

## **DATA LICENCE AGREEMENT - PRICEVIEWER**

Licensor: **EXPERIAN LIMITED** (Company No. 0653331), whose registered office is at The Sir John Peace Building, Experian Way, NG2 Business Park, Nottingham, Nottinghamshire NG80 1ZZ.

### **Definitions**

In this Agreement;

“Data” means petrol station data and fuel price data

“Service” means the provision of the Data provided by the Licensor and made available to the Licensee

“Licence” means the licence agreement between the parties relating to the Data;

“Licence Fee” means the fee payable by the Licensee to the Licensor for the Licence as invoiced by the Licensor from time to time;

“Working day” means 9am to 5pm, UK time Monday to Friday excluding public and statutory holidays.

### **1. Delivery of Service**

1.1. Delivery of the Service shall be the provision of the Data to the Licensee by email.

1.2. The date upon which the Data is first provided to the Licensee is the Delivery Date (“Delivery Date”).

1.3. The Licensor will use all reasonable endeavours to comply with any agreed Delivery Date. Risk in the Data will pass to the Licensee upon delivery.

### **2. Licence**

2.1. In consideration of payment by the Licensee to the Licensor of the Licence Fee, the Licensor hereby grants to the Licensee a non-exclusive non-transferable licence to use the Data on computers at the Licensee’s own premises. The Licence allows the Licensee to use the Data for the Licensee’s own internal business purposes only but excluding, for the avoidance of doubt, use of the Data to conduct surveys and/or compile further data. All copyright, database rights and any other intellectual property rights relating to the Data shall remain the exclusive property of Experian or its licensors.

2.2. The Licensee shall not use or permit the Data to be used for any other purpose or disclose it to any third party. The Licensee shall use all reasonable endeavours to prevent its employees from disclosing or misusing the Data. The Licensee shall not reproduce the Data or allow it to be reproduced in any form.

2.3. The Licence does not allow the Licensee to use the Data to provide to any other party, including unrelated and related third parties, any form of consulting, service bureau, time sharing services or services of any other kind.

### **3. The Licensor's Warranties**

3.1. The Licensor warrants that it is authorised to license the Data and that it will compile and supply the Data using reasonable skill and care. The Licensor does not warrant that the Data will be error-free or complete.

3.2. The Licensee acknowledges that there are limitations on the accuracy of survey data and accordingly that the Data should not be relied upon as the sole source of information in any material business transaction, including without limitation relating to planning or property.

3.3. The Licensor does not warrant that the Data will be fit for the Licensee's particular requirements and all other implied terms, conditions, representations and warranties in respect of the Data are excluded to the fullest extent permitted by law.

3.4. Save in respect of fraud or death or personal injury resulting from its negligence, the Licensor’s total liability to the Licensee in relation to this Agreement, whether in contract, negligence or otherwise, shall be limited to re-performing the obligations to which the Licensee’s claim relates.

3.5. The Licensor will in no circumstances be liable to the Licensee for any loss of profit, contracts, goodwill, anticipated savings or for business interruption, loss arising from third party claims or any indirect, special or consequential loss.

3.6. The Licensor shall not be liable for any failure or delay in performing its obligations where this is caused by events or circumstances beyond the Licensor’s reasonable control.

3.7. Whilst the Licensor will take reasonable steps to check and maintain the Data, the Licensor does not warrant that the Service will be uninterrupted.

3.8. Save as expressly provided in this Agreement all conditions, representations, warranties, terms and undertakings express or implied statutory or otherwise in respect of the Data are excluded to the fullest extent permitted by law.

#### **4. The Licensee's Obligations**

4.1. The Licensee shall pay in full to the Licensor the Licence Fee within 30 days of the date of the Licensor's invoice thereof. The Licence Fee is stated exclusive of value-added tax and all other taxes, duties, imposts and levies for which the Licensee shall be additionally liable. The Licensor reserves the right to charge the Licensee interest in respect of late payment of the Licence Fee (after as well as before judgement) at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc.

4.2. The Licensee shall be entitled to make copies of the Data for security and archive purposes only. Any such copies shall in all respects be subject to the terms of this Licence and shall be deemed to form part of the Data.

4.3. The Licensee shall not assign, transfer, distribute, sell, lease, rent, sub-licence, charge or otherwise deal in or encumber the Data in any way or form.

4.4. The Licensee is responsible for providing and maintaining any equipment and software required to use the Data.

#### **5. Limitation of Liability**

5.1. In respect of any breach of its obligations under this Agreement or any representation, statement or tortious act or omission (including negligence) or breach of statutory duty arising under or in connection with this Agreement:

5.1.1. the Licensor's liability to the Licensee in respect of direct damage to the physical property of the Licensee resulting from the negligence of the Licensor shall be limited to the Licence Fee paid under this Agreement in respect of any one event or series of connected events.

