



## SOIL-LINK MARKETPLACE - TERMS AND CONDITIONS

These terms and conditions (as amended from time to time under clause 20.3) ("**Conditions**") govern your use of the Soil-Link Marketplace ("**Soil-Link Marketplace**"). The Soil-Link Marketplace is made available by Soil Link Ltd (Company Registration Number: 15320555), whose registered office is at 143 South Road, Haywards Heath, England, RH16 4LY ("**Soil-Link**"), to the firm that uses the same ("**User**"). These Conditions apply to the exclusion of any other terms that the User seeks to impose or which are implied by trade, custom, practice or course of dealing.

**\*Note particularly clause 13 (Limitation of Liability)\***

### 1. BASIS OF CONTRACT AND ACCOUNT APPLICATION

- 1.1. In these Conditions, the definitions contained in Schedule 1 shall apply.
- 1.2. You can apply to become a User on our Website at [www.soil-link.co.uk/signup](http://www.soil-link.co.uk/signup). In a Listing, a User may act as either a Buyer or a Seller, and when running a Listing, the User shall be known as a Listing Holder.
- 1.3. Any Application made by a Prospective User constitutes an offer by the Prospective User to become a User of the Soil-Link Marketplace as a Buyer or a Seller in accordance with these Conditions. Following receipt of an Application, Soil-Link may, at its option, submit an Application acknowledgement to the Prospective User. At this point, it shall become a User and be bound by a contract subject to these Conditions, including any policies or third-party terms referred to in them ("**Contract**"). The Contract shall come into existence immediately upon sending the application acknowledgement ("**Start Date**").
- 1.4. Should anything in the Application (or any other correspondence to or from the User) contradict these Conditions or any policies or third-party terms referred to in them ("**Contradictory Terms**") in any way, such Contradictory Terms shall not be incorporated.
- 1.5. If there is any inconsistency between the provisions set out in these Conditions and the provisions in any policy document, the provisions in these Conditions shall prevail.
- 1.6. The User (by submitting the Application) and Soil-Link (by accepting the same) each warrants that: (i) it has full capacity to enter into and perform its obligations under the Contract; and (ii) the Contract is executed by a duly authorised representative of that party.
- 1.7. Any documents submitted by a User to Soil-Link to support an Application or in response to any request from Soil-Link at any time shall be either genuine documents or true copies of the same.
- 1.8. The User warrants that the information provided during the Application process is complete, accurate, and up to date, and the User agrees to notify Soil-Link of any changes to it promptly.
- 1.9. A User may only have one Account but may set up Authorised Users to act on its behalf. The User shall be liable for Authorised Users' acts and omissions and shall ensure that their use of the Soil-Link Marketplace is in accordance with these Conditions.
- 1.10. Soil-Link reserves the right to reject an Application without giving reasons for its decision.
- 1.11. Soil-Link reserves the right to suspend or remove a User or an Authorised User from the Soil-Link Marketplace for any reason, including where it/they act in a manner which is detrimental to the advancement of the Soil-Link Marketplace (including, but not limited to, failing to conclude accepted Transactions with other Users).
- 1.12. Soil-Link will provide the Services in accordance with the Contract from the Start Date.

### 2. SERVICES

- 2.1. Soil-Link's Services are accessible via its Website (the "**Soil-Link Marketplace**").
- 2.2. Upon acceptance of the Application, Soil-Link shall grant the User a non-exclusive licence for the duration of the Term to access and use the Soil-Link Marketplace in accordance with these Conditions.
- 2.3. Use of the Soil-Link Marketplace by a User or an Authorised User shall be limited to facilitating the buying and selling of Products in accordance with these Conditions. Any unauthorised use of Services by the User (or on behalf of the User, other than by Soil-Link Personnel) shall render all Soil-Link's warranties and obligations under the Contract null and void.
- 2.4. The Soil-Link Marketplace provides the following:
  - 2.4.1. Hosting – Soil-Link will host a User's Listing on its Website. Soil-Link acts as an intermediary; Soil-Link does not possess or own anything listed on the Soil-Link Marketplace and is not involved in the actual Transaction between Buyers and Sellers. Soil-Link is not a traditional auctioneer;
  - 2.4.2. other optional services which may be offered to a User by Soil-Link from time to time.
- 2.5. Soil-Link shall provide the Services: (i) using reasonable care and skill; (ii) in accordance with Applicable Law; and (iii) in accordance with the Service Specification in all material respects.



- 2.6. Soil-Link shall aim to make the Soil-Link Marketplace available to the User on a 24/7 basis. Soil-Link reserves the right to take some or all of the Soil-Link Marketplace offline as reasonably required for routine and emergency maintenance or repairs.
- 2.7. The following shall not reduce Availability: (i) availability of the portion of the circuit that does not transit the hosting provider's backbone network, as the User is responsible for its internet access; (ii) User-caused or third party-caused outages or disruptions (except to the extent that such outages or disruptions are caused by those duly authorised third parties sub-contracted by Soil-Link to perform the Services); and (iii) outages or disruptions attributable in whole or in part to Force Majeure Events.
- 2.8. Soil-Link does not warrant that: (i) the User's use of the Services will be uninterrupted or error-free; or (ii) the User's access to the User Data will be uninterrupted or error-free.
- 2.9. Each User and Authorised User shall:
  - 2.9.1. keep a secure password for its/their use of the Services;
  - 2.9.2. ensure that such password is changed no less frequently than monthly; and
  - 2.9.3. keep its/their password confidential.
- 2.10. In the event of a failure to comply with its obligations relating to the Services, Soil-Link will use reasonable commercial endeavours to correct the same promptly or provide the User with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the User's sole and exclusive remedy for any breach of this clause. The obligations in this clause shall not apply to the extent any failure is caused by a Force Majeure Event or any User Default.
- 2.11. Soil-Link reserves the right to modify the Services in any manner which: (i) improves the nature or quality of the Services; (ii) is necessary to comply with any Applicable Law or safety requirement; (iii) results from a Sourcing Issue; or (iv) does not materially affect the nature or quality of the same, and Soil-Link shall endeavour to notify the User in any such event. Such notification may be via the Account interface and shall include any variations to the Charges that Soil-Link reasonably considers to be necessary in light thereof.
- 2.12. Soil-Link shall follow the archiving procedures for User Data as described in the Data Retention Policy. However, it is the Users responsibility to ensure that User Data is appropriately backed up.
- 2.13. Where there is a Default on the part of the User, Soil-Link (without limiting its other rights or remedies) may suspend performance (and is relieved from its performance obligations) until the User remedies the same. The User shall be liable for any costs incurred by Soil-Link as a result of such Default.
- 2.14. Notwithstanding any other provision, Soil-Link specifically denies any implied or express term or representation that Services will: (i) be fit to operate in conjunction with any hardware items or software products other than those listed in the Service Specification; or (ii) operate uninterrupted or error-free.

### **3. CREATING A LISTING**

- 3.1. The User may create a Listing to purchase or sell Product via the Account.
- 3.2. By creating a Listing for the sale of Product, the User warrants that:
  - 3.2.1. it is the rightful owner of the Product;
  - 3.2.2. it has the capacity to transfer ownership to the Buyer; and
  - 3.2.3. the Product meets the requirements set out in the Soil and Aggregate Quality Policy.
- 3.3. All Listings must contain (at a minimum) the information outlined in the Listing Policy and materially comply with the policy.
- 3.4. Listings must not contain:
  - 3.4.1. any information that encourages or allows a User to transact with another User outside of the Soil-Link Marketplace; nor
  - 3.4.2. anything contrary to Soil-Link's Acceptable Use Policy.
- 3.5. Listings are sorted and displayed by our automated tools and processes. If you would like more information on our Listing Policy, please contact us.
- 3.6. Soil-Link may suspend or remove any Listing at its sole discretion.

### **4. PRICING YOUR PRODUCT**

- 4.1. A Seller shall price its Product in accordance with the Listing Policy.
- 4.2. The price must be exclusive of VAT but inclusive of any other mandatory charges, including delivery and collection fees and import or export fees.

### **5. CONCLUDING A LISTING**

- 5.1. Where a Listing is for the sale of Product:
  - 5.1.1. the Listing Holder (being the Seller) is matched with compatible Bids for its Product;



- 5.1.2. a group of Bids relating to such Product is displayed to the Listing Holder in the form of a redacted list, showing the price per m<sup>3</sup> only;
- 5.2. Where a Listing is for the purchase of Product:
  - 5.2.1. the Listing Holder (being the Buyer) is paired with the Sellers of Product which matches the specification required;
  - 5.2.2. a group of Bids relating to such Product is displayed to the Listing Holder in the form of a redacted list, showing the quantity available only;
- 5.3. if the Listing Holder wishes to view a non-redacted group of Bids, it may do so by clicking "View Bids".
- 5.4. If the Listing Holder wishes to accept a specific Bid, it may do so by clicking "Accept Bid", at which point it will have access to the complete list of Bids, including the Buyers or Sellers contact information.
- 5.5. Upon clicking "View Bids", the Listing Holder is agreeing to pay the Charges in accordance with clause 8.
- 5.6. The Buyer and Seller shall Transact on whatever terms they see fit, and Soil-Link shall have no further involvement in the sale or purchase. For the avoidance of doubt, Soil-Link is not a party to the Transaction.

## 6. USER OBLIGATIONS

- 6.1. The User shall:
  - 6.1.1. not Transact with another user outside of the Soil-Link Marketplace for the purpose of circumventing or reducing the Charges ("**Off-Marketplace Transaction**") within the Relevant Period, and any such Off-Market Transaction shall be deemed a material breach of these Conditions and, without prejudice to any other remedy available to Soil-Link, a breach of this clause 6.1.1 shall give rise to the Charges outlined in clause 8.8 and an option for Soil-Link to terminate under clause 14.2.2;
  - 6.1.2. inform Soil-Link as soon as reasonably practicable if another user attempts an Off-Market Transaction;
  - 6.1.3. ensure that data it inputs into the Services is accurate and in accordance with the requirements for the same;
  - 6.1.4. comply with any and all obligations which are set out in these Conditions and which are stated to be performed by the User and any other obligations which are apparent or would be ordinarily expected to be complied with by the User in the ordinary course of receipt of similar services (from a competent provider, acting reasonably and in good faith);
  - 6.1.5. provide all necessary co-operation reasonably required in relation to the Contract and promptly provide such assistance from the User Personnel or any decision, guidance, information or instruction as may be reasonably requested by Soil-Link from time to time;
  - 6.1.6. not to do or permit anything to be done that will or may damage the business, reputation, image and/or goodwill of Soil-Link;
  - 6.1.7. comply with the policies referred to in these Conditions;
  - 6.1.8. only use the Services for lawful purposes and shall not use the Services: (i) in any way that breaches any Applicable Law; (ii) in any way that is unlawful or fraudulent, or has any unlawful or fraudulent purpose or effect; (iii) for the purpose of harming or attempting to harm minors in any way; (iv) to send, knowingly receive, upload, download, store, use or re-use any material which does not comply with Soil-Link's content standards; (v) to transmit, or procure the sending of, any unsolicited or unauthorised advertising or promotional material or any other form of similar solicitation (spam); (vi) to knowingly store, distribute, transmit, send or upload any data or material that contains a Virus; and (vii) to (or attempt to) probe, scan, penetrate or test the vulnerability of any of Soil-Link's systems or networks or to breach any of Soil-Link's security or authentication measures, whether by passive or intrusive techniques, without Soil-Link's prior written consent;
  - 6.1.9. not (and not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Services, in whole or in part, or access all or any part of the Services in order to build any software, product or service which competes with the same;
  - 6.1.10. ensure that there are in place and hereby grant to Soil-Link all necessary consents, licences and permissions required to permit Soil-Link to access and use all the User Content and User Personal Data and any other items as may be appropriate in connection with the Contract; and
  - 6.1.11. be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to Soil-Link Marketplace.

## 7. FEEDBACK

- 7.1. At its discretion, the User may provide Feedback to Soil-Link, but Soil-Link shall not be obliged to take any action in response to the Feedback.
- 7.2. Feedback, even if marked confidential, will not create any confidentiality obligations on Soil-Link unless Soil-Link has otherwise agreed in writing and signed by an authorised signatory of Soil-Link.



- 7.3. Without prejudice to its other rights and remedies (including under this Agreement), Soil-Link will be free to use, disclose, reproduce, distribute, implement in its products and/or services and otherwise commercialise all Feedback provided by the User without obligation or restriction of any kind. The User hereby waives all rights to be compensated or seek compensation for the Feedback and will ensure that any relevant moral rights are waived.

## 8. CHARGES

- 8.1. The Listing Holder shall pay to Soil-Link:

8.1.1. Where the Listing Holder has clicked "View Bids" (but not clicked "Accept Bid"), the higher of:

- 8.1.1.1. the Commission based upon the (mean) average of all Bids in the list; or
- 8.1.1.2. £2,500.00 plus VAT

8.1.2. Where the Listing Holder has clicked "Accept Bid" on a specific Bid, the higher of:

- 8.1.2.1. the Commission based upon the Transaction value for the selected specific Bid; or
- 8.1.2.2. £2,500.00 plus VAT

("Charges").

- 8.2. The Charges shall remain due even if the Listing Holder does not successfully Transact or select a specific Bid. The Commission shall be calculated by taking a (mean) average of all the Bids displayed to the Listing Holder. Such average shall be substituted for the Transaction price.
- 8.3. If it is reasonably apparent that any Charges are incorrect ("**Obvious Pricing Error**"), the User must notify Soil-Link of the same. When Soil-Link becomes aware of an Obvious Pricing Error, it shall promptly notify the User of the error together with the correct price ("**Correct Price**"). Following notification of the Correct Price, such price shall apply in place of the Obvious Pricing Error.
- 8.4. Where a failure of the User to comply with its obligations in the Contract results in additional costs for Soil-Link and/or wasted time, Soil-Link may charge the User for the same on a time and materials basis, which will be calculated at industry standard rates.
- 8.5. The Listing Holder shall pay each invoice that is properly due and submitted to it by Soil-Link within thirty days of the invoice date to a bank account nominated in writing by Soil-Link. Time for payment is of the essence. If Soil-Link has not received a payment which is validly due within such period and without prejudice to any other rights and remedies it may have (but subject to any Applicable Law in force at the time which restricts or excludes the same), Soil-Link may charge interest daily on such due amounts at an annual rate equal to the Rate of Interest, commencing on the Due Date and continuing until fully paid, whether before or after judgment. Such interest shall accrue daily and be compounded quarterly.
- 8.6. All Charges stated or referred to in the Contract are exclusive of value-added tax or other sales taxes, which shall be added to Soil-Link's invoice(s) at the appropriate rate.
- 8.7. Soil-Link may, without limiting its other rights or remedies, set off any amount owing to it by the Customer or any Affiliate against any amount payable by Soil-Link to the Customer.
- 8.8. Where a User within the Relevant Period conducts an Off-Marketplace Transaction in breach of clause 6.1.1, the Listing Holder shall be liable to pay:
- 8.8.1. the commission Soil-Link would have charged had the Transaction taken place on the Soil-Link Marketplace;
  - 8.8.2. interest on a daily basis on such commission due at an annual rate equal to the Rate of Interest commencing on the date of the notice from Soil-Link confirming such payment is due and continuing until fully paid. Such interest shall accrue on a daily basis and be compounded quarterly; and
  - 8.8.3. any other costs or expenses reasonably incurred by Soil-Link in pursuing the same.

## 9. INTELLECTUAL PROPERTY AND MATERIALS

- 9.1. Soil-Link warrants that it has, and will continue to have, all necessary rights in and to any and all Intellectual Property Rights that it purports to grant to the User pursuant to the Contract.
- 9.2. The User acknowledges and agrees that Soil-Link and/or its licensors own all Intellectual Property Rights in the Services.
- 9.3. Except as expressly stated herein, these Conditions do not grant the User any Intellectual Property Rights or any other rights or licences to, in or in respect of the Services.
- 9.4. Soil-Link acknowledges and agrees that the User and/or its licensors own all Intellectual Property Rights in the User Content. Except as expressly stated herein or as is necessary to perform Soil-Link's obligations under the Contract, these Conditions do not grant Soil-Link any Intellectual Property Rights or any other rights or licences to or in respect of any User Content.

## 10. CONFIDENTIALITY

- 10.1. Each party undertakes that it shall, during the Contract (and thereafter), keep confidential and not disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party or any member of the other party's Group, except as permitted by clause 10.2 below.
- 10.2. Each party may disclose the other party's Confidential Information:
- 10.2.1. to its Affiliates, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 10; and
  - 10.2.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority, provided that, to the extent where it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 10.2.2, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 10.3. No party shall use any other party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 10.4. Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any unconnected third party.
- 10.5. Soil-Link may publicise its involvement with the User for its own marketing purposes, and any such publication shall not constitute an unlawful disclosure of Confidential Information for the purposes of this clause 10.

## 11. DATA PROTECTION ARRANGEMENTS

- 11.1. The parties acknowledge that the factual arrangement between them dictates the classification of each party in respect of the Data Protection Legislation. However, the parties anticipate that the User shall act as a controller and Soil-Link shall act as a processor and in any such case:
- 11.1.1. Soil-Link shall be a controller where it is collecting and using personal data in relation to the management of its User accounts; and
  - 11.1.2. Soil-Link shall be a processor where it is processing personal data in relation to the Data Processing Particulars in connection with performing its obligations under the Contract.
- 11.2. Soil-Link shall comply with, and shall procure that any Affiliates comply with, the provisions of the Data Protection Legislation in relation to all User Personal Data that is processed by it in connection with the Contract.
- 11.3. Soil-Link shall be permitted to appoint sub-contractors and to disclose personal data to them for processing in accordance with the Contract, provided always that the sub-contractor's right to process the personal data terminates automatically on expiry or termination (for whatever reason) of the Contract for which the sub-contractor was engaged.
- 11.4. Soil-Link shall be permitted to disclose data pertaining to a Transaction to approved third parties, such as the Environmental Agency. To the extent that any such disclosure contains personal data, Soil-Link shall comply with its obligations under Clause 12.

## 12. DATA PROCESSING OBLIGATIONS

- 12.1. To the extent that Soil-Link is acting as a Processor for and on behalf of the User, it shall:
- 12.1.1. only process the User Personal Data on the User's documented instructions except insofar as required to do so by Data Protection Legislation;
  - 12.1.2. inform the User on becoming aware of: (i) any legal requirement that requires Soil-Link to process User Personal Data otherwise than on the User's documented instructions, unless Applicable Laws prohibit such information on important grounds of public interest; or (ii) any instruction from the User in relation to the processing of personal data which, in Soil-Link's reasonable opinion, infringes Data Protection Legislation;
  - 12.1.3. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing, as well as the risk to the rights and freedoms of natural persons, and in particular, the risks from accidental or unlawful destruction, loss, alteration, unauthorised disclosure or, or access to personal data, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
  - 12.1.4. ensure that its employees and any other persons with access to User Personal Data are made aware of their data protection and security obligations and are subject to binding obligations of confidentiality;
  - 12.1.5. not engage another person to process any User Personal Data (a "sub-processor") without the User's prior specific or general written authorisation, and in the case of a general written authorisation, inform the User of any intended changes concerning the addition or replacement of any sub-processor and allow the User reasonable opportunity to object to such change;

- 12.1.6. ensure that any sub-processor is engaged on terms equivalent to those to which Soil-Link itself is subject under this clause 12 (and any other confidentiality or similar obligations contained in the Contract), and provides sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of Data Protection Legislation;
  - 12.1.7. where a sub-processor fails to fulfil its data protection or confidentiality obligations, remain fully liable to the User for the performance of (or failure to perform) those obligations;
  - 12.1.8. if a data subject makes a request relating to the exercise of their legal rights in relation to personal data, at the User's reasonable cost, provide the User with any information and assistance reasonably required by the User to respond to the request;
  - 12.1.9. if it becomes aware of a personal data breach in relation to any User Personal Data, notify the User immediately upon becoming aware of the breach and thereafter provide details of the nature of the personal data breach and provide the User with such information and assistance as it requires in relation to the personal data breach;
  - 12.1.10. taking into account the nature of the processing and the information available to Soil-Link, at the User's cost, provide the User with such information and assistance as the User reasonably requires to carry out any privacy impact assessments, consult with a supervisory authority prior to processing, or meet any obligations under Data Protection legislation which derive from such activities;
  - 12.1.11. upon the termination of the User for any reason, after completing any processing of personal data on the User's behalf, or on the User's written request, delete or return all such personal data (and any copies of the same) unless Soil-Link is required to store such copies to comply with a requirement imposed by Applicable Laws, and where Soil-Link is required to delete personal data, to the extent that it is not practical to do so immediately, Soil-Link will do so as soon as possible, and in the meantime shall ensure appropriate safeguards are put in place, and the data is not retained for a longer period than is appropriate;
  - 12.1.12. not transfer any of the User's personal data to a third country or international organisation without having the User's prior written consent to that transfer and either (i) the UK Government having decided that country or organisation ensures adequate protection under article 45; (ii) having other appropriate safeguards in place as set out in article 46; (iii) one or more of the derogations in article 49 applies; or the transfer is made in compliance with standard contractual clauses; and
  - 12.1.13. subject to the User providing appropriate confidentiality undertakings, make available to the User all assistance and information necessary to demonstrate compliance with article 28, save that this shall not require Soil-Link to disclose or permit access to any of its (or any third party's) confidential or commercially sensitive information. The User shall ensure that it has all necessary, appropriate consents and notices in place to enable the lawful transfer of the User Personal Data to Soil-Link and/or lawful collection of the User Personal Data by Soil-Link on behalf of the User for the duration and purposes of the Contract.
- 12.2. Where the User makes any such request under clause 12.1.1 to delete or return personal data prior to the termination of the Contract, and it serves to hinder or prevent Soil-Link's obligations thereunder, the Contract shall continue despite such reduced performance, and the Charges which have been paid or which will become payable shall not be affected thereby.

### **13. WARRANTIES, INDEMNITIES AND LIMITATION OF LIABILITY**

- 13.1. Soil-Link warrants that it has the necessary rights to enter into and perform its obligations under the Contract.
- 13.2. All representations, warranties or terms (whether written or oral, express or implied by statute, common law or otherwise) apart from those expressly set out in these Conditions are hereby excluded. In particular, but without prejudice to the generality of the foregoing, Soil-Link makes no representation or gives any warranty (whether express or implied, statutory and/or otherwise) and will have no liability regarding the fitness of the Services for any purpose, whether or not such purpose is disclosed to Soil-Link.
- 13.3. The User hereby indemnifies Soil-Link from and against any and all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by Soil-Link in connection with:
  - 13.3.1. Soil-Link's storage/handling of any User Personal Data in accordance with the terms of the Contract and the User's use of the same;
  - 13.3.2. any failure of the User to obtain appropriate licences and/or consents in accordance with its obligations under these Conditions or any subsequent revocation or non-renewal of any such licence and/or permit; and/or
  - 13.3.3. any failure of the User to ensure its compliance with Applicable Law in accordance with its obligations under these Conditions.
- 13.4. Soil-Link shall defend the User, its officers, directors and employees against any claim that Services infringe any United Kingdom patent effective as of the Start Date, copyright, trade mark and database right, and shall indemnify the User for any amounts finally awarded against the User in judgment or settlement of such claims, provided that:
  - 13.4.1. Soil-Link is given prompt notice of any such claim;

- 13.4.2. the User provides reasonable co-operation to Soil-Link in the defence and settlement of such claim (at Soil-Link's expense, provided such expenses are reasonable and can be evidenced to Soil-Link's satisfaction); and
- 13.4.3. Soil-Link is given sole authority to defend or settle the claim.
- 13.5. In the defence or settlement of any claim, Soil-Link may procure the right for the User to continue using Services, replace or modify the Services so that they become non-infringing, or, if such remedies are not reasonably available, terminate the Contract on 2 Business Days' notice to the User without any additional liability or obligation to pay liquidated damages or other additional costs to the User. In no event shall Soil-Link, its employees, agents and sub-contractors be liable to the User to the extent that the alleged infringement is based on: (a) a modification of the Services by anyone other than Soil-Link; (b) the User's use of the Services in a manner contrary to the instructions given to the User by Soil-Link; or (c) the User's use of the Services after notice of the alleged or actual infringement from Soil-Link or any appropriate authority. The foregoing states the User's sole and exclusive rights and remedies, and Soil-Link's (including its employees', agents' and sub-contractors') entire obligations and liability for infringement of any patent, copyright, trade mark, database right or right of confidentiality.
- 13.6. The following provisions set out the entire financial liability of either party (including any liability for the acts or omissions of its employees, agents and sub-contractors') to the other in respect of:
  - 13.6.1. any breach of these Conditions howsoever arising; and
  - 13.6.2. any representation, misrepresentation (whether innocent or negligent), statement, tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with the Contract.
- 13.7. Nothing in these Conditions shall limit or exclude Soil-Link's or the User's liability for:
  - 13.7.1. death or personal injury caused by its negligence, or the negligence of its employees, agents or sub-contractors;
  - 13.7.2. fraud or fraudulent misrepresentation; and
  - 13.7.3. any other liability which cannot be limited or excluded by Applicable Law.
- 13.8. In the event of a Default by Soil-Link, Soil-Link's liability in respect of loss or damage to tangible property of the User shall not exceed £2,500
- 13.9. Subject to clauses 13.6 and 13.7, Soil-Link's liability in respect of loss or damage under the Contract:
  - 13.9.1. in any twelve-month period shall not exceed a sum equal to the total Charges paid and payable to Soil-Link by the User under the Contract during the period of twelve months immediately prior to the event giving rise to the claim; and
  - 13.9.2. in respect of any Listing shall not exceed a sum equal to the total Charges paid and payable to Soil-Link by the Listing Holder in relation to the same.
- 13.10. Subject to clause 13.6, in no event will Soil-Link be liable to the User (whether in contract, tort, negligence or otherwise):
  - 13.10.1. for any loss of revenue, use, anticipated savings, data, goodwill or opportunity or damage to reputation;
  - 13.10.2. for any indirect, special or consequential loss or damage;
  - 13.10.3. to the extent that any delay in performing or failure to perform Soil-Link's obligations is due to a failure by the User to perform its own obligations under the Contract or if the delay results from a failure by the User to comply with reasonable requests by Soil-Link for instructions, information or action required by it to perform its obligations within a reasonable time; or
  - 13.10.4. for the consequences of any other acts or omissions of the User or the User Personnel.

## 14. TERM AND TERMINATION

- 14.1. The Contract shall commence on the Start Date and continue until terminated by either party.
- 14.2. Without prejudicing any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
  - 14.2.1. the other party fails to pay any amount due under the Contract on the Due Date for payment and remains in default not less than ten Business Days after being notified in writing to make such payment; or
  - 14.2.2. the other party commits a material breach of any other term of the Contract which breach is irremediable or (if remediable) fails to remedy it within a period of ten Business Days after being notified in writing to do so; or
  - 14.2.3. the other party repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms under the Contract; or
  - 14.2.4. the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.
- 14.3. Without prejudicing any other right or remedy available to it, Soil-Link may terminate the Contract should an Insolvency Event occur.
- 14.4. Without prejudicing any other right or remedy available to it, Soil-Link may terminate the Contract with immediate effect by giving written notice to the User if there is a change of control of the User (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.5. Without prejudicing any right to terminate which Soil-Link may have, Soil-Link will be entitled to suspend any Services without notice if:
  - 14.5.1. there is a Default on the part of the User; or

14.5.2. any of the events set out in clauses 14.2, 14.3 or 14.5 occur in relation to the User.

- 14.6. Soil-Link may rely on the suspension to relieve it from the performance of any of its obligations in each case to the extent the suspension prevents or delays the performance by Soil-Link of any of its obligations. Soil-Link shall not be liable for any costs or losses sustained or incurred by the User arising directly or indirectly from any failure or delay by Soil-Link to perform any of its obligations as set out in this clause.
- 14.7. Without prejudicing any other right or remedy available to it, either party may terminate the Contract with immediate effect without cause by giving written notice to the other party.

## 15. CONSEQUENCES OF TERMINATION

15.1. On termination for any reason:

- 15.1.1. all rights granted to the User under the Contract shall cease;
- 15.1.2. the User shall immediately pay any sums due to Soil-Link (including sums on a time and materials basis for any work in progress) without set-off or deduction; and
- 15.1.3. provided all sums due to Soil-Link's Group from the User's Group have been paid, Soil-Link shall make available to the User a copy of all User Content in a commonly-readable electronic format for a period of no more than six days following termination. After such period, Soil-Link may permanently delete all User Content residing on its systems.

## 16. ASSIGNMENT

- 16.1. The User may not assign, sub-contract, sub-license, charge or otherwise deal in any other manner with all or any of its rights or obligations under the Contract, nor provide any of the Services directly or indirectly to third parties, without the consent of Soil-Link, such consent not to be unreasonably withheld or delayed. The User shall not allow any of its rights under the Contract to become the subject of any charge, lien or encumbrance.
- 16.2. Soil-Link may freely assign, sub-contract, charge or otherwise deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the User.
- 16.3. The User agrees that it shall co-operate and undertake all matters at Soil-Link's cost and expense that are necessary to novate or assign any Contract or any parts thereof to any third party when requested to do so by the User.

## 17. FORCE MAJEURE

- 17.1. Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including strikes; lock-outs or other industrial disputes (except with respect to that party's own employees); acts of God; war; riot; civil commotion; pandemic or epidemic; compliance with any law or governmental order, rule, regulation or direction; accident; fire, flood, or storm; in each case whether or not foreseeable ("**Force Majeure Event**").
- 17.2. In such circumstances, the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for two months, the party not affected may terminate the Contract by giving ten Business Days' written notice to the other party.

## 18. NOTICES

- 18.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 18.1.1. delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 18.1.2. sent by email to the email address for the applicable party as follows:
- 18.1.2.1. Soil-Link: legalnotices@soil-link.co.uk;
- 18.1.2.2. User: email given during the Application process or as updated from time to time.
- 18.2. Any notice shall be deemed to have been received:
- 18.2.1. if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- 18.2.2. if sent by pre-paid first-class post or other next working day delivery service at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 18.2.3. if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume, provided that a valid delivery receipt is received (and the parties shall ensure that their email systems are capable of





delivering such a receipt). In this clause 18.2.3, business hours mean, 9.00 am to 5.00 pm, Monday to Friday on a day that is not a public holiday in the place of receipt.

18.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 19. DISPUTE RESOLUTION

19.1. If a dispute arises out of or in connection with these Conditions or the performance, validity or enforceability of the Contract (a “**Dispute**”), then the parties shall follow the procedure set out in this clause 19:

19.1.1. either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (a “**Dispute Notice**”), together with relevant supporting documents. On service of the Dispute Notice, the parties shall attempt in good faith to resolve the Dispute; and

19.1.2. if the parties are, for any reason, unable to resolve the Dispute within 20 Business Days from service of the Dispute Notice, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing (an “**ADR Notice**”) to the other party to the Dispute, requesting mediation. A copy of the ADR Notice should be sent to CEDR Solve.

The mediation will start no later than ten Business Days after the date of the ADR Notice.

19.2. If the Dispute is not resolved within one month of the mediator’s appointment, then either party may commence court proceedings but provided that nothing in this clause 19.2 shall prevent either party from either continuing with any means of alternative dispute resolution as may be agreed in writing from time to time, or seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

## 20. GENERAL

20.1. Entire agreement

20.1.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

20.1.2. Neither party shall have any remedy in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in these Conditions. Neither party shall have any claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.

20.2. Third party rights

20.2.1. A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

20.3. Variations

20.3.1. Except as set out in these Conditions, any variation, including the introduction of any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Soil-Link. Soil-Link may vary these Conditions from time to time on giving the User reasonable notice in writing.

20.4. Waiver

20.4.1. A waiver of any right is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or Default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

20.5. Severance

20.5.1. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of the Contract.

20.5.2. If any provision or part-provision of the Contract is deemed deleted under clause 20.5.1 above, the parties shall negotiate in good faith to agree on a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

20.6. No partnership or agency

20.6.1. Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between the parties, nor constitute any party the agent of the other party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

20.7. Governing law and jurisdiction

20.7.1. The Contract and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any such dispute or claim.

**SCHEDULE 1 – DEFINITIONS AND INTERPRETATION**

**1. Interpretation**

**1.1.** In these Conditions: (i) **person** includes a natural person, corporate or unincorporated body; (ii) a reference to Soil-Link or User includes its personal representatives, successors and permitted assigns; (iii) a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted and includes any subordinate legislation; (iv) any phrase introduced by the terms **including** or **include** shall be illustrative and shall not limit the sense of the preceding words; (v) a reference to **writing** or **written** includes emails but excludes faxes; (vi) the terms ‘personal data’, ‘data subject’, ‘processor’, ‘controller’, ‘processing’, ‘personal data breach’, ‘pseudonymisation’, ‘special categories of data’ and ‘supervisory authority’ have the meanings set out in Data Protection Law; and (vii) the following definitions apply:

<b>“Acceptable Use Policy”</b>	the acceptable use policy (if any) applicable to the Services, set out at Acceptable Use Policy, as may be amended or updated by Soil-Link from time to time on written notice to the User.
<b>“Account”</b>	an administration panel made available to a User on the Soil-Link Marketplace.
<b>“Affiliates”</b>	each agent, employee, contractor or sub-contractor of a party or the party’s Group.
<b>“Applicable Law”</b>	the laws of England and Wales, together with any other mandatory laws, regulations, regulatory policies, guidelines or industry codes which apply to the performance of each party’s obligations under the Contract.
<b>“Application”</b>	an application form submitted to Soil-Link by a Prospective User requesting access to the Soil-Link Marketplace as a User.
<b>“Authorised User”</b>	a delegated user account, set up by a User allowing its Affiliates to act on its behalf via the Soil-Link Marketplace.
<b>“Availability”</b>	the availability of an access point on Soil-Link’s hosting provider’s backbone network, subject to clause 2.7.
<b>“Bid”</b>	in respect of a Product, an offer made by a user to buy from or sell to the Listing Holder such Product at a given specification and a given price.
<b>“Business Day”</b>	a day other than a Saturday, Sunday or public holiday in England.
<b>“Buyer”</b>	a User acting in the capacity of a buyer of Product.
<b>“Charges”</b>	the charges payable by the User to Soil-Link, as set out in clause 8.1.
<b>“Confidential Information”</b>	information of commercial value, in whatever form or medium, disclosed by a party to the other party, including commercial or technical know-how, technology, information pertaining to business operations and strategies, information pertaining to clients, pricing and marketing information relating to the business of either party, information which is marked as confidential, or information which ought reasonably to be considered confidential in light of the nature of the information and/or circumstances of its disclosure, including User Data, but excluding information that: <ul style="list-style-type: none"> <li>(i) is or becomes publicly known other than through any act or omission of the receiving party;</li> <li>(ii) was in the other party’s lawful possession before the disclosure;</li> <li>(iii) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; or</li> <li>(iv) is independently developed by the receiving party, as shown by written evidence.</li> </ul>
<b>“Commission”</b>	the fee payable by a Listing Holder to Soil-Link for its use of the Soil-Link Marketplace, being a percentage of the value of the proposed Transaction as displayed to the Listing Holder immediately prior to the Listing Holder clicking “View Bids”.
<b>“Contract”</b>	the contract (as defined in clause 1.3) between the User and Soil-Link relating to the supply of Services.
<b>“Data Processing Particulars”</b>	the data processing particulars set out in Schedule 2.
<b>“Data Protection Legislation”</b>	any law, statute, regulation, rule or other binding restriction regarding the protection of individuals with regard to the Processing of their Personal Data to which a party is subject, including the DPA and the GDPR (to the extent it remains applicable) and any code of practice or guidance published by the Information Commissioner’s Office from time to time.
<b>“Default”</b>	any act or omission of a party or failure by a party to perform a relevant obligation under the Contract.
<b>“DPA”</b>	the Data Protection Act 2018.

<b>“Due Date”</b>	in respect of a payment under the Contract, the date on which such payment is due pursuant to these Conditions.
<b>“Feedback”</b>	all current and future suggestions, comments or other feedback regarding the Services provided by or on behalf of the User.
<b>“Force Majeure Event”</b>	as defined in clause 17.1.
<b>“Group”</b>	each and every entity that directly or indirectly controls, is controlled by, or is under common control with a party, for so long as such control exists. In the case of companies and corporations, control means beneficial ownership of more than 50% of the voting stock, shares, interest or equity in an entity; in the case of any other legal entity, “control” and “controlled” shall exist through the ability to directly or indirectly control the management and/or business of the legal entity.
<b>“GDPR”</b>	Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the Processing of Personal Data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016, together with any implementation of the above into UK law. Any reference to “articles” is a reference to the GDPR.
<b>“Insolvency Event”</b>	(a) the User suspends or threatens to suspend payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts under section 123 of the Insolvency Act 1986 or is deemed either unable to pay its debts or as having no reasonable prospect of so doing within the meaning of section 268 of the Insolvency Act 1986 or (if a partnership) has any partner to whom any of the above applies; (b) the User starts negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for/enters into any arrangement with its creditors; (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for/in connection with the winding up of the User; (d) the User is the subject of a bankruptcy petition or order; (e) a creditor or encumbrancer of the User attaches or takes possession of, or a distress, execution, sequestration or other process is levied or enforced on or sued against, the whole or part of its assets which is not discharged within fourteen days; (f) an application is made to court, or an order is made to appoint an administrator, or notice of intention to appoint an administrator is given or an administrator is appointed over the User; (g) a floating charge holder over the assets of the User becomes entitled to appoint or has appointed an administrative receiver; (h) a person becomes entitled to appoint a receiver over the assets of the User or a receiver is appointed over the assets of the User; (i) any event analogous to those mentioned in (a)-(h) above in another jurisdiction.
<b>“Intellectual Property Rights”</b>	patents, utility models, rights to inventions, copyright and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
<b>“Listing”</b>	an advert for the sale or purchase of Product at a given price/quantity, created by a User acting as an Listing Holder and hosted by Soil-Link on the Soil-Link Marketplace.
<b>“Listing Holder”</b>	a User who sets up a Listing on the Soil-Link Marketplace to buy or sell Product.
<b>“Off-Marketplace Transaction”</b>	as described in clause 6.1.1
<b>“Product”</b>	soil and/or aggregate, offered for sale or purchase by a User.
<b>“Prospective User”</b>	an applicant to the Soil-Link Marketplace.
<b>“Rate of Interest”</b>	8 % over the then current base lending rate of Barclays Bank PLC from time to time
<b>“Relevant Period”</b>	the period of twelvemonths following (i) an introduction by Soil-Link of one User to another via the Soil-Link Marketplace; or (ii) Soil-Link making one User aware that the other User is buying or selling Product;
<b>“Seller”</b>	a User acting in the capacity of a seller of Product.
<b>“Services”</b>	those services outlined at clause 2.4.
<b>“Soil-Link Marketplace”</b>	the online system made available by Soil-Link to Users to facilitate the sale and purchase of Product.

<b>“Soil-Link Personnel”</b>	Soil-Link’s employees, directors and agents, together with employees, directors and agents of any contractor undertaking activities on behalf of Soil-Link in relation to the performance of its obligations under the Contract.
<b>“Sourcing Issue”</b>	an inability on the part of Soil-Link to source particular materials or resources (including Soil-Link Personnel) on terms similar or identical to those available at the Start Date (including due to exchange rate fluctuations, increases in taxes or duties) or a change in Applicable Law.
<b>“Start Date”</b>	as defined in clause 1.3.
<b>“Term”</b>	the period described as such in clause 14.1.
<b>“Transaction/Transact”</b>	an agreement formed between two users for the sale and purchase of Product.
<b>“User”</b>	has the meaning given to that term at the beginning of these Conditions.
<b>“User Content”</b>	any data, documents, text, drawings, diagrams, images or sounds (together with any database made up of any of these), embodied in any medium, that are provided to Soil-Link by or on behalf of the User, in order to perform its obligations pursuant to the Contract.
<b>“User Data”</b>	the data inputted into the information fields of the Services by the User, or by Soil-Link on the User’s behalf.
<b>“User Personal Data”</b>	any personal data disclosed by the User to Soil-Link or collected by Soil-Link on the User’s instructions in connection with the Contract.
<b>“User Personnel”</b>	employees, directors and agents of the User, together with employees, directors and agents of any contractor undertaking activities on behalf of the User who are not Soil-Link Personnel.
<b>“Virus”</b>	any thing or device (including any software, code, file or program) 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.
<b>“Website”</b>	<a href="https://www.soil-link.co.uk">https://www.soil-link.co.uk</a>



### SCHEDULE 2 – DATA PROCESSING PARTICULARS

DATA PROCESSING PARTICULARS	
<b>Subject matter, nature and purpose:</b>	The subject matter, nature and purpose of the processing is: Collection of data to identify a user of the platform
<b>Data Subjects:</b>	The personal data to be processed concerns the following categories of data subjects: First Name, Last Name & Employer
<b>Categories of Personal Data:</b>	The personal data to be processed falls within the following categories of data: Personal and Employment
<b>Duration:</b>	The personal data may only be processed during the following period: 5 years from date collected