

NHT EFFICIENCY NETWORK

MUTUAL NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

BETWEEN:

- (1) **The Efficiency Network Member**
- (2) **Building Software Limited T/A measure2improve ("m2i")** a company incorporated in England and Wales with registered number 3117419 and whose registered office is at: Swallow court, Devonshire Gate, Sampford Peverell, Devon, EX16 7EJ.

AGREED TERMS:

1. Each of the parties hereto agrees to disclose certain information in connection with their business plans and activities, Intellectual Rights, owned data and the technical architecture underlying specific applications of the software products owned and designed by Building Software, even when customised to suit the specific needs of **The Member**. For the purposes of this agreement, the "**Disclosing Party**" shall mean the party which discloses its Confidential Information (as defined below) to the other party ("**Receiving Party**").
2. For the purposes of this agreement, "**Confidential Information**" means the existence of this agreement and the negotiations between the parties and all information and materials, whether technical, commercial, financial or otherwise, relating to the Disclosing Party and/or its products, business or marketing activities and any information which from the circumstances in which it is made available to the Receiving Party, ought to be treated as confidential, and whether in written, oral, machine readable or any other form and including any copies.
3. In consideration of the mutual exchange of Confidential Information each Receiving Party agrees:
 - (a) to hold the Confidential Information in confidence;
 - (b) save as permitted by Clause 4, not to disclose, publish or communicate the Confidential Information to any third party;
 - (c) to use the Confidential Information only for the purpose of evaluating a partnership between The Client and BSL ("**the Purpose**"); and
 - (d) to abide by the other terms set out in this agreement.
4. The Receiving Party may disclose, and permit disclosure of, the Confidential Information to:
 - (a) any company or properly constituted public body, organisation or charitable foundation etc. which directly or indirectly controls the Receiving Party, and to any company or properly constituted public body, organisation or charitable foundation etc. which is directly or indirectly controlled by any of these or by the Receiving Party ("**Related Companies**");
 - (b) those of its (and its Related Companies') employees, officers and agents who need to know the same;
 - (c) to professional advisers or consultants engaged to advise in connection with the Purpose; in the case of a Benchmarking Club, the club members

on the basis that all such Related Companies, employers, club members, officers, agents, professional advisers and consultants will keep the same confidential on the terms of this agreement, and without prejudice to any other remedies the Receiving Party will indemnify the Disclosing Party for any failure on their part to do so; and

 - (d) as required by law or by any regulation or similar provision or by any order of any court, or governmental or regulatory body.
5. The restrictions on use or disclosure of the Confidential Information will not apply to:
 - (a) any information which is in the public domain (provided that this has not entered public domain as a direct or indirect result of information being disclosed in breach of this agreement by the Disclosing Party or anyone to whom it has disclosed the information);
 - (b) any information which the Receiving Party already possessed prior to disclosure by the Disclosing Party and where the Receiving Party was at the time of such disclosure free to disclose that information to others;
 - (c) any information independently originated by the Receiving Party or acquired by the Receiving Party from a third party in circumstances in which such party is free to disclose it to others;
 - (d) any information which both parties agree is trivial or obvious.
6. The Confidential Information shall remain the sole property of the Disclosing Party. The Disclosing Party may, at any time, request the Receiving Party to return, destroy or delete (in such a manner that it cannot be recovered) all Confidential Information (including all copies and also any document produced by or for the Receiving Party which contains, reflects or is derived from any of the Confidential Information) belonging to the Disclosing Party in the Receiving Party's possession or control.
7. The rights and obligations of the parties under this agreement may not be assigned or otherwise transferred without obtaining the prior written consent of the other party.
8. The obligations in this agreement shall continue to apply to the parties for a period of three (3) years after termination of this agreement.
9. The parties acknowledge that damages alone would not be an adequate remedy for breach by the Receiving Party of the provisions of this agreement and, accordingly, without prejudice to any and all other rights or remedies that the Disclosing Party might have, the Disclosing Party shall be entitled without proof of special damage to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the provisions of this agreement.
10. The parties agree that this agreement shall be governed and construed in accordance with the laws of England, and the parties shall submit to the exclusive jurisdiction of the English courts.

This Agreement has been entered into on the date of first joining the Efficiency Network.