

# Lloyd James Media Limited

## General Terms & Conditions

### Background

1. We own the copyright and Database Rights in the Lloyd James Media Data (as defined below).
2. We have agreed to provide the Services (as defined below) on the terms set out in this agreement.
3. As part of the Services, we have agreed to license to you use of the Lloyd James Media Data for a specific business purpose on the terms set out in this agreement.

### Agreed Terms

#### 1 Interpretation

- 1.1 In this agreement and the Order Form the words and phrases below shall have the following meaning:-
- 1.2 The headings to the clauses in this agreement are for the ease of reference only and shall not affect the interpretation or construction thereof.

**Any Third Party Data or All About Us or Resident Database:** the databases of names, addresses and telephone numbers of individuals, the associated data therein being purchased, derived or imputed by us as part of the Services to be provided.

**Authorised Person:** the person specified on the Order Form or any other person you notify us of whom we are entitled to rely upon as having full legal authority to enter into this agreement.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

**Business Purpose:** the purpose for which you require the Lloyd James Media Data as set forth in the Order Form

**Charges:** the charges set out in the Order Form, as varied from time to time in accordance with this agreement.

**Commencement Date:** the date the Order Form is signed by you.

**Confidential Information:** all confidential information (however recorded or preserved) disclosed by us to you or your employees, officers, representatives, advisers or sub-contractors involved in the receipt of the Services who need to know the confidential information in question in connection with this agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

**Data:** any data, database or information, in whatever form, the provision of which may comprise part of the Services (wholly or in part), including any personal data.

**Database Right:** the intellectual property right in a database as defined in section 3A(1) of the Copyright, Designs and Patents Act 1988.

**Email Broadcast:** the service forming part of the Services if selected by you in the Order Form whereby the Lloyd James Media Data is provided by and managed by us for the purposes of conducting an email campaign on your behalf.

**External Email Broadcast:** the service forming part of the Services if selected by you in the Order Form whereby the Lloyd James Media Data for broadcast via e-mail is provided directly to you for the purposes of conducting your own email campaign in accordance with this agreement in contrast to the Email Broadcast.

**Goneaway:** a) an address to which an item mailed cannot be delivered by virtue of the intended recipient never having been, or no longer being at the address, or where the address is incomplete and bearing the appropriate Royal Mail failure designation.

**Intellectual Property Rights:** patents, utility models, rights to inventions, copyright and neighbouring and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), the Lloyd James Media Data, the Lead Generation and the Product Questions, the Core Questions, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

**List Rental:** the rental by you of any part of the Lloyd James Media Database as set out in the Order Form.

**Multi-Use Marketing:** a series of mailings (including SMS-Mobile) conducted by you by use of the Lloyd James Media Data the number of such mailings permitted by us and the timeframe within which they will be conducted are contained in the Order Form.

**Single Use Mailing:** a mailing (including SMS-Mobile) conducted by you by use of the Lloyd James Media Data on a single occasion.

**Single Use Telemarketing:** a telephone marketing activity conducted by you by use of the Lloyd James Media Data on a single occasion.

**Order Form:** the order form which accompanies and forms part of this agreement and which confirms details of Your Order including the constituent details of the Lloyd James Media Data to be supplied by us and the Charges payable by you for the Services.

**Privacy and Data Protection Requirements:** the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or other relevant supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction (whether mandatory or not).

**Processing:** the meaning given in section 1(1) of the Data Protection Act 1998.

**Security Breach:** any security breach relating to: the Lloyd James Media Data reasonably determined by us to be sufficiently serious or substantial to justify notification to the Information Commissioner or other relevant supervisory authority in accordance with the Privacy and Data Protection Requirements; or the Lloyd James Media Data reasonably determined by us to be sufficiently serious or substantial to give rise to a material risk of litigation by the individuals whose Data is the subject of the breach.

**Services:** the services relating to the Lloyd James Media Data using Our System provided by us to you in consideration of the Charges and as detailed in the Order Form.

**Lloyd James Media Data:** the data owned by us which attracts Database Right and compiled either Third Party Data or from the All About Us or Resident Database, responses to a Lead Generation programme, or data collated or maintained by us or on our behalf and made available to you only as part of the Services.

