

**EXPERIAN TERMS AND CONDITIONS VERSION 4.2 ("TERMS AND CONDITIONS")**

**ADOPTED: 09/2016**

**SECTION A: CORE TERMS**

These Core Terms shall always apply.

**1. PRIMARY OBLIGATIONS AND WARRANTIES**

- 1.1. Experian shall:
- 1.1.1. provide the Services in the Territory in accordance with the Specification;
  - 1.1.2. use all reasonable care and skill in the performance of the Services (including in the collection and collation of any data on which the Services are based or which is comprised within the Services); and
  - 1.1.3. use suitably qualified personnel in the provision of the Services.
- 1.2. The Client shall provide Experian with any information or assistance which the parties have agreed the Client shall provide in order for Experian to perform its obligations under this Agreement, and shall use all reasonable endeavours to ensure that any such information provided to Experian is complete, accurate and in the agreed format.
- 1.3. Each of the parties shall:
- 1.3.1. use all reasonable endeavours to perform its obligations under this Agreement in accordance with the Project Timetable; and
  - 1.3.2. ensure that its personnel, whilst on the premises of the other party, comply with that party's reasonable requirements governing security and health and safety as have been notified to it.
- 1.4. Each party warrants that:
- 1.4.1. it has the full power and authority to enter into this Agreement;
  - 1.4.2. it has obtained and will continue to hold all necessary licences, consents, permits and agreements required for it to comply with its obligations under this Agreement and for the grant of rights to the other party under this Agreement; and
  - 1.4.3. the use by the other party as permitted by this Agreement of any information, data, software, documentation, scorecards and/or services which it provides to the other party shall not infringe any third party Intellectual Property Rights in the Territory.
- 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 the Schedule.
- 3.2. Apart from any sums which are stated in the Schedule to be payable in accordance with a specified payment timetable, all sums payable by the Client to Experian will be invoiced monthly in arrears. All invoices are payable in cleared funds within 30 days after the date of the relevant invoice.
- 3.3. If any sum payable by the Client to Experian is not paid in cleared funds by its due date, Experian shall be entitled to charge interest on the overdue amount at 2% per annum 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 under this Agreement the Client agrees in the Schedule to pay a minimum fee over any particular period, and it does not meet such minimum fee requirement in that period,

Experian shall be entitled to invoice the Client for the difference between the relevant fees actually payable in respect of that period and such minimum fee. Any such amount shall be payable to Experian as a debt.

- 3.5. All sums referred to in this Agreement are exclusive of VAT or any other similar sales or turnover tax (if applicable); such taxes shall be payable on the same payment terms as apply to the sums to which the taxes relate.
- 3.6. 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 in RPI in respect of the 12 month period preceding the date of such increase.

**4. NATURE AND USE OF THE SERVICES**

- 4.1. Experian's services involve models and techniques based on statistical analysis, probability and predictive behaviour and are not intended to be used as the sole basis for any business decision. Experian is therefore not able to accept any liability, other than under Clause 1.1.2, for any failure of the Services to achieve any particular result.
- 4.2. The Client agrees that it will:
- 4.2.1. use the Services, and/or any Experian Data and/or Experian Materials provided under this Agreement, for the Permitted Purpose only and in accordance with any Documentation;
  - 4.2.2. 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 Experian Data and/or Experian Materials provided under this Agreement, except as specifically permitted by this Agreement;
  - 4.2.3. not (and will not allow any third party to) adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with any Experian Data and/or Experian Materials provided under this Agreement without the prior written consent of Experian or as otherwise permitted by law;
  - 4.2.4. only take such copies of the Experian Data and/or Experian Materials as are reasonably required for the use of the Experian Data and/or Experian Materials in accordance with this Agreement; and
  - 4.2.5. become liable to pay increased licence fees on the basis of the increased number of users or machines or sites, if the Experian Data or Experian Materials are licensed on a user or machine or site licence basis, and the number of users or machines or sites set out in the Schedule is exceeded.

