

**TERMS OF BUSINESS
(DATA LICENSING)**

1. DEFINITIONS AND INTERPRETATION

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

Agreement	the agreement between Callcredit and the Client for the provision of the Services, consisting of the Order and these terms
Applicable Law	any law, statute, statutory instrument, bylaw, order of a court of competent jurisdiction and any requirement of any regulatory, fiscal or governmental body to which the relevant Party is subject, in all cases to the extent in force from time to time and which applies to the relevant Party in undertaking any relevant activity pursuant to or in connection with the Agreement
Callcredit	the Party named as such in the Order, being Callcredit Marketing Limited (company no. 2733070), Callcredit Data Solutions Limited (company no. 5749125) or Callcredit Lead Generation Limited (company no. 5373447) the registered office of each of which is at One Park Lane, Leeds, West Yorkshire LS3 1EP
Client	the Party named as such in the Order
Commencement Date	the date specified as such in the Order or, if no such date is specified, the second signature date of the Order
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 by any means and whether or not marked "confidential", including the Input and the Deliverables and any access credentials issued by Callcredit in connection with the Services
Deliverables	the data, scores, results, reports, documents, flags, models, attributes, software and other information (and all updates of them) in any form to be made available to the Client by or on behalf of Callcredit, including the output from the Services and such deliverables as are described in the Order, whether or not appended to the Input
Derived Materials	any analyses, works, reports, data or other materials which to any extent are derived from or incorporate any of the Deliverables
Force Majeure Event	any cause beyond the reasonable control of the affected Party, including any 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, or unauthorised interference with either Party's systems or services via the internet
Input	all data and other information made available to Callcredit pursuant to the Agreement by or on behalf of the Client to enable provision of the Services, including such input as is described in the Order
IPR	all copyright and related rights, database rights, trade marks, service marks, trade, business and domain names, rights in trade dress, get-up, goodwill or to sue for passing off, rights in designs, patents or confidential information (including know-how and trade secrets) and any other intellectual property rights, registered or unregistered, in any part of the world
Licence Period	the period(s) of time during which the Deliverables are licensed to the Client, each beginning on the Commencement Date (or such other date as may be specified in the Order) and continuing for the period stated in the Order
Order	the order for the Services, signed by or on behalf of Callcredit and the Client and incorporating these terms
Party	a party to the Agreement and its lawful successors and assignees
Permitted Use	any use of the Deliverables expressly described as such in the Order, but excluding any Prohibited Use
Price	Callcredit's charges, royalties, fees and other remuneration and expenses described in the Order
Prohibited Material	anything pornographic, obscene, offensive, racist, abusive, harassing, bigoted, violent, criminal, discriminatory, libellous, defamatory, unlawful or illegal or which promotes any services relating to (i) road traffic accident or personal injury claims; (ii) medical or clinical negligence claims; or (iii) the misale of financial products (including the reclaim of PPI premiums or compensation for misale of PPI products)
Prohibited Use	any use (i) for making contact for the first time by SMS; (ii) for product or model development; (iii) for political campaigning (including activity in support of, or against, a political party, a referendum campaign or a candidate standing for election); or (iv) in connection with any Prohibited Material; in each case except to the extent expressly and specifically permitted in the Order
Questionnaire	has the meaning given in clause 16.1
Services	the supply of the Deliverables and any other services expressly described in the Order

Software	any of the Deliverables that comprise computer software, whether as source or object code (or both)
Territory	the United Kingdom, or such other geographical area(s) that may be specified in the Order
Year	each period of twelve consecutive months commencing on the Commencement Date or any anniversary of that date

1.2 In the Agreement:

- 1.2.1 references to clauses are to the clauses of these terms;
 - 1.2.2 the headings are for convenience only and do not affect the interpretation of the Agreement;
 - 1.2.3 references to any gender include any other gender and the singular includes the plural and vice versa;
 - 1.2.4 a reference to a statute or statutory provision is 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; and
 - 1.2.5 "including", "include" or "includes" shall be deemed to be followed by "without limitation" unless the context requires otherwise.
- 1.3 To the extent of any inconsistency between the Order and these terms, the Order shall take precedence, other than clauses 4 to 10, 12, 16, 23 and 25 which shall take precedence over all other provisions of the Agreement.