**Lloyd James Media Data Delivery:** one copy of any data forming part of the Lloyd James Media Data provided by us either in paper, printed or other documentary form or in other electronic format stored on Our System or bureau, pursuant to Your Order and in accordance with the Order Form.

**Term:** the term set out in the Order Form.

**Your Order:** our confirmation of order form, signed and accepted by you setting out without limitation the details of the data to be supplied by us pursuant to the Business Purpose and the Charges payable by you for the Services.

#### 2 Agreement Acceptance

A hyperlink to this agreement accompanies the Order Form. Your completion and signature on the Order Form (which contains an express acknowledgment you have had opportunity to read this agreement) shall constitute acceptance of this agreement.

#### 3 Scope

During the Term we shall supply the Services to you and you shall pay the Charges.

#### 4 Services

4.1 During the Term we shall supply the Services to you by providing the Lloyd James Media Data in accordance with your instructions provided under the Order Form.

4.2 We shall not act on any specific instructions given by you from time to time during the Term unless they are:

4.1.1 in writing; and

4.1.2 given by an Authorised Person.

4.3 We shall provide the Lloyd James Media Data for the Business Purpose only and in compliance with your instructions from time to time as set out in the Order Form.

4.4 In the event that any delivery date shall be agreed between us in the Order Form, you acknowledge that such date shall be indicative only and that we shall not be liable for any loss or damage suffered by you as a result of late delivery of the Lloyd James Media Data.

#### 5. Licence

5.1 As part of the Services and in further consideration of the Charges we grant to you a non-exclusive, non-transferable, revocable, licence for the Business Purpose only during the Term, to:

5.1.1 access and view the Lloyd James Media Data (but not to Manipulate or create Derived Data);

5.1.2 store the Lloyd James Media Data on Your System for a maximum period limited to 60 days;

5.1.3 distribute the Lloyd James Media Data to Your Users on Your System.

5.2 You shall not redistribute the Lloyd James Media Data (wholly or in part) save where you are acting as agent for a client and provided always (unless stated otherwise in the Order Form):

5.2.1 you notify us of the identity of your client (failure to so notify shall constitute a breach of this agreement entitling us to terminate this agreement); and

5.2.2 for the avoidance of doubt you shall remain fully liable under this agreement.

5.3 You shall:

5.3.1 only make copies of the Lloyd James Media Data to the extent reasonably necessary for the Business Purpose (which includes, for clarity, back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Lloyd James Media Data);

5.3.2 not extract, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Lloyd James Media Data other than for the Business Purpose; and

5.3.3 not do anything that may materially damage our reputation; and

5.3.4 take reasonable steps to ensure the reliability of all our employees who have access to the Lloyd James Media Data.

5.4 Your right to use the Lloyd James Media Data shall be non-exclusive and for single use only, unless stated otherwise in the Order Form.

5.5 Single Use Mailing and External Email Broadcast permits you to dispatch or broadcast a single mailing piece or SMS to each name supplied as part of Your Order. Single Use Telemarketing permits a single contact to be made with the specified name at the telephone number supplied as part of Your Order within a period of 28 days, but subject to a maximum of three call attempts being made to reach them: if a name cannot be reached after three call attempts, (regardless of the call disposition), the name cannot be called again by you.

5.6 Multi-Use Marketing requires you remain solely responsible for maintaining compliance with (including but not limited to the telephone preference service and mail preference service) and you must immediately report to us any opt outs on the part of contacts which you become aware of.

5.7 We have the right to provide any of the Data supplied to you under the Services at any time to any third party unless the same are subject to any exclusivity period governing the supply of responses to Product Questions contained in the Order Form.

5.8 We shall deliver the Lloyd James Media Data to the address specified on the Order Form.

5.9 In the event you breach this agreement or any provision in the Order Form including but not limited to your use of the Lloyd James Media Data beyond the 28 day use window (which period shall apply to all use of the Lloyd James Media Data unless stated otherwise in the Order Form), we shall be entitled to levy a re-use charge of 100% of the value of the Your Order on each occasion of such breach. We shall be entitled to audit your use of the Lloyd James Media Data to ensure your compliance with the 28 day use restriction and to

verify you have deleted the Lloyd James Media Data (which shall include the right to enter your premises) after such period which for the avoidance of doubt shall include whether the same is used for Multi-Use Marketing or single use.

