

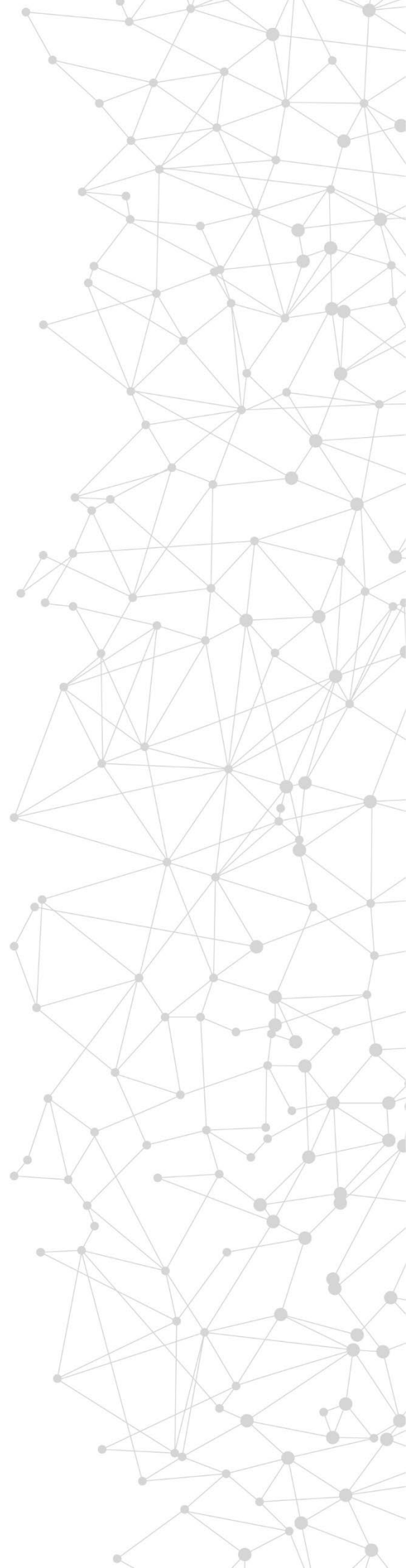


## Terms of Business

End User



IS 666067



This Agreement is made on the Start Date

## Parties

- (1) Sagacity Solutions Limited (Registered No. 05526751), whose registered office is at part 4<sup>th</sup> Floor, 120 Holborn, London EC1N 2TD ('Sagacity'); and
- (2) <company name>, (**Registered No. <registrations number>**), whose registered office is situated at <company address> ('End User')

## Recital

The End User wishes to receive certain Services from Sagacity.

### 1. Definitions and Interpretations

The words and expressions defined in Schedule 1 shall have the meanings given in that Schedule.

### 2. Orders and Terms and Conditions of Business

- 2.1. All Services supplied by Sagacity after the Start Date shall be subject to the terms of this Agreement unless and until terminated.
- 2.2. Sagacity shall only be obliged to perform those requested Online Services and those Services set out in a signed Order Confirmation.

### 3. The Products and Services

- 3.1. Sagacity shall perform the Services with reasonable skill and care, using techniques generally accepted in the data management/data processing services industry.
- 3.2. The Data Processing Services are performed by Products which are based primarily on Third Party Data. As such, Sagacity can only pass on such warranties and indemnities as are given by the relevant Third-Party Data Supplier in its licence for the relevant data with Sagacity. Any such warranty and/or indemnity will be set out in this Agreement and/or the applicable EUL Terms.
- 3.3. For the purpose of providing Online Services, Sagacity grants to the End User a non-exclusive, non-transferable licence, without the right to grant sub-licences to access the relevant Product(s) and Services, for its own internal business purposes only.
- 3.4. Sagacity shall provide Support Services to the End User by telephone and email during Normal Working Hours. The End User may purchase enhanced support services separately at the Supplier's then current rates.
- 3.5. Sagacity shall not provide the Support Services in respect of (i) any out of date version of the Product(s) (ii) improper use of the Product(s) (iii) use in breach of this Agreement (iv) any defects caused by the End User's failure to implement any updates or Sagacity recommendations (v) any modifications made to the Product(s) other than by Sagacity or (vi) any fault in the End User's equipment or software (including software interfacing with the Products).
- 3.6. To enable continuous improvement and to provide the best service possible, Sagacity may temporarily suspend access to the Products and/or the Services for maintenance or upgrade work providing reasonable prior notice where possible.

- 3.7. Updates (minor changes to functionality) and upgrades (major changes to functionality) to the Products and new Services may be available from time to time.
- 3.8. The End User may provide the Deliverables to a third-party service provider provided that such third party is acting only on the End User's behalf and only uses the Deliverables for the End User's internal business purposes and subject to the terms of this Agreement.