2. SUPPLY OF THE SERVICES AND DELIVERABLES

- 2.1 Callcredit shall perform the Services and (where applicable) compile the Deliverables, in all cases using reasonable care and skill.
- 2.2 Provided that the warranties in clause 3.2 are and remain true, Callcredit warrants that:
 - 2.2.1 it has the right to license the Deliverables to the Client in accordance with clause 4.1 and has obtained the benefit of all necessary licences, consents and permissions that it is aware are necessary to facilitate the Agreement;
 - 2.2.2 any Software will be capable in all material respects of performing the functions specified the Order (if any); and
 - 2.2.3 use of the Deliverables pursuant to and in accordance with the Agreement will not infringe the IPR of any third party.
- 2.3 As the Services are generic in nature and provided as part of Callcredit's standard service offering, Callcredit may from time to time change the form and content of the Services and upgrade or modify any of the methods used to access or deliver the Services.
- 2.4 The Client acknowledges that it is not technically possible to guarantee uninterrupted access to the Software or other Services provided over the internet. Accordingly, without prejudice to clause 2.1, Callcredit does not warrant or represent that the Software or the Services will be uninterrupted or continuously available.

3. INPUT

- 3.1 The Client grants Callcredit a non-exclusive, non-transferable licence to use and copy the Input for the performance of the Services only.
- 3.2 The Client warrants that:
 - 3.2.1 it has the right to license the Input to Callcredit in accordance with clause 3.1; and
 - 3.2.2 use of the Input pursuant to and in accordance with the Agreement will not infringe the IPR of any third party.
- 3.3 Where any Input is to be published, distributed or displayed by Callcredit in the course of the Services, the Client will ensure that such Input:
 - 3.3.1 does not contain or link to any Prohibited Material;
 - 3.3.2 unless specifically permitted in the Order, does not contain or promote anything related to gambling, tobacco, alcohol or pharmaceuticals associated with sexual performance;
 - 3.3.3 complies with any applicable guidance or code of practice, including the UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing; and
 - 3.3.4 will not result in any breach of Applicable Law in any way.
- 3.4 The Client shall indemnify Callcredit and keep it indemnified against all liabilities, costs, claims, demands, damages, losses and expenses (including reasonable legal expenses) arising out of or in connection with any breach by the Client of any of the warranties in clause 3.3.
- 3.5 The Client shall provide any Input in the format agreed from time to time between the Parties. If the Input is not received by Callcredit in that format, the Client will either promptly resubmit it in the agreed format or ask Callcredit to correct it at the Client's expense (the charges for which shall be agreed between the Parties).
- 3.6 The Client must retain a copy of the Input so that Callcredit does not hold the Client's only copy of it.

4. USE OF THE DELIVERABLES AND DERIVED MATERIALS

- 4.1 Callcredit grants the Client a non-exclusive, non-transferable licence to use the Deliverables in the Territory for the Permitted Use during the Licence Period.
- 4.2 The Client shall not use the Deliverables, or allow the Deliverables to be used, other than for the purposes and in the manner expressly permitted in the Agreement.
- 4.3 Save as set out in clause 5, the Deliverables may only be used for the sole benefit of the Client and the Client shall not sell, transfer, distribute or otherwise make the Deliverables available to, or use the Deliverables on behalf of, any third party.
- 4.4 The Client shall not adapt, alter, modify, reverse engineer, decompile, disassemble or otherwise interfere with the Deliverables nor produce any copies, revisions, enhancements or derivative works of the Software (if any) except to the extent that such activities: (i) are required by Applicable Law; (ii) cannot, as a matter of Applicable Law, be prohibited; or (iii) are expressly permitted under the Agreement.

