

PDV's Standard Terms and Conditions

1. DEFINITIONS AND INTERPRETATION

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

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

Applicable Regulations means those provisions of any Act together with all Codes of Practice applicable from time to time in relation to the handling, processing, provision and use of data for direct marketing purposes pursuant to the Agreement or any Order Confirmation;

Agreement means these PDV Standard Terms and Conditions and any associated Order Confirmation including where relevant any Term Supply Agreement;

Broadcast is the process of directly marketing a commercial message to a group of people e.g. using email, SMS or RMT;

Codes of Practice means best practice guidelines issued from time to time by any regulator or regulators in relation to the Act.

Confidential Information means any information, data or know-how including but not limited to that which relates to (in the case of PDV any PDV database or databases or extracts from any of them or to any part or parts of any PDV database or databases and all PDV Data), research, plans, ideas, products, services, customers, markets, software developments, inventions, processes, designs, drawings, statistics, marketing or

finances, or other business or technical information which is treated confidentially. Confidential Information does not include information that:

- is in the possession of the receiving Party at the time of the disclosure;
- becomes public knowledge without any action of either Party;
- was independently developed or prepared by either Party; or
- is required to be disclosed by law or by any regulator to whose regulation the disclosing Party is subject.

Contact Channel means the media channel or channels permitted for use in respect of PDV Data supplied which may be via Post, Email, Landline Telephone, Mobile Telephone or SMS;

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

Customer means the Party or Parties to the Agreement other than PDV;

Data Owner means PDV;

PDV means PDV Limited, Company No. 03974954, with its registered office located at Green Heys, Walford Road, Ross on Wye, HR9 5DB;

PDV Data PDV's data as more particularly described in the Order Confirmation;

PDV's Standard Terms and Conditions means these terms and conditions;

Email means the Contact Channel of email;

End User means as relevant the Customer and/or the third party specified in the Order Confirmation that is acquiring or being granted or is permitted to acquire or be granted the right to have an End User Licence to use or broker PDV Data;

End User Licence means the non-exclusive temporary and restricted licence granted to the End User to use PDV Data subject to the terms of the Agreement including but not limited to the Licence Terms and the terms of the Order Confirmation;

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

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

Landline Telephone means the Contact Channel of landline telephony;

Licence Period means the period during which time the End User may make use of the PDV Data concerned;

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

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

Mobile Telephone means the Contact Channel of mobile telephony;

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

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

Order Confirmation means an order confirmation emanating from PDV to the End User granting an End User Licence for the End User to make use of PDV Data;

Output means an upload from PDV of PDV Data to specified SFTP account for the customer;

Party means either PDV or the End User;

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

Post means the Contact Channel of mailing;

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

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

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

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

Seed Names means as relevant security names, postal addresses, Email addresses, Landline

Telephone and Mobile Telephone numbers as are included in each Output of PDV Data which inclusion monitors the timing of delivery of PDV Data, the terms of the Agreement and the usage of PDV Data in compliance with the Agreement.

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

Software means a secure file transfer protocol, a protocol used to transfer files between a PC and an embedded device using RS-232 or any other similar secure protocols which allows an End User to download PDV Data;

Term Supply Agreement means any agreement entitled Term Supply Agreement between PDV and the Customer;

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

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

- 1.2 PDV has the right to revise and amend these Terms and Conditions from time to time as published on www.PDV.co.uk. The End User will be subject to the policies and terms in force at the time that the End User orders the PDV Data as evidenced by the Order Confirmation, but subject to (and to the extent of) any changes therein as may from time to time be required by law or regulatory authority.

2. GRANT OF LICENCE AND DATA SUPPLY

- 2.1 Subject to the terms of the Agreement PDV hereby grants the End User an End User Licence under Licence Terms as prescribed in the Agreement to use PDV Data solely for the Purpose.
- 2.2 End User shall have the right in accordance with the Licence Terms and the Agreement only to use the PDV Data concerned but without limitation not

to copy, alter, manipulate, adapt or license others to use PDV Data.

- 2.3 End User warrants that any PDV Data shall not be used for the purposes of data enhancement or used for combining with the End User's or another third party's data unless as otherwise specified in the Order Confirmation and then only to that extent.
- 2.4 End User alone will be permitted to extract information from the PDV Data and to print it in documentary form on condition only that:
- 2.4.1 any documents produced in this way and any copies of such documents will be retained in the possession of End User; and:
- 2.4.2 neither the electronic form nor any information extracted, nor any printed copies or parts of printed copies shall be passed on, disclosed or otherwise communicated to any third party; and:
- 2.4.3 PDV Data held in electronic form is deleted and any copies of it destroyed within twelve weeks from the date of Output.
- 2.5 The Usage Terms for the PDV Data concerned shall be for one time only unless stated otherwise in the Order Confirmation.
- 2.6 The Licence Terms for use of Post, Email or SMS Contact Channels permit the despatch by the End User of one Mailing Piece/Creative to each Name supplied, unless stated otherwise in the Order Confirmation.
- 2.7 The Licence Terms for use of Landline Telephone or Mobile Telephone Contact Channels permit a single contact to be made by the End User through telephony to each individual whose contact details are provided in the PDV Data concerned subject to a maximum of fifteen call attempts being made to make contact with them. For clarity if the individual cannot be reached after fifteen call attempts (i.e. the call rings out or the individual is not in) this individual is not permitted to be called again under the End User Licence.

- 2.8 Individuals provided in the PDV Data concerned who do not become either an Enquirer or a Purchaser immediately following the execution of the campaign as permitted in this Agreement, may only be contacted again by the End User if and to the extent that the Licence Terms permit repeat contact.
- 2.9 Contact details of an Enquirer may be retained by the End User for a period of no more than ninety days following initial first contact via the campaign as permitted under the terms of the Agreement, provided that:
- 2.9.1 This period of retention is permitted solely to allow the End User a reasonable time to convert an Enquirer into a Purchaser;
- 2.9.2 No further contact of any kind may be made by the End User after the permitted ninety day period of retention unless the Enquirer has become a Purchaser.
- 2.10 The End User Licence is terminated immediately the PDV Data concerned has been used under the Licence Terms as stated in the Order Confirmation. Following such termination of the End User Licence any question as to the extent of contact pursuant to unauthorised use of the PDV Data comprised in any Output concerned shall for all purposes be determined conclusively as follows:
- 2.10.1 Seed Names contacted will be taken to have been contacted by the Customer irrespective of how and by whom such contact has been made;
- 2.10.2 each unauthorised contact with a Seed Name will evidence unauthorised contact also with such proportion of the PDV Data to which the Order Confirmation relates as is equal to the fraction ("the Specified Fraction") that the contacted Seed Name bears to all of the Seed Names included within such PDV Data, so that for example each unauthorised contact made with a Seed Name where a total of five Seed Names shall have been included within the PDV Data concerned shall mean that one fifth of all of the PDV Data to which the Order Confirmation relates shall have been contacted without authorisation; and
- 2.10.3 the written certificate by a director of PDV as to the number of Seed Names included within the PDV Data concerned shall be conclusive and binding on the Customer and on PDV.
- 2.11 The Licence Period is a maximum of eight weeks from the date of Output. No use of the PDV Data concerned after the expiry of the Licence Period is permitted.
- 2.12 Upon each occasion of unauthorised contact with a Seed Name the Customer will pay to PDV on PDV's first written demand such sum as shall be equal to the Specified Fraction of the entire value of the Order Confirmation concerned. The Parties each agree, warrant, represent and acknowledge that payment of such sum for each such unauthorised contact represents genuine pre-estimate of PDV's loss since:
- 2.12.1 establishing the extent of use of the PDV Data concerned by reference to contact with Seed Names represents the only practicable method of monitoring the use of the PDV Data concerned;
- 2.12.2 the number of Seed Names included within the PDV Data concerned is necessarily limited so as to preserve for the mutual benefit of both Parties the value of the PDV Data concerned;
- 2.12.3 the market for usage of data is a volume market such that contact with Seed Names is deemed, and/or conclusively presumed, for economic and statistical reasons to be done only in conjunction with proportionate contact with the rest of the PDV Data concerned;
- 2.12.4 it is consistent with the provisions of paragraph 5.62 of the Fourth Edition (February 2012) of the Direct Marketing Code of Practice of the Direct Marketing Association;
- 2.12.5 the value attributable to each use of the PDV Data concerned is fairly demonstrated and established between PDV and the Customer by proportionate reference to the amount payable by the Customer originally pursuant to the Order Confirmation for

lawful use; and

- 2.12.6 accordingly that the appropriate recompense for PDV's loss in respect of each occasion of unauthorised contact with the PDV Data concerned is that PDV should be paid by the Customer a sum equal to the Specified Fraction of the amount payable in respect of the PDV Data concerned for lawful use as set out in the Order Confirmation.
- 2.13 The End User accepts that PDV Data may contain goneaways, deceased's, dead and wrong numbers, e-mail bouncebacks and inaccuracies.
- 2.14 The End User accepts that no guarantees are offered for response, contact or open rates, click-throughs or deliverability through any Contact Channel in respect of PDV Data.
- 2.15 PDV will deliver PDV Data to the address specified in the Order Confirmation.
- 2.16 Once a delivery date of an Output has been agreed the End User:
- 2.16.1 acknowledges that such date shall be indicative only;
- 2.16.2 agrees that PDV shall not be liable for any loss or damage suffered by End User as a result of late delivery of PDV Data;
- 2.16.3 agrees that whilst PDV shall make every effort to complete the Output within the time quoted, time shall not be of the essence of the Output.
- 2.16.4 agrees to receive the Output of PDV Data, return any PDV Data or send any other data owned by the End User to PDV by the Software.
- 2.16.5 PDV will not be liable for any direct or indirect loss, damage or inconvenience whatsoever caused by use of the Software.
- 2.17 The End User shall comply at all times with clause 7.
- 2.18 PDV reserves the right to grant licences in respect

of PDV Data to any other party or parties.

3. CALCULATION AND PAYMENT OF FEES

- 3.1 Subject to the minimum payment to be paid as specified in the Order Confirmation the Rental Fee will be calculated by reference to the Volume and will be charged per thousand at the rates set out in the Order Confirmation.
- 3.2 In the event that PDV agrees to Net Names and the supply of PDV Data for the purpose of de-duplication against other data held by the End User and on the basis that the End User shall only pay a proportion of the price reflecting the Net Names actually used any claim for credit for the unused portion of the PDV Data:
- 3.2.1 must be made within a period not exceeding three months from the date of Output;
- 3.2.2 must be supported by a de-duplication report from a recognised data processing bureau approved by PDV. Certificates produced by the End User will not be accepted as proof of valid Net Names;
- 3.2.3 will have Run-On Costs applied to all approved Net Names.
- 3.3 On signing the Order Confirmation the End User agrees to be bound by the terms of the Agreement including fee calculations regardless of whether any PDV Data Output is used by End User.
- 3.4 If there are any issues or deficiencies relating to PDV Data:
- 3.4.1 the End User must submit any queries in respect of the PDV Data concerned in writing to PDV within eight weeks from date of Output, or by the end of the Licence Period whichever is sooner;
- 3.4.2 the End User must submit all queries in a format required by PDV;
- 3.5 The End User acknowledges any queries relating to PDV Data may not be used by the End User as a reason for payment to be withheld or delayed;

3.6 In the event of a dispute in respect of PDV Data, the End User acknowledges that PDV may resolve any dispute by:

3.6.1 a re-supply of PDV Data; or

3.6.2 a goodwill credit on account.

only once PDV has investigated all queries relating to PDV Data and after the End User has submitted PDV Data in accordance with clause 3.4.1 and 3.4.2.

3.7 The End User acknowledges that any re-supply of PDV Data or goodwill credit on account will be at PDV's sole discretion.

3.8 The End User acknowledges that queries submitted to PDV by the End User will only be investigated if the End User has fully complied with clause 3.4.1 and 3.4.2 and the total of queried PDV Data exceeds 5% of the total Output in any Order Confirmation.

3.9 In the event that PDV does not receive a written notification of a query in respect to the PDV Data with rationale and support in accordance with clause 3.4, then any invoice issued for PDV Data will be deemed valid and payable and may not thereafter be disputed.

3.10 Any queries in respect of the contents of an invoice must be received no later than 10 days from the date of receipt after which point the invoice shall be deemed valid and payable and may not thereafter be disputed.

PDV reserves the right to charge interest on any sums not paid by the due date for payment at the greater of:

- 4% per annum over the base rate of Barclays Bank PLC ; or
- 8% per annum.

In addition, PDV reserves the right to charge the End User for its legal and other costs plus any VAT should any sums not be paid but due for payment be referred to PDV's solicitors or other

representatives.

4. DATA USAGE

4.1 The End User is responsible for maintaining the cleanliness of PDV Data prior to its use by screening against internal and proprietary suppression files as required by the Applicable Regulations and accepted industry best practice.

4.2 The End User undertakes that it will at all times comply with the provisions of Applicable Regulations in respect of the use, storage and transfer of PDV Data and that it will not violate any law including but not limited to the Act and all laws of the United Kingdom governing advertising practices (including but not limited to advertising on the internet), and/or any Applicable Regulations.

4.3 The End User agrees to request written approval from PDV if the End User is situated outside of the European Economic Area and shall supply the name and address of any agents, subsidiaries, affiliates, branches or professional advisers of the End User who are sent PDV Data who exist outside the European Economic Area who process, analyse, format, review or otherwise hold PDV Data on behalf of the End User.

4.4 In the event of PDV Data being released to a source outside the European Economic Area, the End User must:

4.4.1 ensure that an appropriate safe harbour agreement or data processing agreement such as EU Model Clauses incorporating the relevant standard contractual clauses is in place between the signatory and the source or;

4.4.2 only use bureaux or call centres that are accredited to BS7799 / ISO 27001 International Data Security Standards

4.5 End User hereby undertakes that the instructions to PDV in respect of PDV Data and the format of Output:

- 4.5.1 are correct in every respect;
- 4.5.2 should a re-Output of PDV Data be required as a result of errors or omissions, or a change of requirements PDV shall be entitled to:
- 4.5.2.1 additionally charge the End User £60 for each re-Output at the sole discretion of PDV; or
- 4.5.2.2 re-charge at the full rate for re-use of PDV Data if it has already been used;
- 4.6 Output instructions shall be supplied to PDV by the End User at least seven days prior to the proposed Output date and in the event that instructions are not received by this time PDV reserves the right to:
- 4.6.1 supply PDV Data according to a standard format;
- 4.6.2 charge the End User in respect of any additional costs arising as a result of late instruction or changes in such instructions.
- 4.7 Following use of PDV Data and no later than one month after the end of the Licence Period the End User shall return all unsubscribe requests, goneaways, bouncebacks and call disposition files to PDV indicating which of these categories are applicable to each set of Names.
- 5. OBLIGATIONS OF THE END USER**
- 5.1 The End User warrants that any material sent or quoted during or following the use of PDV Data or any of it for the Purpose will at all times comply with Applicable Regulations; and that:
- 5.1.1 it will upon request by PDV forthwith supply to PDV copies of any such documents, scripts or other items which will be used for the Purpose in advance, during or following the use of PDV Data or any of it;
- 5.1.2 it will not make any statement or provide any other information that is unlawful, fraudulent, untrue, false, incorrect or misleading including but not limited to information relating to the End Users identity and contact details. The End User warrants that any and all information the End User issues, produces or originates shall be true in every respect throughout the term of this Agreement and the End User shall promptly notify PDV of any changes to such information;
- 5.1.3 it shall inform PDV as soon as is practicable and within the timeframes required by the Applicable Regulations in the event that any recipient of a Mailing Piece/Creative or a telemarketing call objects or requests that such contact ceases or asks for their name to be removed from the PDV Data;
- 5.1.4 it agrees that the raising of a Order Confirmation by PDV in no way constitutes acceptance or acknowledgement that the End User is in compliance with the law or with Applicable Regulations or any of them or that of the content of its communication or its product or the Contact Channel is proper, acceptable or compliant with the Agreement.
- 5.1.5 The End User may at any time before any Output or broadcast as specified in the Order Confirmation, cancel or amend an Order Confirmation by providing PDV with immediate written notice. If the End User amends or cancels an Order Confirmation, the End User liability to PDV shall be limited to payment to PDV of all costs PDV incurs in fulfilling the Order Confirmation until PDV receives the End User's cancellation. For the avoidance of doubt, PDV shall have the right of consent as to whether to amend or cancel an Order Confirmation in PDV's sole discretion.
- 5.1.6 The End User should not use PDV Data to send or procure the sending of, any unauthorised advertising or promotional material or any other form of similar solicitation (spam) or transmit any PDV Data or send any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to or which might adversely affect the operation of any computer software or hardware.
- 5.2 PDV reserves the right to halt the End User from using PDV Data or any of it for the Purpose if it is deemed in PDV's own discretion that such material

contravenes clause 5.1 in any way.

- 5.3 For external email broadcasts and SMS broadcasts the End User is responsible for ensuring that all subject headers, from lines, unsubscribe footers or stop messages are exactly as per the formats and wording stipulated by PDV.
- 5.4 The End User hereby undertakes to deliver promptly to PDV any written notice or other communication in respect of PDV Data received from any other official or legislative body.

6. INTELLECTUAL PROPERTY RIGHTS

- 6.1 All Intellectual Property Rights relating to or arising out of or in connection with PDV Data are the exclusive property of PDV and nothing in the Agreement shall constitute a sale, transfer or assignment of (or an agreement to sell, transfer or assign) any such Intellectual Property Rights whatsoever.
- 6.2 The End User shall not in any way question or dispute the validity of or ownership by PDV of any Intellectual Property Rights relating to or arising out of or in connection with PDV Data.
- 6.3 The End User is hereby licensed only to use the Intellectual Property Rights of PDV for the Purpose and not further or otherwise. Upon expiry of the End User Licence, the End User shall immediately discontinue such use without compensation for such discontinuation.
- 6.4 The End User shall indemnify PDV against liabilities, costs and expenses PDV may incur as a result of the combining or use of PDV Data or any of it with other data, software or equipment not supplied by PDV which gives rise to an infringement of any copyright, patent, or other Intellectual Property or other proprietary right.
- 6.5 The End User shall promptly notify PDV if it becomes aware of any infringement or suspected infringement by any person of the Intellectual Property Rights relating to or arising out of or in connection with PDV Data or any of it, and shall give all reasonable assistance in connection with any claims or proceedings made or instituted

against such person for such infringement or suspected infringement.

- 6.6 Retention of title does not apply for the use of PDV Data in the event of transfer of assets from the End User to another party even for Order Confirmations with Usage Terms of more than one time.

7. SECURITY AND CONTROL

- 7.1 The End User shall at all times effect and maintain adequate security measures to safeguard and protect the integrity of the PDV Data from access, copying, manipulation, or use by any unauthorised person.
- 7.2 The End User will promptly notify PDV of any breach or suspected breach of such security measures.
- 7.3 The End User shall retain the PDV Data under its own effective control for the duration of the Licence.
- 7.4 PDV reserves the right to include Seed Names to ensure that PDV Data is used in accordance with this Agreement. In the event that PDV determines that PDV Data has not been used or suspects it has not been used in accordance with this Agreement, PDV shall be permitted to conduct an investigation in accordance with this clause 7 and the End User hereby undertakes to PDV to co-operate fully with such investigation.
- 7.5 The End User will permit with reasonable written notice from PDV for PDV and/or its authorised representative(s) to have access to the End Users premises to:
- 7.5.1 examine hardware, software, data and any other records, documents or other relevant information relating to the End Users use of PDV Data and to compliance with the Applicable Regulations, and to take copies thereof;
- 7.5.2 ask for and receive explanations in respect of such matters from the End User to the extent necessary for PDV to be satisfied that the terms of the Agreement are being complied with.

- 7.6 PDV may also inspect, audit and take copies from the relevant books, records and to appoint an independent auditor to review the accounts and other records (in each case including but not limited to those in machine readable form) of the End User for the purposes of ensuring the accuracy of the records of all supplies of PDV Data to the End Users.
- 7.7 Access shall be granted for these purposes at any time during which the relevant premises are ordinarily open for business. Written notice will not need to be given if access is required by regulation or if PDV has reason to suspect a breach of the Applicable Regulations or a breach of the security and confidentiality clauses of the Agreement.
- 7.8 If an audit determines inadequacy or breach then PDV has the right to terminate the Agreement forthwith with all fees due from the End User becoming immediately payable in full.
- 7.9 **THE CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS PDV FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, LOSSES, DEMANDS, CLAIMS, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL COSTS AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH ANY AND ALL USE OF PDV DATA UNAUTHORISED BY PDV BY ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO THE END USER WHERE THE END USER IS NOT THE CUSTOMER).**
- 7.10 For all of the purposes of this clause 7 unauthorised use is evidenced as set out in clause 2.10.
- 8. WARRANTIES AND LIABILITY**
- 8.1 The Parties warrant to each other that they each have full power, right and authority to enter into the Agreement.
- 8.2 PDV warrants that:
- 8.2.1 it has full rights to license PDV Data to the End User for the Purpose;
- 8.2.2 PDV Data has been collected in compliance with the Applicable Regulations.
- 8.2.3 The End User acknowledges and agrees that:
- 8.2.4 PDV is the Data Owner;
- 8.2.5 PDV can make no (and has not made any) representation nor give (and has not given) any warranty or undertaking as to the suitability of PDV Data for any purposes of the End User;
- 8.2.6 PDV will not be liable for any loss, damage or inconvenience whatsoever caused by any inaccuracies in the PDV Data;
- 8.2.7 PDV shall not be liable to the End User or to any other person for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with PDV Data or its use by the End User;
- 8.2.8 notwithstanding the generality of clause 8.3.3 PDV expressly excludes all liability for consequential loss or damage including but not limited to loss of profit, business, revenue, goodwill or anticipated savings, other than any liability which may not by applicable law be excluded;
- 8.2.9 it will take out and maintain adequate insurance cover of up to £3 million with a reputable insurance company against liability which the End User may incur to any person in connection with PDV Data which shall include cover but without limitation against liability for death or personal injury to any customer, employee of the End User or to any third party and damage to or loss of property. The End User will on demand from PDV produce to PDV evidence of such insurance and of its inception and maintenance.
- 8.3 The End User warrants that it will:
- 8.3.1 fully and effectively indemnify PDV against liability (including but not limited to all claims, judgments, costs and other liabilities) which PDV may incur by reason of the End User's activities in connection with PDV Data, other than for the reasons detailed in clause 8.2;

- 8.3.2 maintain the confidentiality and integrity of any Personal Data received from or on behalf of PDV;
- 8.3.3 implement and maintain appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in accordance with relevant data protection law;
- 8.3.4 ensure that its employees and its agents and permitted sub-contractors will comply with all relevant laws, regulations, bye-laws, British Standards and EU or international standards including but not limited to the Applicable Regulations;
- 8.3.5 not undertake any activity or make any claims which will bring PDV into disrepute;
- 8.3.6 not institute proceedings for damages for breach of the Agreement after the expiration of thirty days from the date on which the End User became aware of the same or the date on which it ought reasonably to have become aware of the same.
- 8.4 The End User warrants that where PDV Data has been sent by the End User to any of its associated companies, subsidiaries, affiliates, professional advisers, agents, individuals, customers or clients, PDV shall be permitted to promptly receive a complete and full list of the names and contact details of any and all the recipients of PDV Data upon PDV providing written notice to the End User.
- 8.5 The Customer and/or any agency or broker executing the Agreement represents and warrants that it has the authority to bind the End User to the terms stated herein and remains jointly and severally liable for all obligations under this Agreement.
- 8.6 Except as expressly stated in this Agreement all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

9. CONFIDENTIALITY

- 9.1 Each Party agrees not to use or reveal the Confidential Information disclosed to it by the other Party for any purpose except to further the objective of the Agreement. Each Party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other in order to prevent it from falling into the public domain or possession of persons other than those persons authorized hereunder to have any such information, which measures shall include at least a reasonable degree of care. This provision shall be binding on the Parties and shall be treated and safeguarded hereunder by the receiving Party notwithstanding the termination or expiry of this Agreement.
- 9.2 Each Party shall keep confidential all provisions of the Agreement and shall not make any public announcement of it or its subject matter without the other Party's prior written consent.
- 9.3 The End User acknowledges that PDV shall have the right in PDV's sole discretion to require the return of any Confidential Information or PDV Data in respect of any Output of PDV Data where PDV deems the PDV Data has been used outside the terms of the End User Licence as specified in the Order Confirmation or; (a) where the End User is unable to destroy any PDV Data; or (b) the Order Confirmation has been cancelled in accordance with clause 10 or (c) upon termination of the Agreement. For the avoidance of doubt, any PDV Data or Confidential Information shall be returned in accordance with clause 2.16.4.

10. TERMINATION

- 10.1 Upon termination of the Agreement the End User shall immediately return all PDV Data or any other Confidential Information in accordance with this Agreement or confirm its destruction. For the avoidance of doubt, PDV will advise the End User in writing if the PDV Data is to be returned or destroyed.
- 10.2 PDV may terminate the Agreement with immediate effect on giving written notice to End User if the End User:

10.2.1 has used PDV Data outside the terms of the Agreement;

10.2.2 commits any breach of the Agreement which in the sole discretion of PDV cannot be remedied within twenty-eight days of being served written notice to remedy the same;

10.2.3 commits any breach of the Agreement which is capable of being remedied but has not been remedied within twenty-eight days of written notice being given to the End User;

10.2.4 convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the End User shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the End User or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the End User or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction of a solvent company) or any other analogous event occurs in respect of or relating to the End User; or

10.2.5 suffers a change of Control

10.3 Any termination of the Agreement shall be without prejudice to any other rights or remedies to which a Party may be entitled under the Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

10.4 Upon the termination of the Agreement for any reason the licence set out in clause 2.1 shall forthwith terminate and clauses 2.10, 2.12, 7 and 9 hereof shall continue in force in accordance with

their terms.

11. GENERAL

11.1 The End User shall not be entitled to assign or save as may be provided for in the Order Confirmation sub-license or otherwise transfer the End User Licence, the End User Licence shall be personal to the End User only.

11.2 The Agreement contains the whole agreement and understanding between the Parties and supercedes any prior written or oral agreement between them relating to the subject matter of the Agreement and the End User hereby agrees that it has not entered into the Agreement on the basis of any representation not set out in the Agreement.

11.3 Any notice under the Agreement shall be in writing and shall be deemed duly given if sent by first class post or delivered by hand or facsimile transmission to the address of the Party to be served set out in the Order Confirmation or to the registered office of that Party. Any notice so served shall be deemed delivered if by post two business days after posting, if by hand on the date of delivery and if by facsimile transmission upon receipt of electronic confirmation of transmission.

12. VAT

Save insofar as otherwise expressly provided, all amounts stated in the Order Confirmation are exclusive of amounts in respect of Value Added Tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes are made under the Order Confirmation the End User shall, on receipt of a valid VAT invoice from PDV, pay to PDV such additional amounts in respect of VAT as are chargeable on the supply of PDV Data as at the same time as payment is due for the supply of the PDV Data.

13. GOVERNING LAW AND SUBMISSION TO JURISDICTION

13.1 The construction, validity and performance of the Agreement shall be governed by and construed in all respects in accordance with English law.

13.2 All disputes arising in any way out of or affecting this Agreement shall be subject to the exclusive

jurisdiction of the English Courts to which the Parties agree to submit.

PDV's Lead Generation Terms and Conditions

These Lead Generation Terms and Conditions ("Terms") shall be read in conjunction with PDV's Standard Terms and Conditions. Capitalised terms contained herein shall have the same meaning as in PDV's Standard Terms and Conditions. Should there be a conflict between PDV's Standard Terms and Conditions and these Terms, then these Terms shall prevail.

1. DEFINITIONS

In these PDV Lead Generation Terms and Conditions and the Order Confirmation unless the context shall otherwise require, the following words and expressions shall have these meanings assigned to them:

Advertising Services means the activity provided by PDV of attracting consumer attention to a Customers' product or business in print, broadcast, or electronic media.

Brochure Request means an active registration with an End User which Opt-In the responder to receiving a brochure;

Contract Type refers to the type of agreement under which PDV will supply Leads to the End User as defined below and detailed on the Order Confirmation:

- **Capped Contract** refers to a set volume of leads, which unless otherwise stated may be 10% over and above the volume referred to on the Order Confirmation;
- **Term Contract** refers to a fixed time period, such as six or twelve months;
- **Rolling Contract** shall continue until the Notice Period is served by either PDV or the End User.

Co-Registration means an active registration with an End User which Opt-In the responder to receiving contact by the End User;

Exclusivity Period means the period following its collection that a response to a specific Question Set can be utilised via the specified Contact Channel by the End User;

Input Materials means all data, information and associated materials which are required to be provided by the End User to PDV in order that PDV may carry out the agreed Lead Generation services on behalf of the End User.

Lead Generation ("Leads") means PDV Data provided to the End User through a Question Set, Brochure Request or Co-Registration from a Survey as specified on the Order Confirmation;

Licence Period means the period during which time the End User may make use of the PDV Data concerned;

Notice Period means the notice period required to be given in writing, by either PDV or the End User for the ceasing of data collection;

Question Set means specific questions asked on a Survey which form the basis of PDV Data supplied to End User for Lead Generation;

Start Date is the date on which the Question Set is added by PDV to the live survey either on a PDV site or telesurvey, or affiliated site or telesurvey, with a view to collecting data which is to be supplied to the End User;

Survey means any Question Set compiled and executed by or in conjunction with PDV which contains a Question Set and other questions in order to create PDV Data.

Uncontactable Name means goneaways, deceased's, dead and wrong numbers, Email bouncebacks and inaccuracies, subject to investigation by PDV.

2. SERVICES

2.1 References in these Lead Generation Terms and Conditions to clauses and parties are respectively to the clauses of and the parties to these Terms and Conditions. The headings in these Terms and Conditions are for convenience only and shall not affect their interpretation.

2.2 PDV has the right to revise and amend these Terms and Conditions from time to time as published on www.pdvlt.com. The End User will be subject to the policies and terms in force at the time that the End User orders the PDV Data as specified in the Order Confirmation, unless any change to those policies or these Terms and Conditions are required by law or government or regulatory authority in which case it will apply to orders the End User has previously placed that PDV has not yet fulfilled.

2.3 The End User shall be responsible for delivering to PDV, all necessary Input Materials in the manner, quantity, form, condition and delivery timescale agreed in the Order Confirmation or in writing, where applicable. PDV reserves the right to charge a reasonable additional fee for any preparatory work necessary to use the Input Materials where such Input Materials were not supplied as agreed.

2.4 The End User hereby grants to PDV a non exclusive, limited, worldwide, royalty-free revocable license to display, perform, copy, transmit, distribute and promote the End User's campaign and Input Materials in connection with its obligations in the Order Confirmation.

2.5 PDV reserves the right to alter the wording of a Question Set at any time and without notice or to refuse to include in a Survey, questions which in the reasonable opinion of PDV are or may be

illegal or offensive or not in their commercial interest.

2.6 PDV warrants that it will only use the Input Materials to enable PDV to carry out the services and provide the agreed Lead Generation as detailed on the Order Confirmation, and for no other purpose and following completion of the order, will arrange for all copies of the Input Materials to be deleted from PDV's systems.

2.7 The End User acknowledges that they shall not issue, produce or originate any information or make any statement (using PDV Data or otherwise) that is untrue, false, incorrect or misleading including (but not limited to) information relating to the End Users identity and contact details. The End User warrants that any and all Input Materials the End User issued, produced or originates from the End User shall be true in every respect throughout the term of this Agreement and/or Order Confirmation and the End User shall promptly notify PDV of any changes to such information.

2.8 PDV reserves the right at any time prior to the first Output of PDV Data to cancel an Order Confirmation without incurring any liability other than liability which may not by applicable law be excluded or limited, in which event no part of the Rental Fee for PDV Data yet to be Output shall be payable by the End User.

2.9 Outputs will cease following the delivery of all PDV Data collected in accordance with the Order Confirmation up until the completion of the Notice Period.

2.10 The End User agrees to receive the Output of PDV Data, return any PDV Data or send any other data owned by the End User to PDV by Serial File Transfer Protocol (the "**Software**"), a protocol used to transfer files between a PC and an embedded device using RS-232 or any other similar serial protocols. PDV will not be liable for any direct or indirect loss, damage or inconvenience whatsoever caused by any type of Software or where the End User has requested PDV Data to be Output, PDV Data returned or

where any other data owned by the End User was sent to PDV by any other Contact Channel.

- 2.11 All PDV Data collected on behalf of the End User up until the completion of the Notice Period and delivered thereafter, shall be paid for by the End User whether or not the PDV Data is used by the End User.
- 2.12 PDV reserves the right to review and revise the cost per Name at any time. If PDV's proposed revision to the cost per Name is not agreeable to the End User, PDV has the right to serve notice in accordance with the Notice Period.
- 2.13 The End User acknowledges that Co-Registrations are from individuals who have registered with the End User and that the End User may only continue to market its products and services to such Co-Registered individuals until they unsubscribe. The End User further acknowledges that individuals who have elected to Co-Register with the End User may have also elected to register with PDV and/or its affiliated publishers and may have elected to Co-Register and/or opt-in to additional advertisers. Therefore, the End User acknowledges that PDV, and its affiliated sites retain all rights to market and communicate to such persons.
- 2.14 If the End User requests any amendments to a Lead Generation campaign after the Start Date, the relevant Notice Period would need to be served by the End User and a new Order Confirmation agreed, unless otherwise agreed in writing with PDV.
- 2.15 The End User undertakes to fully comply with the Codes of Practice set out by the DMA and the ASA (Regulatory Authorities) and hereby agrees to be fully responsible to the Regulatory Authorities where PDV has sent a relevant mailing piece or creative on your behalf and agrees to fully indemnify PDV against all costs, claims, liabilities, demands, losses and expenses resulting from any breach of any of the Regulatory Authorities Codes of Practice.
- 2.16 In respect of Advertising Services, PDV agrees to promote the service or business of the Customer

for a set period of time as specified on the Order Confirmation. PDV do not make any guarantee as to the level of activity that this generates.

3. UNCONTACTABLE NAMES

- 3.1 The cost per Name takes into account a percentage of Uncontactable Names. Only Outputs with greater than 5% of Uncontactable Names against all PDV Data of the same product type supplied to the End User in a calendar month will be investigated by PDV for possible deficiency.
- 3.2 If the Uncontactable Names deficiency is greater than 5% the End User agrees to provide PDV with proof of deficiency for all disputed Names. In the event that the End User disputes any Names provided by PDV as hoax or invalid, the End User agrees to provide reason codes for each Name as detailed below:
- **A41** Business Number - Consumer informs Agent that Number is a business number
 - **A43** Deceased - Consumer informs Agent that Individual is deceased
 - **A44** Goneaway - Consumer informs Agent that Individual has moved away
 - **A45** Under 18 - Consumer informs Agent that Individual is under 18
 - **A46** Wrong Consumer - Consumer informs Agent that Call is a wrong number - Individual does not live at that address
 - **A47** Dead Line - Dialler or Agent identifies Line as dead
 - **A48** Did not Request Contact - Consumer informs Agent that they did not complete the survey
 - **A49** Profanity - Individual is identified as a profanity
 - **A50** Fax/Modem number - Dialler or Agent identifies Number is Fax or Modem Number

No other return reason is acceptable unless otherwise stated on the Order Confirmation.

- 3.3 In order for PDV to investigate any possible deficiency, the End User must return

Uncontactable Names within thirty days from date of Output.

- 3.4 PDV agrees to replace data which it has verified as hoax or invalid with valid Names subject to clauses 16 to 18 of these PDV Lead Generation Terms and Conditions, and clause 3.5 to 3.7 of PDV's Standard Terms and Conditions, unless otherwise stated in the Order Confirmation.

4. LICENCE TERMS AND INTELLECTUAL PROPERTY

- 4.1 PDV grants the End User an exclusive Licence Period of twenty eight days (four weeks) from date of Output of the leads, unless otherwise stated on the Order Confirmation.

- 4.2 The End User is not permitted to supply, transfer or otherwise make available any Leads to any third parties other than the End User, unless otherwise stated on the Order Confirmation.

- 4.3 Unless otherwise stated in the Order Confirmation, the contact details of an Enquirer may be retained by the End User for a period of no more than ninety days following initial first contact via the campaign as permitted under the terms of the Agreement, provided that:

- 4.3.1 This period of retention is permitted solely to allow the End User a reasonable time to convert an Enquirer into a Purchaser;

- 4.3.2 No further contact of any kind may be made by the End User after the permitted ninety day period of retention unless the Enquirer has become a Purchaser.

- 4.4 Input Materials, such as creative assets, email broadcasts or question wording from End Users will not contain or promote adware, spyware, viruses, obscene, abusive, violent, bigoted, hate-oriented, cracking, hacking or warez content or conduct.

- 4.5 During the term of this Agreement and for twelve months thereafter, the End User shall not directly or indirectly solicit any on-line publisher, web site, email provider or telesurvey call centre that is

affiliated with PDV for the purposes of collecting data. In the event that the End User does directly or indirectly contract with such affiliate then the End User shall pay PDV an additional commission equal to the amount PDV would otherwise have received had the End User obtained the data from PDV.

- 4.6 PDV Data will remain under the ownership of PDV at all times. PDV shall have the right to analyse, manipulate, formulate conclusions and extract information from all PDV Data. PDV shall be entitled to use such information at its sole discretion by way of the grant of End User Licences to third parties provided that nothing herein shall permit PDV to reveal to any third party the responses to specific Question Sets within the Exclusivity Period.

5. TERMINATION

- 5.1 The required Notice Period to be given in writing, by either PDV or the End User for the ceasing of data collection will be as follows, unless otherwise stated on the Order Confirmation,

- **Capped Contract** – can be terminated by either party giving one months notice at any time after the Start Date, or on reaching the Capped Contract volume of Leads, whichever is sooner;
- **Term Contract** – as detailed on the Order Confirmation.
- **Rolling Contract** – can be terminated by either party giving one months notice for a one month rolling contract, or three months notice for a three month rolling contract, at any time after the Start Date;

- 5.2 Notice must be sent in writing to PDV Ltd and should be addressed to Head of Lead Generation, 64 Clarendon Road, Watford, Hertfordshire, WD17 1DA. Any notice given under this Agreement will be deemed to have been received:

- If delivered personally or sent by email or fax then at the time of delivery, or receipt of email or fax transmission unless delivery of fax transmission occurs before 9 am on a working day (in which case the notice will be deemed to have been received at 9 am on that day) or delivery

or fax transmission occurs either after 5 pm on a working day or on a day which is not a working day (in which case the notice will be deemed to have been received at 9 am on the next following working day); or sent by email to the Head of Lead Generation, or

- if sent by pre-paid first class or special delivery post at 9 am on the second working day after posting.

5.3 PDV shall be permitted to terminate the Order Confirmation with immediate effect in the event of a breach of any of these clauses by the End User.

6. FEES AND PAYMENTS

6.1 The End User agrees to pay the fees set forth on the Order Confirmation within thirty days of date of PDV's invoice, unless stated otherwise on the Order Confirmation.

6.2 In the event that PDV does not receive a written notification of a query in respect to the PDV Data with rationale and support in accordance with clauses 16 - 19, then any invoice issued for PDV Data will be deemed valid and payable and may not thereafter be disputed.

6.3 Any queries in respect of the contents of an invoice must be received no later than 10 days from the date of receipt after which point the invoice shall be deemed valid and payable and may not thereafter be disputed.

6.4 PDV reserves the right to charge interest on any sums not paid by the due date at a rate of 4% per annum over the base rate of Barclays Bank PLC.

6.5 In the event that PDV has no other option than to seek payment of unpaid debt through the courts, PDV will charge the sum of 8% per annum on any unpaid debt.

6.6 In addition, PDV reserves the right to charge the End User for its legal and other costs plus any VAT should any sums not be paid but due for payment be referred to PDV's solicitors or other representatives.

<ENDS>