



ARC DATA LIMITED TERMS AND CONDITIONS

1) GENERAL

- a) In these terms and conditions, unless elsewhere defined herein:
- i) **"Buyer"** means the person, firm or corporation with whom Arc Data Limited contracts;
 - ii) **Commissioner:** the Information Commissioner (see Article 4(A3), UK GDPR and section 114,DPA 2018);
 - iii) **"Contract"** means the agreement between Arc Data Limited and the Buyer for the provision of services to include where appropriate the licensed use of Data, as set out in the Order and of which these terms and conditions form a part;
 - iv) **"Controller"**: has the meaning given to it in section 6, DPA 2018;
 - v) **"Data"** means the List or other data supplied or to be supplied to the Buyer pursuant to the Contract (as the case may be);
 - vi) **"Data Protection Legislation"**: all applicable data protection and privacy legislation in force from time to time in the UK including but without limitation the UK GDPR; the DPA 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended;
 - vii) **Data Subject:** the identified or identifiable living individual to whom the Personal Data relates.
 - viii) **"DPA"** means the UK's Data Protection Act 2018;
 - ix) **"GDPR"** means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR));
 - x) **"Insert(s)"** means the promotional item(s), article(s) or other thing(s) which the Buyer wishes to place in the publication or product published, produced or supplied by the Medium Owner;
 - xi) **"Arc Data Limited"** means Arc Data Limited, a limited liability company incorporated in England (company number 11615386), the registered office of which is at Trojan House, 34 Arcadia Avenue, London, United Kingdom, N3 2JU;
 - xii) **"Intellectual Property Rights"** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
 - xiii) **"List"** means a list or collection consisting of contact data, whether or not Personal Data;
 - xiv) **"List Owner"** means the person, firm or corporation being the Owner or duly authorised supplier of any List and on whom an Order for the supply of a List is placed;
 - xv) **"Mailing"** means the third party mailing by, for and on behalf of the Buyer in accordance with the Contract;
 - xvi) **"Mailing Pieces"** means the promotional item(s), article(s), Creative (as defined below) or other thing(s) to be mailed or delivery by the Buyer to addresses on the List(s);
 - xvii) **"Materials"** means the data, articles or anything else that is the subject of the contract between Arc Data Limited and the Buyer for the list rental;
 - xviii) **"Medium Owner"** means the person, firm or corporation who or which publishes, produces or supplies the publication or product into which the Inserts are to be placed;
 - xix) **"Order"** means the Buyer's order for the supply of Data as set out in the Buyer's purchase order form or the Buyer's written acceptance of Arc Data Limited's quotation (as the case may be);
 - xx) **"Owner"** means the Medium Owner or the List Owner as the case may be.



- xxi) **“Personal Data”**: means any information relating to an identified or identifiable living individual that is processed by the Processor on behalf of the Controller as a result of, or in connection with, the provision of the services provided by Arc Data Limited; an identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
- xxii) **“Personal Data Breach”** a breach leading to the accidental, unauthorised or unlawful destruction, loss, alteration, disclosure of, or access to, the Personal Data.
- xxiii) **“Processor”**: a natural or legal person, public authority, agency or other body which processes personal data on behalf of the Controller.
- xxiv) **“Records”**: has the meaning given to it in Clause 0.
- xxv) **“URN”**: means a unique reference number, which may be used by the Buyer alone (Controller in this case) to identify a Data Subject.

- b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- c) A reference to a party includes its personal representatives, successors and permitted assigns.
- d) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- e) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limited the sense of the words, description, definition, phrase or term preceding those terms.
- f) A reference to **writing or written** includes email but not fax.
- g) Unless otherwise agreed in writing by Arc Data Limited, these terms and conditions and the terms of any Order shall apply to and govern any contract between Arc Data Limited on the Owner's behalf and the Buyer to the entire exclusion of any terms or conditions emanating from or stipulated or referred to by the Buyer whether orally or in writing which shall be of no effect.
- h) Arc Data Limited has no authority on behalf of the Owner to agree any variation, waiver of or addition to these terms and conditions except as expressly agreed by the Owner and Arc Data Limited in writing.
- i) The Buyer acknowledges that Arc Data Limited is contracting as agent for and on behalf of the Owner and Arc Data Limited is not personally liable under this contract.
- j) Any reference to **processing, processes, processed, or process** includes any activity that involves the use of the Personal Data. It includes, but is not limited to, any operation or set of operations which is performed on the Personal Data or on sets of the Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction. Processing also includes transferring the Personal Data to third-parties.

