

CNM Limited

Terms & Conditions of Business

1 Interpretation

In these Conditions:-

“the Client” means the person, firm or company with whom the Contract is made;

“the Company” means CNM Limited whose registered office address is 161 High Street Tonbridge Kent TN9 1BX;

“the Contract” means the Contract for the provision of the Services;

“the Information” means the information provided to the Client by the Company in performing the Services;

“the Schedules” means schedules 1 to 11 attached to these Conditions.

“the Services” means the Services to be provided by the Company for the Client;

“the Supplier” means the Supplier of the Information to the Company for the provision of the Services.

2 Supply of the Goods/Services

- 2.1 The Company shall supply the Services in accordance with any written, verbal (i.e. telephone) or other order of the Client which is accepted by the Company, subject in all cases to these Conditions, which will govern the Contract to the exclusion of any other terms and conditions subject to which any such order is made or purported to be made, by the Client.
- 2.2 No variation to these Conditions shall be binding unless agreed to in writing by a director of the Company.
- 2.3 The Client shall at its own expense supply the Company with all necessary data or other information relating to the Services within sufficient time to enable the Company to provide the Services in accordance with the Contract. It shall be the Client's responsibility to ensure the accuracy of the data and information it shall provide to the Company in order for the Company to provide the Services and it is understood and recognised by the Client that the Company's ability to provide the Services effectively will be reliant on the accuracy of the information provided by the Client.
- 2.4 The Client acknowledges that the Company is performing the Services and providing the Information to the Client pursuant to licences granted to it by its Suppliers and the Client agrees and undertakes that it shall (in relation to the use of the Information):
 - 2.4.1 comply with the Data Protection Act 1998 or any modification or re-enactment of it from time to time
 - 2.4.2 comply with the (Data Protection and Privacy) (Direct Marketing) Regulations 1998 or any modification or re-enactment of it from time to time
 - 2.4.3 not do or permit to be done anything which is reasonably likely to bring the Company or its Suppliers into disrepute
 - 2.4.4 not export or permit the export of the Information to a country which is not within the European Economic Area without the express consent of the Company and/or the Supplier of the Information.
 - 2.4.5 not disclose the Information to any more than one party, so that for clarification purposes, if the Client is obtaining the Information for its own customer or client it may supply or impart the

Information to this customer or client on one occasion only, but not to any other customer, client or any third party.

- 2.4.6 strictly adhere to the specific service terms of the Company's Suppliers as detailed in the Schedules.
- 2.4.7 where the Information is in the form of a sales, contact or marketing list only use the Information once unless multiple use is expressly permitted by the Company. The Client acknowledges that such lists may include “seed” or “dummy” records that do not relate to a real individual or business. Such records are included for the purpose of monitoring use of the data. The Client agrees not to alter or delete or in any way modify these “seed” or “dummy” records.
- 2.4.8 indemnify the Company against any loss, cost or expense it shall incur due to the Client's breach of this Condition 2.4.

3 Price

- 3.1 The price of the Services shall be the Company's quoted price (“the Price”). The Price shall remain valid for a period of 28 days only from the date quoted.
- 3.2 The Price is exclusive of any Value Added Tax which the Client shall be additionally liable to pay.

4 Payment

- 4.1 The Company shall be entitled to invoice the Client for the Price of the Services on or at any time after performance of the Services and/or the provision of the Information. The Company may at its discretion invoice the Client at the end of the month in where the Company is providing the Services on an ongoing basis to the Client.
- 4.2 If the Client fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
 - 4.2.1 cancel the Contract or the performance of the Services to the Client; and
 - 4.2.2 charge the Client interest on the amount unpaid at the rate of 5% per annum above Lloyds Bank Plc's base rate from time to time, until payment is made in full;

and the Client agrees to indemnify the Company, on an indemnity basis, in respect of all legal costs and expenses incurred by the Company in seeking to obtain payment in full.

- 4.3 When the Client contracts with the Company on behalf of its own client, it is hereby understood that the Client is acting in Trust for the Company and as such, any payments collected by the Client from their client on behalf of the Company shall be held in Trust for the Company and shall not be co-mingled with the Client's operating funds. Such funds shall be remitted to the Company. In the case of a bankruptcy filing or proceeding by the Client, these funds shall be identified as held in Trust for the Company.

5 Performance/Delivery

- 5.1 The Services shall be performed and the Information delivered in a manner agreed at the time the Contract is made.
- 5.2 Time for performance of the Services shall not be of the essence, unless previously agreed by the Company in writing.

- 5.3 The Company is not obligated to deliver the contracted service if the Client is in breach of any legal provisions or infringes any obligations within these terms and conditions.
- 5.4 Except where otherwise stated the Company is entitled to employ sub-contractors. The hiring of sub-contractors by the Company does not affect the contractual obligations of the Company to the Client.