**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.
- 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; and
  - 5.2.2. take all reasonable steps to minimise disruption to the other party's business during such audit.
- 5.3. The Client shall not copy, interfere with and/or use in any unauthorised way any User Access Device provided by Experian.
- 5.4. It is the Client's responsibility to inform Experian of any unauthorised use and/or disclosure of any User Access Device so that Experian can suspend or disable that User Access Device as appropriate. The Client shall remain liable for any and all fees for the Services incurred in connection with the use of any User Access Device, until the Client has informed Experian.

- 5.5. If as a result of (a) any changes in any legislation, regulations, codes or other rules having equivalent force (including any reasonable interpretation thereof) and/or (b) any changes in the supply of third party data used in connection with the Services, Experian considers the Services to have become Affected Services, Experian shall be entitled to do one of the following on giving prior notice to the Client (and Experian shall use reasonable endeavours to give three months' prior written notice):
- 5.5.1. modify the Affected Services as necessary; or
  - 5.5.2. procure alternative data, the same as or similar to the data used in the Affected Services; or
  - 5.5.3. terminate this Agreement (without liability) in respect of those Affected Services.
- 5.6. In exercising its rights under Clause 5.5, Experian will consult with the Client, and act reasonably and in a way which is consistent with its treatment of its other similarly affected clients.
- 5.7. In exercising its rights under Clause 5.5.3, Experian will (where appropriate) refund any fees paid by the Client in advance in respect of the Affected Services.
- 5.8. Where the Client is authorised by the Financial Conduct Authority, each party will cooperate and share information with the other as reasonably necessary from time to time (including in circumstances where the parties may individually or collectively have caused detriment to end consumers) to ensure that both parties discharge their regulatory obligations, and in order to help achieve positive consumer outcomes.
- 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; and
  - 6.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information.
- 6.2. The parties may disclose the Confidential Information for which it is the recipient to, and allow its use in accordance with this Agreement by, the following (as long as the conditions in Clause 6.3 are met):
- 6.2.1. employees and officers of the recipient who necessarily require it as a consequence of the performance of the recipient's obligations under this Agreement;
  - 6.2.2. the recipient's auditors and professional advisors solely for the purposes of providing professional advice and any other persons or bodies having a legal right or duty to have access to, or knowledge of, the Confidential Information in connection with the business of the recipient;
  - 6.2.3. the recipient's Group Companies for reasonable reporting purposes;
  - 6.2.4. (in the case of Experian being the recipient), agents and sub-contractors of Experian who necessarily require it as a consequence of the performance of Experian's obligations under this Agreement.
- 6.3. As a condition of the rights set out in Clause 6.2 the party wishing to exercise the rights must:
- 6.3.1. ensure that any person to whom it discloses Confidential Information is under an obligation of confidentiality in relation to such Confidential Information; and
  - 6.3.2. procure that such persons observe the restrictions in this Clause 6.
- 6.4. The restrictions in Clause 6.1 do not apply to any information to the extent that it:
- 6.4.1. is or comes within the public domain other than through a breach of Clause 6.1; or
  - 6.4.2. is in the recipient's possession (with full right to disclose) before receipt from the other party; or
  - 6.4.3. is lawfully received from a third party (with full right to disclose); or
  - 6.4.4. is independently developed by the recipient without access to or use of the Confidential Information of the disclosing party; or
  - 6.4.5. is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body or in accordance with the rules of any recognised stock exchange.
- 7. INTELLECTUAL PROPERTY RIGHTS**
- 7.1. All Intellectual Property Rights in the Client Materials will remain vested in the Client (or its relevant licensors) and to the extent that any rights in such materials vest in Experian by operation of law, Experian hereby assigns such rights to the Client.
- 7.2. All Intellectual Property Rights in the Experian Data, the Experian Materials and the Derivative Output will remain vested in Experian (or its relevant licensors) and to the extent that any rights in such data or materials vest in the Client by operation of law, the Client hereby assigns such rights to Experian.
- 7.3. Each party:
- 7.3.1. acknowledges and agrees that it shall not acquire or claim any title to any of the other party's Intellectual Property Rights (or those of the other party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights;
  - 7.3.2. agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other party's ownership (or the other party's licensors' ownership) of such Intellectual Property Rights; and
  - 7.3.3. agrees not to remove, suppress or modify in any way any proprietary marking, including any trade mark or copyright notice, on or in the materials of the other party and agrees to incorporate any such proprietary markings in any copies it takes of such materials.
- 8. LIMITS ON LIABILITY**
- 8.1. 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):
- 8.1.1. for breach of its obligations under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
  - 8.1.2. for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;
  - 8.1.3. for breach of Clause 6;
  - 8.1.4. (in the case of the Client) for any intentional breach of Clause 4.2.2;
  - 8.1.5. 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
  - 8.1.6. for that party's fraud or fraudulent misrepresentation.
- 8.2. 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.
- 8.3. Except as provided in Clauses 8.1, 8.2, and 8.4, 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:
- 8.3.1. for all claims arising in the first Contract Year, liability shall be limited in aggregate to the Initial Contract Value;
  - 8.3.2. 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.
- 8.4. The limitations in Clause 8.3 shall:
    - 8.4.1. not apply to the indemnities given under either Clause 21.1 or Clause 21.2;
    - 8.4.2. not apply to any liability of the Client under Clause 22.1.2; or
    - 8.4.3. be in addition to the obligation of the Client to pay the fees and charges under this Agreement.
  - 8.5. Subject to Clause 8.1, neither party shall be liable to the other (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) for:
    - 8.5.1. any indirect or consequential loss;
    - 8.5.2. 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; or
    - 8.5.3. 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.

