

Order Form

This Order Form and the attached terms and conditions set out the terms of the Agreement between Market Location Ltd ("ML") and Client, being the person, company or other undertaking whose name and address are shown below. IT IS AGREED that Client will pay the Charges shown below in consideration of ML giving Client the right to access and use the selected Database(s) for the duration specified below and/or for providing the Services selected below (if any). Any defined terms used on this Order Form shall have the meaning as defined in the terms and conditions.

Client

Business Name		Company No Required for email broadcasts	
Address			
Contact Name		Position	
Telephone No		Email	

Client Account Information

This information is mandatory please complete:

Accounts Contact		Email:	
Invoice Address:			
Purchase Order No:		Payment Terms:	☐ 30days ☐ 60days ☐ Other

ML Database (MLDB) and or Services

Requirements (select only one option)	☐ Data ☐ Email ☐ Data Solutions ☐ Data & Email ☐ Email & Data Solutions ☐ Data and Data Solutions ☐ Data, Email and Data Solutions
Email (select only one option)	☐ Supply ☐ Broadcast ☐ Supply & Broadcast
Data (select only one option)	☐ MLBNB ☐ MLCP ☐ MLBOM ☐ MLDB ☐ MLBNB & MLCP ☐ MLBNB & MLDB ☐ MLBNB, MLCP & MLDB
Usage (select only one option)	☐ Single Use ☐ Multiple Use 12 months ☐ Multiple Use 24 months

Data Solutions

Data Audit	Yes ☐ No ☐	Targeting / Segmentation	Yes ☐ No ☐
Matching / Cleansing	Yes ☐ No ☐	Bizi Application Setup	Yes ☐ No ☐
Appending / Enhancing	Yes ☐ No ☐	Ice Application Setup	Yes ☐ No ☐
Delivery Date		Updates	Yes ☐ No ☐
Updates Frequency		No of Updates	

Additional Requirements

Permitted Third Parties: Legal entity name and address			
Information Selection eg Industry Types, Geographic Areas, Contacts Plus.	Please see schedule 2 attached to this Order Form for more information (if applicable)		
Volumes			
Data Fields to be supplied			
Total Price (+ VAT)	£	Cost per '000	£
Agency Commission	0.00%	ML Sales Ref	

Signed by or on behalf of the Client/Broker

Acknowledged by and on behalf of ML

Name		Name	
Position		Position	
Signature		Signature	
Date		Date	

This Order Form constitutes an offer, which, upon signing and communicating its acceptance by the Client, becomes a binding agreement between Client and ML on the terms set out in this Order Form and the attached terms and conditions.

Schedule 2 Additional Information

Terms and Conditions

DATA AND SERVICES TERMS AND CONDITIONS

1. DEFINITIONS

1.1 The following terms shall, unless the context requires otherwise, have the following meanings:

"Agreement" means the Order Form and these terms and conditions.

"Appending & Enhancing" means the process of introducing additional Data Fields to existing records in the Client Database and/or Client Consolidated Database (as the case may be) performed by ML.

"Broker" means the entity identified as such on the Order Form (if any) who enters into this Agreement for and on behalf of the Client and is responsible for delivering the Data to the Client and paying the Charges to ML.

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

"Charges" means the amount(s) payable by Client or Broker (as applicable) to ML in respect of the supply of Data and/or Services (as applicable), as specified on the Order Form.

"Cleansing" means any process performed by ML on Client Database and/or Client Consolidated Database to identify inaccuracies in the existing records comprising Client Database and/or Client Consolidated Database.

"Client" means the entity identified as such on the Order Form.

"Client Consolidated Database" means the single database generated, maintained and held by Client which includes ML Records in any form supplied by ML.

"Client Database" means any database of business names, telephone numbers, addresses, and other related information, owned by Client or licensed to Client by a third party other than ML.

"Commencement Date" means the Service and/or Data delivery date, or the date the Order Form is signed by Client, whichever is earlier.

