

**IMPORTANT: BY USING CARDINUS SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE FOLLOWING TERMS:**

- A. CARDINUS SOFTWARE AS A SERVICE TERMS AND CONDITIONS
- B. CARDINUS CLIENT TERMS AND CONDITIONS

**CARDINUS SOFTWARE AS A SERVICE TERMS AND CONDITIONS**

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation to the Software and Services between you and us, Cardinus Risk Management Limited, registered in England and Wales under company no. 3127254, with registered office 107 Leadenhall Street, London, EC3A 4AF (**Cardinus**).

A copy of this Agreement is available with the option to print on the Cardinus Website as is in force from time to time.

**Background**

Cardinus supplies the following two Services:

- A. Cardinus has developed certain Software, which is made available to Cardinus Clients for the purposes of providing search and reporting tools based upon the subscriber data suitable for a range of risk management and business information purposes and the results of that analysis back to the Client. Cardinus additionally provides Support Services to assist with use of it's' Software, particularly the Indigo platform.
- B. The Client wishes to use Cardinus' risk surveying and reporting Services, including onsite risk Services. Reports covered include insurance risk, reinstatement cost assessment, fire, health and safety, asbestos management surveys and other Services as may be offered and agreed between the parties from time to time. Cardinus also offer personnel who can provide support and assistance to Client's needs and requirements.

**1.0 Definitions and Interpretation**

In this entire Agreement the following words and expressions shall have the following meanings:

**Agreement** the Agreement between Cardinus and the Client incorporating the Terms and Conditions within the entirety of this document.

**Affiliate** each and any undertaking which is from time to time a group undertaking of Cardinus (and for this purpose the expressions "undertaking" and "group undertaking" shall have the meanings set out in section 1161 of the Companies Act 2006;

**Authorised User** the user who is authorised to have access to the Services;

**Claims** shall mean all demands, Claims, proceedings, penalties, fines and liability (whether criminal or civil, in contract, tort or otherwise);

**Client** the person or organisation named at the foot of this Agreement; or the person or organisation stated within the Order, whether instructed directly or indirectly by their agent, duly appointed to act on their behalf;

**Client Account** a profile under which the Authorised User has access to the Services;

**Client Data** the data uploaded onto the Software by the Client;

**Commencement Date** the date hereof or the date of the first Contract if earlier;

**Confidential Information** includes any proprietary data and any other information disclosed by one party to the other in writing or disclosed orally and by its nature is deemed to be proprietary or confidential information. Notwithstanding the foregoing, Confidential Information will not include any information that is or becomes known to the general public, which is already in the receiving party's possession prior to disclosure by a party or which is independently developed by the receiving party without the use of Confidential Information;

**Contract** an Order when accepted by Cardinus in accordance with Clause 21;

**Documentation** the accompanying proprietary documentation (including without limitation, operating manuals, user instructions, technical literature, and on-line help) made available to the Client by Cardinus for use with the Services, available online via [www.cardinus.com](http://www.cardinus.com) and/or the Software;

**Fees** the fees payable by the Client to Cardinus for the Services as set out in the Quote provided by Cardinus to the Client or by agreement in writing between the parties;

**Losses** shall mean all Losses including without limitation financial losses, damages, legal costs and other expenses of any nature whatsoever;

**Order** the Client's written agreement to buy Services based on the Quote and this Agreement;

**Personal Data** has the meaning given to it in the Data Protection Act 2018;

**Property and/or Risk Address** means the particulars of which are set out in the Order based on the Quote;

**Quote** means the information provided by the Client, along with the Cardinus Services and Fee, based on that information and a link to this Agreement;

**Report Delivery Date** the date the Report is to be delivered as set out in the Order Confirmation, where known;

**Reports** means all Reports, documentation, presentations, software or drawing in whatever format that Cardinus shall or may create or deliver to the Client as part of the Services provided by Cardinus;

**Services** means the Services to be provided under this Agreement by Cardinus to the Client, more particularly described in the Quote, Order and Documentation;

**Software** means the platform known as Indigo or any other platform or application provided under this Agreement via links provided to the Client by Cardinus from time to time;

**Support Services** support services to be provided by Cardinus pursuant to clause 10;

**Term** the duration of this Agreement as set out in clause 2.1;

**Use** to login to the Client Account, to upload Client Data on to the Software, to access the Software and to otherwise make Use of the Services;

**User Subscription:** the User Subscription purchased by the Client pursuant to clause 3.1 which entitles an Authorised User to access and Use the Software and the Services in accordance with this Agreement.

