

Date: 2nd April 2014

The Secretary of State for Business, Innovation and Skills

and

TrustMark (2005) Limited

Master Licence Agreement

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THIS AGREEMENT is made this second day of April 2014

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS** of 1 Victoria Street, London SW1H 0ET (the “**Licensor**”); and
- (2) **TRUSTMARK (2005) LIMITED** Company Registration No. 5480144 whose registered office is at Venture House, 2 Arlington Square, Downshire Way, Bracknell, Berkshire RG12 1WA (the “**Licensee**”).

BACKGROUND:

- (A) The Licensor and the Licensee entered into a licensing agreement in 2005, which was subsequently amended by a deed of variation in 2007 (as amended, the “**Original Agreement**”), under which the Licensor granted the Licensee the right to use the Trade Marks for the purpose of operating the TM System.
- (B) In order to facilitate the expansion of the TM System and to improve its operation, the parties have agreed to further amend the Original Agreement by way of this Agreement. This Agreement shall be substituted in place of the Original Agreement with effect from the date shown at the top of this page.
- (C) The TM System is the framework under which the Licensor licenses the Licensee to use the Trade Marks to maintain and improve standards within trades as set out in the Core Criteria. The Licensee sub-licenses the Trade Marks to Scheme Operators who are approved to recruit reputable and trustworthy tradesmen known as TM Registered Firms. Scheme Operators effectively sub-sub-license TM Registered Firms to use the Trade Marks and it is the TM Registered Firms that carry out the actual work.
- (D) The Licensee shall sub-licence a Scheme Operator to use the Trade Marks only where such Scheme Operator meets the Core Criteria set out by the Licensor. Scheme Operators are then audited annually by the Licensee to ensure processes, standards and complaint procedures are being followed.

AGREED TERMS:

1. Interpretation

- 1.1. The definitions and rules of interpretation in this clause apply in this Agreement:

Expression	Meaning
“Brand Identity Guidelines”	such branding guidelines as may from time to time be issued by the Licensor for the use of the Trade Marks, the

	current form is which is contained in Schedule 5;
“Commencement Date”	the date of this Agreement;
“Core Criteria”	the criteria that Scheme Operators must satisfy before they are (sub) licensed by the Licensee to use the Trade Marks, as may from time to time be issued or approved by the Licensor, the current form of which is set out in Schedule 1;
“Database”	the database, maintained by the Licensee, (including names, addresses, email addresses, websites and telephone numbers) of Scheme Operators, Schemes, and TM Registered Firms;
“Scheme”	a membership scheme for businesses who under take work as covered by the Core Criteria and operated by a Scheme Operator that has been approved (or in the process of applying for approval, as the context requires) by the Licensee as meeting the Core Criteria;
“Scheme Operator”	a trade association or other body that operates a Scheme and that is approved (or in the process of applying for approval, as the context requires) by the Licensee as meeting the Core Criteria to operate a Scheme;
“Scheme Operator Licence”	the standard form of sub-licence to be entered into by the Licensee and a Scheme Operator as may from time to time be issued by the Licensee, the current form of which is set out in Schedule 2;
“Territory”	the United Kingdom and any other country approved by the Licensor;
“TM Apps”	all mobile applications (“Apps”) and associated technology developed and/or used by the Licensee in connection with the TM System (including, but not limited to, the ‘record your conversation with a tradesman’ App);

“TM Registered Firm”	a business that is a member of a Scheme;
“TM Registered Firm Licence”	the standard short-form of sub-sub-licence to be entered into by a Scheme Operator and a TM Registered Firm as may from time to time be issued by the Licensor, the current form of which is set out in Schedule 3;
“TM System”	the TrustMark governance arrangements (including the TM System Regulations) that establish the TrustMark scheme to encourage the adoption of agreed minimum service standards for businesses in the sectors covered by the Core Criteria based on TM Registered Firms displaying the Trade Marks;
“TM System Regulations”	the regulations governing the operation of the TM System, which shall comprise of this Agreement, the Core Criteria, the Brand Identity Guidelines and the Trade Mark Regulations;
“Trade Mark Regulations”	the regulations governing the use of the Trade Marks as made available for public inspection by the Intellectual Property Office and as may be amended by the Licensor from time to time in accordance with the Trade Marks Act 1994;
“Trade Marks”	the certification trade marks detailed in Schedule 4;
“Website”	www.trustmark.org.uk ;
“Wind-down Period”	a period of six months commencing on the date of the termination of this Agreement; and
“Working Day”	any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

1.2. In the interpretation of this Agreement:

- (a) unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular;

- (b) unless the context otherwise requires, a reference to one gender shall include a reference to the other genders;
- (c) any reference to a person shall include natural persons and partnerships, firms and other such unincorporated bodies, corporate bodies and all other legal persons of whatever kind and however constituted;
- (d) the Schedules form part of this Agreement and shall take effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules;
- (e) unless the context otherwise indicates, references to clauses and schedules are to clauses of, and schedules to, this Agreement;
- (f) schedule and paragraph headings and sub-headings shall not affect the interpretation of this agreement;
- (g) a reference to a business shall include any person, company, corporation or body corporate, wherever and however incorporated or established;
- (h) a reference to any party shall include that party's personal representatives, successors and permitted assigns;
- (i) a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time; and
- (j) a reference to this Agreement or to any other agreement or document referred to in this Agreement is a reference to this Agreement or such other document or agreement as may be varied or novated from time to time (in each case, other than in breach of the provisions of this Agreement).