2) ACCEPTANCE OF ORDERS AND BASIS OF CONTRACT

- a) Despite using the term “Buyer”, and unless specifically stated otherwise, for the purposes of these terms and the Contract(s), the Buyer shall at no time take title to the Data, but shall be granted a non-exclusive, limited, revokable license to use the Data in accordance with these terms and the Contract.
- b) The Buyer and Arc Data Limited agree and acknowledge that for the purpose of the Data Protection Legislation:
 - i) While Arc Data Limited is normally the Processor, it may in certain circumstances act as the Controller, in which case Arc Data Limited shall notify the Buyer beforehand.
 - ii) The Controller retains control of the Personal Data and remains responsible for its compliance obligations under the Data Protection Legislation, including but not limited to, providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Processor.



- iii) The Buyer will only process the Personal Data to the extent, and in such a manner, as is necessary in accordance with the Contract.
- iv) The Buyer will not process the Personal Data for any other purpose or in a way that does not comply with the Contract or the Data Protection Legislation. The Processor must promptly notify the Controller if, in its opinion, the instructions do not comply with the Data Protection Legislation.
- v) Where the Buyer acts as Processor, it must comply promptly with any written instructions requiring the Buyer to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- vi) The Buyer will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third-parties unless Arc Data Limited or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commissioner). If a domestic law, court or regulator (including the Commissioner) requires the Buyer to process or disclose the Personal Data to a third-party, the Buyer must first inform Arc Data Limited of such legal or regulatory requirement and give Arc Data Limited an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
- vii) The Processor shall reasonably assist the Controller, at no additional cost to the Processor, with meeting the Controller's compliance obligations under the Data Protection Legislation, taking into account the nature of the processing and the information available to the Processor, including in relation to the Owner's rights, data protection impact assessments and reporting to and consulting with the Commissioner under the Data Protection Legislation.
- viii) The Buyer must notify promptly Arc Data Limited of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Buyer's performance of the Contract.
- c) Arc Data Limited shall be under no obligation to accept any Order from the Buyer or to give any reason for refusing to do so.
- d) The Order constitutes an offer by the Buyer to purchase Data in accordance with these terms and conditions.
- e) Arc Data Limited shall accept an Order once an Order confirmation has been signed and returned to Arc Data Limited by the Buyer.
- f) Any quotation given by Arc Data Limited shall not constitute an offer, and is only valid for a period of 30 days from its date of issue.
- g) These terms and conditions apply to the Contract to the exclusion of any other terms that the Buyer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- h) Arc Data Limited reserves the right to amend the Order and/or these terms and conditions if required by any applicable statutory or regulatory requirement, and shall notify the Buyer in any such event.

3) BUYER'S OBLIGATIONS

- a) The Buyer shall:
 - i) ensure that the terms of the Order and any other information it provides to Arc Data Limited are complete and accurate;
 - ii) co-operate with Arc Data Limited in all matters relating to the Contract;
 - iii) provide Arc Data Limited, its employees, agents, consultants and subcontractors with such information and materials as Arc Data Limited may reasonably require in order to fulfil its obligations under the Contract and ensure that such information is complete and accurate in all material respects;
 - iv) obtain and maintain all necessary licences, permissions and consents which may be required for Arc Data Limited to be able to provide the Buyer with the Data; and
 - v) comply with all applicable laws and regulations.



- b) If Arc Data Limited's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Buyer or failure by the Buyer to perform any relevant obligation (a "**Buyer Default**"):
 - i) without limiting or affecting any other right or remedy available to it, Arc Data Limited shall have the right to suspend performance of the Contract and to rely on the Buyer Default to relieve it from the performance of any of its obligations in each case to the extent the Buyer Default prevents or delays Arc Data Limited's performance of any of its obligations; and
 - ii) Arc Data Limited shall not be liable for any costs or losses sustained or incurred by the Buyer arising directly or indirectly from the Buyer's failure or delay to perform any of its obligations under this Contract.

4) BUYER'S EMPLOYEES

The Buyer shall procure that Buyer's employees:

- a) are informed of the confidential nature of the Personal Data and are bound by written confidentiality obligations and use restrictions in respect of the Personal Data;
- b) have undertaken training on the Data Protection Legislation and how it relates to their handling of the Personal Data and how it applies to their particular duties; and
- c) are aware both of the Buyer's duties and their personal duties and obligations under the Data Protection Legislation and these terms and conditions.