#### **4. The End User's Obligations**

- 4.1. The End User shall: (i) provide all necessary co-operation in relation to this Agreement; (ii) provide the End User Data in a consistent and acceptable format and as stipulated in the Order Confirmation or online job set up for Online Services; (iii) in the case of Hosting Services, (a) provide the updates specified by the date specified and (b) comply with any relevant restrictions set out in the Order Confirmation; (iii) comply with the EUL Terms applicable to the Services selected; and (iv) retain duplicates of all End User Data supplied to Sagacity.
- 4.2. The End User undertakes (i) not to use the Deliverables for any unlawful, harmful, threatening, defamatory, obscene, harassing or discriminatory purpose or for any purpose which is likely to bring either Sagacity or a Third Party Data Supplier into disrepute; (ii) not to use the Deliverables for the marketing or promotion of any services in connection with payday loans or for claims management purposes such as the reclaim of Payment Protection Insurance ('PPI') or compensation for the mis-selling of PPI products, debt management or accident claims purposes and (iii) except to the extent permitted by law, not to adapt, modify, translate, reverse assemble, decompile or reverse engineer, de-compile, reverse compile, disassemble the Products or any component or to create any derivatives or other products or services based upon the Products nor duplicate or reproduce the Products or (iv) allow any third party to licence, sell, rent, lease, transfer, assign, distribute, disclose or otherwise commercially exploit the Deliverables.
- 4.3. The End User agrees and acknowledges that the Deliverables, Products and Online Services supplied under this Agreement may not be re-sold or otherwise made available in any way whatsoever to any other third party or any subsidiary, holding company or group company unless expressly permitted by Sagacity in advance In Writing or in the applicable EUL Terms.
- 4.4. The End User agrees, in its use of the Deliverables and Products, to comply with the directions of a Third Party Data Supplier (as relayed to the End User by Sagacity in the EULs) and any code of practice, regulations or legislation introduced by the Government or a competent authority which relates to the privacy of a consumer or business, including the Telephone Preference Service, Facsimile Preference Service or Mailing Preference Service, as relevant. The End User acknowledges that Sagacity does not screen End User Data or New Data against such preference services unless the End User has requested and paid for this as one of its selected Data Processing Services.
- 4.5. The End User warrants that (i) it has complied with the relevant provisions of the Data Protection Legislation in relation to the collection of the End User Data and its supply to Sagacity; (ii) it shall comply with all applicable laws and regulations with respect to its activities under this Agreement; (iii) it has made all necessary notifications to the Information Commissioner; (iv) the End User Data will not contain anything defamatory, obscene or contrary to any law or regulation or that infringes any third party's Intellectual Property Rights; and (v) any marketing communication for which the New Data is used shall comply with the DMA Code of Practice and with the British Code of Advertising, Sales Promotion and Direct Marketing. Sagacity reserves the right to request the End User to supply two samples of any marketing communication(s) that it intends using to market any products and/or services using the New Data for prior approval by the Third-Party Data Supplier (which shall not be unreasonably withheld or delayed). The End User shall not use any marketing communication for which prior approval has been declined.

- 4.6. The End User shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Products, Services and Deliverables and, in the event of any such unauthorised access or use, it shall promptly notify Sagacity.
- 4.7. The End User shall carry out all End User responsibilities as set out in this Agreement in a timely and efficient manner. In the event of any delays, Sagacity may (in its sole discretion) adjust any agreed timetable or delivery schedule as reasonably necessary.
- 4.8. If the End User is in breach of a term of this Agreement or any EUL terms then the End User will fully indemnify and keep Sagacity indemnified against any loss, liabilities claims, actions, proceedings, expenses and costs (including without limitation court costs and reasonable legal fees) and damage (including any claims from a Third Party Data Supplier) which Sagacity or the Third Party Data Supplier suffers as a result of the End User's breach and any breach by a third party instructed by or on behalf of the End User.
- 4.9. The End User shall store any User ID and Password issued to it by Sagacity securely and shall be liable for any misuse or loss of any password by its employees. The End User warrants that it shall undertake regular reviews of its employees' access rights to any password issued by Sagacity and in particular shall be responsible for promptly disabling access in respect of employees who no longer work for the End User's organisation and in all other circumstances where an employee's access is no longer required or appropriate. The End User is responsible for payment of all invoices generated as a result of Products accessed and Services used using its User ID and Password.
- 4.10. The End User shall promptly notify Sagacity on becoming aware of any invalid records contained in the New Data and shall immediately cease to use such invalid records.

## **5. Delivery**

- 5.1. Unless otherwise agreed in the Order Confirmation, Sagacity will deliver the Deliverables electronically to the End User or, in the case of the Online Services, the Deliverables will be made available for collection. Sagacity will deliver the Deliverables by a secure method of transfer via an encrypted link using SSL, as a PGP encrypted e-mail attachment or via SFTP transfer or other secure equivalent. Deliverables made available for collection will be stored securely on Sagacity's systems.

## **6. Payment**

- 6.1. The fees for the Services are set out in the Order Confirmation or, in the case of the Online Services, shall comprise the Annual Licence Fee and the tariff for each Data Processing Service selected which is viewable online on the 'Account' tab of the End User's user account. Any Fees which have been pre-paid are not refundable other than where Sagacity are in breach of this Agreement by failing to provide the service to which the licence relates.
- 6.2. Payment is due within 28 days from the date of the invoice. Subject to Clause 6.9, for Online Services invoices shall be submitted at the end of each calendar month for usage of the Service(s) during such month, unless such amounts are paid in advance by credit card. Invoices for Bureau Services shall be invoiced upon completion of the job described in an Order Confirmation unless agreed otherwise with Sagacity. Licences for use of any third-party software will be invoiced in advance and shall be payable prior to the End User accessing such software.
- 6.3. Any disputes in relation to an invoice should be notified to Sagacity within 21 days of the date of the invoice otherwise such invoice shall be deemed accepted.
- 6.4. Sagacity reserves the right to charge interest on overdue sums from the due date at the rate of 4% above the base rate for HSBC Bank plc for the time being. This right extends to any part of a disputed invoice which is subsequently established to have been properly invoiced.

