

Targets Located Standard Terms and Conditions

1. Definitions and Interpretation

1.1 In these Targets Located Standard Terms and Conditions and the Order Confirmation unless the context shall otherwise require the following words and expressions shall have these meanings assigned to them:

Act means the Data Protection Act 1998, the Data Protection Directive 95/46/EC and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as well as any amendments or replacements thereof, including any legislation implementing EC Directives 97/66/EC and 2002/58/EC).

Applicable Regulations means those provisions of English law together with all codes of practice applicable from time to time in relation to the handling, processing, provision and use of data for Direct Marketing purposes pursuant to this Agreement;

Agreement means these Targets Located Standard Terms and Conditions and any associated Order Confirmation;

Contact Channel means the specific media channel or channels permitted for use in respect of Targets Located supplied under the Agreement which may be via Postal, Email, Landline Telephone, Mobile Telephone or SMS;

Control means control as defined in section 840 of the Income and Corporation Taxes Act 1988;

Data Owner means Targets Located, the proprietary owner of the Data;

Targets Located Data means data from Targets Located's proprietary databases as more particularly described in the Order Confirmation;

Targets Located Standard Terms and Conditions means this Agreement;

Direct Marketing means the use of data for targeting, in adherence to the Applicable Regulations by advertisers to promote goods or services to individuals using one or more of the Contact Channels;

Email means the Contact Channel of email;

End User means the third party specified in the Order Confirmation that is acquiring the right to have a temporary End User Licence to use or broker Targets Located pursuant to this Agreement;

End User Licence means the non-exclusive temporary and restricted licence granted to End User to use Targets Located Data subject to the terms of this Agreement and the Order Confirmation;

Enquirer means either a) an individual who during the course of a telemarketing call responds to End User by expressing purchasing interest in the specific offer of the campaign for which Targets Located has been provided or b) an individual who responds directly to the offer in an email creative, mailing piece or SMS sent by or on behalf of the End User, with a firm intention to purchase;

External Email Broadcast means an Order Confirmation whereby Targets Located for broadcast via email is provided directly to End User to run its own campaign as opposed to using Targets Located to broadcast on its behalf;

Intellectual Property Rights means in respect of all Targets Located Data all and any copyrights, database rights, design rights, topography rights, trademarks, trade names, rights in respect of passing off, inventions, patents, know how, confidential information and ideas, subsisting in all and any of the countries of the world and applications for protections available in respect thereof or any of them in all and any countries of the world

Landline Telephone means the Contact Channel of landline telephony;

Licence Period means the period during which time End User may make use of Targets Located Data under the terms of this Agreement;

Licence Terms means together the specific terms of the End

User Licence listed on the Order Confirmation which terms shall include but not be limited to the Contact Channel, Usage Terms and Licence Period;

Mailing Piece/Creative means promotional material which End User may intend to communicate to individuals whose details are contained in the Targets Located Data;

Mobile Telephone means the Contact Channel of mobile telephony;

Names mean the names of individuals whose details are contained in the Targets Located Data;

Net Names means that the End User may be eligible for a percentage rebate for verified duplication of individuals within Targets Located Data and the End User's other data files. The percentage shown is the absolute minimum number of individuals that an End User will pay for;

Order Confirmation means a contract between Targets Located and End User for a grant of an End User Licence for the End User to make use of Targets Located Data;

Output means a delivery of Targets Located Data;

Party means either Targets Located or End User;

Personal Data means the personal data (as that term is defined in the Act) contained in the Targets Located Data;

Postal means the Contact Channel of mailing;

Production Charges means the weekly, monthly and one-off fees charged for production, Output and re-Output of Targets Located Data as set out in the Order Confirmation;

Purchaser means an individual who purchases from the End User a specific product or service (which can be evidenced by a contract) promoted to the consumer through a telemarketing call, email creative, mailing piece or SMS through a campaign in which Targets Located Data has been provided;

Purpose means the purpose of supplying Targets Located Data pursuant to this Agreement which unless stated otherwise in the Order Confirmation is as a source for Direct Marketing;

Rental Fee means the amount payable by an End User for use of Targets Located Data calculated and specified on the Order Confirmation as a cost per K;

Run-On Costs means the amount charged for Names deemed to have been classified as part of the allowable Net Names;

Seed Name means a disguised dummy record unique to each Output of Targets Located Data to End User and appropriate to the Contact Channel, which is identifiable when communication is made by End User and which is used in order to monitor compliance with the Agreement and End User Licence;

Selection Criteria means the specific requirements as specified on the Order Confirmation that End User requires Names within Targets Located Data to conform to and which are available for selecting in Targets Located Data;

SMS means the Contact Channel of text communication service component of a phone, web or mobile communication systems, using standardised communications protocols that allow the exchange of short text messages between fixed line or mobile phone devices.

