

**TERMS OF BUSINESS
(CLIENT AS END USER)**

1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement the following terms have the following meanings:

Additional Group Company	a company expressly identified as an Additional Group Company in the SOC (if any)
Agreement	the agreement between the Company and the Client for the provision of the Services, consisting of the SOC and these terms of business
Authorised Data Processor	a third party expressly identified as an Authorised Data Processor in the SOC (if any)
CAMEO Codes	the geodemographic classification codes owned and developed by the Company, constituting a database
CAMEO Directories	the combination of the Geo-positioning Data and the associated CAMEO Codes, constituting a database, as listed in the SOC
Client	the Party named as such in the SOC
Company	the company specified as such in the SOC, being either Callcredit Marketing Limited (company number 2733070) or The Trading Floor Limited (company number 5749125), the registered office of each of which is at One Park Lane, Leeds, West Yorkshire, LS3 1EP
Confidential Information	all trade secret, confidential or proprietary information of either Party including information concerning its products, services, customers, suppliers, business accounts, financial or contractual arrangements or other dealings, computer systems, test data, software, source and object code, business methods and development plans, contained in any format and whether or not communicated orally and whether or not marked "confidential", including the Input and the Deliverables (as applicable)
Copy	means the advertisement and/or (as the case may be) other content featuring the Client's branding, get up, trade marks or styling provided by or on behalf of the Client for incorporating into the Electronic Mail
Deliverables	the data (including any CAMEO Directories, Geo-positioning Data and CAMEO Codes described in the SOC), scores, results, reports, documents, flags, models and other information (and all updates of them) in any form to be made available to the Client by or on behalf of the Company, including the output from the Services and such deliverables as are described in the SOC
Designated Site	any premises identified as such in the SOC
DPA	Data Protection Act 1998
Electronic Mail	has the meaning given in PECR
Event of Force Majeure	in respect of any Party, any cause beyond its reasonable control including any of the following: act of God, act of terrorism, governmental act, war, fire, flood, explosion or civil commotion, industrial action (excluding internal industrial action), failure in telecommunications services, unauthorised interference with either Party's systems or services via the Internet
Geo-positioning Data	the output area reference code and other raw geo-positioning data, constituting a database
Input	all data made available to the Company pursuant to the Agreement including data input onto the Company's databases by (or on behalf of) the Client to enable provision of the Services
Licence Period	the period(s) of time during which the Deliverables are licensed to the Client, each beginning on the date of the SOC and continuing for the period stated in the SOC
Opt In	to actively indicate a wish to receive a marketing communication (including the ticking of a box inviting such marketing communications), and "Opted In" and "an Opt In" shall be read accordingly
Opt Out	to actively indicate a wish not to receive a marketing communication (including the ticking of a box declining an invitation to receive such marketing communications or objecting to it), and "Opted Out" and "an Opt Out" shall be read accordingly
Party	a party to the Agreement and its lawful successors or assigns
PECR	The Privacy and Electronic Communications (EC Directive) Regulations 2003
Permitted Purposes	any use of the Deliverables as expressly described in the SOC
Perpetually-licensed	the Deliverables described as such in the SOC (if any)

Deliverables

Price	the Company's charges, royalties, fees and other remuneration and expenses described in the SOC
Seeds	has the meaning given in clause 6
Services	the services expressly described in the SOC
SOC	the sales order confirmation for the Services, signed by or on behalf of the Company and the Client and incorporating these terms of business
Special Conditions	any terms or conditions expressly identified as such in the SOC
Year	each period of twelve consecutive months commencing on the date of the SOC or any anniversary of that date

- 1.2 References to clauses are to the clauses of these terms of business.
- 1.3 The terms "data processor", "data controller", "data subject", "personal data" and "process" shall have the meanings given in the DPA.
- 1.4 To the extent of any inconsistency between the SOC and these terms of business, the SOC shall take precedence, other than clauses 4, 5, 7, 8, 10, 11, 15, 22 and 24 of these terms of business which shall take precedence over all other provisions of the Agreement.
- 1.5 The headings in these terms of business are for convenience only and do not affect its interpretation.
- 1.6 References to any gender include any other gender and the singular includes the plural and vice versa.
- 1.7 A reference to a statute or statutory provision shall be construed as a reference to it as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes all statutory instruments, notices or orders made under it.
- 1.8 Any occurrence of the word "including", "include" or "includes" shall be deemed to be followed by "without limitation" unless the context requires otherwise.

2. THE SERVICES

- 2.1 In consideration of the Client paying the Price to the Company, the Company agrees to perform the Services and (where applicable) compile the Deliverables, in all cases using reasonable care and skill.
- 2.2 On the condition that the warranty in clause 3.2 is and remains at all times accurate, the Company warrants that:
- 2.2.1 it has the right to make the Deliverables available pursuant to the Agreement and has obtained the benefit of all necessary licences, consents and permissions it is aware are necessary to facilitate the Agreement, including the consents from the relevant data controllers of the Deliverables to the sharing of the Deliverables as envisaged by the Agreement;
- 2.2.2 in respect of each record in the Deliverables, the relevant data subject(s) have not, at the time of delivery to the Client, to the Company's actual knowledge, Opted Out of, or otherwise withdrawn their appropriate consent to, the personal data in the Deliverables being used for the Permitted Purposes;
- 2.2.3 insofar as the Permitted Purposes include use of the Deliverables for unsolicited communications by electronic mail or mobile telephone numbers by or on behalf of the Client, the relevant data subjects have Opted In to receiving such communications and such Opt Ins inure to the benefit of the Client at the time the Deliverables are supplied to the Client; and
- 2.2.4 use by the Client of the Deliverables pursuant to and in accordance with the Agreement will not infringe the intellectual property rights of any third party.
- 2.3 As the Services are generic in nature and are provided as part of the Company's standard service offering, the Company may where necessary change the form and content of the Services and/or (as the case may be) upgrade or modify any of the methods used to access or deliver the Services.
- 3. INPUT**
- 3.1 To the extent relevant, and subject to clauses 12 and 13, the Client grants to the Company a non-exclusive, non-transferable licence to use and, if necessary, copy the Input for the performance of the Services only.
- 3.2 The Client warrants that it has the right to license the Input to the Company in accordance with clause 3.1.
- 3.3 If the Client is to provide Input, the Client agrees to provide it in the format or formats agreed from time to time between the Parties. If the Input is not received by the Company in the format agreed between the Parties, then the Client will (i) promptly resubmit the Input in the agreed format; or (ii) subject to prior agreement with the Company, instruct the Company to correct the Input at the Client's expense (the fees and charges for which shall be agreed between the Parties).
- 3.4 The Client must retain a copy of the Input so that the Company does not hold the Client's only copy of it.
- 4. LICENCE**
- 4.1 The Company grants to the Client a personal, non-exclusive, non-transferable licence to use the Deliverables at the Designated Site(s) in accordance with the Permitted Purposes and, save in respect of any Perpetually-licensed Deliverables, only for the Licence Period. The Client may retain, use and otherwise enjoy the benefit of any Perpetually-licensed Deliverables indefinitely provided it does so in accordance with the