## 9. TERMINATION

- 9.1. Either party shall be entitled to terminate this Agreement immediately by serving written notice on the other party in the following circumstances:
  - 9.1.1. if the other party commits a material breach of any of its obligations under this Agreement which is not capable of remedy;
  - 9.1.2. 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; or
  - 9.1.3. if the other party has passed a resolution for its winding up or is subject to a petition presented to any court for its winding-up (save, in either case, for a voluntary winding-up for the purpose of a voluntary reconstruction or amalgamation), is the subject of an application for administration, or a notice of intention to appoint an administrator, filed at any court, 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 suspends or threatens to suspend payment of its debts 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.
- 9.2. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party:
  - 9.2.1. which have accrued before termination; or
  - 9.2.2. which are intended to continue to have effect beyond termination.
- 9.3. Upon termination of this Agreement (or the relevant elements of it) and subject to Clause 9.4:
  - 9.3.1. the parties shall each promptly return the Confidential Information of the other party to its owner;
  - 9.3.2. the Client shall, at Experian's request either return any Experian Materials and/or Experian Data to Experian or destroy such materials and, if destroyed, provide a certificate stating that such materials have been destroyed; and
  - 9.3.3. Experian shall promptly return any Client Materials and/or Client Data to the Client on request.
- 9.4. Experian's obligations under Clause 9.3 shall not apply where it is necessary to retain any Confidential Information of the Client to exercise any rights granted under this Agreement which are intended to survive termination of this

Agreement and/or to the extent that it would be impracticable to return any such Confidential Information or materials as a result of such Confidential Information or materials having been reformatted in order for Experian to provide the Services or for Experian to exercise any rights granted under this Agreement, provided always that the retention of any Confidential Information of the Client shall be subject to Experian's obligations under Clause 6 and Clause 19.

- 9.5. The licences granted by Experian under this Agreement will automatically expire on termination of this Agreement for any reason and the Client shall cease to use all Experian Data and Experian Materials (unless any licence is expressed in the Schedule to be perpetual in which case such licence and any terms relating to the extent and/or exercise of that licence shall remain in force notwithstanding termination of this Agreement, except if termination is by Experian pursuant to Clause 9.1).

## 10. FORCE MAJEURE

- 10.1. 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.
- 10.2. If the Force Majeure persists for a period of 28 days or more, the party not claiming Force Majeure may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on the Client to pay accrued fees).