"Confidential Information" means all confidential or proprietary information (however recorded) concerning the business, affairs, customers, clients or suppliers of the other party (or any member of its group), that is disclosed or made available whether before or after the date of this Agreement (in any form or medium), directly or indirectly, by either party to the other party. For the avoidance of doubt, Data and ML Records shall constitute confidential information of ML and the existence and content of this Agreement shall constitute confidential information of each party.

"Contract Year" means each period of 12 consecutive months commencing on the Commencement Date and each anniversary thereof.

"Control" means the ability to direct the affairs of another whether by means of voting or contractual rights or otherwise and whether directly or indirectly and **"change of control"** shall be construed accordingly.

"Data" means any or all of MLDB, MLEM, MLBNB, MLCP, and/or MLBOM, as selected on the Order Form.

"Data Audit" means the report following Matching and Cleansing performed by ML on Client Database and/or Client Consolidated Database.

"data controller", "data processor", "personal data" and "processing" have the meanings as defined in the Data Protection Requirements.

"Data Fields" means the specific pieces of information that may comprise a ML Record. The types of Data Fields may be set out on the Order Form.

"Data Protection Requirements" means the UK General Data Protection Regulation (DPPEC (The Data Protection, Privacy and Electronic Communications (Amendment Etc.) (EU Exit)) Regulations 2019), the Data Protection Act 2018 and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), as amended, extended, re-enacted or replaced from time to time and any mandatory guidance or codes of practice issued by the Information Commissioner or other relevant supervisory authority.

"Data Solutions" means any or all of the data solutions identified as such on the Order Form, carried out by ML on Client Consolidated Database and/or any Client Database.

"Direct Marketing" means any form of marketing by telephone, fax, direct mail, market research or use of circulation list, which is aimed at a target market and is carried out by Client, or on Client's behalf by a third party (other than a Restricted Company). For the avoidance of doubt, Direct Marketing shall include Profiling and any other pre-sales activities that support Direct Marketing, conducted by Client, by Broker and/or a Permitted Third Party on Client's behalf, but shall exclude any form of publishing of ML Records.

"Email Broadcast" means the transmission of email Direct Marketing communications to Emails by ML on behalf of Client.

"Emails" means the email addresses contained in the Data, and **Email** shall be construed accordingly.

"Force Majeure" means any events, circumstances or causes beyond the party's reasonable control including accidents, fires, explosions and (when the party affected is any ML Group company or any affiliate of the foregoing) any legislation, order or regulation which materially restricts the licensing of the Data and/or the supply of the Services by ML to Client.

"Hosting" means the physical hosting of Client Consolidated Database and/or any Client Database, on a secure ML server.

"Intellectual Property Rights" means all copyright, database rights, trade marks, domain names, moral rights, patents and rights in inventions, rights in Confidential Information and any other similar or equivalent rights or forms of protection in any part of the world, in each case whether registered or unregistered.

"Matching" means any process where an enquiry is made in relation to any ML Record to ascertain whether a corresponding record (whether or not accurate or complete) appears in any other database.

"ML" means Market Location Ltd incorporated and registered in England and Wales with company number 01864009 whose registered office is 62 Anchorage Rd, Sutton Coldfield B74 2PG.

"MLDB" or "ML Data" means the master database of business names, telephone numbers, addresses, and other related information collected, verified and owned by ML or ML Group or affiliate, as updated from time to time by Updates.

"ML Group" means ML, any subsidiary or holding company from time to time and any subsidiary from time to time of a holding company of ML. For this purpose, a "subsidiary" and "holding company" have the meaning set out in section 1159 of the Companies Act 2006.

"ML Records" means records of businesses contained in the Data, comprised of Data Fields.

"MLBNB" or "Brand New Business Data" means the database comprising ML Records of businesses which have started, changed owner, relocated or opened a new office within the period of three months immediately preceding the date of delivery of the Data to Client under this Agreement.