5) OWNER'S APPROVAL

- a) The Buyer shall supply to Arc Data Limited two examples of each Creative (as defined in clause 9)f) below) intended to be mailed by the Buyer which Arc Data Limited shall submit to the Owner for approval. Acceptance of the Buyer's Order is conditional upon the Owner approving the example and acceptance shall not be deemed to have taken place unless and until Arc Data Limited has received confirmation from the Owner that the example is approved.
- b) The Buyer undertakes to Arc Data Limited:
 - i) that only Creative which has been approved by the List Owner will be mailed or disseminated by the Buyer;
 - ii) to include such wording as reasonably directed by Arc data Limited;
 - iii) to return or delete all data supplied immediately after agreed usage date; and
 - iv) to inform Arc Data Limited of any responses marked 'gone away' found as a result of their mailing and to act promptly following requests for suppression.

6) DATA

- a) Lists are compiled by the List Owners and while Arc Data Limited endeavours to supply accurate information about each list, Arc Data Limited relies upon the List Owner's description of that List. Each List is updated regularly by the List Owner but no warranty or guarantee is given by Arc Data Limited as to the accuracy of the contents of any List or as to the results of any mailing by the Buyer based on the contents and Arc Data Limited shall not be liable in any way whatsoever to the Buyer in respect thereof.
- b) Where the number of names and addresses included in any List is stated by Arc Data Limited either orally or in a quotation, list specification, order acknowledgement or other document, that number is to be treated as an estimate only which shall not be binding on Arc Data Limited and is therefore not warranted by Arc Data Limited to be accurate and Arc Data Limited disclaims any liability in respect thereof.
- c) Where the Buyer requests all available names and addresses on a List, the Buyer will take and pay for all names and addresses actually supplied.
- d) A small number of "seed" names and addresses (usually less than 0.1 % of the total number supplied for any Order) will be included in all Lists to enable the List Owner to monitor their use.



- e) Where the parties agree, the Buyer will provide information on their own database to Arc Data Limited, in order to receive certain non-identifiable insight on their donors. Where this service is being provided, the Buyer shall provide Arc Data Limited with URNs for their donors as well as, as much related donation history as possible. This non-identifiable data should be uploaded to a portal by the Buyer, to enable the carrying out of research on such data, looking for patterns in the data to indicate how the Buyer may wish to contact the donor in the future. This research activity is undertaken in the United States, although no personal identifiable data is transmitted.
- f) The Buyer may send Personal Data, including name and address of donors to Arc Data Limited, who in turn will send on such Personal Data to a third-party controller of larger databases ("Database Owner"). This Personal Data may then be matched to names within the databases of the Database Owner to enable further analysis of the provided Personal Data. The Buyer may then choose to order based upon the earlier analysis and at such cost as agreed between the parties; where this option is chosen, Arc Data Limited will deliver such data to the Buyer's chosen mailing house, who will act in accordance with the Buyer's instructions which will be subject to the required restrictions as set out by Arc Data Limited from time to time, such as the data only being used for a single mailing activity, following which all the provided data must be deleted. Furthermore, any names that are found to be included or have requested to be included, in a suppression list, shall be sent to Arc Data Limited, for the Database Owner to update their own records. Where a Data Subject subsequently donates and does not object to further contact, the Buyer may add such names to their own mailing lists, otherwise all personal data provided by Arc Data Limited must be deleted following the completion of the activity they had agreed with Arc Data Limited.
- g) For the avoidance of doubt, the profiling set out under clauses 6)e) and 6)f) shall not be used for automated decision making.