**Website** the website operated by Cardinus and currently located at [www.cardinus.com](http://www.cardinus.com);

**Working Day** a day (other than a Saturday or Sunday) on which the clearing banks in the City of London are open for business; and

**Virus** any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.1 Reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted. Words importing the singular include the plural, words importing any gender include every gender and words importing persons include bodies corporate and unincorporated; and (in each case) vice versa. Any reference to a party to this Agreement includes a reference to his successors in title and permitted assigns. The headings to the clauses are for ease of reference only and shall not affect the interpretation or construction of this Agreement. References in this Agreement to clauses schedules and exhibits are to clauses of and schedules and exhibits to this Agreement except where otherwise expressly stated.
- 1.2 Words importing any gender include every gender and words importing the singular number include the plural number and vice versa;

- 1.3 Words importing person include firms, companies and corporations and vice versa;
- 1.4 References to numbered clauses are references to the relevant clause in this Agreement;
- 1.5 Any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
- 1.6 The headings to clauses and paragraphs of this Agreement are not to affect the interpretation;
- 1.7 Any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
- 1.8 Where the word 'including' is used in this Agreement it shall be understood as meaning 'including without limitation'; and
- 1.9 In the event of a conflict between this Agreement and an existing agreement, the existing agreement shall prevail relating specifically to the conflicted subject matter.

## 2.0 Agreement and Subscription Term

- 2.1 This Agreement shall commence on the Commencement Date and shall continue (unless terminated earlier by either party in accordance with the terms of this Agreement in accordance with clause 12), until whichever of the following events occurs first:
  - 2.1.1 either party gives 90 days' notice to the other party to terminate; OR
  - 2.1.2 the Agreement between you and Cardinus has terminated.

## 3.0 User Subscription

- 3.1 In consideration of payment by the Client of the Fees for the purchase of User Subscription and the Client agreeing to abide by the terms of this Agreement, Cardinus hereby grants to the Client a non-exclusive, non-transferable right to permit the Authorised User to access the Software and Services for the Term.
- 3.2 Any new features which augment or enhance the current Service, including the release of new tools and resources, if provided to the Client, will be subject to the Terms of this Agreement.
- 3.3 The Client shall not access, store, distribute or transmit any Viruses, or any material during the course of its Use of the Services that:
  - 3.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
  - 3.3.2 facilitates illegal activity;
  - 3.3.3 depicts sexually explicit images
  - 3.3.4 promotes unlawful violence;
  - 3.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
  - 3.3.6 in a manner that is otherwise illegal or causes damage or injury to any person or property;and Cardinus reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 3.4 The Client shall not:
  - 3.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
    - 3.4.1.1 and except to the extent expressly permitted under this Agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Services and/or Documentation (as applicable) in any form or media or by any means; or
    - 3.4.1.2 attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services; or
  - 3.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
  - 3.4.3 use the Services and/or Documentation to provide services to third parties; or
  - 3.4.4 subject to clause 16, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except with the written authorisation of Cardinus, or
  - 3.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Agreement.
- 3.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or Use of, the Services and/or the Documentation and, in the event of any such unauthorised access or Use, promptly notify Cardinus.
- 3.6 In order to access the Service, the Client must:
  - 3.6.1 obtain access to the World Wide Web and ensure they are using Browsers supported by Cardinus Software from time to time.. The Client shall remain responsible for any charges or service fees associated with such access; and

3.6.2 the Client shall remain responsible for maintaining its connection to the World Wide Web and accessing the Software (including, without limitation a suitable computer, modem, internet browser or other access device) and for the avoidance of doubt Cardinus has no responsibility for the Client's equipment and Cardinus does not warrant uninterrupted use of the Software which is subject to availability via the World Wide Web.

- 3.7 Cardinus may contact the Client with certain communications or messages regarding, the Services and/or the Software, (including, without limitation, service announcements and administrative messages) and these communications are considered part of the Services and the Client shall not be permitted to opt out of receiving them during the Term.
- 3.8 The Client agrees not to access the Services by any means other than through the Software provided by Cardinus.
- 3.9 Cardinus will provide the Services in accordance with this Agreement. Cardinus may at its sole discretion modify the features of the Services from time to time without prior notice.
- 3.10 Cardinus makes no representation that Use of the Services or any information acquired from using the Software is or will be appropriate, available or lawful in all countries. The Client shall be responsible for ensuring that its access to the Software is compliant with all local laws.