Usage Terms means the number of times as specified on the Order Confirmation that End User is permitted to contact Names;

Volume means the number of Names to be supplied in the Order Confirmation;

1.2 References in this Agreement to clauses and parties are respectively to the clauses of and the parties to this Agreement.

1.3 The headings in this Agreement are for convenience only and shall not affect their interpretation.

1.4 Targets Located has the right to revise and amend these Terms and Conditions from time to time as published on www.targetslocated.co.uk. The End User will be subject to the policies and terms in force at the time that the End User orders the Targets Located Data as

specified in the Order Confirmation, unless any change to those policies or these Terms and Conditions are required by law or government or regulatory authority in which case it will apply to orders the End User has previously placed that Targets Located have not yet fulfilled.

2. Grant of Licence and Data Supply

- 2.1 Targets Located hereby grants the End User an End User Licence under the terms of this Agreement to use Targets Located Data for its own internal use solely for the Purpose.
- 2.2 End User shall have the right in accordance with the Licence Terms and this Agreement to use but not copy, alter, manipulate, adapt or license others to use Targets Located Data.
- 2.3 End User warrants that any Targets Located Data shall not be used for the purposes of data enhancement or used for combining with the End User's or another third party's data unless as otherwise specified in the Order Confirmation.
- 2.4 End User alone will be permitted to extract information from the Targets Located Data and to print it in documentary form on condition only that:
- 2.4.1 Any documents produced in this way and any copies of such documents will be retained in the possession of End User; and:
- 2.4.2 neither the electronic form nor any information extracted, nor any printed copies or parts of printed copies shall be passed on, disclosed or otherwise communicated to any third party; and:
- 2.4.3 Targets Located Data held in electronic form is deleted and any copies of it destroyed within twelve weeks from the date of Output.
- 2.5 The Usage Terms for the Targets Located Data shall be for one time only unless stated otherwise in the Order Confirmation.
- 2.6 The Licence Terms for use of Postal, Email or SMS Contact Channels permit the despatch by End User of one Mailing Piece/Creative to each Name supplied, unless otherwise agreed on the Order Confirmation.
- 2.7 The Licence Terms for use of Landline Telephone or Mobile Telephone Contact Channels permit a single contact to be made by End User through telephony to each individual whose contact details are provided in Targets Located Data subject to a maximum of three call attempts being made to make contact with them. For clarity if the individual cannot be reached after three calls attempts (i.e. the call rings out or the individual is not in) this individual is not permitted to be called again under the End User Licence.
- 2.8 Individuals provided in the Targets Located Data who do not become either an Enquirer or a Purchaser immediately following the execution of the campaign as permitted in this Agreement, may not be contacted further by the End User.
- 2.9 Contact details of an Enquirer may be retained by the End User for a period of no more than 14 days following initial first contact via the campaign as permitted under the terms of this Agreement, provided that:
- 2.9.1 This period of retention is permitted solely to allow End User a reasonable time to convert an Enquirer into a Purchaser;
- 2.9.2 No further contact of any kind may be made by End User after the permitted 14 day period of retention unless the Enquirer has become a Purchaser.
- 2.10 The End User Licence is terminated immediately the Targets Located Data has been used to the extent hereby licensed.
- 2.11 The Licence Period is a maximum of eight weeks from the date of Output. No use of Targets Located Data after the expiry of the Licence Period is permitted.
- 2.12 In the event of each breach of the Licence Terms by End User a re-use fee of the entire value of the Order Confirmation will be imposed for every such breach. The Parties hereby acknowledge such re-use fee to be a genuine pre-estimate of the loss occasioned by Targets Located in respect of such breach.
- 2.13 End User accepts that Targets Located Data may contain gone aways, deceased's, dead and wrong numbers, Email bounce backs and inaccuracies.