## **6. Charges**

6.1 In consideration of the performance of the Services, you shall pay the Charges to us.

6.2 The Charges shall be due and payable in accordance with the payment structure and invoicing procedure set out in the Order Form.

6.3 Time shall be of the essence regarding your obligations to make payments in respect of the Charges in accordance with the Order Form and such obligations are material obligations for the purpose of this agreement.

6.4 If you fail to make any payment due to us under this agreement by the due date for payment, then, without limiting our remedies under this agreement, you shall pay interest on the overdue amount at the rate of 4% per annum above HSBC Bank Plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. You shall pay the interest together with the overdue amount.

6.5 All Charges are exclusive of VAT, which shall be paid by you at the rate and in the manner for the time being prescribed by law.

6.6 In the event that we agree to supply the Lloyd James Media Data for the purpose of de-duplication against other data held by you and on the basis that you shall only pay a proportion of the price reflecting the "net names" actually used, any claim for credit for the unused portion of the Lloyd James Media Data:

a) must be made within a period not exceeding 60 days from the date of delivery of the Lloyd James Media Data, unless otherwise agreed in writing by us; and

b) must be supported by a deduplication report or certificate from a recognised data processing bureau or other independent agency approved by us; and

c) is conditional upon your return of the unused portion of the Lloyd James Media Data and failure to return shall entitle us to levy a charge for all records delivered to you under the Lloyd James Media Data.

6.7 On signing the Order Form, you agree to be bound by all terms and conditions in this agreement, regardless of whether the Lloyd James Media Data is used for the purpose set out on the Order Form.

6.8 If we are not informed by you in writing or email of your non-receipt of the Lloyd James Media Data, or of any issue relating to the Lloyd James Media Data in any way, within 4 Business Days of the date you sign the Order Form or of the delivery date specified on the Order Form, you will be deemed to have received the Lloyd James Media Data and accepted it as meeting your expectations and specifications.

6.9 Lloyd James Media will either request payment from you on a Pro-Forma basis or, where credit terms are provided, will invoice you upon receipt of a signed order confirmation with payment terms agreed and as outlined on the order confirmation.

6.10 If Lloyd James Media agree to cancel an order before data is delivered then Lloyd James Media will expect full payment for any third party data orders placed prior to the cancellation request being received.

## **7. Unauthorised Use**

If any unauthorised use is made of the Lloyd James Media Data or Materials and such use is attributable to the act or default of yours or a third party that has acquired the Lloyd James Media Data or Materials from you then, without prejudice to our other rights and remedies, you shall immediately be liable to pay us an amount equal to the Charges that we would have charged (in accordance with our published rate card), together with interest at the rate provided for in clause 6.4, had we authorised the unauthorised use from the date of such unauthorised use. For the avoidance of doubt the sum we may charge hereunder shall be exclusive of any discount which may have been applied to the supply of the Lloyd James Media Data so that in assessing the said Charges we may multiply the total number of invoices which comprise the Charges by the total number of unauthorised uses to the date of payment.

## **8. Intellectual Property Rights**

8.1 You acknowledge and agree we have made and will continue to make substantial investment in the obtaining, verification, selection, co-ordination, development, presentation and supply of the Lloyd James Media Data and the Lloyd James Media Data attracts Database Right.

8.2 You acknowledge that:

8.2.1 all Intellectual Property Rights in the Lloyd James Media Data are and will remain our property and nothing in this agreement shall constitute a transfer, assignment or license of any copyright or intellectual property right of ours; and

8.2.2 you shall have no rights in or to the Lloyd James Media Data other than the right to use it for the Business Purpose in accordance with this agreement;

8.2.3 you shall have no rights in or to the Lloyd James Media Data other than a non-exclusive, royalty-free, personal, non-assignable, non-sub-licensable licence (coterminous with this agreement) to process (but not adapt, alter, Manipulate or create Derived Data) the Lloyd James Media Data in the United Kingdom to the extent reasonably necessary for you to process the Lloyd James Media Data for the Business Purpose in accordance with this agreement;

8.3 You acknowledge that reference in any element of the Lloyd James Media Data to trade names or proprietary products where no specific acknowledgement of such names or products is made does not imply that such names or products may be regarded by you as free for general use, outside the scope of the Business Purpose.