## 11. ASSIGNMENT AND SUB-CONTRACTING

- 11.1. Except as provided in Clause 11.2 neither party may assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, or purport to do any of these things, or sub-contract any or all of its obligations under this Agreement without the prior written consent of the other party (such consent not to be unreasonably withheld or delayed).
- 11.2. 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.

## 12. SEVERANCE

- 12.1. If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
- 12.2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend such provision such that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.

## 13. NOTICES

- 13.1. 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 sent by special delivery post (or equivalent service offered by the postal service from time to time) to either the addresses of each party as set out in this Agreement or to the registered office addresses of each party (and in the case of notices sent to Experian, with a copy to Experian's Legal Department).
- 13.2. Notices shall be deemed to have been duly given two clear days after the date of posting.
- 13.3. If either party notifies the other party of a change to its details for the purposes of Clause 13.1, such notification shall only be effective on the date specified in such notice or seven days after notice is given, whichever is later.

## 14. GENERAL

- 14.1. 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.

- 14.2. 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.
- 14.3. 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.
- 14.4. 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.
- 14.5. 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 (whether oral or written) relating to the same subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any warranty or representation (whether made innocently or negligently) that is not set out in this Agreement. Nothing in this Clause shall limit or exclude any liability for fraudulent misrepresentations.
- 14.6. 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.
- 14.7. 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.
- 14.8. This Agreement may be executed in any number of counterparts.
- 14.9. Nothing in this Agreement is intended to, or shall, operate to:
- 14.9.1. create a partnership or joint venture of any kind between the Client and Experian;
  - 14.9.2. authorise either party to act as agent for the other party; or
  - 14.9.3. authorise either party to act in the name or on behalf of, or to otherwise bind, the other party in any way.
- 14.10. In this Agreement:
- 14.10.1. any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;
  - 14.10.2. references to Clauses are to the clauses of the particular section of the Experian Terms and Conditions in which they appear, unless reference is made to another set of Experian Terms and Conditions;
  - 14.10.3. references to schedules are to the Schedule;
  - 14.10.4. the singular includes the plural and vice versa;
  - 14.10.5. the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
  - 14.10.6. where any matter is to be agreed, such agreement must be recorded in writing; and
  - 14.10.7. 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.
- 14.11. The contents of the Schedule shall prevail over the contents of these Terms and Conditions to the extent of any conflict or inconsistency.

## SECTION B: DATA TERMS

These terms relating to data are supplemental to the Core Terms, and apply only if either party provides data to the other party.

### 15. PROVISION OF DATA

- 15.1. Where Experian agrees to supply Experian Data to the Client, Experian grants the Client (subject to Clauses 4.2 and 9.5) a non-exclusive non-transferable licence to use any Experian Data provided as part of the Services in the

Territory for the Permitted Purpose on any licence terms identified in the Schedule. The licence granted under this Clause is made separately in respect of each individual element of the Experian Data and commences on the day that each element of the Experian Data is first made available to the Client.

- 15.2. The use by the Client of any Services which are dependent upon data derived from a Data Sharing Scheme is conditional upon the Client complying with the relevant Data Sharing Scheme Rules which are in force from time to time.

- 15.3. If at any time the condition in Clause 15.2 is not satisfied, Experian shall be entitled to discontinue the provision of any and all Services which utilise data from the relevant Data Sharing Scheme.

## 16. CLIENT OBLIGATIONS

- 16.1. In addition to the obligations set out in the Clause 5.3, the Client shall comply with Experian's reasonable instructions and guidelines relating to data security.

## 17. USE OF CLIENT DATA

- 17.1. The Client grants Experian (subject to Clause 9.3) a royalty free, non-exclusive, non-transferable licence to use (and copy) the Client Data solely for the purposes of:
- 17.1.1. performing this Agreement; and
  - 17.1.2. complying with any requests made to Experian under statute and/or regulation.

