

TERMS AND CONDITIONS

1. GENERAL

In so far as the context admits these terms and conditions are deemed to be incorporated into any agreement entered into with Experian for the provision of list rental services.

2. DEFINITIONS

In this Agreement the following expressions shall have the following meanings:-
"this Agreement" means the terms and conditions set out hereunder and overleaf

"Bureau" means any third party which is responsible to the Client and/or the User and which is to assist the Client and/or the User in using the Services

"the Client" means the individual firm or limited company specified overleaf to whom the Services are to be provided

"the Information" means any information (in whatever form) (including without limitation any list of names and addresses of individuals and/or businesses) contained in the Media

"the Media" means the records, tapes or other materials and documents upon which the Information is communicated to the Client

"the Services" means the Media and the services to be provided by Experian in accordance with this Agreement (details of such services being set out overleaf)

"the User" means that individual firm or other party as may be specified overleaf that is to use the Services

3. CONTRACT TERMS

Subject to Clause 16 hereunder this Agreement and any other agreement between Experian and the Client shall be upon the terms and subject to the conditions set out below and overleaf to the exclusion of any other terms and conditions whether or not the same are endorsed upon delivered with or referred to in the order or any other document delivered sent or otherwise disclosed by the Client to Experian. The Client acknowledges that it has not relied upon any representations or warranties made by Experian save as expressly provided in this Agreement.

4. PAYMENT OF CHARGES

4.1 The charges payable for the Services ("the Charges") shall be as specified overleaf.

4.2 Experian may at its option require the Charges to be paid (either in full or part) before the Services are provided to the Client but otherwise the Charges shall be due and payable to Experian within 30 days of the date of Experian's invoice therefor

4.3 Interest at an annual rate of 3% above Barclays Bank plc's base rate from time to time shall accrue daily and be calculated on a daily basis on any sum overdue from the date of invoice until payment in full of the Charges (whether before or after any judgment)

4.4 Unless expressly stated otherwise the Charges shall be exclusive of VAT (which for the avoidance of doubt shall be payable at the prevailing rate by the Client in accordance with the terms and conditions hereof)

4.5 The Client shall have no right to set-off against Experian in respect of any claims it may have against Experian (whether in connection with this Agreement or otherwise)

4.6 Additional charges shall be payable for any additional services, which the Client requires Experian to provide subsequent to any quotation, given by Experian.

4.7 All delivery and handling charges shall be payable by the Client

4.8 In the event that Experian agrees (as indicated overleaf) to give the Client any credit in respect of the Charges the Client acknowledges that such credit is given by Experian strictly on condition that the Client pays to Experian not less than £1,500 (one thousand five hundred pounds) during each discrete period of 12 (twelve) months commencing on the date of this Agreement and thereafter each anniversary of such date ("the Minimum Value Figure").

4.9 In the event that at the expiry of any period of 12 months referred to in clause 4.8 there is a shortfall between the Charges actually paid by the Client and the Minimum Value Figure Experian shall be entitled to invoice the Client such shortfall and the Client shall then pay such shortfall within 30 days from the date of such invoice.

5. QUOTATIONS

5.1 Any quotations made by Experian are made on the basis that all services quoted for will be ordered and in accordance with costs prevailing at the time of quotation. Quotations and the Charges are subject to amendment at Experian's discretion on or at any time after acceptance in order to meet any increase in such costs (due to whatever cause)

5.2 Experian may correct any Charges payable under this Agreement and invoices in respect thereof where typographical or other errors have been made.

6. COPYRIGHT

Property and the copyright (and all other intellectual property rights) in the Media and the Information (other than any information which was passed to Experian by the Client in connection with the Services or which has been obtained from any third party by Experian) shall at all times remain vested in Experian

7. CONFIDENTIALITY

7.1 The Client undertakes:-

7.1.1 that it shall not (without the prior written consent of Experian) re-use copy reproduce publish or transmit the Information (or any part thereof) in any manner whatsoever.

7.1.2 that it shall not disclose communicate or make available the Information or any confidential information (as defined below) to any third party provided always that the Client shall be permitted to disclose the Information to any User and/or Bureau specified in the Agreement solely in accordance with Clause 8.4 below.