8.4 We reserve the right to grant licenses in respect of the Lloyd James Media Data to any other party or parties.

8.5 You shall notify us immediately if you become aware of any suspected or actual unauthorised use of the whole or any part of the Lloyd James Media Data by any person.

## **9. Confidentiality**

9.1 You acknowledge Confidential Information includes the Lloyd James Media Data.

9.2 You shall keep our Confidential Information confidential and shall not:

9.2.1 use any Confidential Information except for the Business Purpose; or

9.2.2 disclose any Confidential Information in whole or in part to any third party.

9.3 The term Confidential Information does not include any information that:

9.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its representatives in breach of this clause 9;

9.3.2 was available to you on a non-confidential basis before disclosure by us;

9.3.3 was, is, or becomes, available to you on a non-confidential basis from a person who, to your knowledge, is not bound by a confidentiality agreement with us or otherwise prohibited from disclosing the information to you;

9.3.4 was known to you before the information was disclosed to you by us;

9.4 You may disclose the Confidential Information to those of your representatives who need to know that Confidential Information for the Business Purpose, provided that:

9.4.1 you inform those representatives of the confidential nature of the Confidential Information before disclosure; and

9.4.2 at all times, you are responsible for the representatives' compliance with the confidentiality obligations set out in this clause.

9.5 We or you may disclose Confidential Information to the extent required by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, as far as we are legally permitted to do so, we respectively give the other as much notice of the disclosure as possible.

9.6 We shall use reasonable endeavors to keep confidential any said part of the Lloyd James Media Data which is derived from responses to Product Questions.

9.7 The provisions of this clause 9 shall continue to apply after termination of this agreement.

## **10. Data Security**

10.1 You shall ensure that the Lloyd James Media Data is kept secure and in an encrypted form, and shall use all reasonable security practices and systems applicable to the use of the Lloyd James Media Data to prevent, and take prompt and proper remedial action against, unauthorised access, copying, modification, storage, reproduction, display or distribution of the Lloyd James Media Data.

10.2 If you:

10.2.1 become aware of any unauthorised or unlawful Processing of any Lloyd James Media Data or that Lloyd James Media Data is lost or destroyed or has become damaged, corrupted or unusable;

10.2.2 become aware of any Security Breach; or

10.2.3 learn or suspect that any Security Feature has been revealed to or obtained by any unauthorised person, you shall promptly notify us and fully cooperate with us to remedy the issue as soon as reasonably practicable.

10.3 You shall retain the Lloyd James Media Data under your sole control for the Term and take reasonable precautions to preserve the integrity of any Lloyd James Media Data and to prevent any use, copying, manipulation, corruption or loss of the Lloyd James Media Data.

10.4 We shall monitor your usage of the Lloyd James Media Data for the purposes of enforcing this agreement by the deployment of a small percentage of dummy contacts embedded with the Lloyd James Media Data. - seeds

## **11. External Email Broadcast**

When deploying the Lloyd James Media Data for the purpose of External Email Broadcasting:

a) we shall inform you of a test email address for Lloyd James Media that you should use during the entire testing phase of your email campaign.

b) you shall upon receipt of the Lloyd James Media Data adopt, for the purpose of your own unsubscribe mechanism, the unsubscribe wording provided by us. You must also use any header and footer information provided by us to ensure compliant use of the data provided.

c) no later than 7 days after you have broadcast your campaign, all unsubscribes must be sent to Lloyd James Media by SFTP. Thereafter any additional unsubscribes must be sent upon receipt from the consumer.

d) you must be able to provide to us all necessary information on the type of email broadcasting system that will be used and it's compliance with current data protection regulation applying to data processing in the UK.

## **12. Your Obligations**

12.1 Your legal obligations and responsibilities in respect of the Lloyd James Media Data and this agreement shall include your outsourced partners.

12.2 You undertake that your use of the Lloyd James Media Data is for the Business Purposes only.

12.3 If the Lloyd James Media Data is contained in electronic format you alone will be permitted to extract information from the Lloyd James Media Data and to print the same in documentary form on condition that any such printed materials produced and any copies of the same shall be retained solely in your possession and shall not be disclosed or otherwise communicated to any third party.

