

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;
 - 1.1.3. use all reasonable care and skill in the collection and collation of any data on which the Services are based or which is comprised within the Services;
 - 1.1.4. only use personnel in the provision of the relevant Services who are suitably qualified.
- 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;
 - 1.3.2. ensure that its personnel, whilst on the premises of the other party, comply with that party's reasonable regulations 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;
 - 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.
- 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 receipt of the relevant invoice by the Client. Experian's records of the Client's use of the Services shall be used as the basis for calculation of fees payable for the Services unless there is evidence of such records being incorrect and Experian shall make such records available to the Client for inspection.
- 3.3. Unless stated in the Schedule, all fees specified shall be exclusive of all reasonable out of pocket expenses which shall, where agreed by the Client, be payable in addition by the Client. Experian shall provide receipts or other reasonable evidence to the Client of all out of pocket expenses.

- 3.4. 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% 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.

- 3.5. 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.

- 3.6. 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.

- 3.7. If the Experian Data and/or Experian Materials are licensed on a user or machine licence basis, and the number of users or machines stated in the Schedule is exceeded, the Client shall become liable to pay increased licence fees on the basis of the increased number of users or machines.

- 3.8. The fees set out in the Schedule will be fixed until increased on the next (and on each subsequent) Price Indexation Date. Any such increase shall not exceed the relevant increase in the Relevant Index over the corresponding period from the last Price Indexation Date.

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 Experian Data 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 or any Additional User.

5. ADDITIONAL USERS

- 5.1. 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 Additional Users to exercise the Additional User Rights. In order to achieve this without the need for each Additional User to contract direct with Experian, the Client agrees as follows:

- 5.1.1. the Client shall procure that each Additional User complies with all relevant provisions of this Agreement; and
- 5.1.2. if any Additional 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 Additional User 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 11) against Experian in respect of all losses and liabilities suffered or incurred by an Additional User which have been directly caused by Experian's breach of this Agreement and which, for the purposes of this Clause 5.1 only, shall be deemed to be losses and liabilities of the Client.

6. COMPLIANCE AND AUDIT

- 6.1. 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.
- 6.2. In addition to the general obligations under Clause 6.1 each of the parties shall:

- 6.2.1. 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;
- 6.2.2. 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).
- 6.3. 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.
- 6.4. The Client shall ensure that the Processing by Experian (as contemplated by this Agreement) of any Personal Data which the Client makes available to Experian satisfies the requirements of the first data protection principle under the DPA.
- 6.5. 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.
- 6.6. 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:
- 6.6.1. observe the other party's procedures relating to the protection of confidential information about any clients or customers of the other party;
- 6.6.2. take all reasonable steps to minimise disruption to the other party's business during such audit.
- 6.7. In order to protect the integrity of the data used in connection with the Services, the Client shall:
- 6.7.1. comply with Experian's reasonable instructions and guidelines relating to data security;
- 6.7.2. not copy, interfere with and/or use in any unauthorised way any digital certificate, web certificate or any other security device provided by Experian;
- 6.7.3. in all cases where use of the Services is dependant upon CAIS Data enter into and comply with Experian's standard CAIS agreement.
- 6.8. If as a result of any changes in any legislation, regulations, codes or other rules having equivalent force (including any reasonable interpretation thereof), Experian considers in its reasonable opinion that it is no longer desirable or commercially viable for Experian to continue to provide the Services at all or in accordance with this Agreement, or if any third party data or software becomes unavailable to Experian, Experian shall be entitled to do one of the following on giving three months' prior notice to the Client:
- 6.8.1. modify the affected Services as necessary to accommodate such changes or unavailability; or
- 6.8.2. terminate this Agreement (without liability) in respect of those Services which are affected by such changes or unavailability.
- 6.9. In exercising its rights under Clause 6.8, Experian will consult with the Client, and act reasonably and in a way which is consistent with its treatment of its other clients.
- 7. CONFIDENTIALITY**
- 7.1. Each party shall, in respect of the Confidential Information for which it is the recipient:
- 7.1.1. 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;
- 7.1.2. take all reasonable steps to prevent unauthorised access to the Confidential Information;
- 7.1.3. not use the Confidential Information other than for the purposes set out in this Agreement.
- 7.2. The parties may disclose the Confidential Information to, and allow its use in accordance with this Agreement by, the following (as long as the conditions in Clause 7.3 are met):
- 7.2.1. employees and officers of the recipient who necessarily require it as a consequence of the performance of the recipient's obligations under this Agreement;
- 7.2.2. 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;
- 7.2.3. in the case of Experian being the recipient:
- 7.2.3.1. agents and sub-contractors of Experian who necessarily require it as a consequence of the performance of Experian's obligations under this Agreement, and Experian Group Companies;
- 7.2.3.2. the ICO pursuant to any requirement to do so (whether legally binding or otherwise);
- 7.2.3.3. any person as permitted by the DPA or any other statutory provision.
- 7.2.4. in the case of the Client being the recipient, Additional Users to the extent required to enable such Additional Users to exercise the Additional Users' Rights.
- 7.3. As a condition of the rights set out in Clause 7.2 (excluding Clause 7.2.3.2 and 7.2.3.3) the party wishing to exercise the rights must:
- 7.3.1. ensure that any party to whom it discloses Confidential Information is under an obligation of confidentiality in relation to such Confidential Information; and
- 7.3.2. procure that such persons observe the restrictions in this Clause 7.
- 7.4. The restrictions in Clause 7.1 do not apply to any information to the extent that it:
- 7.4.1. is or comes within the public domain other than through a breach of Clause 7.1; or
- 7.4.2. is in the recipient's possession (with full right to disclose) before receipt from the other party; or
- 7.4.3. is lawfully received from a third party (with full right to disclose); or
- 7.4.4. is independently developed by the recipient without access to or use of the Confidential Information; or
- 7.4.5. 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.
- 7.5. If the Client is a Public Authority then the Client acknowledges as follows:
- 7.5.1. the provisions of Clause 7.2.2 are not intended to allow the Client under the FOIA to:
- 7.5.1.1. confirm or deny the existence of any Confidential Information of Experian;
- 7.5.1.2. disclose any Confidential Information of Experian;
- 7.5.2. the details (if any) contained in the section of the Schedule entitled "Freedom of Information" reflect the broad categories of information that the parties are agreed in principle should or should not be disclosed in response to a request about or relating to Experian under the FOIA (including a request relating to this Agreement);
- 7.6. If the Client is a Public Authority the Client agrees that upon receiving any request about or relating to Experian under the FOIA (including a request relating to this Agreement) or otherwise it shall:
- 7.6.1. give full details of such request to Experian as soon as reasonably practicable;

