

1. PRIMARY OBLIGATIONS AND WARRANTIES

- 1.1. Experian shall:
 - 1.1.1. provide the Services in accordance with the Specification;
 - 1.1.2. use all reasonable care and skill in the performance of the Services, and in the collection and collation of any data on which the Services are based or which is comprised within the Services.
- 1.2. The Client shall use all reasonable endeavours to ensure that any information provided to Experian is complete, accurate and in the agreed format.
- 1.3. Each of the parties shall use all reasonable endeavours to perform its obligations under this Agreement in accordance with any written timetable for delivery of the Services agreed between the parties.
- 1.4. Each party warrants that it has the full power and authority to enter into this Agreement.
- 1.5. The warranties expressly set out in this Agreement are the only warranties that each party gives to the other in respect of the subject matter of this Agreement. All other warranties, representations or terms of equivalent effect that might be implied by law are excluded to the extent permitted by law.

2. TERM

- 2.1. This Agreement shall be deemed to have commenced on the Commencement Date and, subject to the provisions for early termination set out in this Agreement, shall continue for the Initial Term and thereafter unless terminated by either party serving on the other not less than the Minimum Notice Period to expire on or after the end of the Initial Term.

3. PAYMENTS AND INVOICING

- 3.1. The Client shall pay the fees set out in and/or referred to in the Schedule. All sums referred to in this Agreement are exclusive of VAT.
- 3.2. Experian will invoice the Client monthly in arrears, unless otherwise stated in the Schedule.
- 3.3. All invoices are payable in cleared funds within 30 days after receipt of invoice by the Client. If any sum payable by the Client to Experian is not paid by its due date, Experian shall be entitled to charge interest on the overdue amount at 2% above Barclays Bank plc's base rate from time to time. Interest will accrue on a daily basis from the due date up to the date of actual payment, after as well as before judgment.
- 3.4. If the Client does not meet any minimum fee requirement in a period as referred to in the Schedule, Experian shall be entitled to invoice the Client for the difference between the fees actually payable in that period and that minimum fee. Any such amount shall be payable to Experian as a debt.
- 3.5. Unless otherwise stated in the Schedule, the fees set out in the Schedule will be fixed until increased on the date(s) set out in the Schedule or, if none, then each anniversary of the Commencement Date. Any such increase shall not exceed the percentage increase over the 12 months prior to the increase taking effect:
 - 3.5.1. in the relevant managerial and/or professional band of the HAY Index produced by The HAY Group Management Limited (Company No 763575) based on the financial provincial scales for systems staff in the managerial and professional bands as the case may be (in the case of man day rates);
 - 3.5.2. in the Retail Prices Index published by the Central Statistical Office (in the case of all other fees).
- 3.6. If any index referred to in Clause 3.5 ceases to be published then a broadly equivalent index as may be agreed by the parties will be used as a substitute.

4. NATURE OF THE SERVICES

- 4.1. Experian's services are not intended to be used as the sole basis for any business decision, and are based upon data which is provided by third parties, the accuracy and/or completeness of which it would not be possible and/or economically viable for Experian to guarantee. Experian's services also involve models and techniques based on statistical analysis, probability and predictive behaviour.

Experian is therefore not able to accept any liability, other than under Clause 1.1, for:

- 4.1.1. any inaccuracy, incompleteness or other error in the Services and/or the Information which arises as a result of data provided to Experian by the Client or any third party;
- 4.1.2. any failure of the Services to achieve any particular result for the Client.

5. COMPLIANCE AND AUDIT

- 5.1. Each party shall in connection with the provision or use of the Services (as appropriate) comply with all legislation, regulations, and other rules having equivalent force which are applicable to that party, including the DPA.
- 5.2. Each party shall permit the other (on reasonable notice and during normal working hours) to audit the first party's compliance with its obligations under this Agreement in relation to the use of any software, data or other materials. The party carrying out the audit shall:
 - 5.2.1. observe the other party's procedures relating to the protection of confidential information about any clients or customers of the other party;
 - 5.2.2. take all reasonable steps to minimise disruption to the other party's business during such audit.
- 5.3. In order to protect the integrity of the data used in connection with the Services, the Client shall:
 - 5.3.1. comply with Experian's reasonable instructions and guidelines relating to data security;
 - 5.3.2. not copy, interfere with and/or use in any unauthorised way any digital certificate or any other security device provided by Experian.