"MLBOM" or "Businesses on the Move" means the database comprising ML Records of businesses who have confirmed their intention to move premises within the next 12 months.

"MLCP" or "Contacts Plus Data" means the database comprising ML Records of contacts whose job descriptions fall under the sector(s) specified on the Order Form.

"MLEM" or "Email Data" means the database of personal and company email addresses attached to individual ML Records.

"Net Data" means the provision of any Data without any ML Records identified as a duplicate of records appearing in any Client Database.

"Permitted Third Party" or "Permitted Third Parties" means any third party specifically mentioned as such on the Order Form, being an intermediary or sub-contractor appointed by Client in connection with the Data and/or Services.

marketlocation G-Cloud 15 Terms & Conditions

"Profiling" means profiling, analysis, research and reporting of Client Consolidated Database and/or Client Database.

"Restricted Company" means any company that is included in ML Restricted Companies list from time to time, as provided by ML to Client from time to time and available upon request. The meaning of Restricted Company extends to such company's holding company or subsidiaries and the subsidiaries of its holding company.

"Services" means any or all of Data Solutions and/or Email Broadcast, as selected on the Order Form.

"Suppression Data" means ML Records relating to live businesses who have indicated a wish not to receive marketing material from third parties.

"Targeting & Segmentation" means a process performed by ML resulting in identifying and grouping records in Client Database and/or Client Consolidated Database according to specified characteristics.

"Updates" means the Data as amended or updated by changing, adding or deleting ML Records or Data Fields.

"Usage" means single use or the period of use of the Data permitted under this Agreement, as specified on the Order Form, and if not so specified, 12 months from the Commencement Date.

1.2 In this Agreement unless the context otherwise requires:

1.2.1 a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time;

1.2.2 the singular includes the plural and vice versa;

1.2.3 any words following the terms "including", "include", "in particular" or "for example" or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words; and

1.2.4 references to a party or parties shall be the parties to this Agreement.

1.3 Unless expressly agreed by the parties in writing, if there is any conflict or inconsistency between the provisions of these terms and conditions and the Order Form, the provisions of these terms and conditions shall take precedence.

2. TERM

2.1 This Agreement shall commence on the Commencement Date and shall continue in effect until the later of the end of the Usage, or the date the last Service is performed under this Agreement (as applicable), when it shall expire automatically, unless:

2.1.1 it is terminated earlier in accordance with clause 9 (termination); or

2.1.2 in the case of the supply of Data: (i) the Client continues to use the Data beyond the Usage; and/or (ii) fails to comply with clause 10.2.2 (destruction of data on termination) and/or clause 10.2.4 (certification of destruction of data), in which case (and without prejudice to ML's other rights), the Agreement shall be extended automatically for 12 months period(s) and ML may charge the Client or the Broker (as applicable) an appropriate fee upon each such extension.

3. DATA

3.1 This clause 3 applies to the supply of Data by ML, if such supply is specified on the Order Form.

3.2 ML shall supply the Data specified on the Order Form.

3.3 ML hereby grants to Client a non-exclusive, non-transferable and non-sublicensable licence to combine Data supplied under this Agreement with Client Database (subject to the ability to comply with clause 3.4) which Client (and its Permitted Third Parties) may use (excluding the Suppression Data) for Client's own Direct Marketing purposes only.

3.4 Client shall ensure that ML Records are identifiable and capable of being extracted from Client (and its Permitted Third Parties') systems at all times as ML Records, by being clearly and unambiguously flagged or marked.

3.5 Client shall comply (and shall ensure that its Permitted Third Parties comply) with the DMA (Data and Marketing Association) Code of Practice and the applicable Data Protection Requirements when Data is used for Direct Marketing purposes.

3.6 Client hereby agrees not to send more than twelve (12) communications to any Email in any consecutive twelve (12) month period and send more than two (2) communications to any Email in any one calendar month.