- 2.14 End User accepts that no guarantees are offered for response, contact or open rates, click-through or deliverability through any Contact Channel in respect of Targets Located Data.
- 2.15 Targets Located will deliver Targets Located Data to the address specified in the Order Confirmation.
- 2.16 Once a delivery date of an Output has been agreed the End User:
- 2.16.1 acknowledges that such date shall be indicative only;
- 2.16.2 Agrees that Targets Located shall not be liable for any loss or damage suffered by End User as a result of late delivery of Targets Located Data;
- 2.16.3 Agrees that whilst Targets Located shall make every effort to complete the Output within the time quoted, time shall not be of the essence of the Output.
- 2.16.4 Agrees to receive the Output of Targets Located Data, return any Targets Located Data or send any other data owned by the End User to Targets Located by Serial File Transfer Protocol (the "Software"), a protocol used to transfer files between a PC and an embedded device using RS-232 or any other similar serial protocols. Targets Located will not be liable for any direct or indirect loss, damage or inconvenience whatsoever caused by any type of Software or where the End User has requested Targets Located Data to be Output, Targets Located Data returned or where any other data owned by the End User was sent to Targets Located by any other Contact Channel.
- 2.17 End User shall comply at all times with clause 7.
- 2.18 Targets Located reserves the right to grant licences in respect of Targets Located Data to any other party or parties.
- ### 3. Calculation and Payment of fees
- 3.1 Subject to the minimum payment to be paid as specified in the Order Confirmation the Rental Fee will be calculated by reference to the Volume and will be charged per thousand at the rates set out in the Order Confirmation.
- 3.2 In the event that Targets Located agrees to Net Names and the supply of Targets Located Data for the purpose of deduplication against other data held by End User and on the basis that End User shall only pay a proportion of the price reflecting the Net Names actually used any claim for credit for the unused portion of the Targets Located Data:
- 3.2.1 Must be made within a period not exceeding three months from the date of Output;
- 3.2.2 Must be supported by a de-duplication report from a recognised data processing bureau approved by Targets Located. Certificates produced by End User will not be accepted as proof of valid Net Names;
- 3.2.3 Will have Run-On Costs applied to all approved Net Names.
- 3.3 On signing the Order Confirmation End User agrees to be bound by the terms of this Agreement including fee calculations regardless of whether the Output of Targets Located Data is used by End User.
- 3.4 If Targets Located is not informed by End User in writing or email of non-receipt of the Output of Targets Located Data or of any issue relating to Targets Located Data Output in any way within fourteen days of the Output date End User will be deemed to have received and accepted the Targets Located Data.
- 3.5 Notwithstanding clause 3.4, issues or deficiencies relating to the Output or to Targets Located Data:
- 3.5.1 Must be submitted via email to Targets Located within four weeks of Output;
- 3.5.2 Must be accompanied with the required information in the required electronic format specified by Targets Located at the relevant time;
- 3.5.3 may not be used by End User as a reason for payment to be withheld or delayed;