## 18. NATURE OF DATA

- 18.1. Experian Data is 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 is therefore not able to accept any liability, other than under Clause 1.1.2, for any inaccuracy, incompleteness or other error in the Experian Data which arises as a result of data provided to Experian by the Client or any third party.

## 19. DATA PROTECTION

- 19.1. Without prejudice to the general obligations under Clause 5.1 each of the parties shall:
- 19.1.1. notify all relevant details of any processing of Personal Data to the ICO as set out in the DPA and only process such Personal Data in accordance with the terms of its notification under the DPA; and
  - 19.1.2. comply with its obligations in respect of the rights of the individuals to whom the provision of the Services relates as set out in the DPA (including the data protection principles referred to in the DPA).
- 19.2. Experian shall (in circumstances where it is a data processor) process any Personal Data contained within the Client Data only in accordance with the instructions of the Client. The Client shall be deemed to have instructed Experian to process any such Personal Data to the extent reasonably necessary for the provision of the Services.
- 19.3. The Client shall ensure that any Personal Data which the Client makes available to Experian for the purposes of Experian Processing it as contemplated by this Agreement satisfies the requirements of the first data protection principle under the DPA.
- 19.4. Each party warrants that it shall take appropriate technical and organisational measures against unauthorised or unlawful Processing of personal data and against accidental loss or destruction of, or damage to, the Personal Data of the other party.

## SECTION C: MATERIALS TERMS

These terms relating to Client Materials and Experian Materials are supplemental to the Core Terms, and apply only if either party provides such materials to the other.

### 20. LICENCE AND USE

- 20.1. Experian grants the Client (subject to Clauses 4.2 and 9.5) a non-exclusive, non-transferable licence to use any Experian Materials provided as part of the Services in the Territory for the Permitted Purpose on any licence terms identified in the Schedule. The licence granted under this Clause 20.1 is

made separately in respect of each individual element of the Experian Materials and commences on the day that each such element of the Experian Materials is first made available to the Client.

- 20.2. The Client agrees that it will, in the case of a user and/or machine and/or site specific licence, only use the Experian Materials for the number of users on the machines and/or at the site (as the case may be) specified in the Schedule.
- 20.3. Experian shall not be in breach of its obligations or warranties under this Agreement with regard to any software provided to the Client under this Agreement to the extent that any failure of the software to comply with its Specification has no material effect upon the functionality of the software or upon the ability of the Client to use the software.
- 20.4. The Client grants Experian (subject to Clause 9.3) a royalty free, non-exclusive, non-transferable licence to use (and copy) the Client Materials solely for the purposes of performing this Agreement and complying with any requests made to Experian under statute and/or regulation.

## 21. THIRD PARTY CLAIMS

- 21.1. Subject to Clause 21.3, Experian shall fully indemnify the Client against:
  - 21.1.1. any amounts paid by the Client to any third party as a result of or in connection with any claim which that third party brings against the Client alleging that its Intellectual Property Rights are infringed by the provision by Experian to the Client of the Experian Materials or the use of the Experian Materials by the Client as permitted by the terms of this Agreement; and
  - 21.1.2. any associated legal expenses reasonably and properly incurred.
- 21.2. Subject to Clause 21.3, the Client shall fully indemnify Experian against:
  - 21.2.1. any amounts paid by Experian to any third party as a result of or in connection with any claim which that third party brings against Experian alleging that its Intellectual Property Rights are infringed by the provision by the Client to Experian of the Client Materials or the use of the Client Materials by Experian as permitted by the terms of this Agreement; and
  - 21.2.2. any associated legal expenses reasonably and properly incurred.
- 21.3. The indemnities in Clauses 21.1 and 21.2 shall not apply to the extent that any claim arises as a result of use of an infringing design supplied or made by the indemnified party, and are subject to the indemnified party:
  - 21.3.1. notifying the indemnifying party promptly on becoming aware of any matter or claim to which the indemnity might relate;
  - 21.3.2. not making any admission, settlement or payment in respect of such matter or claim, other than a payment made pursuant to a court order, without the prior written consent of the indemnifying party (such consent not to be unreasonably withheld or delayed); and
  - 21.3.3. allowing the indemnifying party, where appropriate, to appoint legal advisers of its choice and to conduct and/or settle negotiations and/or proceedings relating to such matter or claim and the indemnified party shall comply with the indemnifying party's reasonable requests in the conduct of any such negotiations and/or proceedings.
- 21.4. If any claims are made, or in Experian's reasonable opinion are likely to be made, by any third party alleging that its Intellectual Property Rights are infringed by the Client's use of the Experian Materials as permitted by the terms of this Agreement, Experian may at its sole option and expense:
  - 21.4.1. procure for the Client the right to continue using the relevant Experian Materials (or any part of them) in accordance with the terms of this Agreement; and/or
  - 21.4.2. modify the relevant Experian Materials to avoid the infringement or replace the relevant Experian