- Permitted Purposes (except in relation to the period of time during which the Deliverables may be used).
- 4.2** Save as provided by clauses 4.8 and 26, the Client shall not sell, transfer, distribute or otherwise make the Deliverables available to, or use the Deliverables on behalf of, any third party.
- 4.3** Save as otherwise required by law or expressly permitted under the Agreement, the Client shall not adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Deliverables.
- 4.4** The Client shall not use the Deliverables through a network, time sharing or multiple user arrangement.
- 4.5** The Client shall not use the Deliverables for or in connection with any sexually explicit, pornographic, offensive, racist, obscene, abusive, bigoted, violent, criminal, discriminatory, libellous, defamatory or illegal purpose or in a way which markets or promotes any services in connection with the mis-selling of financial products (including the reclaim of payment protection insurance ("PPI") premiums or compensation for mis-selling of PPI products). If any event occurs that places or is reasonably likely to place the Client in breach of the undertakings given in this clause 4.5 the Client shall notify the Company immediately. Any failure by the Client to comply with either of its obligations in this clause 4.5 will be deemed to be a material breach of the Agreement incapable of remedy.
- 4.6** Where the Services involve suppression of data, the data that is eliminated as a result of the suppression may not be used for marketing purposes.
- 4.7** Except as expressly stated otherwise in the SOC, the Company shall not be required to (but may in its sole discretion) provide updates to the Deliverables.
- 4.8** Without prejudice to clause 4.1, the Client may engage the Authorised Data Processor to process the Deliverables for the Permitted Purposes on the Client's behalf at the Designated Site(s) provided that the Client enters into (and enforces) a contract with the Authorised Data Processor including obligations that: (i) the Authorised Data Processor only uses the Deliverables on behalf of the Client for the Permitted Purposes and then only during the Licence Period; (ii) the Authorised Data Processor does not under any circumstances use the Deliverables on its own behalf or on behalf of a third party; and (iii) the Authorised Data Processor shall comply with provisions materially similar to clauses 4.2, 5, 7, 8, 10 and 15 of these terms of business.
- 4.9** Where the Authorised Data Processor delivers the Input to the Company or the Deliverables to the Client the Client acknowledges that the Authorised Data Processor is responsible for ensuring that the Services are not affected by the fact that the Input and/or (as the case may be) Deliverables are processed or delivered through the Authorised Data Processor and that the Company is not responsible for any defects or delay in the Services arising as a result.
- 5. OWNERSHIP**
- 5.1** Title, copyright and all other intellectual property rights in the Input (in the form received from the Client) shall at all times remain vested in the Client (or its third party licensors) and the Company shall acquire no rights in them save as expressly provided in the Agreement.
- 5.2** Title, copyright and all other intellectual property rights in the Deliverables and the Services (excluding any part that is comprised of Input in the form received from the Client) shall at all times remain vested in the Company (or its third party licensors) and the Client shall acquire no rights in them save as expressly provided in the Agreement.
- 6. SEEDS**
- The Deliverables may contain seed names and addresses or phone numbers ("Seeds") for control purposes. The Client acknowledges that these Seeds will not be made known to them. It shall constitute a material breach of the Agreement if the Company's records indicate that any Seeds received any communications undertaken by or on behalf of the Client or with the Client's consent or knowledge outside the Permitted Purposes.
- 7. COMPLIANCE WITH LAWS**
- 7.1** The Company and the Client shall at all times in respect of the subject matter of the Agreement comply with all applicable laws of England and Wales, including the DPA, the Parties acknowledging the provisions of clause 8.
- 7.2** The Client shall use the Deliverables only in accordance with best industry practice including the Direct Marketing Association's Code of Practice and the British Code of Advertising, Sales Promotion and Direct Marketing.
- 7.3** If the Deliverables include telephone numbers or e-mail addresses, then (except to the extent the SOC expressly provides otherwise) the Client, and not the Company, is responsible for ongoing compliance with PECR, including processing against the latest Telephone Preference Service file.
- 8. DATA PROTECTION**
- 8.1** To the extent the Company, in delivering the Services, is acting as a data processor in relation to personal data received from the Client for which the Client is a data controller, the Company shall:
- 8.1.1** process the personal data strictly in accordance with the Client's lawful instructions as required in order to provide the Services;
- 8.1.2** ensure that only such of its employees who may be required by the Company to assist it in meeting its obligations under the Agreement shall have access to the personal data;
- 8.1.3** ensure that all such employees have undergone training in the law of data protection and in the care and handling of personal data and are under obligations of confidentiality to the Company;
- 8.1.4** employ appropriate operational and technological processes and procedures in accordance with best industry practice in respect of security against unauthorised use or access, loss, destruction, theft and/or (as the case may be) disclosure of the personal data and shall process such personal data in accordance with the DPA;
- 8.1.5** provide reasonable assistance to the Client promptly in respect of all subject access requests which may be received by the Client from any data subjects whose personal data is being processed by the Company on behalf of the Client;
- 8.1.6** not use the personal data for any purposes which are inconsistent with those instructed by the Client;
- 8.1.7** not disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised by the Client or as otherwise set out in the Agreement;
- 8.1.8** not sell, transfer, distribute or otherwise make the personal data available to or use the personal data on behalf of any third party unless otherwise requested or agreed by the Client or as otherwise permitted under the Agreement; and
- 8.1.9** not transfer or process the personal data outside the European Economic Area unless otherwise agreed by the Client.
- 8.2** In any instance in which either Party is deemed a data controller in respect of the processing of any personal data in connection with the Agreement, such Party undertakes to the other Party to comply with the DPA and, without prejudice to the effect of clauses 7.1 and 8.1, assumes responsibility for compliance with the DPA in respect of the processing of the personal data in respect of which it is deemed a data controller.
- 9. ELECTRONIC COMMUNICATIONS**
- 9.1** Insofar as the Client has engaged the Company to undertake Electronic Mail (including email or SMS) broadcast services, the Client will ensure that any Copy it provides to the Company does not contain or promote anything pornographic, racist, libellous, defamatory, obscene, abusive, bigoted, violent, criminal or discriminatory or relating to gambling, pharmaceutical products associated with sexual performance, tobacco, alcohol or illegal goods or services, or that infringes any third party's intellectual property rights or breach any other laws or regulations in any way.
- 9.2** Clauses 9.3 to 9.5 only apply to the extent the activities undertaken pursuant to the Agreement are regulated by PECR.
- 9.3** The Client acknowledges that the Client and the Company must, to the extent relevant, comply with PECR in performing their respective obligations under the Agreement and accordingly, the Client acknowledges and agrees that the Company may at its sole discretion and without liability to the Client refuse to undertake any Service which would cause it or the Client to contravene PECR.
- 9.4** Accordingly, but without limiting the generality of clause 9.3, the Company may at its sole discretion and without liability to the Client refuse to:
- 9.4.1** transmit unsolicited Electronic Mails unless either (i) the recipient of the Electronic Mail has notified the Client or the Company that he consents for the time being to such communications being sent by or on behalf of the Client; or (ii) PECR otherwise permits; or
- 9.4.2** transmit any Electronic Mail where (i) the identity of the Client has been disguised or concealed or (ii) where a valid address to which the recipient of the Electronic Mail may send a request that such Electronic Mails cease has not been provided.
- 9.5** Notwithstanding clause 2.2, primary responsibility for compliance with PECR remains with the Client. To the extent PECR applies to the Services and any activities undertaken by the Company in connection with the Services, the Company shall be deemed to be acting as agent of the Client.
- 10. CONFIDENTIALITY**
- 10.1** Subject to clause 10.2, each Party shall in respect of the other Party's Confidential Information:
- 10.1.1** keep it in strictest confidence and not make it available to any third party;
- 10.1.2** only use it for the purposes of the Agreement and ensure that only those of its employees who need to know have access to it; and
- 10.1.3** ensure that before any employee is allowed access to it, the duty of confidentiality under this clause 10 is brought to his or her attention.
- 10.2** Clause 10.1 does not apply to Confidential Information to the extent that:
- 10.2.1** it is in the public domain at the date of its disclosure or subsequently comes in to the public domain otherwise than by breach of the Agreement;
- 10.2.2** it was lawfully in the receiving Party's possession or known to it by being in its use or being recorded in its files or computers or other recording media before receipt from the disclosing Party, or has been lawfully developed by or for the receiving Party independently of any Confidential Information disclosed to it by the disclosing Party;
- 10.2.3** it is lawfully disclosed to the receiving Party by any third party and is not the subject of any restriction as to its use or disclosure imposed by or on that third party at the time of provision;
- 10.2.4** the receiving Party is obliged to disclose it by law, by any court of competent jurisdiction or any regulatory body provided that (where permitted by law) it gives the disclosing Party reasonable notice of such disclosure and the reason for the disclosure;
- 10.2.5** provision of the Services requires the Company to make the Confidential Information available to its sub-contractors who are subject to similar obligations of confidentiality and of compliance with the DPA; or
- 10.2.6** disclosure of the Confidential Information to third parties by the receiving Party is permitted under the terms of the Agreement or has been authorised in writing by the disclosing Party.
- 11. LIABILITY**
- 11.1** Notwithstanding any other term of the Agreement, the Company does not limit or exclude liability for fraud or fraudulent misrepresentation or for death or personal injury arising from its negligence. Clauses 11.2 to 11.13 are subject to this clause 11.1.
- 11.2** The Company does not warrant or represent that the Deliverables or the Services will be entirely error free.
- 11.3** The Company gives no warranties and makes no representations as to the suitability of the Deliverables or the Services for any particular purpose. The Client is responsible for satisfying itself that the Deliverables and the Services are suitable for any use to which it wishes to put them. Given the nature of the Services and Deliverables, the Company recommends that the Client does not use them (in particular any reports or analyses or inferred data variables) as the sole basis for any business decision.
- 11.4** The Company may be asked or required to provide advice or assistance to the Client which does not form part of the Services (for example, by giving an opinion on the form or content of any Copy). The Company does not hold itself out as an expert provider of such advice or assistance and shall have no liability if the Client chooses to rely on it.
- 11.5** The Company shall have no liability for defects in the Deliverables or the Services which are attributable to defects in any Input.
- 11.6** The Company shall have no liability for failing to meet any delivery dates for the Deliverables where the Input (if any) has not been delivered to the Company in sufficient time or if the Input does not conform to the requirements of the Agreement.
- 11.7** If the Client discovers any defect in the Deliverables or the Services which is directly and exclusively attributable to an act or omission of the Company then the Client may notify the Company who shall be entitled at its sole discretion to take steps to correct the same at its own expense. The Client's right pursuant to this clause 11.7 shall expire on the date falling 13 months after completion of the Services, at which time the Company will delete the Input from its systems in line with its standard deletion policy. The Company shall have no liability to correct any such defect unless notification is given within that period.
- 11.8** The Client acknowledges that the Deliverables and the Services may be based on information provided to the Company by third parties over whom the Company has no control. Accordingly, without prejudice to clause 2.1, the Company gives no warranties and makes no representations as to the accuracy or completeness of the Deliverables and the Services.
- 11.9** The Company shall not be liable for any loss or damage arising out of or in connection with any statement, representation, assurance or warranty made by or on behalf of the Company (whether made negligently or innocently) which is not expressly contained in the Agreement even if the Company had notice of the possibility of such loss.