- 7.6.2. consult with Experian in relation to the response to such request;
- 7.6.3. refer to the section of the Schedule entitled "Freedom of Information" in considering such request;
- 7.6.4. consider in good faith any comments or suggestions from Experian as to which information should be provided as part of the response to such request.

8. LICENCE AND USE

- 8.1. Experian grants the Client a non-exclusive, non-transferable licence to use any Experian Data and/or 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 is made separately in respect of each individual element of the Experian Data and/or Experian Materials and commences on the day that each such element of the Experian Data and/or Experian Materials is first made available to the Client.
- 8.2. The licence granted under Clause 8.1 will automatically expire on termination of this Agreement for any reason (unless the licence is expressed in the Schedule to be perpetual in which case the licence and any terms relating to the extent and/or exercise of that licence shall remain in force notwithstanding termination of the Agreement, except if termination is by Experian under Clause 12.1).
- 8.3. The Client grants Experian:
 - 8.3.1. a perpetual, royalty free, non-exclusive, non-transferable licence to use and copy the Client Data which is provided to Experian or input into any of Experian's databases under or in accordance with the terms of this Agreement for any agreed purposes and/or in order for Experian to comply with any requests made to Experian under statute;
 - 8.3.2. subject to Clause 8.3.1 for the Term, a royalty free, non-exclusive and non-transferable licence to copy and use any Client Materials in order to perform its obligations under this Agreement.
- 8.4. The Client agrees that it will:
 - 8.4.1. use the Services, Experian Data and/or Experian Materials for the Permitted Purpose only and in accordance with any Documentation;
 - 8.4.2. (subject to Clause 5) not sell, transfer, sublicense, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any third party any of the Services, Experian Data and/or Experian Materials;
 - 8.4.3. not (and will not allow any third party to) adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with the Experian Data and/or Experian Materials without the prior written consent of Experian or as otherwise permitted by law;
 - 8.4.4. 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;
 - 8.4.5. in the case of a machine and/or site specific licence, only use the Experian Data and/or Experian Materials on the equipment and/or at the site (as the case may be) specified in the Schedule.
- 8.5. Experian shall not be in breach of its obligations under Clause 1.1.1 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.

9. INTELLECTUAL PROPERTY RIGHTS

- 9.1. 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.

- 9.2. All Intellectual Property Rights in the Experian Materials, the Experian Data and the Derivative Output will remain vested in Experian (or its relevant licensors) and to the extent that any rights in such materials and data vest in the Client by operation of law, the Client hereby assigns such rights to Experian.