7.1.3 (without prejudice to Clause 7.1.2 above) that it shall not provide

the whole or any part of the Information as part of any directory or other product or service for distribution to third parties

7.1.4 For the purposes of sub-clause 7.1.2. hereof the expression "Confidential Information" shall mean (as the context may require):-

7.1.4.1 any information concerning Experian's trade secrets or business dealing transactions or affairs which may come to the notice of the Client and/or

7.1.4.2 any information or know-how relating to the methods or techniques used by Experian in devising and developing the Services and any tapes documents or other materials comprising any part of such information and/or know-how made available by Experian hereunder

7.1.5 The provisions of sub-clause 7.1.2. hereof shall not apply to any Confidential Information to the extent that the Client is required to divulge the same by a Court tribunal or governmental authority with competent jurisdiction or the information is in the public domain or such information has been received independently from a third party.

8. USAGE

8.1 Unless otherwise agreed in writing by Experian the Information shall be used by the Client once only and within 6 months of being supplied by Experian and only for the purposes relating to the Client's marketing purposes as specified more particularly overleaf provided that the Client shall be entitled to use the Information subsequently in respect only of those individuals and/or businesses which become bona fide customers of the Clients as a result of a mailing carried out using the Information and in accordance with this Agreement.

8.2 It is a condition of this provision of the Services that prior to such provision the Client shall specify, in writing to Experian the full name and address of the User and the Bureau and such information concerning such User and Bureau as Experian shall reasonably require together with the estimated date upon which the Information is intended for use and the purposes of such use. The Client agrees that Experian may withhold the provision of the Services to the Client when Experian has reasonable justification for doing so. The Client acknowledges that the Information may contain data licensed to Experian by third parties (in respect of data licensed by each such third party a "Third Party Database") and that Experian is contractually restricted from sub-licensing the whole or substantially the whole of any Third Party Database in one single selection of records or in several selections to a single sub-licensee either alone or together with its affiliates. Experian reserves the right (without incurring any liability to the Client) to withhold performance of the Services and/or the provision of any data to the Client to the extent that Experian reasonably considers this to be necessary in order to comply with this restriction and/or any other obligation of Experian to any such licensor of a Third Party Database.

8.3 A reasonable time prior to such use the Client shall provide to Experian a sample of all promotional material to be delivered to any and all names and address included within the Information and the Client further expressly agrees that it shall not send out any promotional material if so required by Experian.

8.4 Subject always to sub-clause 7.1. above the Client may use the Information for the bona fide business purposes of the User and may provide the Information to the User and/or Bureau solely for such purposes to be carried out but the Client shall procure that the User and the Bureau shall (where the context so admits) fully comply with the obligations of the Client under this Agreement as if they were each a party hereto (without limitation including the provisions of Clause 7.1 hereof) and shall supply the User and Bureau with a copy of these terms and conditions.

8.5 The Information will contain a number of check names and addresses in order to monitor the usage and to ensure that the Information is used in accordance with this Agreement

8.5.1 The Client agrees that (and shall procure that the User and/or Bureau shall agree that) Experian shall be entitled to publicise or disclose to third parties the existence of or the outline of the subject matter of this Agreement

8.5.2 Where the Information is used in contravention of the provisions of this Agreement the Client shall be liable to pay Experian a sum equivalent to the value of the Charges on each occasion that the Information is so used which sum shall be payable in accordance with the provisions of Clause 4.2 above.

8.5.3 The Client expressly agrees and acknowledges that the provisions of sub-clause 8.5.2 above shall operate by way of liquidated damages and are a genuine pre-estimate of Experian's loss in such circumstances All Media must be returned to the address specified on such Media within one month of completion of the mailing

9. LIMITATION OF LIABILITY

9.1 While reasonable endeavours will be made by Experian to provide the Services in accordance with any delivery date or manner specified and to ensure that the Information is accurate Experian does not warrant the accuracy or fitness for any particular purpose of the Information (or any part thereof) and does not warrant or guarantee the results of any mailing and Experian shall not be liable to the Client for any loss damage costs or expenses suffered or incurred by the Client (and/or the User and/or the Bureau) by reason of the Services not being provided on the said dates or the said manner or any Information being inaccurate or in the event of any defect in our failure of any mailing.