- 11.10** The Company shall not be liable for any special, indirect or consequential loss arising out of or in connection with the Agreement or its subject matter even if the Company had notice of the possibility of such loss.
- 11.11** The Company shall not be liable for any loss of business, loss of profits, loss of anticipated savings, loss of reputation, loss of goodwill, business interruption or increase in bad debt or any loss incurred by any third party arising out of or in connection with the Agreement or its subject matter even if the Company had notice of the possibility of such loss.
- 11.12** The Company's entire aggregate liability in respect of all claims, losses, damages and costs arising out of or in connection with the Agreement or its subject matter (whether in contract, tort including negligence, breach of statutory duty or otherwise) in any Year shall not exceed an amount equal to the sums received by or due to the Company from the Client under the Agreement in respect of that Year or £200 (whichever is the greater).
- 11.13** Except as expressly provided in the Agreement all conditions and warranties or terms of equivalent effect whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.
- 11.14** As the Deliverables provided by the Company to the Client are a valuable proprietary asset of the Company, the Client agrees that the Company will be entitled to liquidated damages calculated in accordance with either of the following formulae:
Formula A (use of the Deliverables in excess of any usage limits specified in the Agreement): $P \times r \times n \div N$
Formula B (use of the Deliverables following expiry of the Licence Period): $P \times r \times t \div T$
where *P* is the Price per record contained in the Deliverables; *r* is the number of records used in excess of the usage limits (Formula A) or following expiry of the Licence Period (Formula B); *n* is the total number of times such records were so used; *N* is the number of times such records were permitted to be used by the Agreement; *t* is the duration for which such records were used (rounded up according to the nearest whole number of periods equal to the duration of the Licence Period); and *T* is the duration of the Licence Period.
Such liquidated damages shall be due as a debt payable on demand in writing by the Company to the Client. This right to liquidated damages is without prejudice to the Company's other rights and remedies, whether under the terms of the Agreement or otherwise, including the Company's right to seek injunctive relief in any court of competent jurisdiction. The Parties hereby acknowledge and agree that in each case the formula specified in this clause is a genuine pre-estimate of the loss which would be incurred by the Company in the relevant circumstances.
- 12. PAYMENT AND COSTS**
- 12.1** The Client shall pay the Price to the Company, together with all reasonable travel, accommodation and subsistence expenses incurred by or on behalf of the Company during performance of any of the Services away from the Company's premises.
- 12.2** The Company may increase the Price on one occasion each Year. Any such increase shall not exceed the increase (expressed as a percentage) in the Retail Prices (all items) Index since the date of the SOC or since the date of the last increase (if any) in the Company's charges, whichever is the later. If that index ceases to be published then the Company and the Client shall agree another comparable replacement index (such agreement not to be unreasonably withheld or delayed).
- 12.3** Value added tax ("VAT") is to be paid by the Client at the prevailing rate on all sums due under the Agreement. All sums quoted in the Agreement are exclusive of VAT.
- 12.4** All sums due must be paid within 30 days of the date of the Company's invoice. The Client shall pay interest and fixed sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any due amounts invoiced by the Company.
- 13. TERMINATION FOR CAUSE**
- 13.1** Either Party may terminate the Agreement (including all licences granted under it) immediately on written notice if:
- 13.1.1** the other commits any material breach of the Agreement and such breach is incapable of remedy or, where capable of remedy, is not remedied to the non defaulting Party's reasonable satisfaction within 14 days of written notice specifying the breach and requiring its remedy;
- 13.1.2** in respect of the other (being a company) a resolution is passed or an order is made for winding up (save for the purpose of a bona fide reconstruction or amalgamation) or (being an individual) a bankruptcy petition is presented or a bankruptcy order is made;
- 13.1.3** in respect of the other (being a company) an administration order is made, or a receiver or administrative receiver is appointed over any of its property or assets; or
- 13.1.4** the other is dissolved or 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply.
- 13.2** The Company may terminate any or all of the licences granted hereunder and/or (as the case may be) the Agreement if as a result of any act or default of any third party the Company is no longer permitted or licensed to provide the Services or to make the Deliverables available pursuant to the Agreement or if in the Company's reasonable opinion it is necessary to do so to comply with any law, regulation or applicable code of practice.
- 14. CONSEQUENCES OF TERMINATION**
- 14.1** Subject to clauses 14.3 and 14.4, on termination or expiry of the Agreement or any licences under it for any reason, the Client shall:
- 14.1.1** immediately return to the Company the relevant Deliverables in hard copy form (and all copies thereof);
- 14.1.2** otherwise delete the relevant Deliverables which remain in the possession or control of the Client (including all flags and other data and information appended to or forming part of any of the Client's databases which are derived from the relevant Deliverables) from the Client's computer systems and other storage media; and
- 14.1.3** provide the Company with written confirmation signed by a duly authorised officer that this clause 14 has been complied with.
- 14.2** For the purposes of clause 14.1, the relevant Deliverables are those Deliverables in respect of which the licence granted under clause 4.1 has terminated or expired.
- 14.3** Save where the Agreement is terminated by the Company pursuant to clause 13, the Client shall not be required to comply with clause 14.1 in respect of any Perpetually-licensed Deliverables. For the avoidance of doubt, if the Agreement is terminated by the Company pursuant to clause 13, the Client's obligations under clause 14.1 shall also apply to any Perpetually-licensed Deliverables.
- 14.4** Each Party acknowledges that they may each have a standard data archiving policy which includes the creation and retention of backup copies of data and other information ("Retained Data") held on its archive computer systems for legal, regulatory compliance, IT restoration and disaster recovery purposes only. Each Party agrees that the Retained Data held on the archive computer systems of the other Party shall not be subject to an obligation to be returned or deleted whether upon termination or expiry of the Agreement or otherwise. For the avoidance of doubt:
- 14.4.1** to the extent that the Retained Data are data and other information supplied to one Party by the other Party, such Retained Data shall remain subject to the other terms of the Agreement as may be applicable; and
- 14.4.2** to the extent that the Retained Data are Deliverables or information derived from them, such data may not be used by the Client for live operational purposes after (i) the date of termination of the Agreement; or (ii) the expiration of the licence set out in clause 4.1 (whichever is the earlier).
- 14.5** In the event of termination pursuant to clause 13.2, the Company shall refund to the Client a proportion of any pre-payment of the Price, such proportion to reflect the unexpired part of the period in respect of which the Price was paid. Save for such refund, in respect of the matters referred to in clause 13.2: (i) the Company shall have no liability to the Client; and (ii) the Company shall be deemed not to be in breach of any of its obligations under the Agreement.
- 14.6** Termination is without prejudice to any antecedent breach or to any continuing obligation. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 15. AUDIT**
- 15.1** Subject to the Company being given reasonable prior written notice, it shall permit the Client and its authorised independent auditors to have reasonable access during the Company's normal business hours to the Company's relevant premises, documents and operations (each as are relevant in the circumstances) for the sole purpose of ensuring that the Company is complying with the Agreement.
- 15.2** Subject to the Client being given reasonable prior written notice, it shall permit and procure the Company and its authorised independent auditors to have reasonable access during the Client's normal business hours to the Client's relevant premises, documents and operations (and those of any Authorised Data Processors and Additional Group Companies) (each as are relevant in the circumstances) for the sole purpose of ensuring that the Client, any Authorised Data Processors and any Additional Group Companies are complying with the Agreement or any obligations which the Client is required to impose pursuant to the Agreement.
- 15.3** If either Party exercises its right of audit under clause 15.1 or clause 15.2 (as appropriate) the visiting Party shall at all times comply with the host's reasonable safety and security rules and regulations in place from time to time. Each Party agrees to reimburse the other for all damage, losses, costs, claims demands and expenses suffered by the other that are directly attributable to the acts or omissions of the visiting Party (or its authorised representatives) in exercising its rights of access under clause 15.1 or clause 15.2 (as appropriate).
- 16. FORCE MAJEURE**
- 16.1** Neither Party shall be liable to the other for any delay or non-performance of its obligations under the Agreement (except for its obligation to make payment) arising from any Event of Force Majeure.
- 16.2** The Party affected by the Event of Force Majeure shall use reasonable endeavours to mitigate the impact of any Event of Force Majeure and to recommence performance of its obligations under the Agreement as soon as is reasonably practicable.
- 16.3** If the affected Party is unable to perform its obligations under the Agreement by reason of the Event of Force Majeure for more than four weeks, the non-affected Party may terminate the Agreement immediately by serving notice on the other and neither Party shall be liable to the other by reason of such termination.
- 17. VARIATION**
Subject to clause 2.3, any amendment, modification, variation or supplement to the Agreement must be made in writing and signed by an authorised signatory of each Party.
- 18. WAIVER**
Failure by either Party to exercise or enforce any rights available to that Party or the giving of any forbearance, delay or indulgence is not to be construed as a waiver of that Party's rights under the Agreement.
- 19. ASSIGNMENT AND SUBCONTRACTING**
- 19.1** Either Party is entitled to subcontract the performance of any of its obligations under the Agreement provided that such Party shall be liable for its obligations under the Agreement to the same extent as if it had carried out the work itself.
- 19.2** The Client shall not assign, transfer, charge or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 20. SEVERANCE**
If any provision of the Agreement is found to be illegal or unenforceable by any court of competent jurisdiction then that provision shall be deemed to be deleted, but without affecting the remaining provisions.
- 21. NO PARTNERSHIP, NO AGENCY**
Nothing in the Agreement constitutes a partnership between the Parties. Neither Party is deemed to be the agent of the other for any purpose, and neither has the power or authority to bind the other or to contract in the name of the other, except as expressly set out in the Agreement.
- 22. ENTIRE AGREEMENT**
- 22.1** These terms of business and the SOC apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 22.2** The Agreement sets out the entire agreement between the Parties in relation to its subject matter and supersedes all previous written or oral agreements, representations, undertakings, warranties or arrangements between the Parties in relation to that subject matter.
- 22.3** Each Party acknowledges and agrees that in entering into the Agreement it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement.
- 22.4** Nothing in clauses 22.2 or 22.3 shall exclude or limit any liability of the Parties arising as a result of any fraud or fraudulent misrepresentation.
- 23. NOTICES**
All notices, requests, consents and authorisations made pursuant to the Agreement must be in writing and must, where the Company is the recipient, be sent to its chief trading address specified in the Agreement (or such other trading address as is notified to Client from time to time), and where the Client is the recipient, be sent to its