- 3.5.4 May not be investigated by Targets Located if raised outside the terms of this clause;
- 3.5.5 Will be resolved if Targets Located deems the issue valid, as soon as is practicable;
- 3.5.6 May be settled, by either (a) re-supply of Targets Located Data or (b) a credit on the Order Confirmation. Targets Located will investigate any issues or deficiencies to the Output and at the sole discretion of Targets Located (once an investigation has been completed to Targets Located's satisfaction) will (a) if applicable, re-supply Targets Located Data over 5% of the total Output; or (b) if applicable, credit over 5% of the value of the total Output as agreed between Targets Located and End User. For the avoidance of doubt, Targets Located will not raise a re-supply of any Targets Located Data or raise a credit on for issues or deficiencies which are 5% or under of the total Output unless otherwise agreed in writing between Targets Located and End User.
- 3.6 In the event that Targets Located does not receive a written notification of a disputed invoice with rationale and support therefore specifically set forth therein, within ten days from the date of the invoice, such invoice will be deemed valid and payable and may not thereafter be disputed. End User acknowledges Targets Located's reliance upon this provision in making payments to participants in its network.
- 3.7 Payment terms are as specified in the Order Confirmation. Targets Located reserves the right to charge interest on any sum not paid by the due date for payment at the rates of 4% above Bank of England's base rate from the date due to the date such sum is received by Targets Located.
- 3.8 In the event that Targets Located opts to refer the End User to its legal representatives as a result of non payment of any of its invoices, Targets Located reserves the right to raise an additional charge of 6% of the outstanding debt, together with all out of pocket expenses related to the costs of litigation.
- 4. Data Usage**
- 4.1 End User is responsible for maintaining the cleanliness of Targets Located Data prior to its use by screening against internal and proprietary suppression files as required by the Applicable Regulations and accepted industry best practice.
- 4.2 End User undertakes that it will at all times comply with the provisions of Applicable Regulations in respect of its use, storage and transfer of Targets Located Data and that it will not violate any law including but not limited to the UK Data Protection Act 1994 and 1998 and amendments thereto and all laws of the United Kingdom governing advertising practices on the internet or the Federal Trade Commission Act, CANSPAM Act of 2003 and/or any Applicable Regulations or rules of the Federal Trade Commission.
- 4.3 End User and/or agency agrees to request written approval from Targets Located if the End User and/or agency is situated outside of the European Economic Area and shall supply the name and address of any agents, subsidiaries, affiliates, branches or professional advisers of the End User and/or agency who are sent Targets Located Data by the End User and/or agency who exist outside the European Economic Area who process, analyse, format, review or otherwise hold Targets Located Data on behalf of the End User and/or agency in respect of any Contact Channel or any kind of fulfilment.
- 4.4 In the event of Targets Located Data being released to a source outside the European Economic Area, End User and/or agency must:
- 4.4.1 Ensure that an appropriate safe harbour agreement (to the extent that the source is registered under the USA safe harbour scheme) or data processing agreement incorporating the relevant standard contractual clauses (is in place between the signatory and the source) or;
- 4.4.2 Only use bureaux or call centres only use bureaux or call centres that are accredited to BS7799 / ISO 27001 International Data Security Standards
- 4.5 End User hereby undertakes that the instructions to Targets Located in respect of Targets Located Data and the format of
- Output:
- 4.5.1 is correct in every respect;
- 4.5.2 Should a re-Output of Targets Located Data be required as a result of errors or omissions, or a change of requirements T shall be entitled to:
- 4.5.2.1 Additionally charge End User £75 for each re-Output at the sole discretion of Targets Located; or
- 4.5.2.2 Re-charge at the full rate for re-use of Targets Located Data if it has already been used; or
- 4.5.2.3 Refuse to carry out the requested activity in which event the End User shall remain obliged to make full payment of fees.
- 4.6 Output instructions shall be supplied to Targets Located by End User at least seven days prior to the proposed Output date and in the event that instructions are not received by this time Targets Located reserves the right to:
- 4.6.1 Supply Targets Located Data according to a standard format;
- 4.6.2 Charge End User in respect of any additional costs arising as a result of late instruction or changes in such instructions.
- 4.7 Following use of Targets Located Data and no later than one month after the end of the Licence Period End User shall return all unsubscribe requests, goneaways, and bouncebacks and call disposition files to Targets Located indicating which of these categories are applicable to each set of Names.
- 5. Obligations of End User**
- 5.1 End User agrees that any material sent or quoted during or following the use of Targets Located Data or any of it for the Purpose will at all times comply with Applicable Regulations; and that:
- 5.1.1 it will upon request by Targets Located forthwith supply to Targets Located copies of any such documents, scripts or other items which will be used for the Purpose in advance, during or following the use of Targets Located Data or any of it;
- 5.1.2 it will not make any statement or provide any other information that is unlawful, fraudulent, untrue, false, incorrect or misleading including but not limited to information relating to the End Users identity and contact details. The End User warrants that any and all information the End User issues, produces or originates shall be true in every respect throughout the term of this Agreement and/or Order Confirmation and the End User shall promptly notify Targets Located of any changes to such information;
- 5.1.3 it shall inform Targets Located as soon as is practicable and within the timeframes required by the Applicable Regulations in the event that any recipient of Mailing Piece/Creative or any recipient of a telemarketing call objects or requests that such contact ceases or asks for their name to be removed from the Targets Located Data as a result of it;
- 5.1.4 it agrees that the raising of a Order Confirmation by Targets Located in no way constitutes acceptance or acknowledgement that End User is in compliance with the Applicable Regulations or any of them or that of the content of its communication or its product or the Contact Channel is proper, acceptable or compliant with this Agreement.
- 5.1.5 The End User and/or agency may at any time before any Output as specified in the Order Confirmation, cancel or amend an Order Confirmation by providing Targets Located with immediate written notice. If the End User and/or agency amend or cancel an Order Confirmation, the End User and/or agencies liability to Targets Located shall be limited to payment to Targets Located of all costs Targets Located incurs in fulfilling the Order Confirmation until Targets Located receives the End Users and/or agencies cancellation. For the avoidance, Targets