3.7 Any Direct Marketing carried out by a third party on behalf of Client (including by a Permitted Third Party) shall be on terms not less onerous than this Agreement.

3.8 Client acknowledges and agrees that seed records, which can be tracked, are included in the ML Records.

3.9 Client shall not use or supply any ML Records for any purpose except as expressly permitted by this Agreement. In particular, but without limitation, Client shall not supply any ML Records to any third party (including any companies in the same group of companies as Client) or permit any such third party to use ML Records for any purpose.

3.10 Client shall only make copies of Data and/or ML Records to the extent reasonably necessary for back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing purposes.

3.11 Client acknowledges that not each ML Record in the Data contains all the Data Fields, however, ML will use reasonable endeavours to ensure that Client has as many of those Data Fields as exist in relation to each business.

3.12 Client acknowledges that the Data supplied by ML pursuant to this clause 3 will include personal data and that in accordance with the Data Protection Requirements, each of ML and Client shall act as data controller in respect of such personal data, as, without prejudice to the terms of this Agreement, they will each separately determine the purposes for which and the manner in which such data is processed. For the avoidance of doubt, Client shall not be processing any personal data on behalf of ML as a result of the supply of Data by ML. Each party shall at all times comply with the applicable Data Protection Requirements in relation to the Data.

3.13 If Client receives any complaint, notice or communication that relates directly or indirectly to the processing of the Data or to either party's compliance with Data Protection Requirements (as it relates to the Data), it shall immediately notify ML and provide full details and copies of any communication. Client shall use reasonable endeavours to work with ML to remedy the situation, including, if requested by ML, suppressing the data in question from any further use by Client.

4. SERVICES

4.1 This clause 4 applies to the supply of Services by ML, if such supply is specified on the Order Form.

4.2 ML shall supply the Services specified on the Order Form.

4.3 ML shall: (a) use reasonable endeavours to provide the Services in accordance with this Agreement in all material respects; (b) use reasonable skill and care in the provision of the Services; and (c) use reasonable endeavours to meet any performance dates specified on the Order Form. Any performance dates are approximate only, and the time of performance is not of essence.

4.4 In the event the Services require access to and/or processing by ML of any of Client Database, Client hereby grants to ML a royalty-free, non-exclusive, transferable, sub-licensable and perpetual licence to use such Client Database, including for verification purposes, and to combine such Client Database with other data that ML is entitled to hold. The Client acknowledges that from the moment such Client Database is combined with ML's data, ML shall become a data controller in respect of any personal data contained therein, as it will independently determine the purpose for which and the manner in which it will process such personal data. Consequently, ML shall be responsible for its own compliance with the Data Protection Requirements in respect of any such personal data.

4.5 ML and Client acknowledge and agree that to the extent the provision of the Services requires the processing of personal data contained in Client Database by ML, ML shall process such personal data as a data processor for and on behalf of the Client and to this extent the provisions of Schedule 1 (Data Processing Schedule) shall apply.

5. PAYMENT

- 5.1 Client or (if Broker is acting on behalf of Client) Broker shall pay to ML the Charges as set out on the Order Form. Any delay in payment of sums beyond 30 days from the due date shall result in the sum bearing interest at the rate of 4% above the base rate from time to time of the Royal Bank of Scotland.
- 5.2 Without prejudice to clause 9.1.3, in the event Client or Broker (as applicable) fails to make any payment under this Agreement by its due date, ML shall be entitled to suspend the delivery of the Data, Updates and/or the provision of the Services.