6. CONFIDENTIALITY

- 6.1. Each party shall, in respect of the Confidential Information for which it is the recipient:
 - 6.1.1. keep the Confidential Information strictly confidential and not disclose any part of such Confidential Information to any person except as permitted by or as required for the performance of the recipient's obligations under this Agreement;
 - 6.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information.
- 6.2. Each party may disclose Confidential Information to, and allow its use in accordance with this Agreement by, the following provided that it shall procure that any party to whom it discloses Confidential Information shall observe the restrictions in this Clause 6:
 - 6.2.1. employees and officers of the recipient who require it for the recipient to perform its obligations under this Agreement;
 - 6.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice;
 - 6.2.3. if Experian is the recipient, agents and sub-contractors of Experian involved in performing Experian's obligations under this Agreement, and Experian group companies;
 - 6.2.4. if Experian is the recipient the Information Commissioner's Office pursuant to any requirement to do so (whether legally binding or otherwise), and any person as permitted by the DPA or any other statutory provision.
- 6.3. The restrictions in Clause 6.1 do not apply to any information to the extent that it:
 - 6.3.1. is or comes within the public domain other than through a breach of Clause 6.1; or
 - 6.3.2. is in the recipient's possession (with full right to disclose) before receipt from the other party; or
 - 6.3.3. is lawfully received from a third party (with full right to disclose); or
 - 6.3.4. is independently developed by the recipient without access to or use of the Confidential Information; or
 - 6.3.5. is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body.

7. USE OF INFORMATION/SERVICES

- 7.1. The Client agrees that it will:
- 7.1.1. use the Services and/or the Information for the Permitted Purpose only;
 - 7.1.2. not sell, transfer, sub-license, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any third party any of the Services and/or Information;
 - 7.1.3. not (and will not allow any third party to) copy, adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Services and/or any Information.

8. INTELLECTUAL PROPERTY RIGHTS

- 8.1. All Intellectual Property Rights in the Client Data will remain vested in the Client (or its relevant licensors).
- 8.2. All Intellectual Property Rights in the Services, the Information and the Derivative Output will remain vested in Experian (or its relevant licensors).
- 8.3. The Client grants Experian a perpetual, royalty free, non-exclusive, non-transferable licence to use (and copy) the Client Data in order to perform this Agreement and for other agreed purposes and in order for Experian to comply with any requests made to Experian under statute.

9. LIMITS ON LIABILITY

- 9.1. Neither party excludes or limits its liability to the other for any of the following (and nothing in this Agreement shall be construed as excluding or limiting such liability):
 - 9.1.1. for breach of its obligations under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - 9.1.2. for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;
 - 9.1.3. for breach of Clause 6;
 - 9.1.4. (in the case of the Client) for any intentional breach of Clause 7.1.2;
 - 9.1.5. for any matter which it would be illegal for that party to exclude and/or limit, or attempt to exclude and/or limit, its liability; or
 - 9.1.6. for that party's fraud.
- 9.2. The liability of each party to the other (whether in contract, negligence, breach of statutory duty or under any indemnity or otherwise) in respect of any claims for the damage to or loss of tangible property (excluding claims for loss or corruption of, or damage to, data contained on any tangible media) shall be limited to £1 million per claim or series of claims arising from any one incident.
- 9.3. Except as provided in Clauses 9.1, 9.2 and 9.4, the liability of each party to the other in respect of any claims (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) brought under or in connection with this Agreement shall be limited as follows:
 - 9.3.1. for all claims arising in the first Contract Year, liability shall be limited in aggregate to the Initial Contract Value;
 - 9.3.2. for all claims arising in any subsequent Contract Year liability shall be limited in aggregate to the fees (excluding VAT) paid by the Client to Experian under this Agreement in the previous Contract Year.
- 9.4. The limitations in Clause 9.3 shall be in addition to the obligation of the Client to pay fees and charges under this Agreement.
- 9.5. Subject to Clause 9.1, neither party shall be liable to the other (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) for:
 - 9.5.1. any indirect or consequential loss;
 - 9.5.2. the following types of financial loss; loss of profits; loss of earnings; loss of business or goodwill; even if that party had notice of the possibility of the other party incurring such losses;
 - 9.5.3. the following types of anticipated or incidental losses; loss of anticipated savings; increase in bad debt; failure to reduce bad debt; even if that

party had notice of the possibility of the other party incurring such losses.

10. TERMINATION

- 10.1. Either party shall be entitled to terminate this Agreement immediately by serving written notice on the other party in the following circumstances:
 - 10.1.1. if the other party commits a material breach of any of its obligations under this Agreement which is not capable of remedy;
 - 10.1.2. if the other party commits a material breach of any of its obligations under this Agreement which is not remedied within 28 days after receipt of a notice from the party not in breach specifying the breach, requiring its remedy and making clear that failure to remedy may result in termination;
 - 10.1.3. if the other party has passed a resolution for its winding up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any court for its winding-up (save for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is the subject of an application for administration filed at any court or a notice of appointment of an administrator filed at any court or a notice of intention to appoint an administrator given by any person, or is the subject of a notice to strike off the register at Companies House, or is dissolved or declared bankrupt, or has a receiver, administrator or administrative receiver appointed over all or part of its assets, or enters into an arrangement with its creditors, or is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, or ceases to trade or takes or suffers any similar action.
 - 10.1.4. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party which have accrued before termination or which are intended to continue to have effect beyond termination. The Client's entitlement to use the Information shall (unless such entitlement is stated to be perpetual) cease on termination of this Agreement.