registered office or chief trading address as specified in the Agreement (or such other trading address as is notified to the Company from time to time). Notices may be sent either by first class mail or fax. Correctly addressed notices sent by first class mail are deemed to have been delivered seventy-two hours after posting. Notices sent by fax during the recipient's business hours are deemed to have been delivered at the time set out in the transmission confirmation document and notices sent by fax outside the recipient's business hours are deemed to have been sent on the first business hour of the recipient following transmission.

24. GOVERNING LAW & JURISDICTION

24.1 The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement or of any term of the Agreement or of any non-contractual obligation undertaken or incurred in connection with the Agreement (including those arising out of pre-contractual dealings) will be governed by the laws of England.

24.2 The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or (as the case may be) to settle any disputes, which may arise out of or in any way relate to the Agreement or its formation, existence, construction, performance or validity or of any non-contractual obligation undertaken or incurred in connection with the Agreement (including those arising out of pre-contractual dealings) and, for these purposes, each Party irrevocably submits to the exclusive jurisdiction of the courts of England.

24.3 The rights and remedies provided in the Agreement are cumulative and (except as otherwise stated) are not exclusive of any rights or remedies provided by law.

25. THIRD PARTY RIGHTS

The Parties do not intend to confer any rights on any third parties by virtue of the Agreement and an entity which is not a party to the Agreement shall have no right to enforce any of its terms.

26. SPECIFIC TERMS AND CONDITIONS FOR ADDITIONAL GROUP COMPANIES

If any Additional Group Companies are listed in the SOC then, notwithstanding clause 4.2, the Services may be made available to Additional Group Companies for their own use in accordance with the Permitted Purposes provided that: (i) the Client procures that each of the Additional Group Companies shall grant the rights and comply with the obligations placed upon the Client pursuant to the Agreement to the same extent (where appropriate) as if each Additional Group Company had executed the Agreement in its own right; and (ii) to enable the Company's liability to be limited to the Additional Group Companies to the same extent that it is limited to the Client, the Client shall indemnify the Company and keep it indemnified against all costs, claims, demands and expenses (including legal expenses) arising out of or in connection with any claims made against the Company by any Additional Group Company arising as a result of the Agreement; however (subject to the provisions of clause 11) the Client shall be entitled to bring a claim against the Company in respect of such costs, claims, demands and expenses incurred by any Additional Group Companies that arise as a direct result of breach by the Company of the terms of the Agreement which, for the purposes of this sub-clause (ii), shall be deemed to be costs, claims, demands or expenses of the Client.