- 4.5 The Client shall not use the Deliverables in connection with any Prohibited Material. The Client shall promptly notify Callcredit of any breach of this clause 4.5.
- 4.6 Except as expressly permitted in the Order, the Client shall not use any Derived Materials, or make any Derived Materials available to any third parties, other than to the extent, in the manner and subject to the terms on which the Client is permitted to use and make available the Deliverables under the Agreement.
- 4.7 Where the Services involve suppression of data, the data that is eliminated as a result of the suppression may not be used for the Permitted Use.
- 4.8 Except as expressly stated otherwise in the Order, Callcredit shall not be required to (but may in its sole discretion) provide updates to the Deliverables. Callcredit only supports the current plus one previous version of any Software.
- 4.9 The Client shall use reasonable endeavours to ensure that it does not import any virus or other malicious code into the Software or Callcredit's computer systems.
- 4.10 The Client shall maintain an accurate record of each of the geographical addresses at which the Deliverables are held and shall promptly provide a copy of it to Callcredit upon Callcredit's written request.
- 5. THIRD PARTY RECIPIENTS**
- 5.1 This clause 5 only applies if the Order identifies any End Users, Authorised Data Processors or Additional Group Companies.
- 5.2 In this clause 5 the following terms have the following meanings:
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| Additional Group Company | a third party expressly identified as such in the Order (if any) |
| Authorised Data Processor | a third party expressly identified as such in the Order (if any) |
| End User | a third party expressly identified as such in the Order (if any) |
| Third Party Recipient | any End User, Additional Group Company or Authorised Data Processor |
- 5.3 Subject to clause 5.6, if the Order identifies any End Users:
- 5.3.1 the Client may use the Deliverables on behalf of the End Users and/or (as specified in the Order) sublicense the Deliverables to the End Users, in either case only for the Permitted Use and only during the Licence Period;
- 5.3.2 the Deliverables may be used for the sole benefit of the End Users only and not for the benefit of any other person (including the Client); and
- 5.3.3 no Additional Group Companies are permitted.
- 5.4 Subject to clauses 5.3.3 and 5.6, if the Order identifies any Additional Group Companies:
- 5.4.1 the Client may use the Deliverables on behalf of the Additional Group Companies and/or (as specified in the Order) sublicense the Deliverables to the Additional Group Companies, in either case only for the Permitted Use and during the Licence Period; and
- 5.4.2 the Deliverables may be used for the benefit of the Additional Group Companies in addition to that of the Client.
- 5.5 Subject to clause 5.6, if the Order identifies any Authorised Data Processors, the Client, End User or any Additional Group Companies may pass the Deliverables to the Authorised Data Processors and the Deliverables may be used by the Authorised Data Processors for the benefit of the Client, End User or Additional Group Companies (as applicable), only in accordance with the Permitted Use and only during the Licence Period.
- 5.6 If any Third Party Recipients are to be given access to any personal data (as defined in clause 9.3) in the Deliverables or any Derived Materials, the Client shall, before providing such access and periodically while such access persists, perform such due diligence checks on those Third Party Recipients as are required in order to comply with good industry practice and Applicable Law. The Client shall not permit a Third Party Recipient access to the personal data if it does not satisfy, or ceases to satisfy, those checks.
- 5.7 Callcredit is not responsible for any defects or delay in the Services or Deliverables arising as a result of the Input or the Deliverables being supplied to, from, through or by means of any Third Party Recipients.
