

HelloReport

terms of service

Terms & Conditions

CONTRACT with HelloReport

This Agreement consists of these Terms and Conditions and is made on the effective date, between HelloReport Limited ("HelloReport") whose registered office is at Unit 8, Bankhead Industrial Estate, Bankhead Drive, Edinburgh, United Kingdom, EH11 4BP and "Client" defined as a trial or subscribed user of the HelloReport software as a service ("Saas") product.

BACKGROUND

The Client wishes to engage HelloReport to provide and maintain a software solution (System) under the terms of this Agreement. The Client will use the System to collect, manage and maintain asset management data.

1. Definitions

- 1.1 In this Agreement the following expressions shall have the following meanings unless the context otherwise provides:-
"Assets" – buildings, elements or individual items managed with the Property Inspection Software

"Charges" - the charges set out in the OF,

"Event of Force Majeure" - strike, fire, national power failure, flood or any disaster, act of God, War or similar event

"System" - a web site environment and associated mobile applications provided by HelloReport under the terms of this Agreement, which includes access to and use of the Property Inspection Software known as HelloReport and associated technical support

"Intellectual Property Rights" - any and all patents, trademarks, design rights, unregistered designs, copyrights, know-how, rental rights and similar current and future rights throughout the world (and including all renewals and extensions) whether or not they are registered or capable of being registered

"Month" - a calendar month

"Uploaded Data and Files" - all electronic information including but not limited to drawings and word-processing files uploaded to, and/or incorporated into the System from time to time by or on behalf of the Client or its representatives, or agents

"Users" – software users approved by client as having rights to access to the system. Users must be named individuals and must not be anonymous. "Meta Data" – all data input into the predefined data fields of the System related to any object in the System.

"Custom Field Data" – all data input into the customer configured data fields of the system related to any given object in the system,

"Working Day" - means a day (other than a Saturday or Sunday) on which the banks are ordinarily open for business in the City of London between the GMT hours of 0900 and 1700

2. Consideration

- 2.1 In consideration for the payment by the Client to HelloReport of the Charges agreed and subject to the terms and conditions of this Agreement, HelloReport shall provide the System for the Client for use on the Inspection from offices within the Region. The System facilitates asset management undertaken by the Client and its professional advisers, agents, contractors, sub-contractors and other participants in the Inspection ("Participants"). HelloReport grants a Participant access to and use of the System for the Inspection to the extent that the Client's Agreement remains in force. The Client is not permitted to resell the System without the express written permission of HelloReport.

3. Payment

- 3.1 In consideration for the provision of the System the Client shall pay to HelloReport the Charges in accordance with the agreement.
- 3.2 All Charges will be paid monthly in advance unless agreed

otherwise in writing.

- 3.3 Where additional users are added by the client they will be added at a minimum of an annual contract period. The annual fee quoted in the order form will be applied automatically without the need to seek client approval.
- 3.4 Incremental upgrades will be included free of charge. New products and major new functionality will be offered to clients at discounted rates. The HelloReport hosting fees detailed in this document will be increased by RPI plus 3.9% on 1st May and then every subsequent year.
- 3.5 All sums payable hereunder are exclusive of expenses and VAT or any other applicable tax or duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point.
- 3.6 All invoices submitted by HelloReport shall be paid by the Client within thirty (30) days of the date of the invoice.
- 3.7 Without prejudice to any other right or remedy of HelloReport, if the Client fails to make any payment under this Agreement on the due date for payment then following prior written notice HelloReport may charge the Client, and the Client shall pay HelloReport on demand, interest on the unpaid amount at the rate of two percent (2%) per annum above the then current base rate of Barclays Bank Plc from the due date for payment until payment is received in full by the HelloReport.

4. Warranties

- 4.1 HelloReport warrants and represents: -
 - 4.1.1 that it has and will at all times have full power and authority and all necessary third party licences and consents to enter into and perform its obligations under this Agreement;
 - 4.1.2 that all materials produced by HelloReport or otherwise supplied by HelloReport to the Client under this Agreement are HelloReport's own original work and shall not infringe any third party's Intellectual Property Rights nor shall they be obscene, blasphemous, or defamatory nor shall they infringe any Scottish law or regulation; and
 - 4.1.3 that it shall perform all services under this Agreement with reasonable care and skill and to good industry standard.
- 4.2 Save in the case of death or personal injury resulting from its negligence the aggregate liability of HelloReport under this Agreement (howsoever arising) shall not exceed £5,000.
- 4.3 Save in the case of death or personal injury resulting from its negligence, in no event shall HelloReport be liable under this Agreement in respect of indirect or consequential loss or damage (howsoever arising).
- 4.4 HelloReport is not responsible for the Client and for any person or company authorised by the Client uploading or entering obscene, blasphemous or defamatory data onto the System via Meta Data, Custom Data or contained within any Uploaded Data and Files.
- 4.5 It is the responsibility of the Client and its suppliers to maintain the integrity of the individual log-in security system. HelloReport cannot be held responsible for any consequences of a security breach resulting from any compromise of the

security system by the Client or its suppliers.