2. Grant and duration

- 2.1. The Licensor grants to the Licensee a non-exclusive, royalty-free licence (with the right to sub-license Scheme Operators and to sub-sub-license TM Registered Firms) to use the Trade Marks within the Territory in relation to the TM System in accordance with the TM System Regulations.
- 2.2. The Licensee may seek mutual recognition of the TM System with parallel schemes operated by third parties provided that the Licensor has confirmed in writing, acting reasonably, that such schemes offer a customer proposition consistent with that of the TM System. Before seeking such recognition the Licensee shall inform the Licensor in writing of its intention.
- 2.3. This Agreement shall come into effect on the Commencement Date and shall continue in force thereafter unless terminated in accordance with clause 12 of this Agreement.

3. Operation of the TM System

3.1. The Licensee shall:

- (a) Applications: assess applications from Scheme Operators for approval against the Core Criteria. If a Scheme Operator and its Scheme meet such criteria, the Licensee shall, subject to payment of the application fee by the Scheme Operator (which shall be set by the Licensee), approve the application and enter into a Scheme Operator Licence with such Scheme Operator.
- (b) Application monitoring: as part of the application process agree with Scheme Operators an appropriate form of independent initial and review that will be carried out on its processes. These should align with recognised trade standards: Competent Persons Schemes standards in relevant trades, or otherwise recognised British, international or industry standards as appropriate. To ensure a 'level playing field', the Licensee shall ensure that consistent standards are applied by all Scheme Operators within any given trade. Normally, industry best practice, National Occupational Standards (NOS) Current Minimum Technical Competencies (cMTS) will be used to set the standards. As a minimum, all Scheme Operators must achieve Quality Management Standard of ISO9001:2008, the Certification Standard of ISO/IEC 17065:2012, or as agreed with the Licensor and relating to the Core Criteria.
- (c) Multi-sector applications: where a Scheme Operator applies for approval in relation to more than one trade, check that the procedures and associated expertise in the Scheme Operator's entry checks, inspection processes and complaints handling are appropriate to all the trades involved in the application. A Scheme Operator can then register TM Registered Firms against any of the trades within the scope of its approval and for which the TM Registered Firm is competent or qualified. The entry checks, monitoring processes, etc. applied to that TM Registered Firms must be appropriate to cover all the trades against which the TM Registered Firm is listed.
- (d) New trades: consider applications for new trades and develop Core Criteria to cover any new trades for the approval of the Licensor.
- (e) Database: create, and at all times maintain and update as necessary, the Database. The Licensee shall provide the Licensor with access to the Database at any time. Upon termination of this Agreement, the Licensee shall assign all rights in the Database to the Licensor in accordance with clause 13. The Licensee shall comply with the provisions of any relevant laws concerning data protection and privacy when operating the Database.
- (f) Website: maintain the website providing information on the TM System and providing a mechanism whereby consumers may search

for Scheme Operators and TM Registered Firms in a particular industry sector, and also verify that a business claiming to be registered through a particular Scheme Operator is in fact so registered. Upon termination of this Agreement, the Licensee shall assign all rights in the Website (including its content and the URL) to the Licensor in accordance with clause 13;

- (g) Compliance: operate the TM System in such a way that complies with the TM System Regulations and at all times preserve the reputation and integrity of the TM System;
- (h) Conduct: not engage in any activity or practice which causes or may be reasonably anticipated to cause an adverse impact on the reputation of the Licensor, the Trade Marks or the TM System;
- (i) Disputes: ensure disputes with Scheme Operators over approval are dealt with fairly. In the event the Licensee either (i) refuses to approve a Scheme Operator's application or (ii) withdraws approval from a Scheme Operator, and the Scheme Operator disputes such decision, the Scheme Operator may seek an independent review of the decision. Arrangements will be made with an appropriate independent qualified mediator or official mediation body. The Scheme Operator will pay the costs of such a review, with the Licensee reimbursing these costs if the arbitrator finds in favour of the Scheme Operator. If the Scheme Operator is already approved, they will be permitted to continue as a Scheme Operator until the outcome of the appeal.
- (j) Promote awareness: promote awareness of the TM System amongst consumers and the trades that a TM Registered Firm operates in and work with Scheme Operators to require them to make similar efforts to promote awareness of the TM System;
- (k) Reasonable fees: charge Scheme Operators membership fees according to a fair and reasonable fee structure; and
- (l) Contracts: only enter into material contracts or license agreements in connection with the TM System (including the TM Apps) that can be assigned (without consent being required and without penalty or material alteration to the terms) to the Licensor following termination of this Agreement.