7) SECURITY

- a) The Buyer must at all times implement appropriate technical and organisational measures against accidental, unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in the [Annex](#).
- b) The Buyer must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:
 - i) the pseudonymisation and encryption of personal data;
 - ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
 - iii) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
 - iv) a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

8) PERSONAL DATA BREACH

- a) The Buyer will immediately and in any event without undue delay notify Arc Data Limited in writing if it becomes aware of:
 - i) the loss, unintended destruction or damage, corruption, or un-usability of part or all of the Personal Data. The Buyer will **immediately contain the breach before attempting to make reasonable endeavours to** restore such Personal Data at its own expense as soon as possible.
 - ii) any accidental, unauthorised or unlawful processing of the Personal Data; or
 - iii) any Personal Data Breach.
- b) Where the Buyer becomes aware of (i), (ii) and/or (iii) above, it will, without undue delay, also provide Arc Data Limited with the following written information:
 - i) description of the nature of (i), (ii) and/or (iii), including the categories of in-scope Personal Data and approximate number of both Owners and the Personal Data records concerned;
 - ii) the likely consequences; and



- iii) a description of the measures taken or proposed to be taken to address (i), (ii) and/or (iii), including measures to mitigate its possible adverse effects.
- c) Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Buyer will reasonably co-operate with Arc Data Limited at no additional cost to Arc Data Limited, in Arc Data Limited's handling of the matter, including but not limited to:
 - i) assisting with any investigation;
 - ii) providing Arc Data Limited with physical access to any facilities and operations affected;
 - iii) facilitating interviews with the Buyer's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
 - iv) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by Arc Data Limited; and
 - v) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.
- d) The Buyer will not inform any third-party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining Arc Data Limited's written consent, except when required to do so by applicable law.
- e) The Controller shall have the sole right to determine:
 - i) whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commissioner, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Controller's discretion, including the contents and delivery method of the notice; and
 - ii) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.
- f) The Buyer will indemnify Arc Data Limited on a full indemnity basis for all reasonable expenses Arc Data Limited may incur, which are associated with the performance of the obligations under clause 8(0) to 8(c) unless the matter arose from Arc Data Limited's specific written instructions, negligence, wilful default or breach of the Contract, in which case Arc Data Limited will cover all reasonable expenses.
- g) The Buyer will also indemnify Arc Data Limited on a full indemnity basis for actual reasonable expenses that Arc Data Limited incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a Personal Data Breach to the extent that the Buyer caused such, including all costs of notice and any remedy as set out in clause 8 (e).

9) LIMITATION OF LIABILITY

- a) No liability is accepted by Arc Data Limited or the List Owner for any loss or damage whatsoever or howsoever caused or suffered by the Buyer as a result of a non-delivery arising out of the contents of the List.
- b) The total liability of Arc Data Limited and/or the Owner in respect of the breach of its obligations under the Contract or these terms and conditions or in tort or otherwise shall not exceed in aggregate an amount equal to the amount received by Arc Data Limited from the campaign giving rise to such claim.
- c) Arc Data Limited does not give advice or information concerning postal regulations, such that the Buyer must take all reasonable steps to ensure they are compliant with all relevant regulation and legislation.
- d) No warranty is given as to the successful outcome of any planning or forecasting undertaken on behalf of the Buyer or as to the success of any mailing and Arc Data Limited and the Owner exclude all liability whatsoever in respect of any losses, damages, costs or expenses arising from any failure to meet performance targets or failure to deliver any mail.
- e) In the event of there being any errors in the Data, Arc Data Limited shall have the right to remedy such fault where possible by resupplying the Data or providing additional Data in lieu of the erroneous Data. However, in the event that the Buyer does not advise Arc Data Limited of any defect within 15 days from date of receipt of the Data, the Buyer shall be deemed to have accepted the Data and shall have no further right of recourse against Arc Data Limited and the Owner shall have incur no liability in respect of any errors in the Data.



- f) The Buyer shall be responsible for the cost and expenses of preparation and delivery of any design, creative or artwork ("**Creative**") and for any additional costs incurred as a result of amendments that are required to the Creative once supplied to Arc Data Limited. These costs will be charged to the Buyer at Arc Data Limited's discretion.
- g) Arc Data Limited accepts no liability for delays to the agreed timing of the Mailing as a result of the Buyer's failure to supply the Creative within the timescale specified above or changes made to the Creative, regardless of the cause.
- h) Arc Data Limited accepts no liability for any liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Buyer arising out of or in connection with any claim made against the Buyer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the use of or errors or omissions in the Creative as supplied by the Buyer for the Mailing and the Buyer shall indemnify Arc Data Limited, on a full indemnity basis, for any losses and costs incurred as a result of any such breach..
- i) Upon completion of any test Mailing, the Buyer will confirm in writing that the Creative, links and unsubscribe options for individuals are correct. Only upon receipt of such confirmation shall Arc Data Limited use reasonable endeavours to meet the Mailing date.
- j) Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
 - i) death or personal injury caused by negligence;
 - ii) fraud or fraudulent misrepresentation; and
 - iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

10) CONSEQUENTIAL LOSS

Notwithstanding anything else contained in these terms and conditions, in no circumstances shall Arc Data Limited or the Owner be liable to the Buyer for any indirect or consequential loss including, without limitation, any loss of agreements or contracts, business or profits, anticipated savings, use or corruption of software, data or information and any costs incurred by the Buyer in connection with the production of Inserts or Mailing Pieces.