- 6.5. All Fees and charges payable are exclusive of VAT which must be paid in addition at the rate and in the manner prevailing at the relevant tax point.
- 6.6. Should the End User cancel any work in progress or if Sagacity terminates this Agreement for cause pursuant to Clause 13, Sagacity may at its sole discretion invoice the End User pro rata for the fees payable for the work that Sagacity has undertaken prior to receiving notice of cancellation.
- 6.7. Sagacity shall provide at least 28 days' written notice of any increase in the Fees. Unless the End User exercises its right to terminate during such notice period pursuant to Clause 13.3, it will be deemed to have accepted the price increase.
- 6.8. Without liability to the End User, Sagacity may suspend any or all of the Services if the End User fails to pay any sum when due.
- 6.9. If the End User's usage of the Services at any time exceeds any credit limit offered by Sagacity, Sagacity may issue an interim invoice and/or request early payment of any invoice prior to providing further Services.

## **7. Claims for Defects THE END USER'S ATTENTION IS DRAWN TO THE LIMITATIONS SET OUT IN THIS CLAUSE**

- 7.1. The fees and tariffs for the Services are determined on the basis of the exclusions and limitations on liability set out in Clauses 7, 8 and 9 below applying to such Services: -
- 7.2. Given that the accuracy of personal data can deteriorate quickly, the End User agrees to examine all Deliverables promptly and to bring any issues to Sagacity's attention In Writing no later than 21 days after delivery of the Deliverables to the End User. If a claim is made during the 21-day period as referred to in Clause 7.1, Sagacity will, at its option, replace the Deliverables free of charge or refund the price of the Deliverables if, following investigation, Sagacity establishes, acting reasonably and in good faith, that such Deliverables were incorrect or defective having taken into account the limitations and disclaimers set out in clause 8 below. This will be in full and final settlement of any and all liability to the End User in respect of the quality and/or fitness for purpose of the Deliverables.

## **8. Accuracy and Suitability Requirements**

- 8.1. Sagacity warrants that: (i) it has full corporate power and authority to enter into this Agreement and do all things necessary for the performance of this Agreement; and (ii) it is authorised to provide the Services and any New Data on the terms of this Agreement and any EUL Terms.
- 8.2. As the Products and the Services have not been created to meet the End User's specific requirements, Sagacity gives no warranty that they are fit for the End User's particular purpose.
- 8.3. Data changes constantly and therefore the accuracy of the Deliverables can deteriorate quickly. Sagacity does not warrant that the Deliverables are error free and Sagacity shall not be liable for any errors or inaccuracies in the Deliverables due to inaccurate or incomplete End User Data.
- 8.4. Sagacity does not guarantee actual response rates or other predictive indications in its analytical conclusions and interpretations.
- 8.5. Sagacity does not guarantee that the Services will be error free or run uninterrupted or that the End User will have continuous access to Services or to any data hosted by Sagacity.
- 8.6. Sagacity shall not be liable if any Deliverables contain anything obscene or offensive as a result of such material having been provided by the End User, unless Sagacity has carried out profanity screening on such Deliverables as one of the End User's selected Data Processing Services.

- 8.7. Except for the warranties given in this Agreement, Sagacity gives no other warranties or representations with regard to the Products, Services or the Deliverables and any further warranties or conditions, express or implied, statutory, customary or otherwise are excluded from this Agreement to the extent permitted by law.

## 9. Limitation of Liability

- 9.1. Save as agreed in this Agreement, all other warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement.
- 9.2. Nothing in this Agreement shall operate to exclude or limit either Party's liability for fraud or for fraudulent misrepresentation or for death or personal injury caused by its negligence or for any other liability which cannot be excluded or limited by law.
- 9.3. Subject to Clause 9.2, Sagacity shall not be liable in tort (including for negligence), contract, misrepresentation, restitution or otherwise for any loss of sales revenue or profit, loss of business, loss of data, loss or depletion of goodwill, loss of management or other time, loss of savings, or pure economic loss, or for any special, indirect or consequential loss, cost, damages, charges or expenses (whether arising directly in the normal course of business or otherwise) even if Sagacity had notice of the possibility of such loss.
- 9.4. Subject to Clauses 7.3, 9.1 to 9.3, and save as set out in clause 9.5, Sagacity's aggregate liability in contract, tort (including without limitation negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or non-performance of this Agreement shall be limited to the amount paid by the End User for the Deliverables or Services which are the subject of the claim (exclusive of VAT) in the 12 months immediately preceding the date on which the claim arose.
- 9.5. Subject to Clauses 9.2 and 9.3, Sagacity's liability to the End User for any claims made against Sagacity under Clauses 10, 11 or 12 shall be limited in aggregate to £500,000.