Located shall have the right of consent as to whether to amend or cancel an Order Confirmation in Targets Located's sole discretion.

- 5.1.6 End User should not use Targets Located Data to send or procure the sending of, any unauthorised advertising or promotional material or any other form of similar solicitation (spam) or transmit any Targets Located Data or send any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.
- 5.2 Targets Located reserves the right to halt End User from using Targets Located Data or any of it for the Purpose if it is deemed in Targets Locates own discretion that such material contravenes clause 5.1.
- 5.3 For External Email Broadcasts and SMS broadcasts End User is responsible for ensuring that all subject headers, from-lines, unsubscribe footers or stop messages are exactly as per the formats and wording stipulated by Targets Located.
- 5.4 Targets Located accepts no responsibility for any breach of the Applicable Regulations including any incidence of contact by phone to individuals registered with the Telephone Preference Service, or in the content of any Postal or Email communication, Landline Telephone, Mobile Telephone or SMS communication or in the necessary application of suppressions.
- 5.5 End User hereby undertakes to deliver to Targets Located any notice or other communication in respect of Targets Located Data received from the Information Commissioner's office or any other official or legislative body.
- 5.6 In this clause the End User contracts as the duly authorized agent for and on behalf of each parent undertaking of the End User where the expression "parent undertaking" bears in relation to the End User the same meaning as set out in section 1162 of the Companies Act 2006 together with Schedule 7 of the Companies Act 2006.
- In consideration of Targets Located from time to time supplying data to the End User each such parent undertaking acting by its duly authorized agent the End User hereby jointly and severally guarantees all obligations of the End User to Targets Located hereunder (including but not limited to all obligations to make payment to Targets Located). Such guarantee is a continuing guarantee and shall remain in force until all of the obligations of the End User hereunder to Targets Located shall have been performed in full.
- The obligations of each parent undertaking hereunder shall not be affected by any act omission or thing which but for this provision might operate to release or otherwise exonerate such parent undertaking from its obligations or affect such obligations including without limitation and whether or not known to it:
- 5.6.1 Any time indulgence or waiver or consent at any time given to the End User or to any other person; or
- 5.6.2 Any compromise or release of or abstention from perfecting or enforcing any right or remedy against the End User or any other person; or
- 5.6.3 any legal limitation disability incapacity or other circumstances relating to the End User or any other person or any amendment to or variation of the terms of any agreement between Targets Located and the End User or any unenforceability of any obligations of the End User under any agreement or the dissolution amalgamation or reconstruction or insolvency of the End User.
- All payments to be made to Targets Located under this clause shall be made in full without deduction, set off, abatement or counterclaim whatsoever save as aforesaid. This guarantee may be enforced by Targets Located without Targets Located first taking any enforcement steps or proceedings against the End User.
- 5.7 The End User acknowledges that should there be, in the reasonable opinion of Targets Located, an event or circumstance (including any material adverse change or the continuation of any circumstance) which, in Targets

Located's reasonable opinion, has adversely affected or will adversely affect the business or condition (financial or otherwise) of the End User or will effect the End User complying with any Order Confirmation then Targets Located shall be permitted to enforce the whole invoice value of the Order Confirmation (and all obligations contained in Targets Located Standard Terms and Conditions) against the parent company of the End User (under section 1162 of the Companies Act 2006 together with Schedule 7).