3.2. The Licensee shall ensure that Scheme Operators comply with the terms of their Scheme Operator Licence and that they, in turn, monitor the actions of TM Registered Firms. The Licensee shall:

- (a) Scheme Operators and TM Registered Firms: deal fairly and honestly with all Scheme Operators and TM Registered Firms and handle all complaints from them promptly and fairly.

- (b) Monitoring: check that all Scheme Operators are fulfilling their duties and obligations as contained in the relevant Scheme Operator Licence (including, without limitation, the appropriate checks on their TM Registered Firms) and that the reputation of the Licensor, the Trade Marks and the TM System is maintained. In the event that any Scheme Operator is not fulfilling such duties and obligations the Licensee shall either take action to ensure their compliance without delay or terminate their Scheme Operator Licence without delay in accordance with the procedures set out in the Scheme Operator Licence.
- (c) Review: the Licensee will undertake a formal review of each Scheme Operator's performance annually. Where the Licensee becomes concerned about a Scheme Operator's operation, either based on this review or for other reasons, it may call for remedial action, and in the absence of a satisfactory resolution may initiate a formal disciplinary process through which the Scheme Operator's registration may be withdrawn, subject to a right of appeal.
- (d) Compliance: ensure that each Scheme Operator provides the Licensee with agreed management information reporting based on agreed key performance indicators.
- (e) Scheme Operator Licences: ensure that, prior to any Scheme Operator making use of the Trade Marks and granting a TM Registered Firm a Licence to use the Trade Marks, such Scheme Operator enters into an Scheme Operator Licence with the Licensee.
- (f) TM Registered Firm Licences: ensure that, prior to any TM Registered Firm making use of the Trade Marks, such members enter into a TM Registered Firm Licence with the Scheme Operator.

3.3. The Licensor may, in its sole discretion, amend the terms of the TM System Regulations at any time and shall give the Licensee not fewer than 30 days written notice before such amendments take effect.

3.4. The Licensee shall:

- (a) notify the Licensor promptly in writing of any situation in which the reputation of the TM System, the Trade Marks or the Licensor may be materially adversely affected and provide, at no cost to the Licensor, all reasonable assistance requested by the Licensor to alleviate such situation;
- (b) ensure the website and relevant literature clearly explains the complaints procedure (including the roles and responsibilities of the Licensor, the Licensee, Scheme Operators and TM Registered Firms) and the possible remedies and sanctions available under the TM System Regulations – as set out in sections 3.5 and 3.6 below;

- (c) handle all complaints fairly and in accordance with sections 3.5 and 3.6 below; and
- (d) nominate, in writing to the Licensor at the date of this Agreement, a Senior Independent Director (“SID”) to be responsible for investigating complaints of the type referred to in clause 3.7 below and ensure that the SID is unbiased and independent when investigating complaints. The Licensee may change the identity of the SID by written notice to the Licensor.

3.5. The complaints procedure for a consumer shall operate in three stages:

- 3.5.1. First, the consumer should complain to the TM Registered Firm that carried out the work.
- 3.5.2. If this does not satisfactorily resolve the complaint, the consumer should then complain to the Scheme Operator of the TM Registered Firm. The Scheme Operator should investigate the substance of the complaint and, if necessary, arrange for the TM Registered Firm to carry out any remedial work.
- 3.5.3. If this does not satisfactorily resolve the complaint, the consumer should then complain to the Licensee. However, the complaint at this stage should only be about the way the Scheme Operator handled the original complaint. The Licensee’s role is to assess whether the Scheme Operator procedurally handled the original complaint correctly.

At no stage in this process will the consumer be entitled to compensation specifically under the TM System from the TM Registered Firm, the Scheme Operator, the Licensee or the Licensor, unless legislation states otherwise. The consumer will retain the right to initiate civil proceedings against the TM Registered Firm for breach of contract and/or negligence and that should be the appropriate route for a consumer to receive compensation. Once the consumer or TM Registered Firm instigates legal action as the result of a complaint, any investigatory process initiated by the Scheme Operator and/or Licensee may be suspended to await the outcome of the court judgment. If the process is not suspended, the Licensee shall not take any action that may prejudice the case from a legal point of view.