6 Liability

- 6.1 The Client acknowledges that the Company's obligations and liabilities in respect of the Contract are exhaustively defined in these Conditions. It is accepted that the Company will not be liable for any indirect or consequential loss, damage, cost or expense of any kind.
- 6.2 Although the Company will endeavour to provide the Services and the Information with all reasonable due care and attention it is agreed and acknowledged by the Client that the Company cannot warrant or guarantee 100% accuracy in relation to the Information provided to the Client and the Company shall not be liable for breach of contract in relation to reasonable inaccuracies and omissions.
- 6.3 The Company accepts liability to the extent that it results from the negligence of the Company and its employees for death or personal injury without limit and for the physical damage to or loss of the Client's tangible property up to the amount of £10,000 in respect of any one incident or series of connected incidents. In all other cases not falling within this clause the Company's total liability (whether in Contract, tort (including negligence) or otherwise) under or in connection with the Contract will not in any event exceed the fees receivable in respect of the Contract. If the Client wishes to protect itself against any greater loss or expense it is hereby put on notice that it should put in place appropriate insurance.
- 6.4 It is accepted that the Company shall not be liable to the Client or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Company's obligations in relation to the Services, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 6.5 If liability is excluded, then the personal liability of employees, representatives and sub-contractors is also excluded.

7 Termination

- 7.1 This Condition applies if:-
- 7.1.1 the Client (being an individual or firm) becomes bankrupt, or (being a company) goes into liquidation, has an administration order passed or has an administrator, receiver or liquidator appointed in respect of the Company, or
- 7.1.2 the Client ceases, or threatens to cease, to carry on business; or
- 7.1.3 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Client and notifies the Client accordingly; or
- 7.1.4 the Client commits any breach of these Conditions.
- 7.2 If Condition 7.1 applies then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract without any liability to the Client, and if the Services have been performed, in whole or in part, but not paid for, the Price, calculated pro-rata in the case of a partly completed service, shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

8 Intellectual Property

- 8.1 The Client acknowledges that the Supplier owns the copyright in the Information
- 8.2 The Client agrees that no intellectual property rights in the Information are transferred or licensed to the Client and the Client will not assert any such rights in the same.
- 8.3 The Client shall not utilise the Suppliers' trademarks or trade names in any way whatsoever.
- 8.4 The Client shall indemnify the Company against all loss or damage suffered as a result of a breach of Conditions 8.2 and/or 8.3 by the Client.

9 Miscellaneous

- 9.1 These Conditions and all other express terms of the Contract shall be governed and construed in accordance with English law.
- 9.2 No waiver by the Company of any breach of the Contract by the Client shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 9.3 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the provisions of these Conditions and the remainder of the provision in question shall not be affected.

Schedule 1 – British Telecommunications Plc ("BT") data sourced from OSIS

The Client shall in all its dealings with or relating to information derived from BT's OSIS database comply with all applicable laws and codes of practice including the Code of Practice on Telecommunications Directory Information Covering the Fair Processing of Personal Data (21 December 1998);

The Client shall use all reasonable endeavours in relation to the security and confidentiality of the Information in its custody or control to prevent unauthorised disclosure of any part of it;

The Client shall, if any complaint is made which relates to the Client's use of the Information, then the Client shall assist BT and the Company in investigating the complaint and shall take such steps as are reasonably necessary to remedy the complaint as soon as practicable.

The Client shall not distribute, publish or display any material amount of the Information by any means, except so that a single specific person can use it

The Client shall not have any rights to use the BT Marks and shall not make reference to BT or any BT product or service in any promotional or marketing advertising, communications, literature, or packaging.

The Client shall not alter any copyright or other intellectual property right acknowledgement or confidentiality marking incorporated into or applied to BT's OSIS data or documentation owned by BT.

Schedule 2 – Royal Mail Group Limited ("Royal Mail") NCoA data

The Client shall sign an end user agreement with the Royal Mail as supplied by the Company and adhere to its terms.

The Client shall not use the data/Information, or allow it to be used, for the purposes of debt collection.

Schedule 3 – Millennium ADMP Limited Mortascreen data

The Client shall not use the data/Information, or allow it to be used, to intentionally and/or knowingly direct market any household that has suffered a bereavement.

The Client shall not use the data/Information, or allow it to be used, for the purposes of debt collection, customer verification or fraud prevention.

Schedule 4 – Millennium ADMP Limited HALO data

The Client shall not use the data/Information, or allow it to be used, to intentionally and/or knowingly direct market any household that has suffered a bereavement.

The Client shall not make the data/Information available for general dissemination through any form of computer network or infrastructure.