9.2 Without prejudice to any other provision contained in this Agreement

9.2.1 Experian shall not be liable (whether in contract or in negligence or tort or otherwise) for any indirect or consequential loss of any kind whatsoever (including without limitation loss of profit or loss of business) suffered by the Client (and/or the User and/or the

Bureau) as a result of or arising out of the use of the Services or otherwise in connection with this Agreement

9.2.2 Experian's maximum aggregate liability hereunder whether for breach of this Agreement or otherwise and whether or not arising from the negligence of Experian or any other person involved directly or indirectly in the provision of the Services shall not exceed an amount equal to the Charges (exclusive of VAT) payable to Experian hereunder in respect of the particular mailing the subject of such breach or other claim.

9.2.3 The provisions of sub-clauses 9.1 and 9.2 above shall not apply to any liability in respect of death or personal injury arising out of the negligence of Experian its servants or agents.

9.3 The Client hereby expressly agrees that time shall not be of the essence in relation to Experian's obligations under this Agreement and that upon leaving the premises of Experian the Media shall be at the risk of the Client

10. INDEMNITY

The Client shall indemnify and keep indemnified Experian from and against any and all liability loss claims demands costs or expenses of any kind whatsoever which it shall at any time suffer or incur

11. STATUTORY REQUIREMENTS

11.1 The Client undertakes that it shall not use the Information for any unlawful purpose and that at all times it shall comply fully with all relevant statutory requirements and regulations from time to time in force (including without limitation the provisions of the Data Protection Act 1998 and any subsequent amendments thereto or re-enactments thereof)

11.2 The Client undertakes to work within all of the relevant codes of practice for the advertising industry including without limitation. "The Promotion Practice" and "The Advertising Associations "Standards of Practice" in List and Database Management (as such codes are amended and re-drafted from time to time)

12. EXCLUSION OF WARRANTIES AND REPRESENTATIONS

Save as expressly provided in this Agreement or to the extent that it is unlawful for any said representations, terms, warranties or conditions to be excluded Experian makes or includes no representations, terms warranties or conditions (whether express or implied (by statute or otherwise) in connection with the Services or use thereof by the Client and/or User and/or Bureau or otherwise in connection with the Agreement)

13. TERMINATION

Experian shall be entitled to terminate this Agreement immediately by written notice to the Client if:-

13.1 The Client is guilty of any material breach of the provisions of this Agreement.

13.2 The Client has had a bankruptcy order made against it or has made an arrangement or composition with its creditors or (being a body corporate) has had convened a meeting of creditors (whether formal or informal) or has entered into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation or has a receiver manager administrator received appointed of its undertaking or any part thereof or a resolution has been passed or a petition presented to any Court for the winding-up of the or for the granting of an administration order in respect of the Client or any proceedings have been commenced relating to the insolvency of the Client

13.3 The Termination of this Agreement shall be without prejudice to the rights of Experian either party accrued prior to such termination or any provision, which by its terms is intended to survive the termination of this Agreement (including without limitation Clause 6 Clause 7 and Clause 9 hereof)

14. FORCE MAJEURE

Notwithstanding anything herein contained neither party shall be under any liability to the other in respect of any failure to perform or delay in performing any of its obligations hereunder which is due to any cause of whatsoever nature beyond its reasonable control and no such failure or delay shall be deemed for any purpose to be a breach of this Agreement

15. ASSIGNMENT AND SUB-CONTRACTING

The rights granted to the Client hereunder are personal to it and the Client shall not assign or grant any rights in respect of or otherwise deal in the same Experian shall be entitled to assign or sub-contract the provision of the Services (or any part thereof) to any third party and reference in the terms and conditions to Experian shall be deemed to include reference to such assignee or sub-contractor

16. WAIVER

Failure or delay by either party to enforce any of the provisions of this Agreement shall not operate as a waiver of any of its rights hereunder or operate so as to bar the exercise or enforcement thereof at any time or time

17. VARIATION

This Agreement constitutes the whole of the terms agreed between the parties hereto in respect of the subject matter hereof and supersedes all previous negotiations understandings or representations and shall be capable of being varied only by instrument in writing signed by a duly authorised representative of each of the parties hereto

18. SEVERANCE

This Agreement is severable in that if any provision hereof is determined to be illegal or unenforceable by any Court of competent jurisdiction such provision shall be deemed to have been deleted without affecting the remaining provisions of this Agreement

19. LAW

This Agreement shall be governed by and construed in accordance with English Law and the parties hereto agree that the English Courts shall have exclusive jurisdiction.