11. GENERAL

- 11.1. Any notices to be sent by one party to the other in connection with this Agreement except for the service of Court proceedings shall be in writing and shall be delivered personally or sent by special delivery post (or equivalent service offered by the postal service from time to time) or fax to the addresses of each party as set out on the front page of the Schedule or as otherwise notified in accordance with the provisions of this Clause.
- 11.2. Notices shall be deemed to have been duly given: if delivered personally, upon delivery; if sent by post, two clear days after the date of posting; if sent by fax, when transmitted provided that a confirmatory copy is sent by special delivery by the end of the next business day after transmission.
- 11.3. Except as provided in Clause 11.4 neither party may assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 11.4. Experian shall be entitled to sub-contract any or all of its obligations under this Agreement to a sub-contractor but by doing so Experian shall be responsible for the acts and omissions of the sub-contractor to the same extent as if it had carried out the obligations itself pursuant to this Agreement.
- 11.5. If any part of this Agreement is found to be invalid or unenforceable by any Court or other competent body, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.

11.6.	Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure.	Word or Expression	Meaning
11.7.	If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.	Commencement Date	The Commencement Date set out in the Schedule or (if none) the date that the individual signature sheet identifying this Agreement is signed by both parties;
11.8.	A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provision. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.	Confidential Information	The Information and any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or group companies in or on any medium or format ;
11.9.	This Agreement and all matters arising out of it shall be governed by, and construed in accordance with, the laws of England. The English courts shall have exclusive jurisdiction over any claim or matter which may arise out of or in connection with this Agreement.	Contract Year	A twelve calendar month period from the Commencement Date or any anniversary of the Commencement Date;
11.10.	Variations of this Agreement shall not be effective unless recorded in writing signed by the parties; variations in electronic form shall not count as variations recorded in writing. However, variations to the Schedule made in accordance with any agreed change control procedure shall be effective.	Derivative Output	Information, data and materials that are derived, prepared or generated by Experian and/or its sub-contractors within Experian's environment pursuant to (and/or as a consequence of) the Services, including search footprints but excluding the Client Data;
11.11.	This Agreement sets out all the terms agreed between the parties relating to the subject matter of this Agreement and supersedes any previous agreement between the parties relating to the same subject matter. Neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement (other than fraudulent misrepresentations) made by it or by any agent or person on its behalf which is not expressly contained in this Agreement.	DPA	The Data Protection Act 1998 and any subordinate legislation having effect in England;
11.12.	The parties hereby agree that nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement or a permitted assignee of such a party.	Force Majeure	Any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems, or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations;
11.13.	Each party shall, at the reasonable request and cost of the other party, do whatever is reasonably required to give the other party the full benefit of all the provisions of this Agreement.	Information	All data, scores, reports and other materials of whatever nature provided to the Client or used by Experian as part of or in connection with the Services
11.14.	Nothing in this Agreement is intended to, or shall, operate to:	Initial Contract Value	In respect of the first Contract Year the greater of any minimum fee and the actual amounts due and payable by the Client under this Agreement (excluding VAT);
11.14.1.	create a partnership or joint venture of any kind between the Client and Experian;	Initial Term	The period specified as such in the Schedule;
11.14.2.	authorise either party to act as agent for the other party;	Intellectual Property Rights	Copyright, database right, domain names, patents, registered and unregistered design rights, registered and unregistered trade marks, and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same;
11.14.3.	authorise either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.	Live Date	The date set out in the Schedule or, if none, the date on which the the Services are first available for use in a live or production environment other than for the purposes of testing;
11.15.	In this Agreement:	Minimum Notice Period	The minimum period of notice to be served to terminate this Agreement as set out in the Schedule (and if none is specified 12 months);
11.15.1.	any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;	Permitted Purpose	Unless otherwise stated in the Schedule, the internal business purposes of the Client and not in any event for the provision of any bureau services to any third parties;
11.15.2.	references to clauses and schedules are to the Clauses of and the Schedule to this Agreement;	Revenue Year	Unless otherwise stated in the Schedule, a period of 12 calendar months commencing on the Live Date or any anniversary of the Live Date;
11.15.3.	the singular includes the plural and vice versa;	Schedule	The schedule(s) containing the specific terms relating to this Agreement;
11.15.4.	the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;	Services	The services specified in the Schedule and all other services supplied by Experian to the Client under or in connection with this Agreement;
11.15.5.	where any matter is to be agreed, such agreement must be recorded in writing;	Specification	Any document referred to in the Schedule that sets out details of the agreed functionality to be provided by any Experian Materials or a detailed description of the Services (as such document is updated by agreement between the parties from time to time);
11.15.6.	wherever the words "including", "include", "includes" or "included" are used they shall be deemed to be followed by the words "without limitation" unless the context otherwise requires.		
11.16.	The contents of the Schedule shall prevail over the contents of these Terms and Conditions to the extent of any conflict or inconsistency		

12. DEFINITIONS

In this Agreement the following words and expressions shall have the following meanings:

Word or Expression	Meaning
Client Data	Any data owned by the Client and provided to Experian in connection with this Agreement;