6. CLIENT OBLIGATIONS

- 6.1 Client shall notify ML in writing immediately upon the occurrence of a change of control of Client or client's holding company.
- 6.2 Client shall keep, in paper and electronic form, at its normal place of business detailed, accurate and up-to-date records sufficient to enable ML to verify Client's compliance with the provisions in this Agreement relating to the Data licence (clause 3), Intellectual Property (clause 7) and Confidentiality (clause 8).
- 6.3 In the event ML reasonably believes that the Client is in breach of the provisions referred to in clause 6.2, Client shall, on reasonable written notice in advance, allow ML, and any auditors or other advisors to ML, to access any of Client's premises, personnel, relevant records and systems as may be reasonably required to verify Client's compliance with the provisions referred to in clause 6.2 (provided that Client may redact commercially sensitive information in the relevant records), and shall provide ML with all reasonable co-operation and assistance. ML shall use its reasonable endeavours to not unreasonably disturb Client during any such verification process.
- 6.4 ML's rights under clause 6.3 shall continue for two years after termination of this Agreement. Any costs of verification carried out under clause 6.3 shall be borne by ML unless the verification reveals a material failure by Client to comply with the provisions of this Agreement in which case Client shall reimburse ML for its costs on demand.
- 6.5 Notwithstanding any other provision of the Agreement failure by Client to comply fully with this clause 6 will entitle ML without prejudice to its other rights to terminate the Agreement with immediate effect.
- 6.6 To the extent that Broker is acting on behalf of Client, Broker undertakes to notify ML promptly in writing in the event of any breach or threatened breach by Client of this Agreement.

7. INTELLECTUAL PROPERTY RIGHTS

- 7.1 Client acknowledges that all Intellectual Property Rights in the Data are the property of ML, ML Group or their affiliates or licensors, as the case may be, and Client shall have no rights in or to the Data and/or ML Records other than the right to use it in accordance with the express terms of this Agreement.
- 7.2 ML shall defend Client from and against any claim or action that the use by Client of ML Records (in accordance with this Agreement) infringes any UK Intellectual Property Right of a third party (**IPR Claim**) and shall be responsible for any losses, damages, costs (including all legal charges) and expenses incurred by or awarded against Client as a result of, or in connection with, any such IPR Claim, provided that, if any third party makes an IPR Claim, or notifies an intention to make an IPR Claim against Client, Client shall: (i) give written notice of the IPR Claim to ML as soon as reasonably practicable; (ii) not make any admission of liability in relation to the IPR Claim without the prior written consent of ML; (iii) at ML's request and expense, allow ML to conduct the defence of the IPR Claim including settlement; and (iv) at ML's expense, co-operate and assist to a reasonable extent with ML's defence of the IPR Claim. This clause 7.2 constitutes Client's sole and exclusive remedy and ML's only liability in respect of IPR Claims.

8. CONFIDENTIALITY

- 8.1 Each party undertakes that it shall not at any time disclose to any person any Confidential Information of the other party. The receiving party shall only disclose such Confidential Information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's rights and obligations under the Agreement, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause as though they were a party to the Agreement. The receiving party may also disclose such of the disclosing party's Confidential Information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction.

9. TERMINATION

- 9.1 Without affecting any other right or remedy available to it, this Agreement may be terminated by ML:
- 9.1.1 on giving at least 30 days' prior written notice to Client in the event of any legislation, order or regulation which materially restricts the provision or licensing of the Data and/or Services by ML to Client; or
- 9.1.2 on giving at least 30 days' prior written notice to Client in the event of a change of control of Client or of any holding company of the Client; or
- 9.1.3 on giving at least 14 days' prior written notice if Client or (if Broker is acting on behalf of Client) Broker is late in paying any Charges.
- 9.2 Without affecting any other right or remedy available to it, this Agreement may be terminated by either party on giving written notice to the other if:
- 9.2.1 the other party commits a material breach of the Agreement (for example, but without limitation, any breach of clause 3 (Data), clause 7 (Intellectual Property Rights) or clause 8 (Confidentiality)) and (in the case of a breach capable of remedy) fails to remedy such breach within 30 days of written notice requesting the breach to be remedied; or
- 9.2.2 the other party is unable to pay its debts or enters into compulsory or voluntary liquidation (other than for the purpose of reconstruction or amalgamation of the company), or commences negotiations with its creditors with a view to rescheduling any of its debts or entering into any compromise or arrangement with its creditors (other than for the purpose of a scheme for a solvent amalgamation or solvent reconstruction), or has a receiver or manager or an administrator appointed of its assets or ceases for any reason to carry on business.