- 3.6. The Licensor has no direct role in investigating complaints. The consumer’s final route of appeal under the TM System is to the Licensee. The Licensor is only able to enforce the terms of the Master Licence Agreement and is not responsible for investigating individual complaints.
- 3.7. Where the Licensor is notified of a complaint (directly or indirectly) (including notification from the Licensee) by a consumer about the way the Licensee has handled a complaint under the TM System, or about the governance of the TM System in general, which creates reasonable grounds for suspecting the Licensee may have breached the Master Licence Agreement:

- (a) the Licensor may refer the complaint to the SID for investigation;
- (b) the SID shall then investigate the complaint and provide a report to the Licensor.. Such report shall include an explanation of the case, confirmation as to whether the Scheme Operator acted in according with their Scheme Operator Licence, details of the actions of the Licensee in investigating the matter with the Scheme Operator and confirming whether the correct procedures were followed;
- (c) during this process the Licensor may inform the consumer that a review is being carried out by a SID of the Licensee;
- (d) upon receipt of the report from the SID, the Licensor may communicate the findings of the report to the Licensee and the consumer; and
- (e) the consumer will have no right of appeal against the SID's report and there shall generally be no further correspondence entered into with the consumer.

4. Reporting and audit rights

4.1. The Licensee shall provide the Licensor with such information on the running of the TM System as the Licensor may reasonably request. As a minimum, the Licensee shall provide the Licensor with an annual report by 31 May of each year in respect of the previous calendar year (linked to an associated formal review meeting as specified in clause 4.4 below). The annual report shall include:

- (a) Copies of reports from an independent annual review of TM System processes similar to that required of Scheme Operators; and
- (b) Statistics (detailed content and format to be agreed from time to time) covering:
 - i. numbers and identity of Scheme Operators and their TM Registered Firms and changes over the reporting period;
 - ii. analysis of the results of Scheme Operator's monitoring, of investigation of any complaints received, and any disciplinary action taken against Scheme Operators;
 - iii. analysis of known cases of infringement of the Trade Marks and actions taken.

4.2. A summary version of the above will be published as an annual report and made available to the public upon request. Scheme Operators, partners and other stakeholders will be given a copy of the report.

- 4.3. The Licensor shall, in order to maintain the common identity and reputation of the Trade Marks and to ensure that the TM System is operated to a consistently high standard, review and audit the Licensee's operation of the TM System when it considers such audit necessary. The Licensee shall, at the Licensor's request, provide or ensure that there is provided to the Licensor all information and documentation and other matters reasonably required by the Licensor in order for the Licensor to carry out such quality control audit.
- 4.4. The Licensor and the Licensee shall meet in May in each calendar year during the preparation of the annual report referred to in clause 4.1 to review the operation and progress of the TM System and agree goals for the next 12 months.

5. Use of the Trade Marks

- 5.1. The Licensee shall use the Trade Marks in accordance with the terms of the TM System Regulations (unless the Licensor specifically provides to the contrary in writing). The Licensee shall at all times preserve the reputation and the integrity of the Trade Marks and shall not change any aspect of the Trade Marks.
- 5.2. The Licensee shall only make use of the Trade Marks for the purposes authorised in this Agreement and, in particular, shall not use the Trade Marks in any way which would allow them to become generic, lose their distinctiveness, become liable to mislead the public, or be materially detrimental to or inconsistent with the good name, goodwill, reputation and image of the TM System or the Licensor.
- 5.3. The Licensee may use and may permit Scheme Operators and TM Registered Firms to use the Trade Marks accompanied by other trade marks (whether registered or not) provided the Trade Marks are sufficiently distinguished from the surrounding and adjacent text, as provided for in the Brand Identity Guidelines.
- 5.4. The Licensee shall not, by virtue of this Agreement, obtain or claim any right, title or interest in or to the Trade Marks except the rights of use as are specifically set out in this Agreement. The Licensee shall not make any claim or representation or do any act which might indicate that the Licensee has any right, title or interest to ownership or use of the Trade Marks other than as is permitted in this Agreement.
- 5.5. The Licensee shall not adopt or use, and shall prevent Scheme Operators and TM Registered Firms from adopting or using, any trade mark, symbol or device which incorporates or is confusingly similar to, or is a simulation or colourable imitation of, the Trade Marks, or unfairly competes with the Trade Marks. The Licensee shall not at any time, whether during or after termination of this Agreement, apply anywhere in the world to register any trade mark identical to or so nearly resembling the Trade Marks as to be likely to deceive or cause confusion.

- 5.6. Except as expressly provided for herein, the Licensee shall not (without the prior written consent of the Licensor) make use of the Licensor's name or any other trade mark, design, copyright or other intellectual property of the Licensor.
- 5.7. The Licensor reserves the right to substitute, add to and/or withdraw the Trade Marks if the Trade Marks can no longer be used or if the Licensor, in its sole discretion, determines substitution of different marks will be beneficial to the TM System. In such circumstances, the use of substituted marks shall be governed by the terms of this Agreement, and the Licensee will not be eligible for any compensation for such substitution.
- 5.8. The Licensee expressly understands and agrees that:
- (a) the Licensor is the owner of all right, title and interest in and to the Trade Marks and the goodwill associated with and symbolised by them;
 - (b) during the term of this Agreement and after its expiration or termination, the Licensee will not directly or indirectly contest the validity of, nor take any other action which tends to jeopardise the Licensor's ownership of, or its right to use and to license others to use, the Trade Marks; and
 - (c) the Licensee's use of the Trade Marks pursuant to this Agreement does not give it any ownership interest or other interest in or to the Trade Marks.