6. Intellectual Property Rights

- 6.1 All Intellectual Property Rights relating to or arising out of or in connection with Targets Located Data are the exclusive property of Targets Located and nothing in this Agreement shall constitute a sale, transfer or assignment of (or an agreement to sell, transfer or assign) any such Intellectual Property Rights whatsoever.
- 6.2 End User shall not in any way question or dispute the validity of or ownership by Targets Located of any Intellectual Property Rights relating to or arising out of or in connection with Targets Located Data or any of it.
- 6.3 End User is hereby licensed only to use the Intellectual Property Rights of Targets Located for the Purpose and not further or otherwise. Upon expiry of End User Licence, End User shall immediately discontinue such use without compensation for such discontinuation.
- 6.4 End User shall indemnify Targets Located against liabilities, costs and expenses Targets Located may incur as a result of the combining or use of Targets Located Data or any of it with other data, software or equipment not supplied by Targets Located which gives rise to an infringement of any copyright, patent, or other Intellectual Property or other proprietary right.
- 6.5 End User shall promptly notify Targets Located if it becomes aware of any infringement or suspected infringement by any person of the Intellectual Property Rights relating to or arising out of or in connection with Targets Located Data or any of it, and shall give all reasonable assistance in connection with any claims or proceedings made or instituted against such person for such infringement or suspected infringement.
- 6.6 Retention of title does not apply for the use of Targets Located Data in the event of transfer of assets from End User to another party even for Order Confirmations with Usage Terms of more than one time.
- ## 7. Security and Control
- 7.1 End User shall at all times effect and maintain adequate security measures to safeguard and protect the integrity of the Targets Located Data from access, copying, manipulation, or use by any unauthorised person.
- 7.2 End User will promptly notify Targets Located of any breach or suspected breach of such security measures.
- 7.3 End User shall retain the Targets Located Data under its own effective control for the duration of the Licence.
- 7.4 Targets Located reserves the right to include Seed Names to ensure that Targets Located Data is used in accordance with this Agreement and any Order Confirmation. In the event Targets Located determines that Targets Located Data has not been used or suspects it has not been used in accordance with this Agreement and any Order Confirmation, Targets Located shall be permitted to conduct an investigation in accordance with clause 7 of this Agreement.
- 7.5 Without prejudice to End Users other obligations under this Agreement, End User will permit with reasonable written notice to Targets Located or an authorised representative to have access to the End Users premises to:
- 7.5.1 examine hardware, software, data and any other records, documents or other relevant information relating to End Users use of Targets Located Data and to compliance with the Applicable Regulations, and to take copies thereof;
- 7.5.2 Ask for and receive explanations in respect to such matters from End User to the extent necessary for Targets Located to be satisfied that the terms of this Agreement are being complied with and that Targets Located Data is being used in accordance with this