- 9.3. Each party:

- 9.3.1. 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;
- 9.3.2. 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;
- 9.3.3. 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

10. THIRD PARTY CLAIMS

- 10.1. Subject to Clause 10.3, Experian shall fully indemnify the Client against:
 - 10.1.1. 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
 - 10.1.2. any associated legal expenses reasonably and properly incurred.
- 10.2. Subject to Clause 10.3, the Client shall fully indemnify Experian against:
 - 10.2.1. 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
 - 10.2.2. any associated legal expenses reasonably and properly incurred.
- 10.3. The indemnities in Clauses 10.1 and 10.2 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:
 - 10.3.1. notifying the indemnifying party promptly on becoming aware of any matter or claim to which the indemnity might relate;
 - 10.3.2. 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
 - 10.3.3. 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.
- 10.4. 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:
 - 10.4.1. 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;

- 10.4.2. 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.
- 10.5. This Clause 10 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 indemnities given in Clause 10.
- 11. LIMITS ON LIABILITY**
- 11.1. 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):
- 11.1.1. for breach of its obligations under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
- 11.1.2. for personal injury or death resulting from its negligence or that of its employees, agents and/or sub-contractors;
- 11.1.3. for breach of Clause 7;
- 11.1.4. (in the case of the Client) for any intentional breach of Clause 8.4.2;
- 11.1.5. 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
- 11.1.6. for that party's fraud.
- 11.2. 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.
- 11.3. Except as provided in Clauses 11.1, 11.2 and 11.4, 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:
- 11.3.1. for all claims arising in the first Contract Year, liability shall be limited in aggregate to the Initial Contract Value;
- 11.3.2. 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.
- 11.4. The limitations in Clause 11.3:
- 11.4.1. shall not apply to the indemnities given by the parties under Clause 10.1 and 10.2;
- 11.4.2. shall not apply to any liability of the Client under Clause 5.1.2;
- 11.4.3. shall be in addition to the obligation of the Client to pay fees and charges under this Agreement.
- 11.5. Subject to Clause 11.1, neither party shall be liable to the other (whether in contract, negligence, for breach of statutory duty or under any indemnity or otherwise) for:
- 11.5.1. any indirect or consequential loss;
- 11.5.2. 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;
- 11.5.3. 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.
- 12. TERMINATION**
- 12.1. Either party shall be entitled to terminate this Agreement immediately by serving written notice on the other party in the following circumstances:
- 12.1.1. if the other party commits a material breach of any of its obligations under this Agreement which is not capable of remedy;
- 12.1.2. 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;
- 12.1.3. 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.
- 12.2. Termination of this Agreement (or of any element of it) shall not affect any rights, obligations or liabilities of either party:
- 12.2.1. which have accrued before termination; or
- 12.2.2. which are intended to continue to have effect beyond termination.
- 12.3. Upon termination of this Agreement (or the relevant elements of it) and subject to Clause 12.4:
- 12.3.1. the parties shall each promptly return the Confidential Information of the other party to its owner;
- 12.3.2. the Client shall, at Experian's request either return the Experian Materials and Experian Data to Experian or destroy such materials and, if destroyed, provide a certificate stating that such materials have been destroyed;
- 12.3.3. Experian shall promptly return the Client Materials and Client Data to the Client.
- 12.4. Experian's obligations under Clause 12.3 shall not apply where it is necessary to retain any Confidential Information or materials of the Client to exercise any rights granted under this Agreement which are intended to survive termination of the 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.
- 13. PERSONNEL**
- 13.1. Each party undertakes that for the Term and for a period of six months afterwards it will not, without the other party's prior written consent, directly or indirectly solicit any of the other party's employees who were in direct contact with the employees of the other party in connection with this Agreement. This restriction shall not apply to any person who responds to a bona fide advertisement which is published in a national, regional or trade newspaper or magazine
- 14. FORCE MAJEURE**
- 14.1. 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.
- 14.2. 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).
- 15. ASSIGNMENT AND SUB-CONTRACTING**
- 15.1. Except as provided in Clause 15.2 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).

15.2. 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.

16. SEVERANCE

16.1. 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.

16.2. If any part of this Agreement is found to be invalid or unenforceable by any Court or other competent body but would be valid or enforceable if some part of the provision were deleted, the provision in question shall be treated as having been amended as necessary to make it valid and enforceable.

16.3. In the circumstances referred to in Clause 16.1 and if Clause 16.2 does not apply, the parties agree to attempt to substitute for any invalid or unenforceable provision a valid and enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision.

17. NOTICES

17.1. 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.

17.2. Notices shall be deemed to have been duly given as follows:

- 17.2.1. if delivered personally, upon delivery;
- 17.2.2. if sent by post, two clear days after the date of posting;
- 17.2.3. 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.

17.3. If either party notifies the other party of a change to its details for the purposes of Clause 17.1, such notification shall only be effective on the date specified in such notice or seven days after notice is given, whichever is later.