12.4 If the Lloyd James Media Data is held in electronic form it together with any copies must be deleted and destroyed within 12 weeks from the date of the Order Form.

12.5 In the event that you receive a request from a recipient of a phone call, mailing or emailing to "Do Not Contact" then you will provide Lloyd James Media with the name and address of such contact.

12.6 You undertake to us that you will notify us immediately of any notice or other communication in respect of the Lloyd James Media Data you receive from the Information Commissioner's office or any other official or legislative body.

12.7 You undertake to us that you will at all times comply with the provisions of the Data Protection Act 1998 in respect of your use and storage of the Lloyd James Media Data.

12.8 You undertake to us that you will supply to us forthwith the name and address of any partners which you have retained for the purpose of carrying out mailing, fulfillment, email broadcast or telemarketing whom will be holding the Lloyd James Media Data both inside and outside the EU and you confirm such partners shall hold the Lloyd James Media Data securely and you shall remain fully liable for their failure a) so to maintain and b) to adhere to the Privacy and Data Protection Requirements.

12.9 In the event of your non-compliance with legislation, DMA codes of practice, failure to adhere to Good Industry Practice or mishandling of contacts contained in the Lloyd James Media Data, which adversely affects our name, reputation and goodwill, or results in additional effort by us to address such damage we reserve the right to levy additional charges of up to £1000 per instance for additional duties undertaken.

12.11 We accept no responsibility for any breach by you of any legislation as a result of communication to the contacts within the Lloyd James Media Data and supplied to you under the Services.

late supply.

12.12 You shall not at any time during the period of 6 months commencing from the date of final delivery by us (as determined by the Order Form) of the Lloyd James Media Data, offer employment to, enter into a contract for services of, or otherwise entice or attempt to entice away from us any employee of ours.

### 13. Warranties

13.1 You warrant:

13.1.1 that you are entitled to and will process the Lloyd James Media Data in compliance with the Privacy and Data Protection Requirements and you are not aware of any circumstances likely to give rise to breach of any of the Privacy and Data Protection Requirements in the future (including any Security Breach);

13.1.2 you will take appropriate technical and organisational measures against the unauthorised or unlawful Processing of the Lloyd James Media Data and against the accidental loss or destruction of, or damage to, the Lloyd James Media Data to ensure a level of security appropriate to the harm that might result from such unauthorised or unlawful Processing or accidental loss, destruction or damage;

13.1.3 you will take reasonable steps to ensure compliance with those measures; and discharge your obligations under this agreement with all due skill, care and diligence;

13.1.4 as far as you are aware, the Processing of the Lloyd James Media Data under this agreement will not infringe the Intellectual Property Rights of any third party;

13.1.5 any documents or other items you mail or email by use of the Lloyd James Media Data will at all times comply with the British Code of Advertising Practice, the British Code of Sales Promotion Practice and contain nothing which infringes copyright or any other right of any third party, shall not be defamatory, obscene, indecent or otherwise illegal or unlawful. You shall upon our request forthwith supply to us copies of any such documents or materials;

13.1.6 you or those calling on your behalf, shall at all times adhere to telemarketing legislation and good industry practice as set out in the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Communications Act 2002 and that any telephone scripts will at all times comply with ICSTIS rules.

13.2 We do not warrant that the Lloyd James Media Data:

13.2.1 is accurate, complete, reliable, secure, useful, fit for purpose or timely;

13.2.2 has been tested for use by you or any third party; or

13.2.3 will be suitable for or be capable of being used by you for the Business Purpose.

13.3 Except as expressly stated in this agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise upon us, are hereby excluded by us to the extent permitted by law.

### 14. Quality Assurance

14.1 You accept that the Lloyd James Media Data may contain a number of Goneaways.

14.2 If the level of Goneaways exceeds the relevant % (See 14.9) or if any other fault arises in the Lloyd James Media Data, we shall have the right to remedy such fault by re-supply of erroneous data. In the event that you do not advise us of any defect in the data within thirty (30) days from the date of receipt of the data supply concerned you shall be deemed to have accepted the Lloyd James Media Data.