11) DATA USAGE

- a) Unless otherwise agreed in writing by Arc Data Limited and subject to the prior consent of the List Owner, the Buyer shall be entitled to use the Materials once only and only for the purpose and on the date specified by the Buyer in the Order.
- b) The Buyer shall not keep, copy or re-use in any way any List without the prior written consent of Arc Data Limited and the List Owner having been obtained.
- c) The Buyer shall not disclose or make available any List either in whole or in part or any information therein to any third party without the prior written consent of Arc Data Limited.
- d) Copyright in all data, labels, envelopes, data and other matter comprised in the Materials shall at all times belong to the List Owner.
- e) The Buyer shall be responsible for and will indemnify the Owner and Arc Data Limited against any mis-use or loss of or damage to the Materials by the Buyer or its agent (including, without limitation, its mailing house or computer bureau) and, without prejudice to the foregoing, a List shall be deemed to have been mis-used if it is used for any purpose other than that specified in the Buyer's Order as accepted by Arc Data Limited.
- f) Unless otherwise agreed in writing by Arc Data Limited, if the Buyer does not use any Data on or by the date specified in, or otherwise in accordance with, the Order and/or these terms and conditions, Arc Data Limited reserves the right to revoke the Buyer's right to use the List and to request its return. Furthermore, unless a new agreement is reached, a List must not be kept for longer than 6 weeks after the original use and no more than 3 months after the list was supplied.



- g) In any dealings which the Buyer may have with any third party regarding the subject matter of the contract between the Buyer and Arc Data Limited, the Buyer shall ensure that these terms and conditions govern any such dealings *mutatis mutandis* and the Buyer undertakes to procure that such third party will comply fully with the Buyer's obligations hereunder and the Buyer will indemnify and keep indemnified Arc Data Limited against all actions, claims, proceedings, costs, damages, losses, liabilities and expenses arising out of any breach thereof by such third party.
- h) The Buyer will adhere to, and comply with, the DPA, GDPR and any other applicable legislation as well as any relevant codes of practice recommended or adopted by Direct Marketing Association (UK) Limited or Information Commissioner's Office ("ICO") and any revisions made thereto from time to time.

12) BUYER'S INDEMNITY

The Buyer undertakes to Arc Data Limited that any printed materials to be distributed by or on behalf of the Buyer shall contain nothing which infringes the copyright of any third party or which is defamatory, obscene, indecent, offensive or otherwise illegal or unlawful and the Buyer will indemnify and keep indemnified Arc Data Limited and the Owner against all actions, claims, proceedings, demands, losses, damages, costs, expenses and liabilities of whatsoever nature arising out of or in connection with any claim that such items infringe copyright or are defamatory, obscene, indecent, offensive, or otherwise illegal or unlawful.

13) DELIVERY

- a) While Arc Data Limited will use all reasonable endeavours to deliver the Data or make them available to the Buyer on the date specified in the Buyer's Order, all such specified delivery dates are estimates only and Arc Data Limited shall not be liable to the Buyer for any delay in delivery.
- b) If the Buyer requests delivery at a time earlier than that specified in the Order, Arc Data Limited will endeavour but shall not be obliged to comply with the earlier requested delivery time and Arc Data Limited shall be entitled to charge the Buyer for any additional costs and expenses incurred by Arc Data Limited in connection therewith.
- c) Delivery to the Buyer shall be deemed to have taken place when the Data are transmitted or made available to the Buyer or its agent by electronic or other means, which shall include (without limitation) email, online portal or download link.