- 5.8 The Client shall ensure that each Third Party Recipient complies with obligations equivalent to any obligations of the Client under clauses 4, 5, 7, 8, 9, 11, 15 and 16.
- 5.9 To enable Callcredit's liability to be limited to the Third Party Recipients to the same extent that it is limited to the Client, the Client shall indemnify Callcredit and keep it indemnified against all liabilities, costs, damages, losses and expenses (including reasonable legal expenses) arising out of or in connection with any claims or demands made against Callcredit by any of the Third Party Recipients in connection with the Services or Deliverables.
- 6. OWNERSHIP**
- 6.1 All IPR 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 Callcredit shall acquire no rights in it save as expressly provided in the Agreement.
- 6.2 All IPR 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 Callcredit (or its third party licensors) and the Client shall acquire no rights in them save as expressly provided in the Agreement.
- 7. COMPLIANCE WITH LAWS**
- 7.1 Callcredit and the Client shall at all times comply with all Applicable Law in respect of the subject matter of the Agreement.
- 7.2 The Client shall use the Services and Deliverables only in accordance with best industry practice including the Information Commissioner's Office's Guidance on Direct Marketing, the Direct Marketing Association's Code of Practice and the Advertising Standards Agency's UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing.
- 8. CONFIDENTIALITY**
- 8.1 Subject to clause 8.2, each Party shall in respect of the other's Confidential Information:
- 8.1.1 keep it in strictest confidence and not make it available to any third party;
- 8.1.2 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
- 8.1.3 ensure that any such employees are aware of its confidential nature before they are allowed access to it.
- 8.2 Clause 8.1 does not apply to Confidential Information to the extent that:
- 8.2.1 it is in the public domain otherwise than by breach of the Agreement;
- 8.2.2 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;
- 8.2.3 it is disclosed to the receiving Party by a third party on a non-confidential basis and is not, to the receiving Party's knowledge, subject to any restriction as to its use or disclosure imposed by or on that third party at the time of disclosure;
- 8.2.4 the receiving Party is obliged to disclose it by Applicable Law, by any court of competent jurisdiction or any regulatory body, provided that (to the extent permitted by Applicable Law) it gives the disclosing Party reasonable notice of such disclosure and the reasons for it;
- 8.2.5 supply of the Services requires Callcredit to disclose the Confidential Information to its subcontractors or infrastructure providers who are subject to similar obligations of confidentiality; or
- 8.2.6 disclosure of the Confidential Information is permitted under the terms of the Agreement or has been authorised in writing by the disclosing Party.
- 9. PERSONAL DATA**
- 9.1 This clause 9 only applies in relation to any personal data in the Input, the Deliverables or the Derived Materials.
- 9.2 In this clause 9 the following terms have the following meanings:
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| DPA | Data Protection Act 1998 |
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- 9.3 The terms "data processor", "data controller", "data subject", "personal data" and "process" shall have the meanings given in the DPA, and "consent" shall mean consent which satisfies the requirements of the DPA.
- 9.4 The Client warrants that each data subject whose personal data is contained in any Input has given consent which permits the use of that personal data in the manner contemplated by the Agreement.
- 9.5 Provided that the warranty in clause 9.4 is and remains accurate, Callcredit warrants that each data subject whose personal data is contained any Deliverables has given consent which permits the use of that personal data in the manner contemplated by the Agreement.