## 10. Confidentiality and Audit

- 10.1. Each Party may be given access to Confidential Information from the other party in order to perform its obligations under this Agreement. Each Party undertakes to keep and treat as confidential all Confidential Information and not to make use of such information for any purpose whatsoever except in the proper performance of this Agreement.
- 10.2. Each Party may disclose Confidential Information to its employees, professional advisers and others (including subcontractors) only to the extent necessary to perform its obligations under this Agreement provided that any such disclosure is made subject to conditions materially similar to the provisions of this Clause 10.
- 10.3. The obligations of confidentiality above will not apply to material or information which:
- 10.3.1. is in or enters the public domain (otherwise than through a breach of this Agreement) or;
  - 10.3.2. is already known (as demonstrated by the receiving Party's records) by the receiving Party at the time of disclosure or;
  - 10.3.3. is rightfully obtained by either Party from a third party without a breach of any obligation of confidentiality or;
  - 10.3.4. is developed by the receiving Party completely independently of any such disclosure by the disclosing Party or;

- 10.3.5. if either Party consents In Writing to the information being disclosed or;
- 10.3.6. if the receiving Party is compelled to disclose the information by law, by any governmental body or other regulatory authority or by a court or other authority of competent jurisdiction provided that the receiving Party will notify the disclosing Party of any request for such disclosure as soon as is reasonably practicable and takes into account the reasonable requests of the other Party in relation to the content of such disclosure.
- 10.4. During the term of this Agreement or the 12 month period after its termination, a senior member of staff, or duly qualified independent auditors of Sagacity's and/or any of its Third Party Data Suppliers (such staff and auditors being referred to in this clause as 'the Auditor') may, upon giving no less than 10 working days' notice, visit the End User's premises during Normal Working Hours at a mutually convenient time for the purpose of investigating and assessing the End User's compliance with the terms of this Agreement and any applicable EUL Terms. The Auditor shall be supervised at all times by a senior member of the End User's staff. Any information disclosed to the Auditor shall be subject to the obligations of confidentiality set out in this clause 10 and shall only be used for the proper conduct of the audit and any resulting action required. This right of audit may not be exercised more than once in any 12-month period unless Sagacity has reasonable grounds to suspect that the End User is in breach of its obligations under this Agreement or any applicable EUL Terms.
- 10.5. Each Party also agrees that it will not (except with the prior written consent of the other Party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other Party any person employed or engaged by such other Party, who has been involved in the performance of the contractual arrangements between the Parties. Such restriction shall remain during the term of this Agreement and for a further period of 12 months after its termination, but it shall not operate to prevent engagement of any employee as a result of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other Party.
- 10.6. The Parties agree that damages may not be an adequate remedy for breach of this clause 10 and that the damaged Party may be entitled to apply for injunctive or other equitable relief.
- 10.7. The above provisions of this Clause 10 shall survive termination of this Agreement, howsoever arising.

## **11. Intellectual Property**

- 11.1. The Intellectual Property Rights in the Sagacity Trade Marks the Products, Third Party Data and the Deliverables and any which arise in providing the Services are and shall remain, or shall be from the time they arise, Sagacity's or the Third-Party Data Supplier's (as appropriate) exclusive property. The End User shall promptly notify Sagacity of any infringement or suspected infringement by any third party or a claim that any Product or Service infringes the rights of a third party of which it becomes aware and shall assist Sagacity to take such action as it deems appropriate.
- 11.2. Any Intellectual Property Rights in the End User Data are and shall remain the End User's exclusive property. The End User hereby grants Sagacity a non-exclusive, non-transferable, fully paid up, royalty free licence for the term of this Agreement to use and process the End User Data for the purposes of performing Sagacity's obligations under this Agreement. For the avoidance of doubt, this does not affect Sagacity's ability to use the New Data.
- 11.3. Subject to Clauses 11.2 and 11.4, Sagacity assigns to the End User all Intellectual Property Rights in relation to any End User Data.
- 11.4. Sagacity uses its own data sets and uses its Third-Party Data Suppliers' data sets for providing the Services to the End User. Consequently, Clause 11.2 does not operate to transfer any ownership of Intellectual Property Rights in such New Data to the End User.

However, the End User may use the Third-Party Data, together with the Deliverables arising from such data sets, for the End User's internal business purposes, provided that the Deliverables are used in accordance with the terms of this Agreement and any EUL Terms.

- 11.5. Subject to Clause 9.5, Sagacity will indemnify the End User against any claim that the normal operation, possession or use of the Products, Services or Deliverables (other than any aspect relating to End User Data) infringes the Intellectual Property Rights of any third party provided that (i) the End User gives Sagacity immediate notice and complete control of such claim; (ii) the End User does not prejudice Sagacity's defence of such claim; (iii) the End User gives Sagacity all assistance with such claim as it may reasonably require; and (iv) the claim does not arise as a result of a breach of any of the End User's obligations under this Agreement or any EUL Terms.
- 11.6. The End User will not remove any notices of confidentiality, ownership or origin on or contained in the Products, Services or Deliverables.
- 11.7. The End User shall ensure that each reference to, and use of, any of the Sagacity Trade Marks by the End User is in a manner approved by Sagacity. Any use of the Sagacity Trade Marks by the End User shall enure for Sagacity's benefit.
- 11.8. Other than the licences expressly granted under this Agreement, neither Party grants any licence of, right in or makes any assignment of any of its Intellectual Property Rights.

