

1. DEFINITIONS

In this Agreement the expressions referred to below shall have the following meanings unless inconsistent with the context:

'Data' means information of any kind, however represented whether comprising words, numbers, graphs, maps, pictures, sketches or otherwise in any other form and whether or not the property of the Company which was supplied or made available by the Company under this Agreement including Data provided pursuant to any Data Services rendered and Data includes any part thereof;

'Data Services' means the services defined in the Requirements Section of the Order Confirmation provided by the Company which includes, without limitation, the following services:-

- (i) 'Database Services' – work carried out by the Company on the Purchaser's own database.
- (ii) 'Profiling' – analysing the Purchaser's customer database in order to identify prospective customers with similar characteristics.
- (iii) 'Statistics' – means statistical analysis of the Company's Data.
- (iv) 'Tele-research' – means compiling information from individuals, partnerships, body corporates or other undertakings over the telephone on behalf of the Purchaser.

'Campaign' means a marketing or sales strategy undertaken by the customer for a single specific product or service;

'Due Date' means no more than 30 days from the invoice date;

'Live Call Agent' means any individual (regardless of employment status) who acts for a Call Centre for the purposes of Product sale or Research;

'Ofcom' means the Office of Communications, the statutory regulator for the UK Telecommunications industry;

'PhonepayPlus' means the company with the responsibility for regulation of Premium Rate Services in the UK;

'Premium Rate Service' means a service which if accessed or purchased will cost the recipient in excess of a standard text message or local telephone call;

'Repeated sales' a repeat order for data from the customer after an initial order of data;

'Seed' means a fictional record inserted by the Company for the purpose of monitoring the use of the Data by the Purchaser' in order to ensure that the data is being used within the terms of this agreement;

'The Company' means Liquid 11 Limited;

'The Purchaser' means the individual, partnership or company or other undertaking the purchase or otherwise acquiring the Data or Data Services and includes its personal representatives or its successors (as the case may be);

'Third Party' means any individual, partnership, body corporate or other undertaking including (for the avoidance of doubt) any employee, agent or associated company of the Purchaser;

'TPS' The Telephone Preference Service (www.tpsonline.org.uk);

2. AGREEMENT

- 2.1 The following terms & conditions will supercede any previous terms & conditions, agreements and/or contracts between the company and the purchaser.
- 2.2 By signing this Agreement you agree and consent:
- 2.2.1 that you have conducted sufficient due diligence to acknowledge the Data is being legally sold;
 - 2.2.2 The data will be handled in full accordance with the Data Protection Act 1998 or any other Act that may supersede it;
 - 2.2.3 The data is suitable for use by a Live Call Agent;
 - 2.2.4 The data is not suitable for marketing covered by the [Electronic Communications Act](#) unless otherwise stated on the Order Confirmation;
 - 2.2.5 This Agreement does not constitute a purchase from the Company, but a lease from the Company and that the Company is still the lawful owner of the data, and the recognised Data Controller;
 - 2.2.6 The Company has the right to 'seed' the data ;
 - 2.2.7 The Purchaser may not resell or copy the Data provided as part of this Agreement;
 - 2.2.8 The Purchaser will destroy the data provided as part of this Agreement after no more than 6 months from the date of the supply of the data;
 - 2.2.9 The data provided shall be for use no more than three times in any one specific campaign or during the 6 months from supply by the Company;
 - 2.2.10 The data shall not be used for marketing any Premium Rate Service unless otherwise stated on the accompanying Order Confirmation;
 - 2.2.11 If the data is to be used for marketing any Premium Rate Service, the purchaser must ensure they have all necessary permissions, completed any regulatory registration process and paid all necessary fees before any marketing of this data may proceed;
 - 2.2.12 The Company may resell a data licence to any other third party without any restrictions on the part of the purchaser;
 - 2.2.13 This Agreement remains in perpetuity and covers all data sold to the purchases from the data of this agreement and includes 'repeated sales';
 - 2.2.14 TPS registered records are not removed or identified from the data unless specifically stated on the invoice;

3. LATE PAYMENT

- If the Purchaser fails to make full payment by the Due Date then without prejudice to any of the Company's other rights or remedies the Company may:
- 3.1 Suspend or cancel delivery of any Data or Data Services due to the Purchaser.
 - 3.2 Charge interest. All overdue sums shall bear a further interest payment equivalent to the HSBC Base Rate plus 4%, calculated from the date of due payment until the date of actual payment.

4. ASSIGNMENT AND SUB-CONTRACTING

The Purchaser shall not be entitled to assign this Agreement without the Company's prior written consent, but the Company shall be entitled to assign it. The Company shall also have the right to sub-contract any of its duties or obligations under this Agreement.