- 9.6 To the extent the Parties are joint data controllers or data controllers in common in relation to any personal data processed under the Agreement, each Party shall be responsible for its own compliance with the DPA in respect of all matters reasonably within its control, or as otherwise agreed in writing between the Parties.
- 9.7 To the extent a Party is a data controller in relation to personal data processed on its behalf by the other Party under the Agreement, it shall comply with the DPA in relation to that processing and, without prejudice to clauses 7.1, 9.6 and 9.8, shall be responsible for compliance with the DPA in respect of that processing.
- 9.8 To the extent a Party is acting as a data processor under the Agreement in relation to personal data in respect of which the other is a data controller, it shall:
- 9.8.1 process the personal data strictly in accordance with the DPA and the data controller's lawful instructions or as required in order to provide or receive the Services and Deliverables, and not use it for any purposes which are inconsistent with those instructions or requirements;
- 9.8.2 ensure that only such of its employees who need to have access to the personal data are permitted access to it;
- 9.8.3 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 data processor in respect of the personal data;
- 9.8.4 provide reasonable assistance to the data controller promptly in respect of all subject access requests which are received by the data processor from any data subjects whose personal data it is processing on behalf of the data controller;
- 9.8.5 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 data controller or as otherwise permitted under the Agreement; and
- 9.8.6 not transfer or process the personal data outside the European Economic Area unless otherwise agreed by the data controller.
- 9.9 Each Party shall take all appropriate technical and organisational measures against unauthorised or unlawful processing of any personal data received from the other Party and against accidental loss or destruction of, or damage to, such personal data. Having regard to the state of technological development and the cost of implementation, the measures must ensure a level of security appropriate to (a) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage as are mentioned in the seventh principle of the DPA, and (b) the nature of the data to be protected.
- 9.10 The Deliverables may contain seed records ("Seeds") for control purposes and the Client acknowledges that these Seeds may not be made known to it. If Callcredit's records show that any Seeds have been contacted outside the scope of the Permitted Use the Client shall be deemed to have committed a material breach of clause 4.2.
- 10. ELECTRONIC COMMUNICATIONS**
- 10.1 This clause 10 only applies to the extent that: (i) the Services consist of Electronic Mail (including email or SMS) broadcast services; or (ii) the Client is to use the Deliverables for such broadcasts or for the purposes of direct marketing by telephone.
- 10.2 In this clause 10 the following terms have the following meanings:
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| Electronic Mail | has the meaning given in PECR |
| ICO Guidance | the Information Commissioner's Office's Guidance on Direct Marketing, including in particular the guidance in it relating to third party consent for direct marketing activity governed by PECR |
| Opt In | to give consent or to actively indicate a wish to receive marketing communications, and "Opted In" shall be read accordingly |
| Opt Out | to actively indicate a wish not to receive a marketing communication, and "Opted Out" shall be read accordingly |
| PECR | The Privacy and Electronic Communications (EC Directive) Regulations 2003 |
- 10.3 If the Input includes email addresses or mobile telephone numbers and the Services include using that input to send unsolicited communications by means of Electronic Mail for direct marketing purposes:

- 10.3.1** the Client warrants that each intended recipient of such Electronic Mail has Opted In to receiving such communications and such Opt Ins inure for Callcredit's benefit at the time the Services are performed; and
- 10.3.2** the Client is the instigator of the relevant communications and Callcredit shall be deemed to be acting as the Client's agent in sending those communications on the Client's behalf.
- 10.4** If the Deliverables include email addresses or mobile telephone numbers and the Permitted Use includes using those Deliverables to send unsolicited communications by means of Electronic Mail for direct marketing purposes, Callcredit warrants that each intended recipient of such Electronic Mail has Opted In to receiving such communications and such Opt Ins inure for the Client's benefit at the time the relevant email address or telephone number is delivered.
- 10.5** If the Deliverables include telephone numbers and the Permitted Use includes using those Deliverables to make calls for direct marketing purposes:
- 10.5.1** Callcredit warrants that, at the time the relevant record is delivered, the subscriber for the telephone number has not, to Callcredit's actual knowledge, Opted Out of that telephone number being used for direct marketing purposes; and
- 10.5.2** once the Deliverables have been supplied, the Client, and not Callcredit, is responsible for continuing to process them against the latest Telephone Preference Service file.
- 10.6** The Client acknowledges and accepts the contents of the ICO Guidance and confirms that it has had the opportunity to make enquiries of Callcredit in relation to the origins of the Deliverables and the nature of the third party consents referred to in clauses 10.4 and 10.5.1.
- 10.7** Callcredit may refuse to undertake any Service which would cause it or the Client to contravene PECR or the ICO Guidance. Accordingly, Callcredit is not obliged to:
- 10.7.1** send unsolicited Electronic Mail if it is not satisfied that: (i) the recipient has notified the Client or Callcredit 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
- 10.7.2** send any Electronic Mail where: (i) the identity of the Client has been disguised or concealed; or (ii) a valid address to which the recipient of the Electronic Mail may send an unsubscribe request has not been provided.
- 11. IMPROVEMYDATA.COM**
- 11.1** This clause 11 only applies to the extent that the Order indicates that the Services are to be performed by means of IMD.
- 11.2** In this clause 11 the following terms have the following meanings:
- IMD** Callcredit Marketing Limited's improvydata.com service as made available at the IMD Website
- IMD Terms** the IMD terms of use, as published at the IMD Website
- IMD Website** <http://www.improvydata.com> or any successor URL
- 11.3** The Client acknowledges that the Services and Deliverables will be provided by means of IMD and that the use of IMD is subject to the IMD Terms. The IMD Terms are accepted by the Client entering into the Agreement. References in the IMD Terms to "You", "Your", and any similar terms, are to be read and construed as references to the Client.
- 11.4** Where Callcredit is Callcredit Marketing Limited, the IMD Terms shall apply to the Services and Deliverables on the basis that (to the extent of any conflict or inconsistency between the IMD Terms and the other terms of the Agreement) the IMD Terms shall prevail over the other terms of the Agreement.
- 11.5** Where Callcredit is not Callcredit Marketing Limited, the IMD Terms shall apply to the Services and Deliverables on the basis that:
- 11.5.1** with effect from the date of the Order, the Client enters into an agreement with Callcredit Marketing Limited on the IMD Terms in relation to the Services and Deliverables;
- 11.5.2** the Agreement shall apply as between the Parties and the IMD Terms shall apply as between the Client and Callcredit Marketing Limited;
- 11.5.3** the only charges payable by the Client for the Services and Deliverables are the Price in accordance with the terms of the Agreement and no additional charges are payable by the Client in relation to IMD; and
- 11.5.4** to the extent of any conflict or inconsistency between the IMD Terms and the terms of the Agreement such that the Client cannot reasonably comply with both sets of terms, the Client shall comply with the IMD Terms and shall be deemed not to have breached the terms of the Agreement by reason of such compliance.
- 12. LIABILITY**
- 12.1** Notwithstanding any other term of the Agreement, Callcredit does not limit or exclude liability for fraud or fraudulent misrepresentation or for death or personal injury arising from its negligence. Clauses 12.2 to 12.10 are subject to this clause 12.1.
- 12.2** Without prejudice to clause 2.1, Callcredit gives no warranties and makes no representations as to the accuracy or completeness of the Deliverables or the Services and does not warrant or represent that the Deliverables or the Services will be entirely error free.
- 12.3** Callcredit 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, Callcredit recommends that the Client does not use them (in particular any reports, analyses or inferred data variables) as the sole basis for any business decision.
- 12.4** Callcredit may be asked or required to provide advice or assistance to the Client which does not form part of the Services. Callcredit 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.
- 12.5** Callcredit shall have no liability for defects in the Deliverables or the Services which are attributable to defects in any Input.
- 12.6** Callcredit shall have no liability for failing to meet any delivery dates for the Deliverables where the Input (if any) has not been delivered to Callcredit in sufficient time or if the Input does not conform to the requirements of the Agreement.