## **12. Data**

- 12.1. The End User shall own all right, title and interest in and to all of the End User Data and shall have the sole responsibility for the legality, reliability, integrity, accuracy and quality of the End User Data.
- 12.2. The Parties agree that in respect of any part of the End User Data that constitutes 'Personal Data', Sagacity shall be the 'Data Processor' and the End User shall be the 'Data Controller'. Where Sagacity is supplying Personal Data to the End User Sagacity, the Third-Party Data Supplier and the End User will each be a Data Controller. Sagacity may also act as a Data Processor of Personal Data. In each case, 'Personal Data', 'Data Controller' and 'Data Processor' shall have the meanings set out in the Data Protection Legislation.
- 12.3. With regard to Personal Data processed under this Agreement, each Party when acting in its capacity as Data Controller shall: -
  - 12.3.1. ensure that when it transfers the relevant Personal Data to the other Party to process it has a legal basis for doing so that the other party in its capacity as Data Processor may lawfully process the data;
  - 12.3.2. Where the End User is the Data Controller and is supplying data to Sagacity for processing, ensure that the Data Subject and/or relevant third parties have been informed of, and have freely given their specific, informed and unambiguous consent to the processing of their data, or such use, processing, and transfer is compliant with Data Protection Legislation on other legal grounds and that the End User's instructions comply with such legislation;
  - 12.3.3. take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental or unlawful loss, destruction, alteration, unauthorised disclosure of or damage or access to Personal data transmitted, stored or otherwise processed;
  - 12.3.4. where the End User is the Data Controller, upon receipt of a complaint from any Data Subject related to the End User's use of the Deliverables or New Data, (i) promptly notify Sagacity; (ii) immediately cease using such Data Subject's details for marketing purposes; and (iii) follow any reasonable complaint handling procedure outlined by the Third-Party Data Supplier relayed to the End User by Sagacity and (iv) respond to such complaint in accordance with the Data Protection Legislation;



- 12.3.5. ensure that it maintains records of all Personal Data containing:
- (a) the name and contact details of all Data Processors appointed by it;
  - (b) the name and contact details of its data protection officer (where appointed);
  - (c) the categories of Data Subject, types of Personal Data processing and duration of processing carried out by it;
  - (d) where applicable, details of transfers of Personal Data to a third country or an international organisation by it, including the identification of that third country or international organisation, and the documentation of suitable safeguards in respect of such transfers; and
  - (e) a general description of the technical and organisational security measures implemented by it to safeguard the Personal Data and the processing of the Personal Data.
- 12.3.6. not undertake any act or omission which would breach the Data Protection Legislation.
- 12.4. With regard to Personal Data processed under this Agreement, Sagacity shall:
- 12.4.1. process the Personal Data only in accordance with the terms of this Agreement and any lawful instructions reasonably given by the End User from time to time to the extent the same fall within the scope of the Services;
  - 12.4.2. ensure that any additional or replacement Data Processors it appoints in respect of the Personal Data, are appointed on terms that comply with the Data Protection Legislation and in any event shall remain fully liable to the End User for performance of such Data Processor's obligations;
  - 12.4.3. take appropriate technical and organisational measures against unauthorised or unlawful processing of the Personal Data or its accidental or unlawful loss, destruction, alteration, unauthorised disclosure or damage or access to Personal Data transmitted, stored or otherwise processed.
  - 12.4.4. not process or transfer any such data outside the European Economic Area (EEA) without the End User's prior consent;
  - 12.4.5. assist the End User with complying with data protection impact assessments in respect of Sagacity processes; and liaise with the relevant supervisory authority in respect of the processing undertaken by Sagacity where reasonably requested to do so;
  - 12.4.6. at the End User's direction, in respect of the Personal Data which is in Sagacity control: delete or return all the Personal Data to the End User within 6 (six) months after the provision of the relevant services, or in the case of the supply of data analytics and hosting services within 6 (six) months after termination of this Agreement, or for any other period as agreed In Writing between the Parties. Sagacity will delete existing copies once the 6-month period has passed unless any applicable laws require storage of the Personal Data by Sagacity. Upon request, Sagacity will promptly certify In Writing to the End User that it has complied with its obligations in respect of this Clause 12.4.6;
  - 12.4.7. make available to the End User all information reasonably necessary to demonstrate compliance by Sagacity with the obligations applicable to them in this Agreement, and allow for and contribute to audits, including inspections, conducted by the End User, or where agreed by both parties (such agreement not to be unreasonably withheld) another auditor appointed by the End User, upon giving no less than 10 working days' notice to Sagacity of the request to carry out an audit. It is agreed that such audit is to take place during normal working hours and at a mutually convenient time for the purpose of investigating and assessing Sagacity's compliance with the terms of this Agreement and shall be subject to such conditions as Sagacity reasonably imposes in order to protect the confidentiality and security of its systems and data. Any information disclosed shall only be used for the proper conduct of the audit and any resulting action required and shall be treated as Confidential Information of Sagacity.