5. NO EXCLUSIVITY

The Company shall have the right to offer for sale or sell to any Third Party any information obtained by the Company by itself or from any Third Party and supplied as Data ordered by the Purchaser except for Data obtained by the Company by means of Tele-research which was ordered by the Purchaser on an exclusive basis.



6. EXEMPTION CLAUSE

- 6.1 Whilst the Company has endeavoured in both the collation of the Data and the provision of the Data Services, to ensure the accuracy, the nature of the Data and Data Services (as the Purchaser accepts and acknowledges) is such that:
- 6.1.1 in the collation of Data and the provision of Data Services the Company often has to rely on information provided by the Purchaser or Third party and such information may have been incorrectly provided by such Purchaser or Third Party.
- 6.1.2 the Data and Data Services become incorrect through passage of time but to no pre-determined pattern and changes therein do not coincide exactly with the collation of the revisions of the Data or Data Services.
- 6.1.3 accordingly the Company does not guarantee or warrant that the Data or Data Services are without error and the Purchaser will not be entitled to refuse to pay any amount due or part thereof under this Agreement by reason of any error or omission in the Data or Data Services.
- 6.1.4 the Company shall not be liable in contract, tort or otherwise for any direct, indirect or consequential loss or damage sustained or incurred by the Purchaser or others resulting from the Company's failure to perform its obligations hereunder (in a timely manner or at all) or by directly, or indirectly, making use of the Data or Data Services, including, but not limited to, any loss or damage resulting as a consequence of any defects or inaccuracies or errors in the Data or Data Services.
- 6.1.5 unless otherwise excluded by sub-clause 6.3. the Company's liability in contract, tort or otherwise for any loss or damage (excluding death or personal injury) sustained or incurred directly, or indirectly, by the Purchaser or others arising as a result of the Company's breach of contract, negligence or howsoever, shall be limited to the amount of the Total Price paid for the data. The Company will not be liable as set out in this sub-clause if the Total Price for the Data or Data Services has not been paid by the Purchaser by the Due Date of payment.
- 6.1.6 subject as expressly provided in this Agreement, all warranties, conditions or other terms implied by Statute or Common Law are excluded to the fullest extent permitted by law.

7. VARIATIONS

Variations to the Requirements set out in the Order Confirmation required by the Purchaser will only be accepted where the variations and price for such variations have been agreed between the Purchaser and the Company in writing.

8. DELIVERY

Any dates quoted for delivery of the Data or Data Services are approximate only and the Company shall not be liable for any loss or damage of any kind whatsoever suffered by the Purchaser from any delay from whatsoever cause arising, nor will any delay entitle the Purchaser to cancel or rescind this Agreement.

9. COPYRIGHT AND CONFIDENTIAL INFORMATION

- 9.1 The Purchaser hereby acknowledges the Company's copyright in the Data owned or acquired by it and supplied or made available by the Company under this Agreement. Furthermore, nothing contained herein will be construed as an assignment of any such copyright to the Purchaser which, at all times, shall vest in the Company or its Supplier.
- 9.2 The Purchaser shall have no rights or interests of whatsoever nature in or to the Data except to use the same in accordance with the terms of this Agreement. For the avoidance of doubt, the Purchaser hereby agrees and acknowledges that the Data or Data Services supplied under the terms of this Agreement will not be used by the Purchaser and/or any other Third Party in the compilation of a product which competes with the Company's or its Supplier's existing products.