6. Infringement of the Trade Marks

- 6.1. Subject to clause 6.2, the Licensee or, where appropriate, the Scheme Operator, shall, in conjunction with the relevant trading standards officers, conduct all proceedings relating to the Trade Marks and shall take all necessary action (including litigation, arbitration or compromise) in respect of any infringement or alleged infringement of the Trade Marks or passing off or any other claim or counterclaim brought or threatened in respect of the use of the Trade Marks. The Licensee shall keep the Licensor informed in a timely manner of any case of infringement more serious than misuse or misrepresentation by an individual firm within the industry wrongly asserting a right to use the Trade Marks, and in such cases shall consult with the Licensor in a full and timely manner in respect of how litigation, arbitration and other infringement proceedings are conducted and take reasonable account of the Licensor's views.
- 6.2. The Licensor shall have the right (but not the obligation) to itself take any action it considers necessary in relation to proceedings regarding the Trade Marks. The Licensor shall notify the Licensee in writing that it wishes to exercise its right under this clause 6.2. The Licensee will provide all assistance as the Licensor reasonably requires, at the Licensee's cost.

7. Maintenance of the Trade Marks

- 7.1. The Licensor will pay all renewal fees for the continued registration of the Trade Marks falling due during the term of this Agreement.
- 7.2. The Licensee undertakes not to do or permit to be done any act which would or might jeopardise or invalidate the registration of the Trade Marks nor to do any act which might assist or give rise to an application to challenge or remove the Trade Marks or which might prejudice the right or title of the Licensor to the Trade Marks.
- 7.3. The Licensee shall on request give to the Licensor or its authorised representative any information as to its use of the Trade Marks or their use by a Scheme Operator or a TM Registered Firm which the Licensor may reasonably require and will (subject to the provisions of this clause 7) render any assistance reasonably required by the Licensor in maintaining the registration of the Trade Marks.

8. Freedom of Information Act

- 8.1. The Licensee acknowledges that the Licensor is subject to the requirements of the Freedom of Information Act 2000 (“**FOIA**”) and the Environmental Information Regulations 2004 (SI 2004/3391) (“**EIR**”) and shall assist and cooperate with the Licensor, at the Licensee’s expense, to enable the Licensor to comply with this legislation.
- 8.2. The Licensee shall at the Licensee’s expense:
 - (a) transfer any request for information received by it and made pursuant to the FOIA or the EIR to the Licensor as soon as practicable after receipt and in any event within 2 Working Days;
 - (b) provide the Licensor with a copy of all information relating to the request in its possession in the form that the Licensor requires within 5 Working Days of the Licensor requesting that information;
 - (c) provide all assistance reasonably requested by the Licensor to enable it to respond to a request for information within the time limits for compliance in accordance with the relevant provisions of FOIA or the EIR.
- 8.3. Whilst the Licensor may consult the Licensee and take the Licensee views into account the Licensee agrees that the Licensor shall be responsible for determining at its absolute discretion whether any information:
 - (a) is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; or
 - (b) fails to be disclosed in response to either a request for information or a direction from the Information Commissioner, the First-tier Tribunal (Information Rights), the Upper Tribunal or a court.

8.4. In no event shall the Licensee respond directly to a request for information unless expressly authorised to do so in writing by the Licensor.

9. Data protection

9.1. References in this Clause 9 to the “Act” are to the Data Protection Act 1998 and all regulations made thereunder from time to time or any superseding or amending enactment and regulations, and words and expressions used in this clause 9 shall have the same meaning as in the Act.

9.2. Each party represents, warrants and undertakes to the other that throughout the duration of this Agreement it shall (i) comply with the Act, and (ii) assist the other to comply with its obligations under the Act where necessary.

9.3. Without prejudice to the generality of Clause 9.2, above, in relation to personal data processed by the Licensee under this Agreement on behalf of the Licensor, the Licensee shall:

- (a) provide the Licensor with such particulars as the Licensor may need to give notification to the Information Commissioner under the Act, for the alteration of any particulars included in such notification and for any renewal notification;
- (b) if the Licensor is served with an enforcement notice or an information notice or a special information notice (together “notices”) by the Information Commissioner, take such steps within such time as the Licensor may by notice in writing reasonably require, being steps and time specified in such notices, for complying with the principle or principles in question;
- (c) comply on the Licensor's behalf with any request made or obligation imposed pursuant to sections 7 and 10 of the Act with which the Licensor is obliged to comply and of which the Licensor gives the Licensee reasonable notice in writing;
- (d) indemnify the Licensor against any liability incurred by the Licensor under section 13 of the Act by reason of any failure of the Licensee to comply with any requirement under the Act or arising out of any act or omission of the Licensee; and
- (e) if a court makes an order pursuant to section 14 of the Act in relation to any personal data processed by the Licensee on behalf of the Licensor and the Licensor gives a copy of such notice to the Licensee, comply with the order so far as it relates to matters within the Licensee's control.