This right of audit may not be exercised other than in accordance with this Clause 12.4.8, nor more than once in any 12-month period, unless: (1) the End User has reasonable grounds to suspect that Sagacity is in breach of its obligations under this Agreement; or (2) otherwise required by applicable law or the direction of a supervisory authority;

- 12.4.8. promptly inform the End User (together with provision of reasonable written justification at the same time) if it reasonably believes that compliance with any Personal Data processing instructions provided by the End User would contravene Data Protection Legislation.
- 12.4.9. ensure that it immediately ceases processing Personal Data where this is required by Data Protection Legislation.
- 12.4.10. ensure that it maintains records of all categories of Personal Data processing activities carried out with, where relevant, such records containing:
  - a) the name and contact details of all other Data Processors appointed by it;
  - b) the name and contact details of its data protection officer (where appointed);
  - c) the categories of Data Subject, types of Personal Data processing and duration of processing carried out by it;
  - d) where applicable, details of transfers of Personal Data to a third country or an international organisation by it, including the identification of that third country or international organisation, and the documentation of suitable safeguards in respect of such transfers; and
  - e) a general description of the technical and organisational security measures implemented by it to safeguard the Personal Data and the processing of the Personal Data.
- 12.4.11. not divulge such Personal Data whether directly or indirectly to any person, without the End User's express consent except to (i) those of its employees and sub-contractors that need to have access to the data and who are made aware of their legal obligations with regards to such data; (ii) the Data Subject, (iii) a supervisory body or; (iv) as required by Data Protection Legislation;
- 12.4.12. promptly carry out any request from the End User or a Data Subject to respond to and/or requiring Sagacity to amend, transfer or delete all or any part of such Personal Data;
- 12.4.13. notify the End User immediately upon receiving any notice or communication from any Data Subject, supervisory or government body which relates directly or indirectly to the processing of the Personal Data;
- 12.4.14. assist the End User to respond promptly to all subject access requests which may be received from Data Subjects and (i) provide the End User with all reasonable information and assistance relating to a Personal Data breach as requested by the End User; (ii) comply with all reasonable steps as reasonably requested by the End User in respect of managing such Personal Data breach and (iii) promptly undertake all such remedial actions as necessary to mitigate the consequences of the Personal Data breach, and to the extent reasonably possible, remedying the cause of the Personal Data breach;
- 12.4.15. notify the End User, within 12 working hours of it becoming aware of a breach or a reason to suspect a breach of the terms of this Clause 12.4. or any Personal Data is, or is suspected to be, lost, corrupted, used by or disclosed to a third party in breach of this Agreement; and
- 12.4.16. establish business continuity plans in order to protect Personal Data in the event of unforeseen circumstances including fire protection and secure, regular back-ups.
- 12.4.17. not undertake any act or omission which would breach the Data Protection Legislation.

12.5. In the event that any of the above obligations, including without limitation under clauses 12.4.2, 12.4.5, 12.4.8, 12.4.12 and 12.4.14, cause Sagacity to incur material additional expense, Sagacity reserves the right to make reasonable additional charges where the End User requests Sagacity to carry out such actions.

12.6. The specific details of data processing are set out in Schedule 2.

### **13. Duration and Termination**

13.1. This Agreement will commence on the Start Date and shall continue for an initial period of 12 months (the 'Contract Period') and thereafter shall continue for successive 12-month periods (the 'Renewal Period') unless and until terminated pursuant to this Clause 13.

13.2. Without prejudice to any other rights or remedies to which the Parties may be entitled, either Party may terminate this Agreement: -

- a) by giving not less than 3 calendar months' notice In Writing to the other Party, such notice expiring not earlier than the end of the initial Contract Period or subsequent Renewal Period;
- b) immediately upon serving notice In Writing if the other Party commits any breach of any of the material terms of this Agreement (payment terms being 'material' for these purposes) and in the case of a breach which is capable of being remedied, such breach is not remedied within 14 days of a written request to do so;
- c) immediately upon serving notice In Writing if the other party (i) has a receiver or administrative receiver appointed over its assets; (ii) passes a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction); (iii) a court of competent jurisdiction makes an order to that effect; (iv) becomes subject to an administration order; (v) enters into any voluntary arrangement with its creditors; or (vi) ceases or threatens to cease to carry on business (v) suspends or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986.
- d) If the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- e) If any warranty given is found to be untrue or misleading;

13.3. The End User may terminate the relevant Data Processing Service on 28 days' notice In Writing if Sagacity serves notice of a price increase in accordance with Clause 6.7.

13.4. Sagacity may terminate this Agreement, or certain Services performed under it immediately by serving notice In Writing:

- i. if the End User breaches any EUL Term; or
- ii. if any of Sagacity's licences to use Third Party Data are terminated or due to a change in law it is no longer permissible to continue to supply any or all of the Services. In such circumstances, Sagacity shall give the End User a pro-rata refund of any applicable Annual Licence Fee.