- 9.3** Where the Company undertakes Tele-research on behalf of the Purchaser and as a result thereof revises the Company's existing Data, the Purchaser hereby agrees and acknowledges that the Data obtained can be utilised by the Company in any fashion whatsoever and without any liability (of whatsoever nature) to the Purchaser.
- 9.4** Where the Company undertakes Tele-research on behalf of the Purchaser and as a result thereof obtains information which is not on the Company's existing database then the copyright to that information vests in the Purchaser.
- 9.5** Where the Purchaser requires the Data for its own internal purposes the Purchaser will keep the Data or Data Services confidential and will require its employees to do likewise. The Purchaser will at all times take the reasonable steps in relation to its employees, authorised and duly appointed agents to ensure that no Third Party reproduces or publishes the Data for his, her or its own financial gain (whether in hard copy or machine readable form and whether directly or in condensed or tabulated form) save and except in accordance with the terms of this Agreement.
- 9.6** Where the Purchaser is a list broker agency or other person and requires the Data for use of or for the benefit of any Third Party the Data may only be disclosed to a Third Party which has contracted with such broker agency or similar person for the acquisition of the Data for a stated and particular use only and provided the Purchaser:
- 9.6.1** has given the Company full details of the Third Party and of the proposed use of the Data and;
- 9.6.2** that such Third Party has previously signed an agreement in respect of the use of the Data in such form as may be required by the Company.
- 9.7** The Purchaser will not either during the subsistence of this Agreement or thereafter, disclose the Data to the Purchaser's customers or any Third Party, save in accordance with the terms of this Agreement.
- 9.8** The Purchaser acknowledges that the Data constitutes an extremely valuable and important asset of the Company. Accordingly, without prejudice to the Company's other rights whether arising under this Agreement or otherwise, in respect of the Data which in the opinion of the Company on the basis of such evidence as is reasonably available to the Company, is used by or on behalf of the Purchaser in the compilation of data ('the Purchaser's database' which expression, where appropriate, shall include any part thereof) which is disclosed by or on behalf of the Purchaser to any Third Party, the Purchaser shall forthwith upon each such disclosure pay to the Company such sum as the Company determines that it would have charged for the supply of such part of the Purchaser's database as was disclosed by or on behalf of the Purchaser which was similar to the names and addresses in the Data (taking into account in determining such sum the types of data elements within the Data).
- Without prejudice to the generality of the foregoing, the Purchaser agrees that it shall be irrefutably assumed that the Data has been used by the Purchaser in the compilation of the Purchaser's database if the entirety of the Purchaser's database contains names and addresses which are similar to more than half the names and addresses in the Data.
- In respect of any such compilation the Purchaser undertakes that it will maintain sufficient records including in respect of each such supply copies of those parts of the Purchaser's database which are supplied to a Third Party and forthwith upon request provide such records and copies in such machine readable form as will enable the Company to assess on the Company's own computer system the amounts due to the Company under this clause.
- 9.9** The provisions of this clause shall survive the termination of this Agreement and the rights of the Company hereunder are in addition to and not in substitution for any rights possessed at law.
- 9.10** The purchaser to whom a licence is granted under this agreement shall not process Data outside of the European Economic Area (or any country deemed adequate by the Commission pursuant to Article 25(6) of Directive 95/46/EC) without the prior written consent the company.

- 9.11 The company in its capacity as Licensor will from time to time update its databases to take into consideration any Record Removal Requests it receives from Data Subjects. In response to such a request the Purchaser agrees to remove these records from the data in a timely fashion.

10. TERMINATION

- 10.1 The Company may terminate this Agreement at any time by written notice to the Purchaser.

- 10.2 Upon termination of this Agreement:-

10.2.1 all rights granted to the Purchaser under this Agreement shall cease to determine;

10.2.2 all Data supplied by the Company shall be delivered up to it forthwith or, alternatively, at the Company's option, destroyed by the Purchaser.

11. ONE-OFF RENTAL

In the event that the words 'one-off rental' is used on the Order Confirmation or alternatively when it has been agreed that one-off rental terms apply, the Purchaser undertakes that it will use the Data on one occasion only. The Purchaser further undertakes that on completion of the use of the Data on such occasion, the Purchaser will return to the Company, or at the Company's option destroys, the Data and the media upon which the Data is supplied to the Purchaser. The Purchaser acknowledges that the price of the Data has been calculated strictly on the basis of such undertakings.

12. DATA LEASING

In the event that the words 'data leasing' are used on the Order Confirmation or alternatively when it has been agreed that leasing terms apply, the Purchaser undertakes that it will use the Data for the period of 6 months commencing on the date of the Agreement. The Purchaser further undertakes that on expiry of the use of the Data, the Purchaser will return to the Company, or at the Company's option destroy, the Data and any copies thereof and the media upon which the Data is supplied to the Purchaser unless the Company and the Purchaser have agreed to extend the period of lease, whereupon these conditions will continue to apply during the extended lease period.

13. GENERAL

- 13.1 This Agreement will be interpreted and operated in accordance with the laws of England and Wales and the Purchaser hereby submits to the jurisdiction of the English Courts. The headings appearing in this Agreement are for the convenience of reference only and will not affect the meaning of anything contained therein.

- 13.2 Failure by the Company to enforce any part of this Agreement shall not be construed as a waiver of any of the Company's rights therein.

- 13.3 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement and the remainder of the provision in question shall not be affected thereby.

- 13.4 THIRD PARTY RIGHTS. A person who is not a party to this Agreement will not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999. The Statutory regulator Ofcom, or its agents (PhonepayPlus) and the Information Commissioner may have rights to enforce any part of this agreement.