17.4. If the address for service of notices under Clause 17.1 is outside the United Kingdom, the Client elects the person or organisation named in the Schedule for the purposes of accepting service of notices within the United Kingdom on the Client's behalf. Any notices sent to in accordance with this Clause 17.4 are deemed given in accordance with Clause 17.2.

18. GENERAL

18.1. 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.

18.2. 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.

18.3. 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.

18.4. 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.

18.5. 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 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.

18.6. 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.

18.7. 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.

18.8. Nothing in this Agreement is intended to, or shall, operate to:

- 18.8.1. create a partnership or joint venture of any kind between the Client and Experian;
- 18.8.2. authorise either party to act as agent for the other party;
- 18.8.3. authorise either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.

18.9. In this Agreement:

- 18.9.1. any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;
- 18.9.2. references to clauses and schedules are to the Clauses of and the Schedule to this Agreement;
- 18.9.3. the singular includes the plural and vice versa;
- 18.9.4. the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 18.9.5. where any matter is to be agreed, such agreement must be recorded in writing;
- 18.9.6. 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.

18.10. The contents of the Schedule shall prevail over the contents of these Terms and Conditions to the extent of any conflict or inconsistency

19. DEFINITIONS

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

Word or Expression	Meaning
Additional User	The persons or organisations as set out in the Schedule to whom Experian supplies the Services, the Experian Materials and/or the Experian Data in addition to the Client;
Additional User Rights	The rights granted to Additional Users as set out in the Schedule;
CAIS	Experian's Credit Account Information Sharing scheme and "CAIS Data" means the data generated and/or shared through such scheme;
Client	The party named as the Client in this Agreement;
Client Data	Any of the data and/or databases owned by the Client and/or any Additional Users and provided to Experian in connection with this Agreement including information derived from completed applications for credit products but excluding any data supplied to the Client or any Additional Users by Experian;
Client Materials	Any of the items provided to Experian by the Client and/or any Additional Users in connection with this Agreement and includes Client Data;
Client Products	Those products set out in the Schedule (and such other products as Experian and the Client may agree from time to time) in respect of which the Services are provided;

Word or Expression	Meaning	Word or Expression	Meaning
Commencement Date	The Commencement Date set out in the Schedule in respect of the Services covered by the Schedule or in the absence of such date then the date that the individual signature sheet identifying this Agreement is signed by both parties;	Minimum Fee	The minimum fee in respect of any particular part of the Services as set out in the Schedule;
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 ;	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);
Contract Year	A twelve calendar month period from the Commencement Date or any anniversary of the Commencement Date;	Permitted Purpose	Unless otherwise stated in the Schedule, the internal business purposes of the Client and/or any Additional Users (as the case may be) in connection with the Client Products in the Territory and not in any event for the provision of any bureau services to any third parties other than to any Additional Users;
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 Materials themselves;	Personal Data	The meaning specified in the DPA;
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;	Price Indexation Date	The dates set out in the Schedule or, if none, then each anniversary of the Commencement Date;
DPA	The Data Protection Act 1998 and any subordinate legislation having effect in England;	Processing	The meaning specified in the DPA;
Experian Data	Any of the data and/or databases and/or scores supplied by Experian to the Client in connection with this Agreement but excluding the Client Data;	Project Timetable	Any timetable expressly set out or referred to in the Schedule or otherwise agreed between the parties from time to time;
Experian Materials	Any of the items developed and/or licensed by Experian to the Client in connection with this Agreement and includes software, Documentation and Scorecards but excluding Experian Data;	Public Authority	A public authority under the provisions of the FOIA;
FOIA	The Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act 2000 as appropriate;	Relevant Index	<ul style="list-style-type: none"> In respect of the periodic fees, the all items index of the Retail Prices Index (or any replacement index) published by the Central Statistical Office (or any replacement body); In respect of man day rates 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; If any of such indices ceases to be published then a broadly equivalent index as may be agreed by the parties will be used as a substitute;
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;	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;
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 736 of the Companies Act 1985;	Schedule	The schedule or schedules which describe the subject matter and specific terms relating to this Agreement;
ICO	The Information Commissioner's Office (or any other title under which such office subsequently operates);	Scorecard	A statistical formula derived to aid decision making and any supporting material in relation to such formulae;
Initial Contract Value	The greater of the Minimum Fee (and/or any fixed fees) and the actual amounts due and payable by the Client as specified in the Schedule in the first Contract Year (excluding VAT);	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;
Initial Term	The period specified as such in the Schedule;	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);
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;	Term	The duration of this Agreement as determined in accordance with Clause 2;
Live Date	The date set out in the Schedule or, if none, the date on which the Experian Data and/or Experian Materials or the Services are first available for use in a live operating or production environment other than for the purposes of testing;	Territory	The United Kingdom or such other territory as is specified in the Schedule;