14) PRICES

- a) The price payable for Data supplied by Arc Data Limited shall be as stated in the Order.
- b) The cost of delivery of the Materials to the Buyer or its agent shall be borne by the Buyer.
- c) Additional charges shall be payable by the Buyer:
 - i) for limited or additional selections from any List;
 - ii) for any preliminary work undertaken by Arc Data Limited at the Buyer's request;
 - iii) in respect of any additional work undertaken by Arc Data Limited; and
 - iv) for additional uses of the List beyond the uses agreed in the Order.
- d) Contract prices are exclusive of Value Added Tax or any other sales or other similar tax payable from time to time ("VAT"), which shall be payable in addition by the Buyer at the prevailing rate and in the manner for the time being prescribed by law at the time when the Order is placed.
- e) If any sum payable by the Buyer under the contract is not paid on the due date then, without prejudice to Arc Data Limited's other rights and remedies, Arc Data Limited reserves the right to charge interest on a day-to-day basis (as well after as before any judgement) from the due date to the date of payment (both dates inclusive) at the rate of 3.5 per cent. above the base rate of Lloyds Bank PLC from time to time in force.



15) PAYMENT

Unless otherwise agreed by Arc Data Limited, the price payable for the Data shall be tendered in full at the time of submission of the Buyer's Order. All charges (including any additional charges) shall be paid upon receipt of the invoice. The amount is to be paid in Pound Sterling (GBP). If this is not done a surcharge equal to 10% of the original Order value will be added. At the discretion of Arc Data Limited, special terms may be agreed with the Buyer subject to such conditions as Arc Data Limited may from time to time specify including, without limitation, the production of satisfactory references and/or the securing of third party guarantees satisfactory to Arc Data Limited.

16) TERMINATION

Arc Data Limited shall be entitled to immediately terminate the contract by notice in writing to the Buyer if:

- a) the Buyer shall fail to make any payment due to Arc Data Limited under the Contract or any other contract between Arc Data Limited and the Buyer;
- b) the Buyer shall fail to give instructions for delivery of the Data within a reasonable time after submitting an Order;
- c) if the Buyer is in breach of any of its obligations under the Contract and shall fail to remedy the same (if capable of remedy) within 7 days of receipt of a notice from Arc Data Limited specifying the breach and requiring it to be remedied; or
- d) if the Buyer shall have a receiver or an administration receiver appointed or shall pass a resolution for winding-up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or a court of competent jurisdiction shall make an order to that effect or if the Buyer shall become subject to an administration order or shall enter into a voluntary arrangement with its creditors or shall cease or threaten to cease to carry on business or enter into any other similar or analogous procedure.

Upon termination of the Contract by Arc Data Limited pursuant to the foregoing provisions, Arc Data Limited and the Owner shall be discharged from any liability for the further performance of its and/or their obligations under the Contract and without prejudice to any other right or remedy available to it, shall be entitled to recover forthwith from the Buyer and the Buyer will indemnify Arc Data Limited and the Owner against all loss or damaged sustained or incurred by Arc Data Limited or the Owner as a consequence of such termination.

17) DATA RETURN AND DESTRUCTION

- a) At Arc Data Limited's request, the Buyer will give Arc Data Limited, or a third-party nominated in writing by Arc Data Limited, a copy of or access to all or part of the Personal Data in its possession or control in the format and on the media reasonably specified by Arc Data Limited.
- b) On termination of the Contract for any reason or expiry of its term, the Buyer will securely delete or destroy or, if directed in writing by Arc Data Limited, return and not retain, all or any of the Personal Data related to the Contract in its possession or control.
- c) If any law, regulation, or government or regulatory body requires the Buyer to retain any documents, materials or Personal Data that the Buyer would otherwise be required to return or destroy, it will notify Arc Data Limited in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for such retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.
- d) The Buyer will certify in writing to Arc Data Limited that it has deleted or destroyed the Personal Data within 14 days after it completes the deletion or destruction.



18) RECORDS

- a) The Buyer will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, the processing purposes, categories of processing, and a general description of the technical and organisational security measures referred to in clause 7) (**Records**).
- b) The Buyer will ensure that the Records are sufficient to enable Arc Data Limited to verify the Buyer's compliance with its obligations under the Contract and the Data Protection Legislation and the Buyer will provide Arc Data Limited with copies of the Records upon request.

19) AUDITS

- a) At least once a year, the Buyer will conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under the Contract, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.
- b) On Arc Data Limited's written request, the Buyer will make all the relevant audit reports available to Arc Data Limited for review, as may be reasonably requested from time to time.
 - i) Arc Data Limited will treat such audit reports as the Buyer's confidential information under the Contract.
 - ii) **Following such review under clause 19(b), where Arc Data provides the Buyer 2 days' notice, the Buyer will grant Arc Data Limited the right to conduct its own audit on its own behalf or via an independent agent;**
- c) The Buyer will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Buyer's management.