9.4. In relation to personal data processed by the Licensee under this Agreement on behalf of the Licensor the Licensee shall take appropriate technical and organisational measures against unauthorised or unlawful processing of

personal data and against accidental loss or destruction of, or damage to, personal data. In complying with the previous sentence, the Licensee shall:

- (a) have regard to the state of technological development and the cost of implementing any measures;
- (b) have regard to the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
- (c) have regard to the nature of the data to be protected; and
- (d) take reasonable steps to ensure the reliability of any employees who have access to the personal data.

9.5. The Licensee shall defend the Licensor against any third party claim, action, suit or proceeding resulting from the Licensee's processing of personal data on behalf of the Licensor and shall indemnify the Licensor and keep the Licensor indemnified for all losses, damages, liabilities and all reasonable expenses and costs incurred by the Licensor as a result of any such action, suit or proceeding including any fine imposed by the Information Commissioner on the Licensor or final judgment entered against the Licensor.

10. Confidentiality

10.1. For the purposes of this clause 10 "Confidential Information" means all non-public information obtained by the Licensee from the Licensor (or any other department or office of the Government) and which is either designated in writing as confidential or which would be regarded as confidential by a reasonable business person.

10.2. Save as provided in clause 10.3 the Licensee agrees not to disclose any Confidential Information to any third party.

10.3. The Licensee may disclose Confidential Information without breaching this Agreement:

- (a) with the prior written approval of the Licensor;
- (b) to such of its employees, agents, sub-contractors or professional advisers as need to know it for the purpose of discharging the Licensee's obligations to the Licensor under this Agreement provided that such employees, agents, sub-contractors or professional advisers are subject to obligations of confidentiality corresponding to those which bind the Licensee;
- (c) if ordered to do so by a court or other regulatory authority.

- 10.4. The Licensee shall effect and maintain adequate security measures to safeguard Confidential Information from unauthorised access, use copying or dissemination.
- 10.5. Except with the prior consent in writing of the Licensor, the Licensee shall not make use of this Agreement or any Confidential Information otherwise than for the purposes described in this Agreement.
- 10.6. The Licensee's obligations contained in this clause 10 shall continue to apply after termination of this Agreement.

11. Intellectual property rights

The copyright and all other rights in the text of the TM System Regulations and all other documents supplied to the Licensee by the Licensor from time to time are the property of the Crown.

12. Termination

- 12.1. Subject to clause 12.4 below, the Licensor may terminate this Agreement with immediate effect by written notice to the Licensee in the event that one or more of the following applies:
- (a) the Licensee ceases or threatens to cease to carry on business or the operation of the TM System;
 - (b) the Licensee goes into liquidation;
 - (c) an administrative receiver or receiver and manager or administrator is appointed for the Licensee or its assets or the Licensee enters into a voluntary arrangement with its creditors or suffers any similar insolvency process or process which affords the Licensee protection from its creditors;
 - (d) the Licensee undergoes a change of control within the meaning of the term as set out in section 1124 of the Corporation Tax Act 2010;
 - (e) the Licensee challenges the validity of the Trade Marks or any of them;
 - (f) the Licensor shall, for any reason, cease to have the right to grant licences in respect of the Trade Marks;
 - (g) the Licensee ceases to be a company limited by guarantee; and
 - (h) the Licensee ceases to be a 'not for profit' entity.
- 12.2. In the event that:
- (a) the Licensee breaches the TM System Regulations;

(b) the Licensor, acting reasonably, considers that the Licensee has operated the TM System in a way that does not fairly balance the interests of both consumers and industry; or

(c) the Licensor acting reasonably, considers that the Licensee has operated the TM System in a way that is not appropriate for a Government endorsed standard;

the Licensor shall have the right to require the Licensee to meet with it to discuss how the Licensee proposes to remedy the situation. If the Licensee refuses to meet with the Licensor within a reasonable period, if the Licensor is not satisfied with those proposals or if the Licensee fails to implement such proposals to the Licensor's satisfaction, the Licensor may, by written notice, terminate this Agreement immediately.

12.3. The Licensor may terminate this Agreement upon six (6) months' written notice to the Licensee.

12.4. Termination of this Agreement shall be without prejudice to any existing rights and/or claims that the Licensor may have against the Licensee, and shall not relieve the Licensee from fulfilling the obligations accrued prior to such termination.