14.3 Where the Lloyd James Media Data contains name elements (such as salutation, forename, initials, surname or other requested information fields) you accept that not all elements will necessarily be present for each record and that no replacement Lloyd James Media Data or refund will be provided for incompleteness of the Lloyd James Media Data in such instance.

14.4 We shall provide de-duplication on a 'best efforts' basis only and you accept that no replacement Lloyd James Media Data or refund will be provided for marginal or partial duplication where the level of duplicates is less than 3% per file supplied.

14.5 You acknowledge and agree that in a limited number of circumstances (e.g. a postcode changes or a building changes to multi-occupancy) the Royal Mail Address may change over time, in such event we are unable to recognise such addresses as being the same and are unable to remove the duplicate. You accept no replacement Lloyd James Media Data or refund will be provided in such circumstances.

14.6 You acknowledge and agree that email addresses are prone to frequent change, as well as being unreachable for a number of technical and other reasons (such as, but not limited to, account disabled, mailbox full, limit on message size, anti-spam policy, firewall). Accordingly a much higher percentage of undeliverable email is to be expected than mail, phone or fax. Where Hard Bounces exceed 15% of the Lloyd James Media Data, replacement Lloyd James Media Data or a refund will be provided in for hard bounces above the said 15% level only.

14.7 You accept and agree that no replacement Lloyd James Media Data or refund will be given for undeliverable email addresses in the Lloyd James Media Data for any other reason for non-delivery, or for hard bounces below the level in clause 14.6 above.

14.8 Before you may make a claim for replacement Lloyd James Media Data or a refund for Goneaways, you must mail or phone a minimum of 1,000 records or 20% of the total number of records in the Lloyd James Media Data whichever is the greater. In the event that there are less than 1,000 records in the Lloyd James Media Data, you must mail or phone all the records in the Lloyd James Media Data.

14.9 The percentages of records which must qualify as Goneaways before replacement Lloyd James Media Data or refund for Goneaways will be given are:

a) Addresses: 13%

b) Telephone Numbers: 13%

14.12 Claims for replacement Lloyd James Media Data or refund for Goneaways must be made with supporting documentation (e.g. returned envelopes, call records) within thirty (30) days of date of purchase.

14.13 Replacement Lloyd James Media Data or refund will not be given where supporting documentation is not provided by you. Only one claim may be made for each purchase. A separate claim must be made for each purchase..

14.14 Until and unless a refund has been agreed by us, payment for the full

amount shall remain due to us and we reserve the right to use all and any applicable legal remedies to recover payment from you as well as any additional costs incurred by us in connection with the same.

### 15. Limitation of Liability

15.1 Neither party excludes or limits liability to the other party for:

15.1.1 fraud or fraudulent misrepresentation;

15.1.2 death or personal injury caused by negligence; or

15.1.3 any matter for which it would be unlawful for the parties to exclude liability.

15.2 We shall not in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for:

15.2.1 any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill;

15.2.2 any loss or corruption of the Lloyd James Media Data (whether direct or indirect) of Data or your information;

15.2.3 loss (whether direct or indirect) of anticipated savings or wasted

expenditure (including management time); or

15.2.4 any loss or liability (whether direct or indirect) under or in relation to any other contract; or

15.2.5 any loss as a result of the actual quantity of response which constitute the Lloyd James Media Data being less than the estimated quantity.

15.3 Our total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement or any collateral contract shall in all circumstances be limited to 50% of that element of the total Charges paid by you which govern the erroneous element of the Services during the 12 month period immediately before the date on which the cause of action first arose.

15.4 Any dates quoted for delivery of the Services are approximate only, and the time of delivery is not of the essence. We shall not be liable for any delay in delivery of the Services that is caused by an event or circumstance or your failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Services.

15.5 You shall indemnify us against any claims, losses, damages, costs (including all legal fees) and expenses incurred by or awarded against us arising out of or in connection with the Processing by you of the Lloyd James Media Data under this agreement except to the extent that the same have arisen out of or in connection with any negligence or willful default of ours. For clarity, this exception shall include any claim or action claiming that the provision, receipt or use of the Lloyd James Media Data (wholly or in part) infringes any Intellectual Property Right of a third party.