10. CONSEQUENCES OF TERMINATION

- 10.1 Termination, for any reason, or expiry of this Agreement shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination or expiry. Any provision of this Agreement which is expressed or intended to come into or continue in force after termination of this Agreement (including clauses 1, 4.4, 5, 6.3, 6.4, 8, 10, 12 and 14) shall do so.
- 10.2 Upon any expiry or termination of this Agreement:
- 10.2.1 the rights granted under clause 3 (Data) of this Agreement shall immediately cease and terminate and Client shall immediately cease all use of the Data supplied pursuant to clause 3;
- 10.2.2 Client shall destroy all Confidential Information, all ML Records, all copies of the Data and all material relating to the Data in all systems and all other material relating thereto. However, Client shall be entitled to retain any ML Record that relates to any business that has become a customer of Client during the term of this Agreement and/or has contacted Client in writing during the term of this Agreement with a view to becoming a customer of Client (requesting a quotation or sending an expression of interest);
- 10.2.3 each party shall settle all monies due and payable by it to the other at the date of termination; and
- 10.2.4 Client shall within 28 days of termination confirm to ML in writing (signed by an officer) that it has fully complied with its obligations in this clause 10.2.

11. WARRANTIES

- 11.1 ML will use reasonable commercial efforts to ensure that ML Records are as complete and accurate as reasonably possible. However, Client acknowledges that the completeness or accuracy of ML Records and the Data relies on periodic verification by ML and that ML Records and the Data may not be complete or accurate at the point of delivery for a number of reasons including, but not limited to, if businesses are created or fail between ML's periodic verifications, or if businesses request that they are not included on the Data. Consequently, ML does not warrant that ML Records and/or Data shall be accurate and complete at all times.
- 11.2 ML warrants that it has the right to grant to Client the licence of the Data and/or ML Records as specified in this Agreement. ML warrants and represents that the Data supplied to the Client has been collected and processed in accordance with the applicable Data Protection Requirements.
- 11.3 Except as expressly stated in this Agreement, all warranties, conditions and terms, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

12. LIABILITY

- 12.1 Neither party excludes or limits liability to the other party for: (i) fraud or fraudulent misrepresentation; (ii) death or personal injury caused by negligence; (iii) in respect of Client's liability to ML, infringement of ML's Intellectual Property Rights in the Data; (iv) payment of any sums properly due and payable under this Agreement; or (v) any matter in respect of which it would be unlawful for the parties to exclude liability.
- 12.2 Subject to clause 12.1, neither party shall in any circumstances be liable whether in contract, tort (including for negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, for (i) any loss (whether direct or indirect) of profits, business, business opportunities, revenue, turnover, reputation or goodwill; (ii) any loss or liability (whether direct or indirect) under or in relation to any other contract; (iii) loss (whether direct or indirect) of anticipated savings or wasted expenditure (including management time); (iv) any ex gratia payments; and/or (v) any indirect or consequential losses.
- 12.3 Subject to clause 12.1, either party's total aggregate liability in any Contract Year, whether in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising out of or in connection with this Agreement shall be limited to the amount equal to the amount of Charges paid and/or payable by Client in respect of such Contract Year or £100,000, whichever is lower.
- 12.4 To the extent that:
- 12.4.1 Broker does not have appropriate authority to enter into this Agreement on behalf of Client; or
- 12.4.2 Broker encourages, permits, facilitates, incites, aids or otherwise causes Client to: (a) exceed Usage of the Data; (b) supply any Data to any third party (including any companies in the same group of companies as Client) for any purpose; (c) fail to comply with clause 3.6 (limit on direct marketing communications); or (d) fail to comply with its obligations under clause 10.2.2 (obligations on termination), the provisions of clause 12.2 shall not apply to the benefit of Client or Broker and Broker shall on demand indemnify ML against all liabilities, costs, expenses, damages and losses suffered or incurred by ML arising out of or in connection with the acts or omissions of the Broker referred to in clauses 12.4.1 and 12.4.2 including, without limitation, any breach by the Client of this Agreement.
- 12.5 Client acknowledges that damages may not be an adequate remedy for the resulting losses suffered by ML arising out of a breach of this Agreement and that ML is entitled to injunctive relief in relation to any such breach or threat of such a breach.
- 12.6 Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if that delay or failure results from Force Majeure. In these circumstances the affected party shall be entitled to a reasonable extension of the time for performing its obligations, provided that, if the period of delay or non-performance continues for three months, the party not affected may terminate this Agreement by giving 14 days' written notice to the other party.