**TERMS OF BUSINESS
(CLIENT AS INTERMEDIARY)**

1. DEFINITIONS AND INTERPRETATION

1.1 In the Agreement the following terms have the following meanings:

Agreement	the agreement between the Company and the Client for the provision of the Services, consisting of the SOC and these terms of business
Authorised Data Processor	a third party expressly identified as an Authorised Data Processor in the SOC (if any)
CAMEO Codes	the geodemographic classification codes owned and developed by the Company, constituting a database
CAMEO Directories	the combination of the Geo-positioning Data and the associated CAMEO Codes, constituting a database, as listed in the SOC
Client	the Party named as such in the SOC
Company	the company specified as such in the SOC, being either Callcredit Marketing Limited (company number 2733070) or The Trading Floor Limited (company number 5749125), the registered office of each of which is at One Park Lane, Leeds, West Yorkshire, LS3 1EP
Confidential Information	all trade secret, confidential or proprietary information of either Party including information concerning its products, services, customers, suppliers, business accounts, financial or contractual arrangements or other dealings, computer systems, test data, software, source and object code, business methods and development plans, contained in any format and whether or not communicated orally and whether or not marked "confidential", including the Input and the Deliverables (as applicable)
Copy	means the advertisement and/or (as the case may be) other content featuring the Client's branding, get up, trade marks or styling provided by or on behalf of the Client for incorporating into the Electronic Mail
Deliverables	the data (including any CAMEO Directories, Geo-positioning Data and CAMEO Codes described in the SOC), scores, results, reports, documents, flags, models and other information (and all updates of them) in any form to be made available to the Client by or on behalf of the Company, including the output from the Services and such deliverables as are described in the SOC
Designated Site	any premises identified as such in the SOC
DPA	Data Protection Act 1998
Electronic Mail	has the meaning given in PECR
End User	the organisation identified as such in the SOC
Event of Force Majeure	in respect of any Party, any cause beyond its reasonable control including any of the following: act of God, act of terrorism, governmental act, war, fire, flood, explosion or civil commotion, industrial action (excluding internal industrial action), failure in telecommunications services, unauthorised interference with either Party's systems or services via the Internet
Geo-positioning Data	the output area reference code and other raw geo-positioning data, constituting a database
Input	all data made available to the Company pursuant to the Agreement including data input onto the Company's databases by (or on behalf of) the Client to enable provision of the Services
Licence Period	the period(s) of time during which the Deliverables are licensed to the Client, each beginning on the date of the SOC and continuing for the period stated in the SOC
Opt In	to actively indicate a wish to receive a marketing communication (including the ticking of a box inviting such marketing communications), and "Opted In" and "an Opt In" shall be read accordingly
Opt Out	to actively indicate a wish not to receive a marketing communication (including the ticking of a box declining an invitation to receive such marketing communications or objecting to it), and "Opted Out" and "an Opt Out" shall be read accordingly
Party	a party to the Agreement and its lawful successors or assigns
PECR	The Privacy and Electronic Communications (EC Directive) Regulations 2003
Permitted Purposes	any use of the Deliverables as expressly described in the SOC
Perpetually-licensed Deliverables	the Deliverables described as such in the SOC (if any)

Price	the Company's charges, royalties, fees and other remuneration and expenses described in the SOC
Seeds	has the meaning given in clause 6
Services	the services expressly described in the SOC
SOC	the sales order confirmation for the Services, signed by or on behalf of the Company and the Client and incorporating these terms of business
Special Conditions	any terms or conditions expressly identified as such in the SOC
Year	each period of twelve consecutive months commencing on the date of the SOC or any anniversary of that date
1.2	References to clauses are to the clauses of these terms of business.
1.3	The terms "data processor", "data controller", "data subject", "personal data" and "process" shall have the meanings given in the DPA.
1.4	To the extent of any inconsistency between the SOC and these terms of business, the SOC shall take precedence, other than clauses 4, 5, 7, 8, 10, 11, 15, 22 and 24 of these terms of business which shall take precedence over all other provisions of the Agreement.
1.5	The headings in these terms of business are for convenience only and do not affect its interpretation.
1.6	References to any gender include any other gender and the singular includes the plural and vice versa.
1.7	A reference to a statute or statutory provision shall be construed as a reference to it as from time to time amended, consolidated, modified, extended, re-enacted or replaced and includes all statutory instruments, notices or orders made under it.
1.8	Any occurrence of the word "including", "include" or "includes" shall be deemed to be followed by "without limitation" unless the context requires otherwise.
2. THE SERVICES	
2.1	In consideration of the Client paying the Price to the Company, the Company agrees to perform the Services and (where applicable) compile the Deliverables, in all cases using reasonable care and skill.
2.2	On the condition that the warranty in clause 3.2 is and remains at all times accurate, the Company warrants that:
2.2.1	it has the right to make the Deliverables available pursuant to the Agreement and has obtained the benefit of all necessary licences, consents and permissions it is aware are necessary to facilitate the Agreement, including the consents from the relevant data controllers of the Deliverables to the sharing of the Deliverables as envisaged by the Agreement;
2.2.2	in respect of each record in the Deliverables, the relevant data subject(s) have not, at the time of delivery to the Client, to the Company's actual knowledge, Opted Out of, or otherwise withdrawn their appropriate consent to, the personal data in the Deliverables being used for the Permitted Purposes;
2.2.3	insofar as the Permitted Purposes include use of the Deliverables for unsolicited communications by electronic mail or mobile telephone numbers by or on behalf of the Client, the relevant data subjects have Opted In to receiving such communications and such Opt Ins inure for the benefit of the Client at the time the Deliverables are supplied to the Client; and
2.2.4	use by the Client of the Deliverables pursuant to and in accordance with the Agreement will not infringe the intellectual property rights of any third party.
2.3	As the Services are generic in nature and are provided as part of the Company's standard service offering, the Company may where necessary change the form and content of the Services and/or (as the case may be) upgrade or modify any of the methods used to access or deliver the Services.
3. INPUT	
3.1	To the extent relevant, and subject to clauses 12 and 13, the Client grants to the Company a non-exclusive, non-transferable licence to use and, if necessary, copy the Input for the performance of the Services only.
3.2	The Client warrants that it has the right to license the Input to the Company in accordance with clause 3.1.
3.3	If the Client is to provide Input, the Client agrees to provide it in the format or formats agreed from time to time between the Parties. If the Input is not received by the Company in the format agreed between the Parties, then the Client will (i) promptly resubmit the Input in the agreed format; or (ii) subject to prior agreement with the Company, instruct the Company to correct the Input at the Client's expense (the fees and charges for which shall be agreed between the Parties).
3.4	The Client must retain a copy of the Input so that the Company does not hold the Client's only copy of it.
4. LICENCE	
4.1	The Company grants to the Client a non-exclusive licence to use the Deliverables on behalf of the End User and/or (as the case may be) sublicense the Deliverables to the End User, in either case at the Designated Site(s) in accordance with the Permitted Purposes and, save in respect of any Perpetually-licensed Deliverables, only for the Licence Period. The End User may retain, use and otherwise enjoy the benefit of any Perpetually-licensed Deliverables indefinitely provided it does so in accordance with the