- Agreement.
- 7.6. Targets Located may also inspect, audit and take copies from the relevant books records and to appoint an independent auditor to review the accounts and other records (in each case including but not limited to those in machine readable form) of End User for the purposes of ensuring the accuracy of the records of all supplies of Targets Located Data to End Users.
- 7.7. Access shall be granted for these purposes at any time during which the relevant premises are ordinarily open for business. Written notice will not need to be given if access is required by regulation or if Targets Located has reason to suspect a breach of the Applicable Regulations or a breach of the security and confidentiality clauses of this Agreement.
- 7.8. If an audit determines inadequacy or breach Targets Located has the right to terminate this Agreement forthwith with all fees due from the End User becoming immediately payable in full.
- 8. Warranties and Liability**
- 8.1. The Parties warrant to each other that they each have full power, right and authority to enter into this Agreement.
- 8.2. Targets Located warrants that:
- 8.2.1. It has full rights to license Targets Located Data to End User for the Purpose;
- 8.2.2. Targets Located Data has been collected in compliance with the Applicable Regulations.
- 8.3. End User acknowledges and agrees that:
- 8.3.1. Targets Located can make no (and has not made any) representation nor give (and has not given) any warranty or undertaking as to the suitability of Targets Located Data for any purposes of End User;
- 8.3.2. Targets Located will not be liable for any loss, damage or inconvenience what so ever caused by any inaccuracies in Targets Located Data;
- 8.3.3. Targets Located shall not be liable to End User or to any other person for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with Targets Located Data or its use by End User, other than for the reasons detailed in clause 8.2;
- 8.3.4. notwithstanding the generality of clause 8.3.3 Targets Located expressly excludes all liability for consequential loss or damage including but not limited to loss of profit, business, revenue, goodwill or anticipated savings, other than any liability which may not by applicable law be excluded;
- 8.3.5. it will take out and maintain adequate insurance cover of up to £3 million with a reputable insurance company against liability which End User may incur to any person in connection with Targets Located Data which shall include cover in respect of the following but without limitation against liability for death or personal injury to any customer, employee of End User or to any third party and damage to or loss of property. End User will on demand from Targets Located produce to Targets Located evidence of such insurance and of its inception and maintenance.
- 8.4. End User warrants that it will:
- 8.4.1. Fully and effectively indemnify Targets Located against liability (including but not limited to all claims, judgments, costs and other liabilities) which Targets Located may incur by reason of End User's activities in connection with Targets Located Data, other than for the reasons detailed in clause 8.2.
- 8.4.2. Maintain the confidentiality and integrity of any Personal Data received from or on behalf of Targets Located;
- 8.4.3. implement and maintain appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in accordance with relevant data protection law;
- 8.4.4. ensure that its employees and its agents and permitted sub-contractors will comply with all relevant laws, regulations, bye-laws, British Standards and EU or international standards including but not limited to the Applicable Regulations;
- 8.4.5. not undertake any activity or make any claims which will bring Targets Located into disrepute;
- 8.4.6. not institute proceedings for damages for breach of Targets Located's Standard Terms and Conditions after the expiration of thirty days the date on which End User became aware of the same or the date on which it ought reasonably to have become aware of the same.
- 8.5. End User warrants that where Targets Located Data has been sent by the End User and/or an agency or broker to any of its associated companies, subsidiaries, affiliates, professional advisers, agents, individuals, customers or clients ("**End Users Associated Recipients**"), Targets Located shall be permitted to promptly receive a complete and full list of the names and contact details of any and all End Users Associated Recipients upon Targets Located providing written notice to the End User.
- 8.6. Any agency or broker executing this Agreement represents and warrants that it has the authority to bind the End User to the terms stated herein and remains jointly and severally liable for all obligations under this Agreement.
- 8.7. Except as expressly stated in this Agreement all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.
- 9. Confidentiality**
- 9.1. **Confidential Information** means in relation to any Output of Targets Located Data: any information technical data or know-how including but not limited to that which relates to data, research, plans, ideas, products, services, customers, markets, software developments, inventions, processes, designs, drawings statistics, marketing or finances, or other business or technical information which is treated confidentially. Confidential Information does not include information that:
- 9.1.1. is in the possession of the receiving party at the time of the disclosure;
- 9.1.2. becomes public knowledge without any action of either Party;
- 9.1.3. Was independently developed or prepared by either Party; or
- 9.1.4. Is required to be disclosed by law or by any regulator to whose regulation the disclosing Party is subject...
- 9.2. Each Party agrees not to use or reveal the Confidential Information disclosed to it by the other Party for any purpose except to further the objective of this Agreement. Each Party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other in order to prevent it from falling into the public domain or possession of persons other than those persons authorized hereunder to have any such information, which measures shall include at least a reasonable degree of care. This provision shall be binding on the Parties and shall be treated and safeguarded hereunder by the receiving Party notwithstanding the termination or expiry of this Agreement.
- 9.3. Each Party shall keep confidential all provisions of this Agreement and shall not make any public announcement of it or its subject matter without the other Party's prior written consent.
- 9.4. The End User acknowledges that the End User shall be permitted in Targets Located's sole discretion to request the return of any Confidential Information or Targets Located Data in respect of any Output of Targets Located Data where Targets Located deems the Targets Located Data has been used outside the terms of the End User Licence as specified in the Order Confirmation or; (a) where the End User is unable to destroy any Targets Located Data; or (b) the Order Confirmation has been cancelled in accordance with clause 10. For the avoidance of doubt, any Targets Located Data or Confidential Information should be returned in accordance with

clause 2.16.4.