5.1.2. in all other cases the Licensor's aggregate liability to the Licensee shall not exceed the Licence Fee paid under this Agreement in respect of the year in which the claim arises.

5.1.3. the Licensor shall in no circumstances be liable to the Licensee in respect of any loss of profits, loss of data, loss of anticipated savings, loss of contracts, loss of goodwill, business interruption, loss arising from third party claims or any type of special, indirect or consequential loss. The Licensee acknowledges its responsibility for maintaining adequate insurance in respect of its business, assets and other liabilities. Nothing in this clause 5.1 creates any additional liability on the Licensor.

5.2. Subject to clause 5.3 the Licensor shall not be obliged to remedy faults resulting from or otherwise in connection with:

5.2.1. a fault experienced by the Licensee where the Licensor is unable to reproduce the error;

5.2.2. any query which could be answered by reference to the online help;

5.2.3. a user who continually has queries, but does not possess a basic understanding of the use of the Data;

5.2.4. any breach by the Licensee of this Agreement or the Licence.

5.3. Where clause 5.2 applies, the Licensor shall act reasonably towards the Licensee by consulting with the Licensee before refusing support and prior to any such refusal, by continuing to provide support to the extent that the Licensor considers it practicable to do so having regard to the frequency and severity of the relevant faults or queries and without incurring additional expense.

5.4. Save as expressly set out in this Agreement, no liability shall attach to the Licensor, its agents or employees in respect of any representations made or advice given unless confirmed in writing by the Licensor provided that written representations made by the Licensor prior to acceptance of this Agreement shall only be binding if reconfirmed in writing by the Licensor immediately prior to acceptance of this Agreement.

#### **6. Duration**

6.1. This Agreement shall commence on the Delivery Date and shall continue for 12 months or until it is terminated in accordance with clause 8 below.

#### **7. Confidentiality**

7.1. Each party shall and shall use all reasonable endeavours to ensure that its employees, agents and sub-contractors shall keep confidential all information concerning the business and affairs of the other which is of a confidential nature save for any in the public domain other than as a result of breach of the terms of this Agreement.

#### **8. Termination**

8.1. This Agreement may be terminated:

8.1.1. forthwith by the Licensor if the Licensee fails to pay the Licence Fee within 30 days of the due date thereof;

8.1.2. forthwith by either party if the other commits any material breach of any term of this Agreement and (in the case of a breach capable of being remedied) fails to remedy the breach within 14 days of a written request to remedy the same; or

8.1.3. forthwith by either party if the other ceases trading, goes into liquidation or is dissolved, struck off, insolvent or bankrupt or is unable to pay its debts as they mature or suffers the appointment of a receiver, administrative receiver or administrator of the whole or any part of its assets or suffers any similar appointment or process under the law of its place of incorporation or domicile

8.2 Where the Services include the provision of fuel price data the Licensee acknowledges that there may be circumstances where the supply of the fuel price data is no longer possible. In such circumstances, Licensor will have the right to immediately terminate those parts of the Service relating to the supply of fuel price data upon written notice to the Licensee. Upon such termination Licensor's only liability will be to reimburse the Licensee pro-rata any fees already paid in advance in respect of the delivery of the fuel price data covering the period where the Licensor can no longer supply such data.

## **9. Force Majeure**

9.1. Neither party shall be liable for any delay in or for failure to perform obligations (other than the Licensee's obligations to pay the Licence Fee) if that delay or failure is caused by circumstances beyond its reasonable control.

## **10. Miscellaneous**

10.1. The waiver by either party of a breach or default of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall delay or omission on the part of either party to exercise or avail itself of any right power or privilege that it has or may have under this Agreement operate as a waiver of any breach or default by the other party.

10.2. If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement.

10.3. This Agreement is the entire agreement of the parties relating to its subject matter and it replaces any earlier agreement, arrangement or understandings relating to its subject matter. Each of the parties acknowledges that subject as provided in clause 5.4 in entering into this Agreement it is not relying on any term, warranty, representation or statement which is not expressly incorporated or referred to in this Agreement.

10.4. This Agreement shall be binding upon and shall ensure for the benefit of the successors in title of the parties hereto.

10.5. This Agreement shall be governed by and construed in accordance with English law and the parties hereto submit to the exclusive jurisdiction of the English courts but this Agreement may be enforced in any court of competent jurisdiction.

10.6. For the purposes of Section 1(2) of the Contracts (Rights of Third Parties) Act 1999 the parties state that they do not intend any term of this Agreement to be enforced by any third party but any third party right which exists or is available independently of that Act is preserved.

10.7. Any notice to be served on either of the parties by the other shall be sent by pre-paid recorded or registered post or by fax or by electronic mail and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile transmission or by electronic mail to the correct facsimile number (with correct answer-back) or correct electronic mail number of the addressee.

10.8. The Licensor shall be entitled to subcontract its obligations under this Agreement but undertakes to do so (if at all) only on occasional and short-term basis.

November 2017