- Permitted Purposes (except in relation to the period of time during which the Deliverables may be used).
- 4.2** Save as provided by clause 4.8, the Client shall not license, sell, transfer, distribute, deal with or otherwise make the Deliverables available to, or use the Deliverables on its own behalf or on behalf of any third party save the End User in accordance with the terms of the Agreement.
- 4.3** Save as otherwise required by law or expressly permitted under the Agreement, the Client shall not adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Deliverables.
- 4.4** The Client shall not use the Deliverables through a network, time sharing or multiple user arrangement.
- 4.5** The Client shall not, and shall procure that the End User does not, use the Deliverables for or in connection with any sexually explicit, pornographic, offensive, racist, obscene, abusive, bigoted, violent, criminal, discriminatory, libellous, defamatory or illegal purpose or in a way which markets or promotes any services in connection with the mis-selling of financial products (including the reclaim of payment protection insurance ("PPI") premiums or compensation for mis-selling of PPI products). If any event occurs that places or is reasonably likely to place the Client in breach of the undertakings given in this clause 4.5 the Client shall notify the Company immediately. Any failure by the Client to comply with either of its obligations in this clause 4.5 will be deemed to be a material breach of the Agreement incapable of remedy.
- 4.6** Where the Services involve suppression of data, the data that is eliminated as a result of the suppression may not be used for marketing purposes.
- 4.7** Except as expressly stated otherwise in the SOC, the Company shall not be required to (but may in its sole discretion) provide updates to the Deliverables.
- 4.8** Without prejudice to clause 4.1, the Client may engage the Authorised Data Processor to process the Deliverables for the Permitted Purposes on the Client or the End User's behalf at the Designated Site(s) provided that the Client enters into (and enforces) or procures that the End User enters into (and enforces) a contract with the Authorised Data Processor including obligations that: (i) the Authorised Data Processor only uses the Deliverables on behalf of the End User for the Permitted Purposes and then only during the Licence Period; (ii) the Authorised Data Processor does not under any circumstances use the Deliverables on its own behalf or on behalf of a third party; and (iii) the Authorised Data Processor shall comply with provisions materially similar to clauses 4.2, 5, 7, 8, 10 and 15 of these terms of business.
- 4.9** Where the Authorised Data Processor delivers the Input to the Company or the Deliverables to the Client or the End User the Client acknowledges that the Authorised Data Processor is responsible for ensuring that the Services are not affected by the fact that the Input and/or (as the case may be) Deliverables are processed or delivered through the Authorised Data Processor and that the Company is not responsible for any defects or delay in the Services arising as a result.
- 4.10** The Client shall procure that the End User shall grant the rights and comply with the obligations placed upon the Client pursuant to the Agreement to the same extent as if such End User had executed the Agreement in its own right in place of the Client.
- 4.11** The Client agrees to indemnify the Company and keep it fully indemnified against all costs, claims, demands and expenses (including legal expenses) arising out of or in connection with (i) any negligence or breach of the Agreement by the End User or any Authorised Data Processor (as if the End User or Authorised Data Processor had executed the Agreement in its own right in place of the Client), whether as a result of a third party claim being made against the Company or otherwise; and (ii) any claim made against the Company by the End User or any Authorised Data Processor.
- 5. OWNERSHIP**
- 5.1** Title, copyright and all other intellectual property rights in the Input (in the form received from the Client) shall at all times remain vested in the Client (or its third party licensors) and the Company shall acquire no rights in them save as expressly provided in the Agreement.
- 5.2** Title, copyright and all other intellectual property rights in the Deliverables and the Services (excluding any part that is comprised of Input in the form received from the Client) shall at all times remain vested in the Company (or its third party licensors) and the Client shall acquire no rights in them save as expressly provided in the Agreement.
- 6. SEEDS**
- The Deliverables may contain seed names and addresses or phone numbers ("Seeds") for control purposes. The Client acknowledges (and is required to ensure that the End User acknowledges to the Client) that these Seeds will not be made known to the Client or the End User. It shall constitute a material breach of the Agreement if the Company's records indicate that any Seeds received any communications undertaken by or on behalf of the Client or End User or with the Client's or End User's consent or knowledge outside the Permitted Purposes.
- 7. COMPLIANCE WITH LAWS**
- 7.1** The Company and the Client shall at all times in respect of the subject matter of the Agreement comply with all applicable laws of England and Wales, including the DPA, the Parties acknowledging the provisions of clause 8.
- 7.2** The Client shall use the Deliverables only in accordance with best industry practice including the Direct Marketing Association's Code of Practice and the British Code of Advertising, Sales Promotion and Direct Marketing.
- 7.3** If the Deliverables include telephone numbers or e-mail addresses, then (except to the extent the SOC expressly provides otherwise) the Client, and not the Company, is responsible for ongoing compliance with PECR, including processing against the latest Telephone Preference Service file.
- 8. DATA PROTECTION**
- 8.1** To the extent the Company, in delivering the Services, is acting as a data processor in relation to personal data received from the Client for which the Client is a data controller, the Company shall:
- 8.1.1** process the personal data strictly in accordance with the Client's lawful instructions as required in order to provide the Services;
- 8.1.2** ensure that only such of its employees who may be required by the Company to assist it in meeting its obligations under the Agreement shall have access to the personal data;
- 8.1.3** ensure that all such employees have undergone training in the law of data protection and in the care and handling of personal data and are under obligations of confidentiality to the Company;
- 8.1.4** employ appropriate operational and technological processes and procedures in accordance with best industry practice in respect of security against unauthorised use or access, loss, destruction, theft and/or (as the case may be) disclosure of the personal data and shall process such personal data in accordance with the DPA;
- 8.1.5** provide reasonable assistance to the Client promptly in respect of all subject access requests which may be received by the Client from any data subjects whose personal data is being processed by the Company on behalf of the Client;
- 8.1.6** not use the personal data for any purposes which are inconsistent with those instructed by the Client;
- 8.1.7** not disclose or permit the disclosure of any of the personal data to any third party unless specifically authorised by the Client or as otherwise set out in the Agreement;
- 8.1.8** not sell, transfer, distribute or otherwise make the personal data available to or use the personal data on behalf of any third party unless otherwise requested or agreed by the Client or as otherwise permitted under the Agreement; and
- 8.1.9** not transfer or process the personal data outside the European Economic Area unless otherwise agreed by the Client.
- 8.2** In any instance in which either Party is deemed a data controller in respect of the processing of any personal data in connection with the Agreement, such Party undertakes to the other Party to comply with the DPA and, without prejudice to the effect of clauses 7.1 and 8.1, assumes responsibility for compliance with the DPA in respect of the processing of the personal data in respect of which it is deemed a data controller.
- 9. ELECTRONIC COMMUNICATIONS**
- 9.1** Insofar as the Client has engaged the Company to undertake Electronic Mail (including email or SMS) broadcast services, the Client will ensure that any Copy it provides to the Company does not contain or promote anything pornographic, racist, libellous, defamatory, obscene, abusive, bigoted, violent, criminal or discriminatory or relating to gambling, pharmaceutical products associated with sexual performance, tobacco, alcohol or illegal goods or services, or that infringes any third party's intellectual property rights or breach any other laws or regulations in any way.
- 9.2** Clauses 9.3 to 9.5 only apply to the extent the activities undertaken pursuant to the Agreement are regulated by PECR.
- 9.3** The Client acknowledges that the Client and the Company must, to the extent relevant, comply with PECR in performing their respective obligations under the Agreement and accordingly, the Client acknowledges and agrees that the Company may at its sole discretion and without liability to the Client refuse to undertake any Service which would cause it or the Client to contravene PECR.
- 9.4** Accordingly, but without limiting the generality of clause 9.3, the Company may at its sole discretion and without liability to the Client refuse to:
- 9.4.1** transmit unsolicited Electronic Mails unless either (i) the recipient of the Electronic Mail has notified the Client or the Company that he consents for the time being to such communications being sent by or on behalf of the Client; or (ii) PECR otherwise permits; or
- 9.4.2** transmit any Electronic Mail where (i) the identity of the Client has been disguised or concealed or (ii) where a valid address to which the recipient of the Electronic Mail may send a request that such Electronic Mails cease has not been provided.
- 9.5** Notwithstanding clause 2.2, primary responsibility for compliance with PECR remains with the Client. To the extent PECR applies to the Services and any activities undertaken by the Company in connection with the Services, the Company shall be deemed to be acting as agent of the Client.
- 10. CONFIDENTIALITY**
- 10.1** Subject to clause 10.2, each Party shall in respect of the other Party's Confidential Information:
- 10.1.1** keep it in strictest confidence and not make it available to any third party;
- 10.1.2** only use it for the purposes of the Agreement and ensure that only those of its employees who need to know have access to it; and
- 10.1.3** ensure that before any employee is allowed access to it, the duty of confidentiality under this clause 10 is brought to his or her attention.
- 10.2** Clause 10.1 does not apply to Confidential Information to the extent that:
- 10.2.1** it is in the public domain at the date of its disclosure or subsequently comes in to the public domain otherwise than by breach of the Agreement;
- 10.2.2** it was lawfully in the receiving Party's possession or known to it by being in its use or being recorded in its files or computers or other recording media before receipt from the disclosing Party, or has been lawfully developed by or for the receiving Party independently of any Confidential Information disclosed to it by the disclosing Party;
- 10.2.3** it is lawfully disclosed to the receiving Party by any third party and is not the subject of any restriction as to its use or disclosure imposed by or on that third party at the time of provision;
- 10.2.4** the receiving Party is obliged to disclose it by law, by any court of competent jurisdiction or any regulatory body provided that (where permitted by law) it gives the disclosing Party reasonable notice of such disclosure and the reason for the disclosure;
- 10.2.5** provision of the Services requires the Company to make the Confidential Information available to its sub-contractors who are subject to similar obligations of confidentiality and of compliance with the DPA; or
- 10.2.6** disclosure of the Confidential Information to third parties by the receiving Party is permitted under the terms of the Agreement or has been authorised in writing by the disclosing Party.
- 11. LIABILITY**
- 11.1** Notwithstanding any other term of the Agreement, the Company does not limit or exclude liability for fraud or fraudulent misrepresentation or for death or personal injury arising from its negligence. Clauses 11.2 to 11.13 are subject to this clause 11.1.
- 11.2** The Company does not warrant or represent that the Deliverables or the Services will be entirely error free.
- 11.3** The Company gives no warranties and makes no representations as to the suitability of the Deliverables or the Services for any particular purpose. The Client is responsible for satisfying itself that the Deliverables and the Services are suitable for any use to which it wishes to put them. Given the nature of the Services and Deliverables, the Company recommends that the Client does not use them (in particular any reports or analyses or inferred data variables) as the sole basis for any business decision.
- 11.4** The Company may be asked or required to provide advice or assistance to the Client which does not form part of the Services (for example, by giving an opinion on the form or content of any Copy). The Company does not hold itself out as an expert provider of such advice or assistance and shall have no liability if the Client chooses to rely on it.
- 11.5** The Company shall have no liability for defects in the Deliverables or the Services which are attributable to defects in any Input.
- 11.6** The Company shall have no liability for failing to meet any delivery dates for the Deliverables where the Input (if any) has not been delivered to the Company in sufficient time or if the Input does not conform to the requirements of the Agreement.
- 11.7** If the Client discovers any defect in the Deliverables or the Services which is directly and exclusively attributable to an act or omission of the Company then the Client may notify