15.6 You shall not institute proceedings for damages for breach of this agreement after the expiration of one year from the date on which you became aware of the same or the date on which you ought reasonably to have become aware of the same.

### 16. Term and Termination

16.1 This agreement shall commence on the Commencement Date. Unless terminated earlier in accordance with this agreement, this agreement shall continue for the period set out in the Order Form.

16.2 You may terminate this agreement in respect of the Services upon thirty (30) days notice in writing.

16.3 We may terminate this agreement with immediate effect if you fail to pay any amount due under this agreement (including the Charges) on the due date for payment and remains in default not less than 30 days after being notified in writing to make that payment.

16.4 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

16.4.1 the other party commits a material breach of any material term of this agreement and (if that breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

16.4.2 the other party:

16.4.2.1 suspends, or threatens to suspend, payment of its debts;

16.4.2.2 is unable to pay its debts as they fall due or admits inability to pay its debts;

16.4.2.3 (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

16.4.2.4 (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986; or

16.4.2.5 (being a partnership) has any partner to whom any of clause 16 applies

16.4.2.6 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (in the case of a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.4.2.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

16.4.2.8 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company);

16.4.2.9 the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

16.4.2.10 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;

16.4.2.11 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other similar process is levied or enforced on or sued against, the whole or any part of the other party's assets and that attachment or process is not discharged within 14 days;

16.4.2.12 any event occurs or proceeding is taken with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in this clause 16 (inclusive);

16.4.2.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or

16.5 Any provision of this agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

16.6 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of either of us that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

16.7 On any termination of this agreement for any reason or expiry of the Term, you shall immediately pay any outstanding amounts owed to us under this agreement.

16.8 On any termination of this agreement for any reason or expiry of the Term you shall as soon as reasonably practicable return or destroy (as directed in writing by us) all Lloyd James Media Data, information, software, and other materials provided to you by us in connection with this agreement including all Materials, and our Confidential Information.

16.9 If you are required or requested by any law, regulation, or government or regulatory body to retain any documents or materials that you would otherwise be required to return or destroy under this clause, you shall notify us in writing of that retention, giving details of the documents or materials that you must retain. You shall not be in breach of clause with respect to the retained documents or materials.

#### **17. Force Majeure**

Neither of us shall be in breach of this agreement nor liable for delay in performing, or failure to perform, any of our respective obligations under this agreement if such delay or failure result from events, circumstances or causes beyond our reasonable control. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.

#### **18. Contract Assignment**

18.1 This agreement is personal to you and expressly excludes any parent, subsidiary or other affiliated company of yours and you shall not assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of your rights and obligations under this agreement without our prior written consent.

18.2 In the event of a transfer of your assets to a third party, the Lloyd James Media Data remains our property and any use of the Lloyd James Media Data so transferred shall be unlawful allowing us to claim against both you and the third party for such unlawful use.

18.3 You confirm you are acting on your own behalf and not for the benefit of any other person.

18.4 We may at any time assign, transfer, mortgage, charge, subcontract, declare a trust of or deal in any other manner with any of our rights and obligations under this agreement without your consent.

#### **19. Contract Waiver**

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

#### **20. Rights and Remedy**

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

#### **21. Notice**

Any notice or other communication given to a party under or in connection with this agreement shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case).

#### **22. Notices and Communications**

22.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

22.2 otherwise at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service.

23. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, writing shall not include email.

#### **24. Entire Agreement**

24.1 This agreement constitutes the entire agreement between us and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between us relating to its subject matter.

24.2 Each of us acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.

#### **25. Agreement Variations**

Except as expressly provided in this agreement, no variation of this agreement shall be effective unless it is in writing in the form of a schedule and signed by each of us (or our Authorised Representatives).

#### **26. Severance**

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

26.2 If any provision or part-provision of this agreement is invalid, illegal or unenforceable, we shall respectively negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original

provision.

#### **27. No Partnership or Agency**

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

27.2 Each of us confirms it is acting on its own behalf and not for the benefit of any other person.

#### **28. Third Party Rights**

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

#### **29. Governing Law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

#### **30. Jurisdiction**

Each of us irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual).