

# Education Terms and Conditions

## DLG

### 1. INTERPRETATION

1.1 In these Terms and Conditions which form part of the DLG Standard Terms and Conditions (as set out in [www.dlg-pdv.com](http://www.dlg-pdv.com)) and the Data Order save where the context otherwise requires, the words and phrases below shall have the following meaning:-

**A-mail** means a DLG database of names, addresses and other data compiled through research from which the Data may be selected for the Output of a Data Order.

**Core Questions** means the contact details and lifestyle questions formulated by DLG and included in a Survey

**Data** means one copy of any data provided by DLG as ordered by the Purchaser and set out in the Data Order, compiled either from Survey responses and/or one of DLG's databases, and/or collated from other 3rd party sources, provided or transferred to the Purchaser either in printed or electronic format. DLG reserves the right to provide to the Purchaser all data sourced from a Survey that is generated from the Product Questions, unless a maximum quantity is specified on the Data Order.

**Data Order** means any DLG confirmation of order form, signed and accepted by the purchaser setting out without limitation the details of the Data to be supplied by DLG and the fees payable by the Purchaser.

**DLG** means Data Locator Group Ltd.

**External E-mail Broadcasting** means a type of order whereby the data for broadcast via e-mail is provided directly to the Purchaser to run their own campaign as opposed to using DLG to broadcast

the data on their behalf.

**Fee** means the fee payable by the Purchaser to DLG for the service and licence to be provided by DLG hereunder and calculated in accordance with clause 4 below, and specified on the Data Order.

**Licence** means the licence granted under clause 3 below and set out in "licence terms" on the Data Order, by DLG to the Purchaser to use the data.

**Names** means the name of each person who either has submitted a Survey or the name of each person identified on a submitted Survey as a spouse/partner of the person who took part in a Survey or the name of a person whose data has been collated in some way by DLG.

**Output** means the provision of a delivery or a series of deliveries of the Data.

**Product Questions** means the questions from a Survey relating to a specific product category or sub category

**Purchaser** means the person, firm or company placing an order with DLG, excluding any parent, subsidiary or other affiliated company.

**Schools Register** means a DLG database of names, addresses and other data compiled through research from which the Data may be selected for the Output of a Data Order.

**Survey** means any Survey compiled and executed by, or in conjunction with DLG which contains interalia Product Questions and Core Questions, and which has been conducted by telephone, printed questionnaire, over the internet, or by other media.

**Volume** means the volume of names intended to be supplied in a Data Order.

- 1.2 The headings to the clauses in these Terms and Conditions are for the ease of reference only and shall not affect the interpretation or construction thereof.

## 2. TIMETABLE

- 2.1 DLG reserves the right at any time prior to the date of execution of a Survey or the Output of the Data to cancel an Agreement and/or a Survey without incurring any liability other than liability which may not by applicable law be excluded or limited, in which event no part of the Fee shall be payable by the Purchaser.

- 2.2 In the event that any Output date shall be agreed between DLG and the Purchaser, the Purchaser acknowledges that such date shall be indicative only and that DLG shall not be liable for any loss or damage suffered by the Purchaser as a result of late delivery of the data.

## 3. LICENCE

- 3.1 Subject to clauses 5.2 and 6 below, in consideration of the Fee DLG hereby grants to the Purchasers the Licence upon and subject to these Terms and Conditions.

- 3.2 The Purchaser shall have the right to use, but not copy, alter, manipulate, adapt or licence others to use, data which is derived from responses to a survey or has been collated in some other way, in accordance with the Data Order and the Licence Terms on the Customer Order, within a maximum of eight weeks from date of order.

- 3.3 The Purchasers right to use the Data shall be non-exclusive and for one-off use only, unless stated otherwise in the 'Licence terms' on the Data Order.

- 3.4 One-off mailing or broadcast allows the single despatch or broadcast of one mailing piece or creative to each name supplied as part of the Data Order. One-off telemarketing allows a single

contact to be made with the specified name at the telephone number supplied as part of the Data Order, but subject to a maximum of three call attempts being made to reach them: if a name cannot be reached after three call attempts, (regardless of the call disposition), this name is not permitted to be called again as part of this Data Order.

- 3.5 DLG shall have the right to provide any of the Data supplied to the Purchaser at any time to any third party unless bound by any exclusivity period on the supply of responses to specific Product Questions as cited in Licence Terms on the Data Order.

- 3.6 DLG will deliver the Data to the address specified on the Data Order.

- 3.7 In the event of a breach of the Licence by the Purchaser, i.e. where it is determined that data has been used by the Purchaser outside of the permitted 8 week window described in sub-clause 3.2, or where licence terms as specified on the Data Order have been breached, a re-use charge of 100% of the value of the order will be imposed per occasion of each breach.

- 3.8 Retention of Title does not apply for the use of the Data, in the event of transfer of assets from the Purchaser to another party, even for Data with multiple-use licence. Data and control of all Licences remain at all times under the ownership of DLG. Any use of data by any company other than the Purchaser as named on the Data Order will be considered fraudulent.

## 4. CALCULATION AND PAYMENT OF THE FEE

- 4.1 Subject to the minimum payment (if any) to be paid as specified in the Data Order the Fee will be calculated by reference to the Volume and will be charged per record at the rates set out in the Data Order or as a set Fee as specified on the Data order.

- 4.2 In the event that DLG agrees to supply the Data for the purpose of deduplication against other data held by the buyer and on the basis that the

Purchaser shall only pay a proportion of the price reflecting the "Net Names" actually used, any claim for credit for the unused portion of the Data:

- (a) must be made within a period not exceeding three months from the date of Output, unless otherwise agreed in writing by DLG; and
  - (b) must be supported by a deduplication report or certificate from a recognised data processing bureau or other independent agency approved by DLG.
- 4.3 The Fee is exclusive of any Value Added Tax which may be payable by the Purchaser.
- 4.4 On signing the Data Order, the Purchaser agrees to be bound by cost calculations, licence terms, payment terms and all Terms and Conditions, regardless of whether the Data is used for the purpose set out on the Data Order. If DLG is not informed by the Purchaser in writing or email of their non-receipt of Data, or of any issue relating to the Data in any way, within 14 days of the date of signing the Data Order or of the delivery date specified on the Data Order, the Purchaser will be deemed to have received the Data and accepted it as meeting their expectations and specifications.
- 4.5 Any issues relating to the Output or the Data or the invoice must be submitted via email to DLG's client services team within 10 weeks from Output for Premium Prospect data. DLG reserves the right to refuse to look into issues that are raised outside of these timeframes, and expects full payment of the invoice.
- 4.6 DLG reserves the right to charge interest on any sum not paid on a due date for payment at the rate of 2.5% per month or part thereof from the date due to the date such sum is received by DLG.

## 5. COPYRIGHT AND PROPRIETARY RIGHTS

- 5.1 Copyright and all other intellectual property rights of whatever nature in the Data, the Survey and the Product/Core Questions, including any right to prevent extraction and/or re-utilise, are and shall remain at all times the property of DLG, and nothing in these Terms and Conditions shall

constitute a transfer, assignment or license of any copyright or intellectual property right of DLG.

- 5.2 Subject to sub-clause 3.2, 3.3 and 3.6 above DLG reserves the right to grant licences in respect of the Data to any other party or parties.
- 5.3 The Purchaser shall notify DLG immediately if the Purchaser becomes aware of any suspected or actual unauthorised use of the whole or any part of the Data or the Reports by any person.

## 6. PURCHASER'S OBLIGATIONS

- 6.1 The Purchaser's legal obligations and responsibilities for the data also include the Purchaser's outsourced partners through whom the Data will pass or the Names will be contacted.
- 6.2 The Purchaser undertakes to DLG that it will use the Data solely for the internal business purpose of the Purchaser and for the purpose only of use as a source of reference for its circulation by mail or by telephone or by email or SMS if applicable to some or all of the individuals listed in the Data and under the agreed Licence.
- 6.3 Save for the purpose specified in sub-clause 6.1 the Purchaser shall not without DLG's prior written consent reproduce, duplicate or copy the Data or any part thereof or information extracted there from, nor pass on, transmit or otherwise communicate the Data or any part thereof or any information extracted there from to any third party.
- 6.4 In the event that the Data is contained in electronic format the Purchaser alone will be permitted to extract information there from and to print the same in documentary form on condition only that:
- 6.4.1 any documents produced as aforesaid and any copies of such documents be retained in the possession of the Purchaser and:
  - 6.4.2 neither the electronic format nor any information extracted there from nor any document on which such information is printed or copies or any part of the aforesaid, shall be passed on, disclosed or otherwise communicated to any third party and:

- 6.4.3 the data held in electronic form is deleted and any copies of it destroyed within 12 weeks from the date of Output.
- 6.5 The Purchaser agrees with and warrants to DLG that any documents or other items mailed or emailed by or on behalf of the Purchaser as a result of or following its use of Data will at all times comply with the current British Code of Advertising Practice, the British Code of Sales Promotion Practice and will contain nothing which infringes copyright or any other right of any third party or is defamatory, obscene, indecent or otherwise illegal or unlawful whether or not such a claim is justified or upheld. The Purchaser further agrees and warrants that it will upon request by DLG forthwith supply to DLG copies of any such documents or other items.
- 6.6 In the event that any recipient of any documents or other items mailed or emailed by the Purchaser objects to such mailing or emailing or requests that it ceases or asks for his or its name to be removed from any list the Purchaser shall procure that such mailing or emailing ceases forthwith and shall inform DLG immediately and provide DLG on a monthly basis with particulars of any documents and other items mailed or emailed to that recipient and of the name and address to which they were sent.
- 6.7 The Purchaser agrees with and warrants to DLG that they, or those calling on their behalf, will at all times adhere to telemarketing legislation and best practice as set out in the Privacy and Electronic Communications Regulations and the Communications Act and that any telephone scripts will all times comply with PhoneyPayPlus rules.
- 6.8 In the event that any recipient of a phone call made by or on behalf of the purchaser objects to such a call, or requests that such calls from them cease or asks for his or its name to be removed from any list the Purchaser shall procure that such telephoning ceases forthwith and shall inform DLG immediately.
- 6.9 The Purchaser hereby undertakes to DLG that it will deliver to DLG any notice or other communication in respect of the Data received from the Information Commissioner's office or any other official or legislative body.
- 6.10 The Purchaser undertakes to DLG that it will at all times comply with the provisions of the Data Protection Act 1998 in respect of its use, storage and transfer of the Data.
- 6.11 The Purchaser will specify to DLG the name and address of any partners which it has retained for the purpose of carrying out mailing, fulfilment, email broadcast or telemarketing and whom will be holding the data, which exist outside the EEA.
- 6.12 In the event of the purchaser's non-compliance with legislation or the DMA's Code of Practice or as set out in these Terms and Conditions, or general bad practice or mishandling of consumers, which adversely affects the name of DLG or results in additional effort by DLG staff to handle such outcomes, DLG reserves the right to subject charges of £1000 per instance.
- 6.13 DLG accepts no responsibility for any breaches in any legislation made by the Purchaser in their communication to the names supplied by DLG.
- 6.14 The Purchaser hereby undertakes that the instruction to DLG in respect of the data selections and output format are correct in every respect and that should re-output of Data be required as a result of errors or omissions in these output instructions DLG shall be entitled to charge the Purchaser for such re-output according to its standard charges for Data output, or expect full payment for the Data if mailed or telemarketed as per the stated licence terms.
- 6.15 Output instructions shall be supplied to DLG by the Purchaser at least 7 days prior to the proposed Output date. In the event that instructions are not received by the due date DLG reserves the right to supply the Data according to the specifications contained on the Data Order or a standard format and to charge the Purchaser in respect of any additional costs arising as a result of such late

supply.

## 7. SECURITY AND CONTROL

7.1 The Purchaser shall at all times effect and maintain adequate security measures to safeguard the Data from access, copying, manipulation, or use by any unauthorised person.

7.2 The Purchaser shall retain the Data under its own effective control for the duration of its Licence.

7.3 A small percentage of dummy names and addresses may be included in the Data to enable DLG to monitor usage.

## 8. LIMITATION OF DLG'S LIABILITY

8.1 DLG neither warrants nor undertakes nor represents nor is it a term or condition of any sale or Agreement for any supply of the Data that the Data is accurate or complete or that any information contained therein is accurate or complete and (except for any liability for death or personal injury resulting from the negligence of DLG or that of its servants or agents, or in relation to any other liability which may not by applicable law be excluded or limited) DLG shall not be liable for any damages, losses, costs, charges or expenses of whatever nature (even if DLG has been advised of the possibility of such damages) including any indirect or consequential loss or damage howsoever arising and including loss of profits, loss of sales, loss of turnover, loss of bargain, loss of opportunity, damage or corruption to or loss of use of computer equipment, software or data or loss of time on the part of management or other staff, caused by, arising out of or in any way connected with any such inaccuracy or omission.

8.2 Subject to the exception in clause 8.1 above DLG shall not be liable for any damages, losses, costs, charges or expenses of whatever nature either consequential or otherwise which may arise as a result of the actual quantity of Names which constitute the Data being less than the Volume.

8.3 Subject to the exception in clause 8.1 above, DLG

shall not be liable for any damages, losses, costs, charges or expenses of whatever nature caused by, arising out of or in any way connected with, or for any failure by DLG to perform any obligation hereunder due to causes beyond its reasonable control (including without limitation industrial disputes, fires, acts of God and hostilities) or any other circumstances which DLG could not reasonably foresee and provide against.

8.4 The Purchaser shall not institute proceedings for damages for breach of these Terms and Conditions after the expiration of one year from the date on which the Purchaser became aware of the same or the date on which it ought reasonably to have become aware of the same.

8.5 Subject to the exception in clause 8.1 above, DLG shall not be liable to the Purchaser for any indirect or consequential losses or damage (including without limitation loss of profits) in respect of any breach of these Terms and Conditions.

8.6 Without prejudice to the provisions of sub-clause 8.1 to 8.5 hereof any liability of DLG in respect of any claims of whatever nature arising out of or in any way connected with the Data or its sale, supply or use of or in respect of any breach by DLG of any obligation or duty pertaining to the Data or to their supply or use (including any other liability of DLG for negligence or breach of copyright) shall not in any circumstances whatsoever exceed in total the contract price of the Data unless separately agreed in writing by the Purchaser and DLG before the Data Order is returned.

## 9. CONFIDENTIALITY

9.1 The Purchaser shall keep confidential all information (whether written or oral) concerning the business of DLG that it has obtained or received as a result of the performance of the Agreement between DLG and the Purchaser.

## 10. TERMINATION

10.1 DLG may terminate this Agreement and Licence forthwith on giving written notice to the Purchaser

if:

10.1.1 the Purchaser commits a serious breach of these Terms and Conditions and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 14 days after the receipt of a request in writing from DLG to do so or:

10.1.2 the Purchaser fails to comply with a statutory demand or goes into liquidation (other than for the purpose of reconstruction or amalgamation) or has a resolution passed for its winding-up or had an administrative receiver appointed or has a petition presented to the court for an administrative order under Part 11 of the Insolvency Act 1986 or has a voluntary arrangement approved under Part 1 of the Insolvency Act 1986.

10.2 Cancellation by DLG under clause 2.2 above occurs.

10.3 Upon termination of this Agreement and Licence the Purchaser shall forthwith return the Data to DLG.

10.4 Termination of this Agreement and Licence between DLG and the Purchaser for whatever reason shall not affect the accrued rights or liabilities of either party.

## 11. ASSIGNMENT

11.1 The Purchaser shall not be entitled to assign, sub-licence or otherwise transfer this Licence or the benefit or burden of this Agreement and this Licence shall be personal to the Purchaser only, DLG reserves the right to assign the benefit or burden of this agreement with the Purchaser.

## 12. AGREEMENT

12.1 These Terms and Conditions supersede all prior Agreements, arrangements and undertakings between the parties relating to the Data supplied under this Data Order. Subject to any variation which is agreed in writing by DLG and the Purchaser subsequent to the DLG Data Order being signed by the Purchaser, the provision of the Data shall be on the Terms and Conditions of DLG

to the exclusion of all other terms and conditions (including any terms or conditions which the Purchaser purports to apply under any purchase order, confirmation of order, specification or other document). No terms and conditions endorsed on, delivered with or contained in any purchase order, confirmation of order, specification or other document provided by the Purchaser shall form part of the contract between DLG and the Purchaser simply as a result of such document being referred to in that contract.

12.2 A contract will be formed between DLG and the Purchaser on the date on which DLG receives the Purchaser's order form duly signed by the Purchaser or if earlier, the date on which the Data is supplied by DLG to the Purchaser.

## 13. WAIVER

13.1 The failure by DLG to exercise a right or remedy hereunder shall in no manner affect DLG's ability to exercise its right or remedy at a later time. No waiver by DLG of the breach of any provision hereof whether by conduct or otherwise on any one or more instances shall be deemed to be further or continuing waiver of such provision.

## 14. NOTICE

14.1 All notices which are required to be give hereunder shall be in writing and shall be sent to the address of the recipient set out in the Data Order or such other address as the provisions of this clause. Any such notice may be delivered by hand or by first class pre-paid letter, telex or facsimile and shall be deemed to have been served of by hand when delivered if by first class post 48 hours after posting and if by telex or facsimile when dispatched.

## 15. PROPER LAW AND JURISDICTION

15.1 These Terms and Conditions shall be governed by and constructed in accordance with the Laws of England. Any dispute which may arise between the parties concerning these Terms and Conditions shall be determined by the English Courts and the parties hereby submit themselves

to the jurisdiction of those courts for such purposes.

## **16. CANCELLATIONS**

16.1 DLG reserves the right to refuse cancellation of this Data Order outside the stated notice period on the Order, or any Output by the Purchaser which form part of a series.

16.2 Each Output within a series will be treated as a separate order in respect of cancellation.

16.3 Requests for cancellation of any Output must be made in writing stating all reasons for cancellation; these must be addressed to the Data Director and must be received by DLG at least 1 month prior to the execution date or copy date of a survey, which ever is the earlier.

16.4 The Cost per Record as contained on the Data Order, shall apply if the Purchaser cancels part of a series of outputs, and shall apply to all Data supplied under this order for Output, irrespective of the date of supply of the Data.

## **17. EXTERNAL E-MAIL BROADCASTING**

17.1 The E-Mail address [creativecompliance@dlg.co.uk](mailto:creativecompliance@dlg.co.uk) must be used in the entire testing phase of the campaign.

17.2 The Unsubscribe footers provided by DLG with the Output must be used and must be functional.

17.3 The Purchaser must be able to provide information on the type of E-Mail broadcasting system that will be used with DLG data.