- the Company who shall be entitled at its sole discretion to take steps to correct the same at its own expense. The Client's right pursuant to this clause 11.7 shall expire on the date falling 13 months after completion of the Services, at which time the Company will delete the input from its systems in line with its standard deletion policy. The Company shall have no liability to correct any such defect unless notification is given within that period.
- 11.8** The Client acknowledges that the Deliverables and the Services may be based on information provided to the Company by third parties over whom the Company has no control. Accordingly, without prejudice to clause 2.1, the Company gives no warranties and makes no representations as to the accuracy or completeness of the Deliverables and the Services.
- 11.9** The Company shall not be liable for any loss or damage arising out of or in connection with any statement, representation, assurance or warranty made by or on behalf of the Company (whether made negligently or innocently) which is not expressly contained in the Agreement even if the Company had notice of the possibility of such loss.
- 11.10** The Company shall not be liable for any special, indirect or consequential loss arising out of or in connection with the Agreement or its subject matter even if the Company had notice of the possibility of such loss.
- 11.11** The Company shall not be liable for any loss of business, loss of profits, loss of anticipated savings, loss of reputation, loss of goodwill, business interruption or increase in bad debt or any loss incurred by any third party arising out of or in connection with the Agreement or its subject matter even if the Company had notice of the possibility of such loss.
- 11.12** The Company's entire aggregate liability in respect of all claims, losses, damages and costs arising out of or in connection with the Agreement or its subject matter (whether in contract, tort including negligence, breach of statutory duty or otherwise) in any Year shall not exceed an amount equal to the sums received by or due to the Company from the Client under the Agreement in respect of that Year or £200 (whichever is the greater).
- 11.13** Except as expressly provided in the Agreement all conditions and warranties or terms of equivalent effect whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.
- 11.14** As the Deliverables provided by the Company to the Client are a valuable proprietary asset of the Company, the Client agrees that the Company will be entitled to liquidated damages calculated in accordance with either of the following formulae:
Formula A (use of the Deliverables in excess of any usage limits specified in the Agreement): $P \times r \times n \div N$
Formula B (use of the Deliverables following expiry of the Licence Period): $P \times r \times t \div T$
where *P* is the Price per record contained in the Deliverables; *r* is the number of records used in excess of the usage limits (Formula A) or following expiry of the Licence Period (Formula B); *n* is the total number of times such records were so used; *N* is the number of times such records were permitted to be used by the Agreement; *t* is the duration for which such records were used (rounded up according to the nearest whole number of periods equal to the duration of the Licence Period); and *T* is the duration of the Licence Period.
Such liquidated damages shall be due as a debt payable on demand in writing by the Company to the Client. This right to liquidated damages is without prejudice to the Company's other rights and remedies, whether under the terms of the Agreement or otherwise, including the Company's right to seek injunctive relief in any court of competent jurisdiction. The Parties hereby acknowledge and agree that in each case the formula specified in this clause is a genuine pre-estimate of the loss which would be incurred by the Company in the relevant circumstances.
- 12. PAYMENT AND COSTS**
- 12.1** The Client shall pay the Price to the Company, together with all reasonable travel, accommodation and subsistence expenses incurred by or on behalf of the Company during performance of any of the Services away from the Company's premises.
- 12.2** The Company may increase the Price on one occasion each Year. Any such increase shall not exceed the increase (expressed as a percentage) in the Retail Prices (all items) Index since the date of the SOC or since the date of the last increase (if any) in the Company's charges, whichever is the later. If that index ceases to be published then the Company and the Client shall agree another comparable replacement index (such agreement not to be unreasonably withheld or delayed).
- 12.3** Value added tax ("VAT") is to be paid by the Client at the prevailing rate on all sums due under the Agreement. All sums quoted in the Agreement are exclusive of VAT.
- 12.4** All sums due must be paid within 30 days of the date of the Company's invoice. The Client shall pay interest and fixed sums in accordance with the Late Payment of Commercial Debts (Interest) Act 1998 on the late payment of any due amounts invoiced by the Company.
- 13. TERMINATION FOR CAUSE**
- 13.1** Either Party may terminate the Agreement (including all licences granted under it) immediately on written notice if:
- 13.1.1** the other commits any material breach of the Agreement and such breach is incapable of remedy or, where capable of remedy, is not remedied to the non defaulting Party's reasonable satisfaction within 14 days of written notice specifying the breach and requiring its remedy;
- 13.1.2** in respect of the other (being a company) a resolution is passed or an order is made for winding up (save for the purpose of a bona fide reconstruction or amalgamation) or (being an individual) a bankruptcy petition is presented or a bankruptcy order is made;
- 13.1.3** in respect of the other (being a company) an administration order is made, or a receiver or administrative receiver is appointed over any of its property or assets; or
- 13.1.4** the other is dissolved or 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 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply.
- 13.2** The Company may terminate any or all of the licences granted hereunder and/or (as the case may be) the Agreement if as a result of any act or default of any third party the Company is no longer permitted or licensed to provide the Services or to make the Deliverables available pursuant to the Agreement or if in the Company's reasonable opinion it is necessary to do so to comply with any law, regulation or applicable code of practice.
- 14. CONSEQUENCES OF TERMINATION**
- 14.1** Subject to clauses 14.3 and 14.4, on termination or expiry of the Agreement or any licences under it for any reason, the Client shall, and shall procure that the End User shall:
- 14.1.1** immediately return to the Company the relevant Deliverables in hard copy form (and all copies thereof);
- 14.1.2** otherwise delete the relevant Deliverables which remain in the possession or control of the Client or End User (including all flags and other data and information appended to or forming part of any of the Client's or End User's databases which are derived from the relevant Deliverables) from any computer systems and other storage media; and
- 14.1.3** provide the Company with written confirmation signed by a duly authorised officer that this clause 14 has been complied with.
- 14.2** For the purposes of clause 14.1, the relevant Deliverables are those Deliverables in respect of which the licence granted under clause 4.1 has terminated or expired.
- 14.3** Save where the Agreement is terminated by the Company pursuant to clause 13, the Client shall not be required to comply with clause 14.1 in respect of any Perpetually-licensed Deliverables. For the avoidance of doubt, if the Agreement is terminated by the Company pursuant to clause 13, the Client's obligations under clause 14.1 shall also apply to any Perpetually-licensed Deliverables.
- 14.4** Each Party acknowledges that they and the End User may each have a standard data archiving policy which includes the creation and retention of backup copies of data and other information ("Retained Data") held on its archive computer systems for legal, regulatory compliance, IT restoration and disaster recovery purposes only. Each Party agrees that the Retained Data held on the archive computer systems of the other Party or the End User shall not be subject to an obligation to be returned or deleted whether upon termination or expiry of the Agreement or otherwise. For the avoidance of doubt:
- 14.4.1** to the extent that the Retained Data are data and other information supplied to one Party by the other Party, such Retained Data shall remain subject to the other terms of the Agreement as may be applicable; and
- 14.4.2** to the extent that the Retained Data are Deliverables or information derived from them, such data may not be used by the Client or the End User for live operational purposes after (i) the date of termination of the Agreement; or (ii) the expiration of the licence set out in clause 4.1 (whichever is the earlier).
- 14.5** In the event of termination pursuant to clause 13.2, the Company shall refund to the Client a proportion of any pre-payment of the Price, such proportion to reflect the unexpired part of the period in respect of which the Price was paid. Save for such refund, in respect of the matters referred to in clause 13.2: (i) the Company shall have no liability to the Client; and (ii) the Company shall be deemed not to be in breach of any of its obligations under the Agreement.
- 14.6** Termination is without prejudice to any antecedent breach or to any continuing obligation. The clauses in the Agreement which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.
- 15. AUDIT**
- 15.1** Subject to the Company being given reasonable prior written notice, it shall permit the Client and its authorised independent auditors to have reasonable access during the Company's normal business hours to the Company's relevant premises, documents and operations (each as are relevant in the circumstances) for the sole purpose of ensuring that the Company is complying with the Agreement.
- 15.2** Subject to the Client being given reasonable prior written notice, it shall permit and procure the Company and its authorised independent auditors to have reasonable access during the Client's normal business hours to the Client's relevant premises, documents and operations (and those of the End User and any Authorised Data Processors) (each as are relevant in the circumstances) for the sole purpose of ensuring that the Client, the End User and any Authorised Data Processors are complying with the Agreement or any obligations which the Client is required to impose pursuant to the Agreement.
- 15.3** If either Party exercises its right of audit under clause 15.1 or clause 15.2 (as appropriate) the visiting Party shall at all times comply with the host's reasonable safety and security rules and regulations in place from time to time. Each Party agrees to reimburse the other for all damage, losses, costs, claims demands and expenses suffered by the other that are directly attributable to the acts or omissions of the visiting Party (or its authorised representatives) in exercising its rights of access under clause 15.1 or clause 15.2 (as appropriate).
- 16. FORCE MAJEURE**
- 16.1** Neither Party shall be liable to the other for any delay or non-performance of its obligations under the Agreement (except for its obligation to make payment) arising from any Event of Force Majeure.
- 16.2** The Party affected by the Event of Force Majeure shall use reasonable endeavours to mitigate the impact of any Event of Force Majeure and to recommence performance of its obligations under the Agreement as soon as is reasonably practicable.
- 16.3** If the affected Party is unable to perform its obligations under the Agreement by reason of the Event of Force Majeure for more than four weeks, the non-affected Party may terminate the Agreement immediately by serving notice on the other and neither Party shall be liable to the other by reason of such termination.
- 17. VARIATION**
- Subject to clause 2.3, any amendment, modification, variation or supplement to the Agreement must be made in writing and signed by an authorised signatory of each Party.
- 18. WAIVER**
- Failure by either Party to exercise or enforce any rights available to that Party or the giving of any forbearance, delay or indulgence is not to be construed as a waiver of that Party's rights under the Agreement.
- 19. ASSIGNMENT AND SUBCONTRACTING**
- 19.1** Either Party is entitled to subcontract the performance of any of its obligations under the Agreement provided that such Party shall be liable for its obligations under the Agreement to the same extent as if it had carried out the work itself.
- 19.2** The Client shall not assign, transfer, charge or deal in any other manner with any or all of its rights and obligations under the Agreement without the prior written consent of the Company (such consent not to be unreasonably withheld or delayed).
- 20. SEVERANCE**
- If any provision of the Agreement is found to be illegal or unenforceable by any court of competent jurisdiction then that provision shall be deemed to be deleted, but without affecting the remaining provisions.
- 21. NO PARTNERSHIP, NO AGENCY**
- Nothing in the Agreement constitutes a partnership between the Parties. Neither Party is deemed to be the agent of the other for any purpose, and neither has the power or