13. NOTICES

- 13.1 Any notice required to be given to a party under or in connection with this Agreement shall be in writing with proof of delivery and shall be delivered to the address for each party as set out on the Order Form, or as notified to the other party from time to time.
- 13.2 Notices under this Agreement shall be made by (a) first class prepaid mail, providing proof of delivery or postage; or (b) by hand or reputable courier, in either case addressed to the recipient at its notice address or (c) by email.
- 13.3 Any notice shall be deemed to have been received, if (a) made by mail, on the second Business Day after posting or at the time recorded by the delivery service; (b) delivered by hand or courier, on signature of a delivery receipt or at the time the notice is left at the proper address.

14. MISCELLANEOUS

- 14.1 Neither party is the agent nor representative of the other and neither party has any authority or power to bind or contract in the name of or to create any liability against the other in any way or for any purpose.
- 14.2 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.
- 14.3 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not (a) waive that or any other right or remedy; or (b) prevent or restrict the further exercise of that or any other right or remedy.
- 14.4 If any court or competent authority finds that any provision of this Agreement (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the parties shall negotiate in good faith to amend that provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the parties' original commercial intention.
- 14.5 The rights and remedies of the parties in connection herewith are cumulative and are not exclusive of any rights or remedies provided by law.
- 14.6 No provision of this Agreement may be varied without prior written agreement of both parties.
- 14.7 Subject to clause 4.4 (licence to ML Records supplied as part of Data Solutions) Client shall not be entitled to assign, sub-licence, sub-contract, charge or otherwise part with any of its rights or obligations arising under this Agreement.
- 14.8 A person who is not a party to this Agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.
- 14.9 This Agreement shall be construed in accordance with and governed by the Laws of England and Wales and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.