13.5. Termination of this Agreement or any Services performed under it shall not affect any accrued rights or obligations of either Party. The provisions of any clauses of this Agreement and any EUL Terms expressed or required by implication to survive termination shall survive termination of this Agreement for any reason. Upon termination of this Agreement for whatever reason, Sagacity shall delete all End User Data from its operational systems within a reasonable time period and the End User shall forthwith delete all New Data from its systems save where the End User has paid for permanent use of such data or is otherwise permitted to retain such data under the appropriate EUL Terms.

13.6. On termination of this Agreement for any reason:

- a) all licences granted shall immediately terminate; and
- b) each party shall return all property and other items belonging to the other party

## 14. General

14.1. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances and warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2. Neither party shall have any liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock outs or other industrial disputes (whether involving the workforce of Sagacity or a Third Party Supplier), failure of a utility service or transport or communications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of Sagacity's, provided that the End User is notified of such an event and its expected duration.

In such circumstances, the affected Party shall be entitled to a reasonable extension of time for performing such obligations provided that if the period of delay persists for 3 months or more, the Party not affected may terminate this Agreement by giving 30 days' written notice to the other.

14.3. If there is an inconsistency between any provisions of this Agreement and the EUL Terms, the provisions of this Agreement shall prevail.

14.4. The failure of either Party to enforce any of the provisions of this Agreement will not be construed as a waiver of its rights in respect of such provision, nor shall any such failure prejudice that Party's right to take subsequent action in respect of it.

14.5. Any rights of any person not a party to this Agreement to enforce the terms of this Agreement pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded, save that Royal Mail shall be entitled to enforce the provisions of any EUL Terms which relate to any Royal Mail Services, including the Royal Mail EULAs pursuant to the Contracts (Rights of Third Parties) Act 1999.

14.6. This Agreement, the online pricing schedules for the Online Products, any Order Confirmations or EUL Terms entered into between the Parties will constitute the entire agreement between the Parties in relation to its subject matter and supersede and replace all previous written or oral agreements and understandings between the Parties (including any confidentiality agreements and without prejudice to any accrued liabilities). Any other terms and conditions (including those in the End User's purchase orders) shall have no effect. In the event of any inconsistencies between such documents, Clauses 1 to 14 and Schedule 1 of this Agreement shall take priority in respect of any matters relating to the provision of the Products and the Services and the EUL Terms shall take priority in respect of any matters relating to the Third-Party Data utilised by the Services and the Products.

14.7. The Parties acknowledge and agree that they have not been induced to enter into this Agreement in reliance upon any representation, warranty, promise, statement or undertaking of any kind other than as expressly set out in this Agreement. Nothing in this Clause 14.7 will limit or exclude any liability in respect of any misrepresentations made fraudulently.

- 14.8. If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, the same shall be deemed omitted from this Agreement and the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired as a result of that omission. Save if any invalid, illegal or unenforceable provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 14.9. Sagacity may revise the terms of this Agreement or any EUL Terms from time to time. The End User will be given at least 28 days' notice of any material amendments to this Agreement and/or any EUL Terms which require the End User to re-accept the Agreement/EUL Terms online. Save as expressly provided in this Agreement, no amendment or variation of this Agreement shall be effective unless In Writing and signed by a duly authorised representative of each of the Parties to it.
- 14.10. The End User shall not, without the prior written consent of Sagacity (such consent not to be unreasonably withheld or delayed), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 14.11. Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture between the Parties or otherwise authorise either party to act as agent for the other party, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).
- 14.12. All notices which are required to be given shall be In Writing. Any notices shall be deemed to have been received if sent by prepaid registered first class post two days after posting (excluding Saturdays, Sundays and Bank and public holidays), if delivered by hand on the day of delivery and if sent by email on a working day prior to 4.00 pm at the time of transmission or otherwise on the next working day.
- 14.13. This Agreement (including any non-contractual disputes or claims) will be governed by English law and the Parties submit to the exclusive jurisdiction of the English courts over any claim or matter arising under or in connection with this Agreement.

## SCHEDULE 1

### Definitions and Interpretation

Analysis Services	analysis of the End User Data involving the creation by Sagacity of a new database in a format suitable for analysis using statistical and other techniques
Annual Licence Fee	the annual fee if any, agreed between the Parties In Writing payable by the End User for use of API Services and/or Sagacity>Online and/or Hosting Services subject to increase in accordance with this Agreement (but which is not payable where an End User is trialling Sagacity's services using a test account or in relation to the creation of a credit card account)
API or API Services	the Data Processing Services performed by Sagacity's integrated data processing platform
Bureau Services	the Data Processing Services described in the Order Confirmation to be provided by Sagacity.