authority to bind the other or to contract in the name of the other, except as expressly set out in the Agreement.

22. ENTIRE AGREEMENT

- 22.1** These terms of business and the SOC apply to the Agreement to the exclusion of any other terms that the Client seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 22.2** The Agreement sets out the entire agreement between the Parties in relation to its subject matter and supersedes all previous written or oral agreements, representations, undertakings, warranties or arrangements between the Parties in relation to that subject matter.
- 22.3** Each Party acknowledges and agrees that in entering into the Agreement it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in the Agreement.
- 22.4** Nothing in clauses 22.2 or 22.3 shall exclude or limit any liability of the Parties arising as a result of any fraud or fraudulent misrepresentation.

23. NOTICES

All notices, requests, consents and authorisations made pursuant to the Agreement must be in writing and must, where the Company is the recipient, be sent to its chief trading address specified in the Agreement (or such other trading address as is notified to Client from time to time), and where the Client is the recipient, be sent to its registered office or chief trading address as specified in the Agreement (or such other trading address as is notified to the Company from time to time). Notices may be sent either by first class mail or fax. Correctly addressed notices sent by first class mail are deemed to have been delivered seventy-two hours after posting. Notices sent by fax during the recipient's business hours are deemed to have been delivered at the time set out in the transmission confirmation document and notices sent by fax outside the recipient's business hours are deemed to have been sent on the first business hour of the recipient following transmission.

24. GOVERNING LAW & JURISDICTION

- 24.1** The formation, existence, construction, performance, validity and all aspects whatsoever of the Agreement or of any term of the Agreement or of any non-contractual obligation undertaken or incurred in connection with the Agreement (including those arising out of pre-contractual dealings) will be governed by the laws of England.
- 24.2** The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and/or (as the case may be) to settle any disputes, which may arise out of or in any way relate to the Agreement or its formation, existence, construction, performance or validity or of any non-contractual obligation undertaken or incurred in connection with the Agreement (including those arising out of pre-contractual dealings) and, for these purposes, each Party irrevocably submits to the exclusive jurisdiction of the courts of England.
- 24.3** The rights and remedies provided in the Agreement are cumulative and (except as otherwise stated) are not exclusive of any rights or remedies provided by law.

25. THIRD PARTY RIGHTS

The Parties do not intend to confer any rights on any third parties by virtue of the Agreement and an entity which is not a party to the Agreement shall have no right to enforce any of its terms.