13. Consequences of termination

13.1. In the event of termination of this Agreement howsoever arising, in order to protect the reputation of the TM System and ensure its continued operation, the Licensee and the Licensor shall enter into the Wind-down Period.

13.2. During the Wind-down Period the Licensor and the Licensee will cooperate with each other to ensure either the orderly winding down of the TM System or the orderly transfer of the rights and obligations of the Licensee under this Agreement to a third party or to the Licensor, whichever the Licensor deems to be most appropriate.

13.3. During the Wind-down Period where the Licensor considers that the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended) ("TUPE") may apply to any transfer of rights and obligations, the Licensee shall comply with any reasonable requests of the Licensor relating to the application of TUPE including, but not limited to, entering into an agreement detailing the respective obligations and responsibilities of the Parties on terms reasonably required by the Licensor.

13.4. After the Wind-down Period:

(a) the Licensee shall, within such period of the end of the Wind-down Period as the parties shall agree (or, if agreement is not reached, within five Working Days of the end of the Wind-down Period)

(“the Post-Termination Period”) cease both operation of the TM System and use of the Trade Marks. During the Post-Termination Period (i) the Licensee’s operation of the TM System shall be in accordance with the terms of this Agreement and (ii) the Licensee shall not enter into any further Scheme Operator Licences nor enter into any material contracts relating to the TM System, without the Licensor’s prior written consent;

(b) the Licensee shall if so requested by the Licensor, within the Post-Termination Period, execute an assignment for a consideration of £1 in favour of the Licensor (or such other person as the Licensor may direct) of all:

- i. intellectual property rights (including in the Website, the Database and the TM Apps);
- ii. licenses and other contracts with third parties required for the operation of the TM System (including the TM Apps);
- iii. other records, information and documents as are used or required to be used in the operation of the TM System (the “Records”); and
- iv. goodwill in the Trade Marks as may have accrued to the Licensee by reason of the use of the Trade Marks and by the Licensee being connected with the Trade Marks in the course of trade,

as may have accrued to the Licensee in relation to the Trade Marks or the TM System;

(c) the Licensee shall, if so requested by the Licensor, within the Post-Termination Period, at no cost to the Licensor, novate all of the Scheme Operator Licences that it has entered into with Scheme Operators to the Licensor or such third party as the Licensor may require and shall take such steps and make such statements as the Licensor requires to ensure the smooth novation of the Scheme Operator Licences;

(d) the Licensee shall, within the Post-Termination Period, deliver to the Licensor (or such other person as the Licensor may direct) the Records, the Website, the Database and the TM Apps;

(e) the Licensee shall, within the Post-Termination Period, deliver to the Licensor (or such other person as the Licensor may direct) the TM System Regulations, all copies thereof, and, as directed by the Licensor, shall either destroy or deliver to the Licensor (or its nominee) all stationery, signs and other material bearing the Trade Marks then in its possession;

(f) after the Post-Termination Period the Licensee shall not purport to be an Operator of the TM System or otherwise associated with the Licensor or the TM System.

13.5. All provisions of this Agreement which in order to give effect to their meaning need to survive its termination shall remain in full force and effect after termination.

13.6. Subject to the provisions of this clause 13 the Licensee shall do nothing after the expiry or termination of this Agreement which might lead any person to believe that the Licensee is still licensed to use the Trade Marks or is in any way connected with the TM System or the Licensor.

14. Waiver and remedies

No relaxation, forbearance, delay or indulgence by either party in enforcing any of the terms and conditions of this Agreement, or the granting of time by either party, shall prejudice affect or restrict the rights and powers of that party under this Agreement nor shall any waiver by either party of any breach of this Agreement operate as a waiver of or in relation to any subsequent or any continuing breach of this Agreement.

15. Entire agreement

This Agreement constitutes the entire agreement between the parties concerning the subject matter of this Agreement and each party confirms to the other that it has not entered into this Agreement on the basis of or in reliance on any representations or warranties made or given by the other party its servants or agents and that nothing in this Agreement shall seek to exclude any liability for fraudulent misrepresentation.

16. Variation

No amendment or other variation to this Agreement shall be effective unless it is in writing and is signed by a duly authorised representative of each party.

17. Force majeure

17.1. In this Agreement, “force majeure” shall mean any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented.

17.2. If either party is prevented or delayed in the performance of any of its obligations under this Agreement by force majeure, that party shall forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure, and shall, subject to service of such notice and having taken all reasonable steps to avoid such prevention or delay, have no liability in respect of the performance of such of its obligations as are prevented by the force majeure events during the continuation of such events, and for such time after they cease as is necessary for that party, using all reasonable endeavours, to recommence its affected operations in order for it to perform its obligations.

17.3. If either party is prevented from performance of its obligations for a continuous period in excess of one month, the other party may terminate this Agreement forthwith on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that the rights and liabilities which accrued prior to such termination shall continue to subsist.