Schedule 5 – Acxiom Limited Purity data

The Client agrees to comply with all future requirements imposed upon the Company by Acxiom Limited Purity data ("Acxiom") as a result of industry regulations or rules, legislation and/or best practice guidelines made known to the Company by Acxiom.

Schedule 6 – DMA TPS/CTPS/MPS data

The Client shall take all such steps as shall from time to time be required by the Company to protect any confidential information in the data/Information and the intellectual property rights of Telephone Preference Service Limited in the data/Information.

Schedule 7 - Equifax Plc Locate data

The Client shall only use the information provided to assist in the tracing of debtors.

The Client should not take action based solely on the basis of an address provided through a Locate search but should first take other steps to verify the identity of the individual concerned.

The Client must ensure that their processes provide an audit trail that records the use of the Locate product. The Company and/or Equifax Plc may carry out random audits to verify that the Client's access to Locate complies with these rules.

Schedule 8 – Equifax Plc Positive Locate data

The Client shall only use the information provided to assist in the location of an individual in order to provide that individual with information, benefits, assets or monies due, or hold some other communication deemed to be beneficial and non-prejudicial to that individual.

One of the conditions of Schedule 2 of the Data Protection Act 1998 must apply to the processing.

The Client must ensure that their processes provide an audit trail that records the use of the Positive Locate product. The Company and/or Equifax Plc may carry out random audits to verify that the Client's access to Positive Locate complies with these rules.

Schedule 9 – REaD Group GAS/GAS Reactive/The Bereavement Register (TBR) data

The Client shall only use the information provided for its own internal direct marketing purposes.

The Company makes no representation or warranty as to the accuracy of GAS/GAS Reactive/The Bereavement Register or the data obtained therefrom.

Schedule 10 – Data Supply

The Client shall verify that the data matches the Client's requirements as communicated to the Company by the Client. The Company is not liable for any shortages or defects unless the Client notifies the Company in writing within 14 days of delivery. If the Client so notifies the Company, the Company will at its sole discretion, either credit the Client for the cost of any defective records or replace the defective data as soon as practicable. The Client shall return any defective data to the Company prior to seeking either remedy.

Schedule 11 – Email Broadcasting

The Company does not make a warranty, guarantee, promise or representation, express, implied, oral, written or otherwise, as to the results of any campaign.

At least 5 working days before the start of the contractual service, the Client is obliged to send the Company all information and materials necessary for the proper execution of the service. If the advertising materials provided is assessed as unsuited or partially unsuited (due to presentability issues or higher than average unsubscribe rates or bad performance/conversion) for the contractual service (implementation/ mailing) by the Company, the Company is entitled to make either contextual or technical changes or corrections to the materials as long as these changes/corrections will optimise the presentability or performance /conversion. Alternatively, the Company has the right to return the materials based on stated reasons. In this case the Client immediately shall provide the Company with materials changes according to the reasons stated for returning the material. All costs, charges and lost profits due to delayed or failed cooperation from the Client are to be reimbursed.

The Client grants to the Company the appropriate rights to execute the contractual service and guarantees to be either the owner of these rights or have the authorisation to grant these rights to the Company.

The Client confirms that carrying out the service in accordance with the Contract will not violate legal provisions or the rights of third parties. In particular, the Client is solely responsible for the content of the advertising materials provided or specified by the Client, and for the legal compliance of the service or product advertised. The Client agrees not to transmit any unlawful, harassing, libellous, abusive, threatening, harmful, vulgar, obscene or otherwise objectionable material of any kind or nature. The Client also agrees not to transmit any material that encourages conduct that could constitute a criminal offence, give rise to civil liability or otherwise violate any applicable law or regulation. The Company is not obliged to check orders for legal compliance.

All copy is to be transmitted via email in the following preferred formats: Text format = Word(.doc) or Text (.txt); Images format = .gif or .jpg; HTML format = entire advertisement must be completed in html format. A charge may be made if the Company is required to host HTML images.

Where applicable the Client must approve all advertising material no later than 48 hours prior to the agreed campaign.

The Client agrees to indemnify the Company in respect of all losses, damages and costs including the costs of legal action against the Company (including fees for legal representation) arising from a breach of law or breach of these terms and conditions by the Client, to the extent that expenses are incurred in defending against claims by third parties, including claims by the appropriate supervisory authorities.

Within 48 hours of the initial service provision, the Client is obliged to check if the service is provided in accordance with the Contract and to inform the Company in writing of any complaints. If the Client does not make such an announcement within this time or in this way, then the service carried out is considered to be in accordance with the Contract.

The Client will be charged 50% of the invoice cost if the job is cancelled and 90% of the invoice cost if the job is cancelled within 72 hours of the agreed mailing date.