20) FORCE MAJEURE

Arc Data Limited shall not be liable for any loss or damaged suffered by the Buyer as a result of any delay in or failure to perform any of Arc Data Limited's obligations under the contract where such delay or failure is caused by circumstances beyond Arc Data Limited's reasonable control including, without limitation, act of God, war, riot, civil, commotion, strike, lock-out, fire, flood, delay in production or in transit, or postal delay and acts or omissions of the Owner or the Buyer and, in the case of delay, Arc Data Limited shall be entitled to an extension of time for performance equal to the period of delay and to terminate the contract if the period of delay continues beyond a reasonable time.

21) ASSIGNMENT

- a) The Buyer shall not assign, transfer, mortgage, charge, subcontract, sub-license, delegate, declare a trust over or otherwise transfer the contract or any of its rights or obligations thereunder in whole or in part without the prior written consent of Arc Data Limited.
- b) Arc Data Limited may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.

22) CROSS BORDER TRANSFERS OF PERSONAL DATA

- a) The Buyer (including its agents) must not transfer or otherwise process the Personal Data outside the UK or, the EEA, without obtaining Arc Data Limited's prior written consent.



23) WARRANTIES

- a) The Buyer warrants and represents that:
- i) its employees, agents and any other person or persons accessing the Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation;
 - ii) it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
 - iii) it has no reason to believe that the Data Protection Legislation prevents it from providing any of the contracted services; and
 - iv) considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the accidental, unauthorised or unlawful processing of Personal Data and the loss or damage to, the Personal Data, and ensure a level of security appropriate to:
 - the harm that might result from such accidental, unauthorised or unlawful processing and loss or damage;
 - the nature of the Personal Data protected; and
 - comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in Clause 7).
- b) Arc Data Limited warrants and represents that the Buyer's expected use of the Personal Data for the purposes as specifically instructed by Arc Data Limited will comply with the Data Protection Legislation.

24) ENFORCEABILITY

If at any time any one or more of the provisions of these terms and conditions becomes invalid, illegal or unenforceable under any law or is held by a Court to be so, the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

25) WAIVER

The rights of Arc Data Limited shall not be prejudiced or restricted by any indulgence or forbearance extended by Arc Data Limited to the Buyer and no waiver by Arc Data Limited in respect of any breach shall operate as a waiver of any subsequent breach.

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

26) NOTICES

All notices which are required to be given under the contract shall be in writing and shall be sent to the last known address or place of business of the recipient or such other address as the recipient may designate by notice in writing given in accordance with that condition. Any notice may be delivered personally or by first-class post or email transmission and shall be deemed to have been served if by hand when delivered, if by first-class post 48 hours after posting and if by email on the following business day.



27) SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

28) NO PARTNERSHIP OR AGENCY

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make to enter into any commitments for on behalf of the other party.

29) THIRD PARTY RIGHTS

Unless it states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

30) ENTIRE AGREEMENT

- a) The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- b) Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misrepresentation based on any statement in the Contract.
- c) Nothing in this clause shall limit or exclude any liability for fraud.

31) ADDITIONAL SERVICES

Arc Data Limited may provide additional services from time to time including, without limitation, data profiling services. Arc Data Limited shall supply such services in accordance with the Order and shall use reasonable endeavours to meet any performance dates specified in the Order but any such dates shall be estimates only and time shall not be of the essence for the performance of such services.

32) HEADINGS

The headings to these terms and conditions are for ease of reference only and shall not affect their construction.

33) JURISDICTION

These terms and conditions and any contract in which they are incorporated shall be governed by and construed in accordance with the laws of England and the parties hereby agree to submit to the jurisdiction of the English courts, which shall have exclusive jurisdiction to settle any dispute or claim (including non- contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.



ANNEX

Security measures

Supplier to insert description of its technical and organisational data security measures such as:

- Physical access controls.
- System access controls.
- Data access controls.
- Transmission controls.
- Input controls.
- Data backups.
- Data segregation.

By signing below, I acknowledge acceptance of the above terms and conditions.

NAME OF COMPANY

ADDRESS

TITLE

NAME (please print)

SIGNED

DATE