Materials with non-infringing materials, whilst still providing the same, or substantially similar, functionality to the infringing materials.

- 21.5. This Clause 21 sets out the entire liability of both parties and the sole remedy of both parties with respect to the infringement of a third party's Intellectual Property Rights and any claims relating to the indemnity given in this Clause 21.

## SECTION D: PERMITTED USERS

These terms relating to Permitted Users are supplemental to the Core Terms and shall apply only where the Schedule states that there are Permitted Users in connection with this Agreement.

### 22. PERMITTED USERS

- 22.1. It may be of benefit to the Client for agreed third parties to have certain access to the Services. The Client shall therefore be entitled to allow Permitted Users to exercise the Permitted User Rights. In order to achieve this without the need for each Permitted User to contract directly with Experian, the Client agrees as follows:
  - 22.1.1. the Client shall procure that each Permitted User complies with all relevant provisions of this Agreement; and
  - 22.1.2. if any Permitted User brings any claim against Experian in connection with the subject matter of this Agreement, the Client shall reimburse Experian in full for any amounts which Experian is obliged to pay to the Permitted User(s) in connection with such claim, and for any associated legal expenses reasonably and properly incurred by Experian. However, the Client shall be entitled to bring a claim (subject to Clause 8) against Experian in respect of all losses and liabilities suffered or incurred by a Permitted User which have been directly caused by a breach of this Agreement by Experian and which, for the purposes of this Clause 22 only, shall be deemed to be losses and liabilities of the Client; and
  - 22.1.3. unless expressly agreed otherwise in the Schedule, a Permitted User must at all times be a Client Group Company in order to have access to the Services as set out in this Agreement. If any Permitted User is no longer a Client Group Company, the rights of the relevant Permitted User will automatically terminate (without further notice and without liability to Experian) on the date it ceases to be a Client Group Company; and
  - 22.1.4. if the Client's rights under this Agreement terminate (for whatever reason), the Permitted Users Rights shall also automatically terminate (without further notice and without liability to Experian).
- 22.2. The Client may (as long as the conditions in Clause 6.3 are met) disclose Confidential Information to, and allow its use in accordance with this Agreement by, Permitted Users to the extent required to enable such Permitted Users to exercise the Permitted User Rights.
- 22.3. References to Client Data and Client Materials in this Agreement shall be deemed to include data and materials provided by Permitted Users.

## SECTION E: DEFINITIONS

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

Word or Expression	Meaning
Affected Services	Services which Experian (in its reasonable opinion) considers that it can no longer provide in accordance with their Specification or that it cannot provide at all as a consequence of the trigger events set out in Clause 5.5;

<b>Word or Expression</b>	<b>Meaning</b>	<b>Word or Expression</b>	<b>Meaning</b>
Agreement	The agreement between Experian and the Client incorporating the relevant Sections of these Terms and Conditions (as applicable) and the other documents and terms referred to in the Schedule;	Experian Materials	Software and any materials, Documentation, Scorecards or other items developed and/or licensed by Experian to the Client in connection with this Agreement excluding Experian Data;
Client Data	Any of the data (including Personal Data) and/or databases supplied by the Client and provided to Experian in connection with this Agreement but excluding any data supplied to the Client by Experian;	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;
Client Materials	Any of the items provided to Experian by the Client in connection with this Agreement and includes Client Data;	Group Company	any company which is in relation to Experian or (as the case may be) the Client, a subsidiary, holding company or subsidiary of a holding company as the terms "subsidiary" and "holding company" are defined by section 1159 of the Companies Act 2006. "Experian Group Company" and "Client Group Company" shall be interpreted in this way;
Client Products	Those products of the Client (if any) set out in the Schedule (and such other products as the parties may agree from time to time) in respect of which the Services are provided;	ICO	The Information Commissioner's Office (or any other title under which such office subsequently operates);
Commencement Date	The Commencement Date set out in the Schedule or in the absence of such date then the date that on which this Agreement is signed by the final signatory;	Initial Contract Value	The greater of (1) the amounts (excluding VAT) payable by the Client under this Agreement in the first Contract Year as specified in the Schedule; and (2) the amounts (excluding VAT) actually paid by the Client under this Agreement in the first Contract Year;
Confidential Information	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, including Experian Data, Experian Materials, Client Data and Client Materials;	Initial Term	The period specified as such in the Schedule;
Contract Year	A twelve calendar month period from the Commencement Date or any anniversary of the Commencement Date, or, if this Agreement is for a Term of less than twelve calendar months, the Term;	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;
Core Terms	The provisions set out in Section A and the definitions set out in Section E of these Terms and Conditions;	Minimum Notice Period	The minimum period of notice to be served by either party to terminate this Agreement as set out in the Schedule (and if none is specified 12 months);
Data Sharing Scheme	Any scheme, programme, membership, information exchange, or other arrangement where certain data sharing activities are carried out subject to the relevant Data Sharing Scheme Rules;	Permitted Users	The permitted users identified in the Schedule;
Data Sharing Scheme Rules	The rules of the relevant Data Sharing Scheme;	Permitted User Rights	The rights of the Permitted User set out in the Schedule;
Derivative Output	Information, data and materials that are derived, prepared or generated by Experian and/or its sub-contractors pursuant to (and/or as a consequence of) the Services, including search footprints but excluding the Client Materials themselves;	Permitted Purpose	Unless otherwise set out in the Schedule, the internal business purposes of the Client in connection with the Client Products in the Territory and not in any event for the provision of bureau services to any third parties;
Documentation	Any or all of the Specification, user documentation, product documentation, technical documentation including guidelines relating to data security and access and/or statements of functionality;	Personal Data Processing	The meaning specified in the DPA;
DPA	The Data Protection Act 1998 and any subordinate legislation having effect in England;	Project Timetable	Any timetable expressly set out or referred to in the Schedule or otherwise agreed between the parties from time to time;
Experian Data	Any of the data (including Personal Data) and/or databases and/or scores supplied by Experian to the Client in connection with this Agreement but excluding the Client Data;	RPI	the Retail Prices Index as most recently published by the Office for National Statistics (or its successor from time to time), or any official index replacing it;
		Schedule	The schedule or schedules which describe the subject matter and specific terms relating to this Agreement;

<b>Word or Expression</b>	<b>Meaning</b>
Scorecard	A statistical formula derived to aid decision making and any supporting material in relation to such formulae;
Services	The services as specified in the Schedule and all other services supplied by Experian to the Client under or in connection with this Agreement, including the provision and grant of licences in respect of any Experian Data and/or Experian Material;
Specification	Any document identified as a specification in the Schedule (as such document is updated by agreement between the parties from time to time), or if none, Experian's standard configuration for the Services from time to time;
Term	The duration of this Agreement as determined in accordance with Clause 2.1;
Territory	The United Kingdom or such other territory as is specified in the Schedule;
User Access Device	Any identification code, username, password, digital certificate, web certificate or any other security device provided by Experian and used by the Client to access the Services.