- 12.7** Callcredit 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 Callcredit had notice of the possibility of such loss.
- 12.8** Callcredit shall not be liable for any loss of business, loss of profits, loss of anticipated savings, loss of reputation, loss of goodwill, business interruption, 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 Callcredit had notice of the possibility of such loss.
- 12.9** Callcredit'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 Price paid or payable by the Client to Callcredit under the Agreement in respect of that Year or £200 (whichever is the greater).
- 12.10** 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 Applicable Law.
- 12.11** As the Deliverables are a valuable proprietary asset of Callcredit, the Client agrees that Callcredit will be entitled to a payment calculated in accordance with the following formulae if the Deliverables are misused in either of the following ways:
- Formula A (use of the Deliverables in excess of any usage limits specified in the Agreement): $(P \times r) \times \left(\frac{n}{N} - 1\right)$
- Formula B (use of the Deliverables following expiry of the Licence Period): $(P \times r) \times \left(\frac{t}{T} - 1\right)$
- 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; and *T* is the duration of the Licence Period. Such payments (i) shall be due as a debt payable on demand in writing by Callcredit to the Client; and (ii) are agreed to be a proportionate means of protecting Callcredit's legitimate interests in deterring and being compensated for the misuse of the Deliverables.
- 13. PAYMENT AND COSTS**
- 13.1** The Client shall pay the Price to Callcredit, together with all reasonable travel, accommodation and subsistence expenses incurred by or on behalf of Callcredit during performance of any of the Services away from Callcredit's premises.
- 13.2** Callcredit may increase the Price on one occasion each Year in a proportion not exceeding the proportionate increase in the Retail Prices (all items) Index since the Commencement Date or the last increase (if any) in the Price, whichever is the later. If that index ceases to be published then the Parties shall agree another comparable replacement index (such agreement not to be unreasonably withheld or delayed).
- 13.3** Any applicable value added, sales or other tax, custom or excise ("**Applicable Tax**") 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 any Applicable Taxes.
- 13.4** All sums due must be paid within 30 days of the date of Callcredit's invoice or such shorter period as may be specified in the Order.
- 14. COMMENCEMENT, DURATION, TERMINATION AND SUSPENSION**
- 14.1** The Agreement shall come into effect on the Commencement Date.
- 14.2** The Agreement shall (subject to earlier termination in accordance with its terms) automatically terminate at the end of the duration specified in the Order or, if no such duration is specified, when all of the Licence Periods have terminated or expired.
- 14.3** Either Party may terminate the Agreement (including all licences granted under it) immediately on written notice if:
- 14.3.1** the other commits any material breach of the Agreement and such breach is incapable of remedy or is not remedied to the non-defaulting Party's reasonable satisfaction within 14 days of written notice specifying the breach and requiring its remedy;
- 14.3.2** 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;
- 14.3.3** 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
- 14.3.4** 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.
- 14.4** Callcredit may terminate any or all of the licences granted by this Agreement and/or (in Callcredit's discretion) the Agreement if:
- 14.4.1** the Client fails to complete and return a Questionnaire within the timescales required by the Agreement;
- 14.4.2** Callcredit reasonably determines that the Client's obligations in clauses 5.6 or 9.9 are not being met in all material respects;
- 14.4.3** the Client fails to implement any modifications which the Parties agree should be implemented with respect to the Client's obligations in clauses 5.6 or 9.9; or
- 14.4.4** the Client fails to provide evidence of any of the modifications referred to in clause 14.4.3 to Callcredit's reasonable satisfaction.
- 14.5** Callcredit may terminate any or all of the licences granted hereunder and/or (in Callcredit's discretion) the Agreement if as a result of any act or default of any third party Callcredit is no longer permitted or licensed to provide the Services or to make the Deliverables available pursuant to the Agreement or if in Callcredit's reasonable opinion it is necessary to do so to comply with any Applicable Law or applicable code of practice.
- 14.6** Where Callcredit is entitled to terminate the Agreement under this clause 14 it may, without prejudice to its right to terminate, elect to suspend the supply of the Services until it is satisfied (acting reasonably) that the circumstances giving rise to the right to terminate have ceased.
- 15. CONSEQUENCES OF TERMINATION**
- 15.1** Subject to clause 15.4, on termination or expiry of the Agreement or any licences under it the Client shall:
- 15.1.1** promptly destroy, delete or return to Callcredit the relevant Deliverables and relevant Derived Materials (and all copies thereof) which remain in the possession or control of the Client; and
- 15.1.2** if requested, provide Callcredit with written confirmation, signed by a duly authorised person, that this clause 15.1 has been complied with.
- 15.2** For the purposes of clause 15.1, the relevant Deliverables are those Deliverables in respect of which the licence granted under clause 4.1 has terminated or expired and the