5. Intellectual Property Rights

- 5.1 Acknowledgement of Ownership. You agree that the HelloReport software products contains proprietary information and material that is owned by HelloReport limited and/or its licensors, and is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary information or materials in any way whatsoever except for use of the HelloReport software products in compliance with these Terms of Service. No portion of the HelloReport software products may be reproduced in any form or by any means.
- 5.2 It is agreed and acknowledged that all Intellectual Property Rights in the System and software shall belong exclusively to HelloReport. It is further agreed and acknowledged that all other Intellectual Property Rights in the Meta Data, Custom Field Data, Uploaded Data and Files will remain the property of the Client and its licensors.
- 5.3 Copyrights. All copyrights in and to HelloReport are owned by HelloReport limited and/or its licensors.
- 5.4 Trademarks. The HelloReport logo, and other HelloReport trademarks, service marks, graphics, and logos used in HelloReport products are trademarks or registered trademarks of HelloReport limited in the UK and/or other countries. You are granted no right or license with respect to any of the aforesaid trademarks and any use of such trademarks.
- 5.5 This clause 5 shall continue to have full force and effect both before and after termination of this Agreement (for whatever reason).
- 5.6 The client agrees not to develop any competing software products during the term of this contract and 36 months following termination of the contract period.
- 5.7 The client accepts that there is no exclusivity implied by this contract and agrees not to act in an anti-competitive manner.

6. Confidentiality

- 6.1 Each party agrees to keep confidential all commercial, technical, financial or other business information concerning the other party to which it may become party during the course of this Agreement and further agrees in particular not to disclose all or any part of that information to any third party, except as may be required by a mandatory rule of law or order of court of competent jurisdiction.
- 6.2 For the purposes of this clause 6 the parties agree that confidential information shall not include:-
 - 6.2.1 information generally available to members of the public in written or other fixed form or which becomes so available through no fault or breach of this Agreement on the part of the recipient.
 - 6.2.2 Information which its recipient can establish by independent evidence was available to it and at its free disposal prior to its receipt under or in connection with this Agreement; and
 - 6.2.3 Information at any time received from a third party not

apparently bound (after enquiry) by any contractual or fiduciary obligation of confidence and thus free to make disclosure.

6.3 It is HelloReport' policy not to release user details to external sources. From time to time we may contact users for the purposes of communicating information about HelloReport, its product and services.

6.4 HelloReport may issue press releases or promotional material relating to the Client and its use of the System for advertising or other purposes before, during or after termination of this agreement.

6.5 This clause 6 shall supersede any previous non-disclosure (NDA) or confidentiality agreement between HelloReport Limited 'and the "Client" as detailed on the OF of this agreement

6.6 This clause 6 shall continue to have full force and effect both before and after termination of this Agreement (for whatever reason).

7. Term, Cancellation and Termination

7.1 This Agreement shall commence on the date at the beginning of this Agreement and subject to the provisions for termination below, shall remain in full force and effect for the initial fixed period.

7.1.1 This Agreement shall continue after the initial fixed contract period stipulated on a rolling monthly basis until either party gives to the other not less than 1 months prior notice in writing of termination.

7.1.2 The whole total contract fee is payable in the event of termination unless termination is the result of HelloReport is breach of contract.

7.2 This Agreement may be terminated by one party giving notice to the other (such notice taking effect immediately) if:-

7.2.1 the other commits a material breach of any term of this Agreement which (in the case of breaches capable of being remedied) has not been remedied within 30 days of a written request to remedy the breach; or

7.2.2 the other becomes insolvent or a similar analogous event occurs.

7.3 After termination of your subscription, system use of HelloReport will be available until the date your current billing cycle ends and we'll not attempt to take another payment from you. Once the cycle ends, access shall only be available on renewal of your subscription. No access shall be provided to the system or stored data unless an active subscription is in place. After 30 days, all account data from including reports, stored photos and PDFs, shall be deleted, this deletion cannot be undone. Direct requests made to HelloReport for reports or data from our system shall be subject to a per report fee which shall be quoted based on the number of reports and the time required, then invoiced in advance.

8. Force Majeure

8.1 Neither party will be liable for any breach of its obligations resulting from an Event of Force Majeure.

8.2 The party affected by an Event of Force Majeure agrees to give notice to the other upon becoming aware of an Event of Force Majeure, that notice containi ng details of the circumstances giving rise to the Event of Force Majeure and to do everything reasonable to avoid or minimise the resulting delay.