Schedule 1 DATA PROCESSING SCHEDULE

1. This Schedule only applies to personal data contained within the Client Database where ML acts as data processor on behalf of the Client in respect of such personal data.
2. Client warrants that:
 - 2.1 any personal data contained in Client Database has been collected and processed in accordance with the applicable Data Protection Requirements; and
 - 2.2 it is entitled to appoint ML (in compliance with the applicable Data Protection Requirements) to provide the Services which may require processing of personal data on behalf of Client.
3. To the extent that ML in the performance of the Services acts as data processor on behalf of the Client in respect of personal data contained within Client Database, ML undertakes that it shall:
 - 3.1 only process personal data in accordance with the reasonable lawful instructions of the Client, including those set out in this Agreement, unless ML is required by the laws of the UK and/or any member of the European Union or by the laws of the European Union applicable to ML to process personal data (**Applicable Laws**). Where ML is relying on laws of a member of the European Union or European Union law as the basis for processing personal data, ML shall promptly notify Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit ML from so notifying Client;
 - 3.2 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risks that are presented by processing (in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data), taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of the processing of personal data, as well as the risk of and the severity of interference with the rights and freedoms of the data subjects (if any);
 - 3.3 ensure that access to personal data is limited to those employees who need access to such personal data to meet ML's obligations under this Agreement and that such employees shall respect and maintain the confidentiality and security of such personal data;
 - 3.4 provide to Client, upon prior written request from Client, a written description of the technical and organisational measures implemented pursuant to paragraph 3.2;
 - 3.5 notify Client without undue delay on becoming aware of a personal data breach;
 - 3.6 assist Client, at Client's cost, in responding to any request from a data subject and in ensuring compliance with the Client's obligations under the Data Protection Requirements with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 3.7 save to the extent that ML is or becomes a data controller in respect of the same personal data contained in Client Database, at the written direction of Client, delete or return personal data and copies thereof to Client on termination of this Agreement unless required by any applicable laws to store the personal data;
 - 3.8 not appoint a third party sub-contractor for the processing of any personal data under this Agreement without the prior written approval of Client. ML confirms that it has entered or (as the case may be) will enter with any third-party processor into a written agreement on that third party's standard terms of business or incorporating terms which are substantially similar to those set out in this Schedule 1. As between Client and ML, ML shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this paragraph 3.8; and
 - 3.9 only transfer personal data to countries outside the UK or European Union, if it has provided appropriate safeguards, as required by the applicable Data Protection Requirements.
4. At Client's reasonable request and subject to Client entering into adequate confidentiality agreements (as required by ML), ML shall:
 - 4.1 make available to Client such information as may reasonably be necessary to demonstrate compliance with its obligations under this Schedule 1, including copies of any audit reports demonstrating compliance with paragraph 3.2 (appropriate technical and organisational measures); and
 - 4.2 subject to the restrictions in paragraph 5 below, allow Client (or an independent, third-party professional auditor engaged by it) to conduct an audit, including inspection, of ML's processing of personal data pursuant to this Agreement.
5. When exercising its rights under paragraph 4.2 above, Client shall:
 - 5.1 promptly provide ML with information regarding any non-compliance discovered during the course of an audit;
 - 5.2 conduct such audits on reasonable written notice, during reasonable times and for a reasonable duration, which shall not unreasonably interfere with ML's day-to-day operations; and
 - 5.3 if an audit requires the equivalent of more than one Business Day of time expended by one or more of ML employees (or other personnel), Client agrees to reimburse ML for any additional time expended at ML's then current professional services rates.
6. In relation to any sub-contractors that are engaged pursuant to paragraph 3.8, Client acknowledges and agrees that it is sufficient, for the purposes of satisfying the requirements of paragraph 4 (information and audit), that ML has a right to audit those sub-contractors on behalf of Client, subject to reasonable restrictions.

7. APPROVED SUB-CONTRACTORS

By entering into this Agreement, the Client is deemed to have approved the use of the following sub-contractors:

Sub-Processor	Specification of Processing
118 Data Resource Limited, 118 Group Limited and Market Location Secure Limited	UK based subsidiary companies of 118 Group providing resources of computing, Hosting and staffing.
Microsoft Ireland Operations Limited	UK hosted provision of Microsoft Azure cloud IAAS/PAAS.
Instiller Limited	UK hosted provision of cloud SAAS Email Marketing Campaign Broadcast application (for email marketing services if required).
Elavon Digital (GB) Ltd (formerly Sage Pay (GB) Ltd)	UK hosted secure payment service for credit card payments (if used).

8. SPECIFICATION OF PROCESSING:

- 8.1 Subject matter: the provision of Services on the Client Data;
- 8.2 Duration: the term of this Agreement;
- 8.3 Nature and purpose of processing: the provision of the Services on the Client Data;
- 8.4 Type of personal data: first and last name, title, position, organisation, business contact information (email, phone, business address);
- 8.5 Categories of data subjects: prospects, customers, business partners and vendors of Client who are natural persons, employees and other officers of contact persons of Client's prospects, customers, business partners and vendors and Client's employees authorised to communicate with ML in connection with this Agreement.