Confidential Information	any information designated as such by either Party together with all other information including without limitation information relating to the business affairs, business plans, business strategies, finances, products, services, data (including the End User Data and the New Data as appropriate), software programs, specifications, documentation, source or object code, developments, pricing terms, trade secrets, know-how, personnel, customers, prospects, suppliers and any other information of a confidential nature imparted by either Party to the other Party during the term of this Agreement or coming into existence as a result of either Party's obligations, whether existing in hard copy form, in electronic form or otherwise, and whether disclosed orally or in writing
Data Protection Legislation	the Data Protection Act 2018 and Directive 95/46/EC, and any other applicable law or regulation relating to the processing of personal data and to privacy, as such legislation shall be amended, revised or replaced from time to time, including by operation of the General Data Protection Regulation (EU) 2016/679
Data Processing Services	the data cleaning or enhancement services performed on End User Data by Sagacity which may utilise datasets supplied to Sagacity by Third Party Data Suppliers
Data Subject	as defined in Data Protection Legislation
Data Supply Services	providing data that has been sourced from Third Party Data Suppliers to the End User
Deliverables	the output data (including any New Data) and media (if any) resulting from performance of the Services
End User Data	a compilation of records of the End Users' existing or prospective customers provided by the End User to Sagacity prior to receiving the Services
Group Company	in relation to any company, that company and every holding and subsidiary company of that company, or any holding or subsidiary company of any such holding or subsidiary company from time to time (holding and subsidiary company shall have the definitions in Section 1159 Companies Act 2006)
Hosting Services	hosting of End User Data on Sagacity's servers
Intellectual Property Rights	any and all intellectual property rights in any part of the world including rights in or in connection with inventions, patents, copyright, moral rights, trademarks, service marks, business or trade names, design rights and database rights, together with all other rights of a similar or corresponding character or nature whether or not now existing or that come into existence in the future and whether or not registered or registerable including all applications and rights to apply for registration of such rights and all renewals and extensions and all rights of action and remedies in relation to past infringements
In Writing	a letter on the relevant Party's headed paper sent by post or by hand or an email emanating from the relevant Party's email address

New Data	any data regarding a Data Subject that did not form part of the End User Data prior to Sagacity's performance of its Services and that Sagacity provides under this Agreement
Normal Working Hours	9 a.m. to 5.30 p.m. Monday to Friday, excluding bank and public holidays and any notified Christmas shutdown
Online Services	the batch Data Processing Services selected by the End User to be performed by Sagacity's online data processing facility called 'Sagacity>Online' or API
Order Confirmation	a notice In Writing from Sagacity to the End User following the End User's request for certain Services (other than Online Services) confirming which (if any) of the requested Services that Sagacity shall provide (subject to the End User's acceptance of the relevant EUL Terms), a description of such Service(s) and the cost and estimated delivery times for such Service(s) and format of End User Data required which the End User shall be required to sign to confirm its acceptance
Parties/Party	both parties or a party to the Agreement as the context requires
Product(s)	any or all of Sagacity's online data processing facilities called 'Sagacity>Online' and 'API'
Royal Mail	Royal Mail Group Limited, 100 Victoria Embankment, London, EC4Y 0HQ
Royal Mail EULA(s)	the licence agreement(s) relating to the Royal Mail Services provided by Sagacity
Royal Mail Services	any services provided by Royal Mail
Services	such of the Bureau Services, API Services, Sagacity Online Services, Hosting Services, Analysis Services, Data Processing Services, Data Supply Services, Royal Mail Services and any other services as may be requested by the End User from time to time and confirmed by Sagacity in an Order Confirmation
Start Date	the date on which the End User accepts this Agreement online
Support Services	the administrative, user and technical support provided by Sagacity by telephone and email for the Products
Third Party Data	data supplied by Sagacity from a Third-Party Data Supplier in connection with certain Services
Third Party Data Supplier(s)	persons that have licensed Third Party Data to Sagacity
Sagacity Trade Marks	any and all trade marks owned and used by Sagacity from time to time in connection with the Products and Services and whether registered or unregistered and including without limitation UK registered trade mark number 2266989, the Sagacity name and logos, API and the Sagacity>Online name and logo
VAT	Value Added Tax which will be added to an invoice at the prevailing rate

1. In this Agreement:
  - 1.1. use of the singular includes the plural and vice versa and the use of any gender includes the other genders;
  - 1.2. references to 'persons' shall include references to individuals, bodies corporate, partnerships and unincorporated associations;
  - 1.3. clause headings are for convenience only and shall not affect the interpretation of this agreement;
  - 1.4. any words following the terms including, include, in particular or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms;
  - 1.5. reference to any Statute or regulation includes a reference to any amendment or re-enactment and to any subordinate legislation made under such Statute or regulation; and
  - 1.6. any capitalised terms used in the EUL Terms shall have the meaning set out above, unless otherwise defined in the applicable EUL Terms.



**SCHEDULE 2****Data Processing**

## 1. Data set:

End User's customer or prospect personal data

## 2. Operation (including any use of Sub-processors)

The cleansing of End User customer and / or prospect data and any other processing forming part of the Services

## 3. Nature and Purpose of the Processing

Sagacity processing the Personal Data to cleanse and / or enhance the data to improve its accuracy, completeness and currency and any other processing included within the Services

## 4. Categories of Data Subject affected

End User customer and / or prospects

## 5. Types of Personal Data Processed

End User name and address and other non-sensitive data related to the individual

## 6. Controller of Personal Data

End User

## 7. Duration of the Processing

As per the retention policy i.e. need for storage for a valid legal or regulatory requirement; or for the duration of the Term or any extended terms of the Agreement

By clicking the 'Accept' button, you are deemed to have accepted the terms and conditions above and you hereby confirm that you are authorised to enter into and form a binding contract on behalf of the End User.