#### 4.0 Authorised User

- 4.1 In relation to the Authorised User, the Client undertakes that It will not allow or suffer any User Subscription to be used by more than the Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or Use the Services and/or Documentation;
- 4.2 Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than each month and that the Authorised User shall keep his password confidential.
- 4.3 Cardinus may audit the Client Account regarding the name and password for the Authorised User, at Cardinus' expense, following the exercise of reasonable prior notice. If such audit reveals that passwords have been provided to, or used by, individuals in excess of the Authorised Users, then Cardinus may without prejudice to Cardinus' other rights:
  - 4.3.1 charge an additional licence fee in respect of each additional user in accordance with its standard scale of charges in force from time to time; and/or
  - 4.3.2 consider this an irremediable material breach for the purposes of clause 12.
- 4.4 The Client shall effect and maintain adequate security measures to safeguard the Software from access or Use by any unauthorised person. The Client is solely responsible for any and all activities that occur under the Client Account, including, without limitation, any unauthorised Use of the Client Account. The Client agrees to notify Cardinus immediately upon learning of any unauthorised Use of the Client Account or any other breach of security of the Software.
- 4.5 Cardinus (or its authorised agents) may log in to the Client Account using the Client password in order to maintain or improve the Services, including to provide the Client with assistance. The Client hereby acknowledges and consents to such access and that the Client shall have no rights in, or to, the Software, the Services or the Documentation other than the right to Use them in accordance with the terms of this Agreement.
- 4.6 Cardinus confirms that it has all the rights in relation to the Services, the Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.
- 4.7 The Client acknowledges that they shall have no right to access the Services or Software in object or source code form or in unlocked coding or with comments.
- 4.8 In circumstances where a Cardinus Partner and/or Freeholder has contracted or engaged Cardinus through a Third Party, then Cardinus has a duty to allow the Partner/Freeholder access to relevant reports, if requested to do so.

#### 5.0 Cardinus Warranties

- 5.1 Subject to clause 11 Cardinus warrants that for the Term of Use of the Software, when used in accordance with Cardinus' operating instructions will in all material respects provide the functions and facilities and will perform substantially as described in the Documentation. The Client shall notify Cardinus in writing if at any time while subscribed to the Services, the Software does not conform to this warranty and such non-conformance is substantial and material to the Client's use of the Software, Cardinus will attempt to replicate and verify such non-conformance. If Cardinus is able to verify the non-conformance Cardinus will, in its sole discretion either:
  - 5.1.1 use its reasonable endeavours to issue a fix, patch or update in accordance with clause 10; or
  - 5.1.2 refund a proportion of the Fees for the period of non-conformance from the date such non-conformance was first notified by the Client to Cardinus in accordance with this warranty.

If the Client receives a remedy described in this clause 5.0, this will be the Client's sole remedy in relation to the corresponding warranty non-compliance.

- 5.2 Cardinus does not warrant or make any representation that:
  - 5.2.1 Services will meet the Client's requirements;
  - 5.2.2 The operation of the Services will be uninterrupted or error free; or
  - 5.2.3 use of and/or output from utilising the Services, will be correct, accurate, or otherwise to be relied upon.
- 5.3 Cardinus and/or its respective suppliers may make improvements and/or changes in the Services, at any time, with or without notice. Cardinus does not represent or warrant that any or all of the Services will be uninterrupted or error-free, that defects will be corrected, or that the Services will be free of viruses or other harmful components.
- 5.4 The Services included in or available through the Software, including the Reports, are based upon the Client Data and information provided by the Client and may include inaccuracies or typographical errors. Cardinus does not warrant or represent that the Use of the Services or the Reports will be correct, accurate, timely or otherwise reliable and the Client should check the accuracy of any Reports. The Client specifically agrees that Cardinus and its Affiliates shall not be responsible for unauthorised access to or alteration of the Client Data or data provided by the Client or any third party.
- 5.5 The warranties set out in this clause 5 are instead of all other warranties, representations or conditions, express or implied, statutory or otherwise, including any implied warranties of satisfactory quality and fitness for a particular purpose.
- 5.6 No oral or written communications by or on Cardinus behalf shall create a warranty or in any way increase the scope of the warranties Cardinus have given.
- 5.7 The Client shall assume the entire risk in the performance of the Services and the results and Reports obtained from its Use, and the Client remains responsible for ensuring that any Reports, opinions, recommendations, forecasts or other comments submitted to third parties, whether or not produced using the Software, are accurate and complete.
- 5.8 Cardinus shall have no responsibility or liability in relation to the performance or otherwise of any third party software.

## 6.0 Service Levels

- 6.1 Cardinus does not guarantee the Services will be available at all times or during any down time caused by:
  - 6.1.1 outages to any public Internet backbones, networks or servers;
  - 6.1.2 any failures of the Client's equipment, systems or local access services;
  - 6.1.3 previously scheduled maintenance notified to the Client; or
  - 6.1.4 events beyond Cardinus' (and/or of its Affiliates') control such as strikes, riots, insurrection, fires, floods, explosions, war, governmental action, labour conditions, earthquakes, natural disasters, or interruptions in Internet services to an area where Cardinus' (or any of its Affiliates') or the Client's servers are located.

## 7.0 Client Data

- 7.1 The Client shall own all rights, title and interest in and to all of the Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.
- 7.2 The Client acknowledges and agrees that Cardinus shall not be responsible for any Customer Data uploaded by an Authorised User;
- 7.3 The Client shall obtain and maintain all necessary licences, consents, and permissions necessary for Cardinus, its contractors and agents to perform their obligations under this Agreement, including without limitation, the Services;
- 7.4 The Client shall provide Cardinus with:
  - 7.4.1 all necessary co-operation in relation to this Agreement; and
  - 7.4.2 all necessary access to such information as may be required by the Supplier;In order to provide the Services, including but not limited to Client Data and content;
- 7.5 Cardinus shall reserve the right to edit, remove or destroy any Client Data which Cardinus believes to be in breach of this Agreement, unsuitable for Use on the Software or otherwise detrimental to Cardinus or the Services.
- 7.6 Cardinus reserves the right to:
  - 7.6.1 archive Client Data 3 years after termination; and
  - 7.6.2 delete Client Data 5 years after termination.Cardinus will endeavour to contact the Client, 6 months prior to either of the above, with the option of providing a copy of Client Data.

## 8.0 Intellectual Property Rights Indemnity

- 8.1 Cardinus will indemnify the Client against any and all liability, loss, damage, reasonable costs and expenses (including reasonable legal fees) which the Client may incur as a result of any claim or action brought against the Client by any person alleging that the Client's authorised and proper Use of the Services under this Agreement infringes the intellectual property rights of such person (Intellectual Property Claim). If that happens, the Client must take reasonable steps to mitigate any losses which the Client shall suffer or incur.
- 8.2 If in Cardinus' reasonable opinion the Services are likely to become or do become the subject of an Intellectual Property Claim, Cardinus may at its sole discretion elect to either:
  - 8.2.1 obtain the right for the Client to continue using the Services in the manner permitted under this Agreement; or
  - 8.2.2 modify or replace the infringing part of the Services so as to avoid the infringement or alleged infringement, without materially reducing the functionality or performance of the Services.
- 8.3 If having used all reasonable endeavours Cardinus cannot achieve either of the circumstances referred to in clause 8.2 on reasonable terms within sixty (60) days of receiving notice of an Intellectual Property Claim the Client may terminate this Agreement, including the Service, by serving not less than fourteen (14) days' notice to that effect upon Cardinus.
- 8.4 The Client shall:
  - 8.4.1 promptly notify Cardinus of any claim or threatened claim concerning the Client's Use of the Service; and
  - 8.4.2 not independently defend or respond to such claim or threatened claim; and
  - 8.4.3 cooperate with Cardinus in the defence of any such claim or threatened claim, subject to payment by Cardinus of the Client's reasonable costs incurred in providing such cooperation.
- 8.5 The indemnity in clause 9 shall not apply to any claim:
  - 8.5.1 which arises from any development, modification, implementation, configuration or integration of the Software, including the Documentation, other than by Cardinus or otherwise approved by Cardinus in writing in advance;
  - 8.5.2 which arises as a result of Use of the Services other than as permitted by this Agreement or as described in the Documentation;
  - 8.5.3 which arises as a result of the Client's continued Use of the Services after the Client has been notified that such use infringes the intellectual property rights of a third party; or
  - 8.5.4 if, in relation to any Intellectual Property Claim, the Client does not comply with clause 8.4.
- 8.6 The provisions of this clause 8 state the Client's exclusive remedy in connection with any claim or threatened claim in relation to the intellectual property rights of another person by the Use of the Services.
- 8.7 The Client will permit Cardinus to check the Use of the Software by the Client at all reasonable times for the purpose of verifying the discharge of the Client's obligations under this clause 8 and Cardinus shall be entitled to enter the Client's premises (and the Client hereby irrevocably licenses Cardinus, its employees and agents to enter its premises for such purpose).

## 9.0 Indemnification

- 9.1 The Client agrees to indemnify, hold harmless and defend Cardinus and its Affiliates, at the Client's expense, in connection with any and all third-party claims, actions, proceedings, and suits brought against Cardinus or any of its officers, directors, employees, agents or Affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, without limitation, reasonable attorneys' fees and other litigation expenses) incurred by Cardinus or any of its officers, directors, employees, agents or Affiliates, arising out of or relating to the Client's:
  - 9.1.1 content submitted, posted to or transmitted through the Software;
  - 9.1.2 breach of any term or condition of this Agreement;
  - 9.1.3 Use of, or connection to, the Software;
  - 9.1.4 violation of applicable laws, rules or regulations in connection with the Services and/or Software.

In such a case, Cardinus will provide the Client with written notice of such claim, suit or action. The Client shall cooperate as fully as reasonably required in the defence of any claim. Cardinus reserves the right, at its own expense, to assume the exclusive defence and control of any matter subject to indemnification by the Client.

## 10.0 Support Services

- 10.1 Subject to clause 6, Service Levels, Cardinus shall during the Term:
  - 10.1.1 provide the Client with access to the Software twenty-four (24) hours a day seven (7) days a week subject to the carrying out of emergency repairs (which Cardinus shall endeavour to carry out as reasonably expeditiously as possible) and planned scheduled maintenance which takes place throughout the first Saturday of every month and otherwise as Cardinus shall notify to the Client;

- 10.1.2 use its reasonable endeavours to schedule all planned enhancement development maintenance or repairs to take place between the hours of 6.00 p.m. and 8.00 a.m.
- 10.1.3 provide the Client with access to such enhanced versions of the Services as Cardinus shall release and charge to its Clients as agreed from time to time;
- 10.1.4 provide the Client with all documentation which Cardinus deems necessary for the utilisation of any modified, enhanced or replacement versions of or additions to the Services delivered to the Client by Cardinus from time to time; and
- 10.1.5 provide the Client with such technical advice by:
  - 10.1.5.1 telephone through a telephone helpdesk which shall be made available to the Client on Working Days between the hours of 9.00 a.m. and 5.30 p.m.
  - 10.1.5.2 Cardinus may at its discretion provide emergency support between the hours of 5.30 p.m. and 10.00 p.m. (in respect of which Cardinus shall reserve the right to charge at the rates in force from time to time);
  - 10.1.5.3 facsimile or email transmission to which Cardinus shall endeavour to respond within forty-eight (48) hours of receipt; or
  - 10.1.5.4 mail to which Cardinus shall endeavour to respond within five (5) Working Days

as Cardinus shall consider necessary to resolve the Client's difficulties and queries in using the Software provided that the provision of this Service shall be conditional upon the Client having first successfully completed a training course in accordance with Cardinus' current minimum recommendations.

- 10.2 If an apparent error occurs in the Software or the provision of the Services by Cardinus, the Client shall inform Cardinus by phone or email as soon as reasonably possible and Cardinus will make reasonable efforts to correct such error in accordance with the time limits set out herewith. The time limits for correction vary according to the nature and severity of the error as determined by Cardinus. Severity categories and target timescales for correction are:
  - 10.2.1 Severity category 1: an error making the Services totally unavailable - one (1) day;
  - 10.2.2 Severity category 2: an error causing substantial problems in use of the Services where no workaround is available - three (3) days;
  - 10.2.3 Severity category 3: an error causing substantial problems in use of the Services where a workaround is available - seven (7) days;
  - 10.2.4 Severity category 4: any other error - next product enhancement.
- 10.3 The Client shall:
  - 10.3.1 ensure that the Software is accessed on suitable equipment (including, without limitation, ensuring any equipment complies with any technical specifications which Cardinus may from time to time require) in a proper manner;
  - 10.3.2 notify each fault to Cardinus as it arises and shall supply Cardinus with a documented example of such fault;
  - 10.3.3 co-operate fully with Cardinus in diagnosing any fault; and
  - 10.3.4 not without Cardinus' prior written consent, request, permit or authorise anyone other than Cardinus or its authorised marketing agents to provide any support services in respect of the Services.
- 10.4 The Support Services do not include:
  - 10.4.1 attendance to faults caused by using the Services otherwise than in accordance with the terms of this Agreement or the Documentation;
  - 10.4.2 support or maintenance of software, accessories, attachments, computer hardware, systems or other devices not supplied by Cardinus;
  - 10.4.3 diagnosis and/or rectification of problems not attributable to the Services; or
  - 10.4.4 loss or damage caused directly or indirectly by operator error or omission,
  - 10.4.5 and any service which is provided by Cardinus as a result of any of the foregoing shall be subject to additional charges at Cardinus' standard rates from time to time in force.
- 10.5 Cardinus shall provide the Support Services during the Term but shall automatically terminate on the termination of the Agreement. No refund of any part of the support charge shall be made on the termination of the Agreement.

## 11.0 Disclaimer and Limitation of Liability

- 11.1 Nothing in this Agreement shall exclude or limit Cardinus' liability for:
  - 11.1.1 fraud; or
  - 11.1.2 death or personal injury arising as a result of Cardinus' negligence
- 11.2 The Client acknowledges that the allocation of risk in this Agreement reflects the price paid for the Services and also the fact that it is not within Cardinus' control how and for what purposes the Client uses the Software and the Services. In no event, therefore, will Cardinus be liable for:
  - 11.2.1 any indirect, consequential, incidental or special damage;
  - 11.2.2 any financial or similar loss of any kind, whether caused directly or indirectly, including: loss of profits, business, chargeable time, anticipated savings, goodwill, any

business interruption or loss of or corruption to data however caused and whether arising under contract, tort, including negligence, statute or otherwise.

- 11.3 Subject to clauses 11.1 and without prejudice to clause 11.2, Cardinus' total aggregate liability in contract shall not exceed the total Fees paid by the Client over the 12 months directly preceding the date on which the claim arose.
- 11.4 Upon request and subject to availability, Cardinus undertakes to provide training in the Use of the Services for the staff of the Client in accordance with Cardinus' standard scale of charges in force from time to time. Such training shall take place at the premises of Cardinus or its appointed agent or as agreed between the parties.

## 12.0 Termination

- 12.1 This Agreement is subject to the rights of termination in clauses 10.5, 12.2, 12.3 and 13.1. Such termination will not, however, affect the applicability of the terms of this Agreement to any Order for which the Software called for by that Order has not yet been delivered and which has not itself been terminated pursuant to clauses 10.5, 12.2, 12.3 and 13.1. In addition, (i) if Cardinus delivers the Software or commences the Services called for in an Order prior to the date of that Order, all provisions of this Agreement and that Order for the benefit or protection of either party will apply to such Services, and (ii) if any Services are provided by Cardinus while this Agreement is in effect but without execution by the parties of an Order all provisions in this Agreement for the benefit or protection of either party will apply as if such Services had been subject to an Order duly executed by the parties.
- 12.2 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this Agreement without liability to the other if the other party commits a material breach of any of the terms of the Agreement and fails to remedy that breach within twenty-eight (28) days of that party being notified in writing of the breach or becomes bankrupt or insolvent or unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), and enters into liquidation, whether voluntary or compulsory (other than for reasons of bona fide amalgamation or reconstruction), passes a resolution for its winding-up, has a receiver or administrator manager, trustee, liquidator or similar officer appointed over the whole or any part of its assets, makes any composition or arrangement with its creditors or takes or suffers any similar action in consequence of its debt, or is unable to pay its debts.
- 12.3 On termination of this Agreement for any reason:
  - 12.3.1 all rights granted to the Client under this Agreement shall cease;
  - 12.3.2 the Client must cease all activities authorised by this Agreement;
  - 12.3.3 the Client must immediately pay to Cardinus any sums due to Cardinus under this Agreement; and
  - 12.3.4 the Client must immediately delete or remove any downloaded aspect of the Services or Documentation from all computer equipment in the Client's possession, and immediately destroy or return to Cardinus (at Cardinus' option) any Documentation then in the Client's possession, custody or control and, in the case of destruction, certify to Cardinus that the Client has done so.
- 12.4 The accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

## 13.0 Confidentiality

- 13.1 Neither party will use or disclose the other party's Confidential Information without the other's prior written consent except for the purpose of performing its obligations under this Agreement or if required by law, regulation or court order. In which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing such information. Upon termination of this Agreement, the parties will promptly either return or destroy all Confidential Information and, upon request, provide written certification of such.

## 14.0 Data Protection Act

- 14.1 Cardinus processes information about the Authorised User in accordance with Cardinus' Privacy Policy. By subscribing to the Services the Client consents to such processing and the Client warrants that all data provided by the Client is accurate. The Privacy Policy can be accessed via [www.cardinus.com/privacy/](http://www.cardinus.com/privacy/)
- 14.2 In performing its obligations under this Agreement each party warrants that it will comply with all applicable data protection laws.
- 14.3 The Client warrants that it has the legal right to disclose all Personal Data that it does in fact disclose to Cardinus under or in connection with this Agreement.
- 14.4 Cardinus warrants that:



- 14.4.1 it will act only on instructions from the Client in relation to the processing of any Personal Data performed by Cardinus on behalf of the Client; and
- 14.4.2 it has in place appropriate security measures (both technical and organisational) against unlawful or unauthorised processing of Personal Data and against loss or corruption of Personal Data processed by Cardinus on behalf of the Client.

## 15.0 General

- 15.1 The Client warrants to Cardinus that in entering into this Agreement it has not relied on any warranty, representation or undertaking save as expressly set out in this Agreement (or an existing agreement between the parties). No waiver or amendment of any provision of this Agreement shall be effective unless made by a written instrument signed by both parties. Each provision of this Agreement shall be construed separately and notwithstanding that the whole or any part of any such provision may prove to be illegal or unenforceable the other provisions of this Agreement and the remainder of the provision in question shall continue in full force and effect.
- 15.2 No forbearance, delay or indulgence by either party in enforcing the provisions of this Agreement shall prejudice or restrict the rights of that party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy herein conferred upon or reserved for either party is exclusive of any other right, power or remedy available to that party and each such right, power or remedy shall be cumulative.

## 16.0 Assignment

- 16.1 The Client shall not, without the prior written consent of Cardinus, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 16.2 Cardinus may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

## 17.0 Notices

- 17.1 All notices given by the Client to Cardinus must be given to the Property and Insurance Managing Director at the address given above. Cardinus may give notice to the Client, via the Website, or at the e-mail or postal address the Client provides to Cardinus when subscribing to the Services.
- 17.2 Notice will be deemed received and properly served immediately when posted on the Website, 24 hours after an e-mail is sent, or three (3) days after the date of posting of any letter.
- 17.3 In proving the service of any notice, it will be sufficient to prove, in the case of a letter, that such letter was properly addressed, stamped and placed in the post and, in the case of an e-mail that such e-mail was sent to the specified e-mail address of the addressee.

## 18.0 Third Party Rights

- 18.1 The Agreement is made for the benefit of the parties to it and (where applicable) their successors and permitted assigns, and is not intended to benefit, or be enforceable by, anyone else and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement. Notwithstanding the foregoing the rights of the parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a party to this Agreement.

## 19.0 No Partnership or Agency

- 19.1 Nothing in the Agreement is intended to or shall operate to create a partnership between the parties, or authorise a party to act as agent for the other, and neither party shall have the 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).

## 20.0 Law and jurisdiction

- 20.1 This Agreement and any dispute or claim arising out of or in accordance with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. Any dispute or claim arising out of or in connection with this Agreement or such Contracts of their formation (including non-contractual disputes or Claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales. Nothing in this Agreement limits the right of Cardinus to bring proceedings against the Client arising out of or in connection with this Agreement in any other court of competent jurisdiction or concurrently in more than one court of competent jurisdiction.

## CARDINUS CLIENT TERMS AND CONDITIONS

### 21.0 Contract Formation

- 21.1. This Agreement shall commence on the Commencement Date.
- 21.2. After the Client places an Order, Cardinus will acknowledge that it has been received. A contract will only exist between the Client and Cardinus once Cardinus has sent an acknowledgement to the Client or, if earlier, performed the Services.

### 22.0 Performance of the Services

- 22.1. The parties shall agree the time and place (if not specified in the Order acknowledgment and/or Quote) when the Services shall be performed, subject to the availability of Cardinus' staff and agents, and in default of agreement the Services will be performed in a reasonable time period.
- 22.2. Cardinus shall use all reasonable endeavours to complete the Services by the Report Delivery Date or meet such other dates as agreed by the parties.
- 22.3. The Services shall be carried out by suitably competent personnel.
- 22.4. Cardinus may choose not to complete any Order by giving notice to the Client if it is unable to carry out the Services (including without limitation if Cardinus is unable to gain access or entry to the Property/ Risk Address).

### 23.0 Fee and payment

- 23.1. In consideration of the Services to be provided by Cardinus to the Client, the Client shall pay or procure the payment of the Fees as set out in the Quote to Cardinus within thirty (30) days of receipt of the relevant invoice (unless a longer period is agreed between the parties).
- 23.2. The Fees are unless stated otherwise exclusive of VAT and / or any other applicable taxes or levy, which shall be charged in addition at the rate in force at the date of invoice.
- 23.3. If payment of the Fee is not received by any due date, Cardinus shall be entitled (without prejudice to any other right or remedy):
  - 23.3.1. To charge statutory interest on the outstanding amount, accruing daily alongside all associated legal costs; and / or
  - 23.3.2. To require that the Client make a payment in advance of any Services or part of the Services not yet supplied; and / or
  - 23.3.3. Not to provide any Reports due on completion of the Services until such payment is made, or if Reports have been issued, to deny the use of such Reports.
- 23.4. All payments shall quote Cardinus' invoice number.

### 24.0 The Client's obligations

- 24.1. The Client undertakes that it or its duly appointed agents will purchase the Services as specifically stated in the Quote, in respect of properties owned or managed by the Client.
- 24.2. The Client acknowledges and agrees that for Cardinus to be able to provide the Services the Client shall:
  - 24.2.1. Co-operate with Cardinus as Cardinus reasonably requires;
  - 24.2.2. Provide to Cardinus such information and documentation as Cardinus reasonably requires;
  - 24.2.3. Provide Cardinus and its agents with access to the Property/Risk Address as reasonably required and agreed in advance;
  - 24.2.4. Make available to Cardinus the facilities, resources, working space and staff as agreed between the parties and / or as Cardinus reasonably requires from time to time; and
  - 24.2.5. Instruct the Client's staff and agents to co-operate and assist Cardinus.
- 24.3. Cardinus may charge the Client for any additional reasonable costs and expenses incurred by Cardinus caused by the Client's instructions, failure to provide instructions, or failure to comply with Clause 24.2.
- 24.4. The Client shall keep confidential all information relating to Cardinus, its processes, its technology and in particular the Software.

### 25.0 Reporting Requirements

- 25.1. Cardinus shall deliver the Reports by the Report Delivery Date or at such later date as is reasonable in the circumstances.
- 25.2. Cardinus grants to the Client a non-exclusive licence (without the right to sub-licence) to Use the Reports. Cardinus shall own all copyright, database and other intellectual property rights in the Reports.
- 25.3. The Report is intended for the Use of the Client and Cardinus does not accept any liability for any reliance placed on the contents of the Report by a third party. The Client shall inform any third party to whom it discloses a Report of the nature and scope of the Report and shall indemnify and hold harmless Cardinus in respect of any third party Claims in accordance with clause 27.6.

- 25.4. Following acceptance of this Agreement, the Client will be entitled to access the Software. Reports can be accessed via the Software.
- 25.5. In circumstances where a Cardinus Partner and/or Freeholder has contracted or engaged Cardinus through a Third Party, then Cardinus has a duty to allow the Partner/Freeholder access to relevant reports, if requested to do so.

#### 26.0 Additional Services

- 26.1. Cardinus will provide, for an additional fee, such additional Services as are agreed between Cardinus and the Client and confirmed by Cardinus in writing.

#### 27.0 Warranties, liability and indemnities

- 27.1. Cardinus warrants that it will use reasonable care and skill in performing the Services and to a standard which conforms to generally accepted industry standards and practices.
- 27.2. If any part of the Services is performed negligently or in breach of the provisions of this Agreement then, at the request of the Client (if the request is given within 6 months of the Report Deliver Date), Cardinus will re-perform the relevant part of the Services, always subject to Clause 27.5 and 27.6.
- 27.3. Cardinus expressly does not warrant that any result or objective whether stated in this Agreement or not shall be achieved, be achievable or be attained at all or by a given Report Delivery Date or any other date.
- 27.4. Except in the case of death or personal injury caused by Cardinus' negligence, Cardinus' liability under or in connection with this Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise howsoever, shall not exceed £10 million any claim or any difference amount that might equate to the amount of Professional Liability cover maintained by Cardinus from time to time. The provisions of this Clause 27.4 shall not apply to Clause 27.6.
- 27.5. Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty nor otherwise for any Losses, damage, costs or expenses of any nature whatsoever incurred or suffered by that other party of an indirect or consequential nature, including without limitation any economic Losses or other Losses of turnover, profits, business or goodwill. The provisions of this Clause 27.5 shall not apply to Clause 27.6.
- 27.6. The Client shall indemnify and hold harmless Cardinus from and against all Claims and Losses arising from loss, damage, liability, injury to Cardinus employees and third parties, infringement of third party intellectual property, or third party Losses by reason of or arising out of any information supplied to the Client by Cardinus, its employees or its contractors, or supplied to Cardinus, its employees or its contractors, or supplied to Cardinus by the Client within or without the scope of this Agreement.
- 27.7. Each of the parties acknowledges that, in entering into this Agreement, it does not do so in reliance on any representation, warranty or other provision except as expressly provided in this Agreement (or other existing agreement between the parties), and any conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law. Nothing in this Agreement excludes liability for fraud.
- 27.8. Nothing in this Agreement will adversely affect the Client's statutory rights where the Client is contracting as a consumer.

#### 28.0 Consumer Rights

- 28.1. By law, the Client contracting as a consumer in the European Union shall have the right to cancel the Contract within seven (7) business days without incurring liability.

#### 29.0 General

- 29.1. Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than six (6) months, either party may terminate this Agreement by written notice to the other party.
- 29.2. This Agreement may only be amended in writing signed by duly authorised representatives of the parties.
- 29.3. Subject to the following sentence, neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other party. A party may, however, assign and transfer all its rights and obligations under this Agreement to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this Agreement.
- 29.4. No failure or delay by either party in exercising any right, power or privilege under this Agreement shall impair the same or operate as a waiver of the same nor shall any single or partial exercise of any right, power or privilege preclude any further exercise of the same or the exercise of any other right, power, or privilege. The rights and remedies provided in this Agreement are cumulative and not exclusive of any rights and remedies provided by law.