10. Termination

- 10.1.1 Upon termination of this Agreement and End User Licence, the End User shall immediately return all Targets Located Data or any Confidential Information in accordance with clause 9 and 2.16.4 of this Agreement to Targets Located or confirm its destruction. For the avoidance of doubt, Targets Located will advise in writing if the End User whether they require the Targets Located Data to be returned or destroyed.
- 10.2 Targets Located may terminate this Agreement, any Order Confirmation and End User Licence with immediate effect on giving written notice to End User if End User:
- 10.2.1 Has used Targets Located Data outside the terms of the End User Licence or Order Confirmation;
- 10.2.2 suffers a change of Control;
- 10.2.3 commits any breach of this Agreement which in the sole discretion of Targets Located cannot be remedied; within twenty-eight days of being served written notice to remedy the same;
- 10.2.4 commits any breach of this Agreement which is capable of being remedied but has not been remedied within twenty-eight days of being served written notice to End User;
- 10.2.5 shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme of arrangement with (or assignment for the benefit of) its creditors or if the End User shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the End User or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the End User or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction of a solvent company).
- 10.3 Any termination of this Agreement shall be without prejudice to any other rights or remedies to which a Party may be entitled under this Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.4 Upon the termination of this Agreement for any reason clause 9 hereof shall continue in force in accordance with the terms.
- ## 11. Force Majeure
- 11.1 Neither Party hereto shall be liable for any breach of its obligations hereunder resulting from causes beyond its reasonable control including but not limited to fires strikes (of its own or other employees) insurrection or riots embargoes container shortages or delays in transportation inability to obtain supplies and raw materials requirements or regulations of any civil or military authority ("Event of Force Majeure").
- 11.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
- 11.3 If a default due to an Event of Force Majeure shall continue for more than eight weeks then the Party not in default shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure.
- ## 12. Waiver
- 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 any 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 hereunder operate as a waiver of any breach or default by the other Party.
- ## 13. Notices

Any notice under this Agreement shall be in writing and shall be deemed duly given if sent by first class post or delivered by hand or facsimile transmission to the address of the Party to be served given in this Agreement or to the registered office of that Party from time to time. Any notice so served shall be deemed delivered when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

14. Invalidity and Severability

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 and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect. The Parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.

15. Non Assignment

- 15.1 No part of this Agreement may be assigned or sub-contracted whether voluntarily, involuntarily, or by operation of law. No such assignment by End User howsoever occurring shall relieve it of its obligations under this Agreement.
- 15.2 End User shall not be entitled to assign or sub-licence or otherwise transfer the End User Licence, the End User Licence shall be personal to End User only.

16. Entire Agreement

- 16.1 Subject to any variation which is agreed in writing between Targets Located and End User this Agreement contains the whole agreement between the Parties and supersedes any prior written or oral agreement between them relating to the subject matter hereof and the Parties hereby acknowledge to each other that they have not entered into this Agreement on the basis of any representations that are not expressly incorporated in this Agreement. All other terms and conditions (including any terms or conditions which End User purports to apply under any purchase order, confirmation of order, specification or other document) shall be of no effect. Without prejudice to the generality of the foregoing no terms and conditions endorsed on, delivered with or contained in any purchase order, confirmation of order, specification or other document provided by End User shall form part of the contract between Targets Located and End User simply as a result of such document being referred to therein.
- 16.2 A contract will be formed between Targets Located and End User on the date that the Order Confirmation is received by Targets Located having been signed and dated by End User.

17. Successors

This Agreement shall be binding upon and endure for the benefit of the successors in title of the Parties hereto.

18. Relationship of Parties

Nothing in this Agreement shall create or be deemed to create a partnership or the relationship of employer or employee between the Parties.

19. Headings

Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.

20. VAT

Save insofar as otherwise expressly provided, all amounts stated in the Order Confirmation are exclusive of amounts in respect of value added tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes are made under the Order Confirmation by Targets Located to the End User and/or agency or broker, the End User and/or agency or broker shall, on receipt of a valid VAT invoice from Targets Located, pay to Targets Located such additional amounts in respect of VAT as are chargeable on the supply of Targets Located Data as at the same time as payment is due for the supply of the Targets Located Data.

21. Governing Law and Submission to Jurisdiction

- 21.1 The construction validity and performance of this Agreement shall be governed by and construed in all respects in accordance with English law.
- 22.2 All disputes arising in any way out of or affecting this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties to this Agreement agree to submit.