8.3 If a default due to an Event of Force Majeure continues for more than twenty-eight (28) days then the party not in default shall be entitled to terminate this Agreement by written notice (that notice being immediately effective, unless the Event of Force Majeure has ended before service of the notice in which case it will not take effect). Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.

9. Severance

If any provision of this Agreement is determined by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly unenforceable for any reason from time to time, that unenforceability shall not affect the rest of this Agreement which shall continue to have full force and effect, the unenforceable part being deemed severed and deleted.

10. Transfer and Use of Third Party Hosts by HelloReport

10.1 Neither party shall assign, transfer, sub-license, sub-contract, charge or otherwise alienate, divide or encumber this Agreement or any of its rights or obligations under this Agreement without the consent in writing of the other party, such consent not to be unreasonably withheld or delayed.

10.2 HelloReport reserves the right to use an external hosting facility from time to time in delivering the System to the Client.

11. Data Storage Limits

11.1 Data storage is limited to 3 years from when the report was created and saved to our server. We recommend that you regularly import your data to a local server for archive purposes.

12. Software Support

12.1 We operate a software helpdesk during the working day and support cases can be raised by phone or email. Our response times are set down in the support service level agreement; available on request.

13. Mobile Applications

13.1 In addition to the core system we provide mobile software applications accessed by smart phones and tablet devices.

13.2 The software fees payable to HelloReport do not relate to devices. Fees are payable for access to the system by software users.

13.3 The operation of such mobile equipment and devices is not

supported by HelloReport. The client is responsible for ensuring that their devices are fully operable, charged and that are running the latest version of HelloReport software applications.

- 13.4 We will not be responsible for Data loss as a result of loss or theft of mobile devices. The client has the ability under the terms of this contract to use our web services API for the development of linked products or new front apps.
- 13.5 HelloReport offers features which utilise on-board GPS hardware provided on the iPad or any other mobile device. The client agrees and accepts that HelloReport merely utilises the GPS hardware and does not guarantee the accuracy of the GPS locations recorded and furthermore understands that it is their responsibility to ensure the GPS locations provided by the mobile device are sufficiently accurate for their needs.

14. User Access

- 14.1 User login credentials are only issued by the client.
- 14.2 Users must be invited into the system via a valid client email address and named by first and surname to allow user support to be provided and security privileges set and maintained.
- 14.3 Login credentials for the system must not be shared between users.
- 14.4 Mobile application fees are charged against User numbers and not device numbers. We reserve the right to charge additional fees if user numbers are found to be in excess of client stated numbers.
- 14.5 We will not be liable for data loss or breaches in security where clause 14.1-14.4 have not been complied with.

15. Further Provision

The headings under this Agreement are for reference purposes only and shall not affect its interpretation.

- 15.1 In this Agreement the singular shall include the plural and vice versa save where the context otherwise requires it.
- 15.2 A delay on the part of either party to this Agreement in exercising or enforcing any right available to it under any provision of this Agreement shall not be construed either as a waiver of that or any other right or a forbearance to sue and such right shall continue to be available notwithstanding delay.

- 15.3 No part of this Agreement may be altered save in writing signed by both parties.
- 15.4 This Agreement supersedes all previous representations (except for fraudulent misrepresentations) arrangements and understandings between the parties in respect of its subject matter and sets out the entire agreement between them.
- 15.5 Nothing in this Agreement shall create or be deemed to create a joint venture, partnership, employment, agency or other relationship between the parties and neither party shall hold itself out as being able to bind the other.
- 15.6 The Ejusdem generis rule shall not apply, so that general words shall not be given a restrictive interpretation by reason of their being preceded or followed by words indicating a particular class of acts, matters or things.

16. Notices

Any notice required to be served in writing by this Agreement shall be delivered personally or sent by first class pre-paid post to the address of the recipient stated above (or to such other address as has been notified to the sender as the proper address for service) or transmitted by facsimile or e-mail to the correct number or e-mail address for the time being of the recipient. Any such notice shall be deemed properly served, in the case of personal delivery on delivery, in the case of facsimile transmission or e-mail upon transmission (provided that the sender can demonstrate receipt of an error free facsimile or e-mail at the recipient's machine or PC and that a copy of the notice is also sent by first class pre-paid post to the recipient on the same day as the facsimile or e-mail, as the case may be, is sent) or in the case of posting two clear working days after the date of posting (which in the case of contention shall be established by affidavit evidence provided by the sender).

17. Governing Law and Jurisdiction

This Agreement shall be governed by the laws of Scotland and the parties hereby submit to the exclusive jurisdiction of the Scottish Courts.