- relevant Derived Materials are those which are derived from or incorporate any of those relevant Deliverables.
- 15.3** Subject to clause 15.4, on termination or expiry of the Agreement Callcredit shall:
- 15.3.1** promptly destroy, delete or return to the Client any Input (and all copies thereof) which remains in the possession or control of Callcredit; and
- 15.3.2** if requested, provide the Client with written confirmation, signed by a duly authorised person, that this clause 15.3 has been complied with.
- 15.4** Each Party acknowledges that the other may have a standard data archiving policy which includes the creation and retention of backup copies of data and other information ("**Retained Data**") held on archive computer systems for legal, regulatory, compliance, IT restoration and disaster recovery purposes ("**Retention Purposes**"). Clauses 15.1 and 15.3 shall not apply to Retained Data held on such archive computer systems but such Retained Data may only be used for the Retention Purposes.
- 15.5** If the Agreement is terminated pursuant to clause 14.5, Callcredit shall refund to the Client a proportion of any pre-payment of the Price reflecting 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 14.5, Callcredit shall have no liability to the Client and shall be deemed not to be in breach of any of its obligations under the Agreement.
- 15.6** Termination does not affect any accrued rights or remedies of either Party. Any terms of the Agreement which are expressly or impliedly intended to have effect at or after termination will continue to apply notwithstanding termination.
- 16. QUESTIONNAIRES AND AUDIT**
- 16.1** Callcredit may from time to time request the Client to complete a questionnaire relating to the Client's manner of complying with clauses 5.6 and 9.9 ("**Questionnaire**"). Upon receipt of any such request, the Client shall complete the Questionnaire and return it to partner-assurance@callcreditgroup.com by no later than 14 days following receipt of the request. Callcredit may ask for a Questionnaire to be completed at any time but its standard practice is to seek completion of Questionnaires on an annual basis.
- 16.2** Each Party shall, subject to receipt of reasonable prior written notice from the other, permit a reasonable number of the other Party's authorised employees and other representatives to have reasonable access during normal business hours to its relevant premises, documents and operations for the sole purpose of auditing compliance with the Agreement. The relevant premises, documents and operations are those which contain or might reasonably be expected to contain evidence of the host party's compliance or non-compliance with any term of the Agreement, but this clause does not entitle the visiting party to inspect any information which is (i) commercially sensitive, (ii) confidential for bona fide reasons of security or because of bona fide confidentiality obligations owed to a third party, or (iii) protected by legal privilege. Any relevant information discovered in the course of an audit may be copied by the visiting party but is Confidential Information of the host party for the purposes of the Agreement.
- 16.3** If either Party exercises its right of audit under clause 16.2 it shall: (i) comply with the host Party's reasonable safety and security rules and regulations in place from time to time; (ii) use reasonable endeavours to restrict its presence on the host Party's premises to a maximum of two days; and (iii) reimburse the host Party for all damage, losses, costs, claims demands and expenses suffered by the host Party that are directly attributable to the visiting Party's (or its authorised representatives') acts or omissions in exercising the right of audit.
- 17. FORCE MAJEURE**
- 17.1** 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 Force Majeure Event.
- 17.2** The Party affected by the Force Majeure Event shall use reasonable endeavours to mitigate the effect of the Force Majeure Event and to recommence performance of its obligations under the Agreement as soon as is reasonably practicable.
- 17.3** If the affected Party is unable to perform its obligations under the Agreement by reason of the Force Majeure Event for more than four weeks, the unaffected 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.
- 18. VARIATION**
- Any variation or supplement to the Agreement shall only have effect if it is in writing and signed by an authorised signatory of each Party.
- 19. WAIVER**
- Failure or delay by either Party to exercise or enforce any available rights or remedies under the Agreement or at law, or any single or partial exercise of any such rights or remedies, is not a waiver or exhaustion of those rights or remedies and shall not prevent or restrict their further exercise.
- 20. ASSIGNMENT AND SUBCONTRACTING**
- 20.1** Each Party is entitled to subcontract the performance of any of its obligations under the Agreement but shall remain liable for its obligations under the Agreement to the same extent as if it had carried out the work itself.
- 20.2** The Client shall not assign, transfer, charge or deal in any other manner with any or all of its rights or obligations under the Agreement without the prior written consent of Callcredit (such consent not to be unreasonably withheld or delayed).
- 21. SEVERANCE**
- If any provision of the Agreement is illegal or unenforceable it shall be deemed to be deleted, but without affecting the validity or enforceability of the remaining provisions.
- 22. 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.
- 23. ENTIRE AGREEMENT**
- 23.1** These terms and the Order 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.
- 23.2** 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.
- 23.3** 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.
- 23.4** Nothing in clauses 23.2 or 23.3 shall exclude or limit any liability arising as a result of any fraud or fraudulent misrepresentation.
- 24. NOTICES**
- All notices, requests, consents and authorisations made pursuant to the Agreement must be in writing and must be sent to the recipient's registered office, chief trading address, or any other premises specified in the Agreement for this purpose or otherwise notified to the other Party. Notices may be sent 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. Notices sent by email are not valid unless the recipient, expressly and in writing, accepts the notice as being valid under the Agreement.
- 25. GOVERNING LAW & JURISDICTION**
- 25.1** The formation, existence, construction, performance, validity and all other aspects of the Agreement, any term of the Agreement and 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.
- 25.2** The Parties irrevocably agree that the courts of England shall have exclusive jurisdiction to hear and decide any suit, action or proceedings, and 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.
- 25.3** 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.
- 26. 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.