18. No partnership/agency

Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the parties, or to authorise either party to act as agent for the other, and neither party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

19. Further assurance

The Licensee shall at the reasonable cost and expense of the Licensor do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the Licensor may from time to time reasonably require for the purpose of giving the Licensor the full benefit of the provisions of this Agreement.

20. Severance

20.1. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

20.2. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

20.3. The parties agree, in the circumstances referred to in clause 20.1 and if clause 20.2 does not apply, to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision. The obligations of the parties under any invalid or unenforceable provision of this Agreement shall be suspended while an attempt at such substitution is made.

21. Notices

21.1. Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the party giving it and shall be served by delivering it personally or sending it by pre-paid recorded delivery

post or fax or e-mail to the address and for the attention of the relevant party set out in clause 21.2 (or as otherwise notified by that party hereunder). Any such notice shall be deemed to have been received:

- (a) if delivered personally, at the time of delivery;
- (b) in the case of pre-paid recorded delivery post, 48 hours from the date of posting;
- (c) in the case of fax or e-mail, at the time of transmission.

provided that if deemed receipt occurs before 9am on a Working Day the notice shall be deemed to have been received at 9am on that day, and if deemed receipt occurs after 5pm on a Working Day, or on a day which is not a Working Day, the notice shall be deemed to have been received at 9am on the next Working Day.

21.2. The contact details of the parties for the purposes of clause 21.1 are:

(a) For the Licensor:

Address: Department for Business, Innovation and Skills, 1
Victoria Street, London, SW1H 0ET
For the attention of: Dr Barry Blackwell
Fax number: Not applicable
E-mail Address: blackwell.barry@bis.gsi.gov.uk

(b) For the Licensee:

Address: Venture House, 2 Arlington Square, Bracknell, Berkshire
RG12 1WA
For the attention of: The Chairman
Fax number: 01344 741 001
E-mail Address: Chair@trustmark.org.uk

or such other contact details in the United Kingdom as may be notified in writing from time to time by the relevant party to the other party.

21.3. In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant party set out in clause 21.2 (or as otherwise notified by that party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery or that the notice was transmitted by fax to the fax number or by e-mail to the e-mail address of the relevant party set out in clause 21.2 (or as otherwise notified by that party hereunder).

22. Assignment and sub-licensing

22.1. This Agreement is personal to the Licensee. The Licensee must not assign, novate, sub-licence or transfer all or any part of its rights or

obligations under this Agreement, save where expressly permitted to do so herein.

- 22.2. The Licensor may assign, transfer and novate the benefit and burden of this Agreement and may delegate any of its obligations under this Agreement.

23. Rights of third parties

A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

24. Dispute resolution

- 24.1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either party notifying the other of the dispute.
- 24.2. Nothing in this dispute resolution procedure shall prevent the parties from seeking from any court of the competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other party to do any act.
- 24.3. If the dispute cannot be resolved by the Parties pursuant to clause 24.1 the dispute may, by agreement between the parties, be referred to mediation pursuant to the procedure set out in clause 24.5.
- 24.4. The performance of this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Licensee (and its employees, consultants, agents or sub-contractors) shall comply fully with the requirements of this Agreement at all times.
- 24.5. The procedure for mediation is as follows:
- (a) a neutral adviser or mediator (“the Mediator”) shall be chosen by agreement between the parties. If they are unable to agree upon a Mediator within 10 Working Days after a nomination of a Mediator by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 Working Days from the date of the nomination or within 10 Working Days of discovering that the nominated Mediator is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (“CEDR”) to appoint a Mediator.
 - (b) The parties shall within 10 Working Days of the appointment of the Mediator meet with the appointed Mediator in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed in writing, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence, save that details of the settlement may be given to any Central Government department without the permission of the Licensee, and without prejudice to the rights of the parties in any future proceedings.
- (d) If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by their duly authorised representatives.
- (e) Failing agreement, either of the parties may invite the Mediator to provide a non-binding but informative opinion in writing. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to this Agreement without the prior written consent of both parties.
- (f) If the parties fail to reach agreement in the structured negotiations within 45 Working Days of the Mediator being appointed, or such longer period as may be agreed by the parties in writing, then any dispute or difference between them may be referred to the Courts.

25. Governing law and jurisdiction

- 25.1. This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law.
- 25.2. The parties irrevocably agree that, subject to clause 24, the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Agreement or its subject matter or formation (including non-contractual disputes or claims).

EXECUTED as a deed by the parties the day and year first above written.

The Corporate Seal of the **SECRETARY OF STATE FOR BUSINESS, INNOVATION AND SKILLS** hereunto affixed is authenticated by:

an official of the Department for Business, Innovation and Skills:

Denis Walker

.....

SIGNED as a deed on behalf of **TRUSTMARK (2005) LIMITED** acting by a Director and the Secretary/two Directors:

Liz Male

Director

Alan C. Slaney

Director