

# PDV Supplier (Data) Terms and Conditions of Purchase

Version 6<sup>th</sup> September 2018

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## 1. APPLICATION OF THESE TERMS

- 1.1. The terms and conditions comprised in this Agreement are the only terms and conditions upon which PDV Limited 'PDV' and the Supplier will deal with each other and they shall govern the Agreement to the entire exclusion of all other terms or conditions.
- 1.2. Each Purchase Order from PDV to the Supplier shall be deemed an offer by PDV to purchase the Services subject to the terms and conditions of this Agreement. No Purchase Order shall be accepted until the Supplier accepts the offer either expressly by giving notice of acceptance, or impliedly by fulfilling the Purchase Order (in whole or in part).
- 1.3. This Agreement shall be effective from the Commencement Date.

## 2. DEFINITIONS

- 2.1. "Agreement" means these PDV Terms and Conditions and any associated Purchase Order and Schedule;
- 2.2. "Applicable Regulations" means as relevant the General Data Protection Regulation 2016/679 "GDPR" and the Privacy and Electronic Communications (EC Directive) Regulations 2003 "PECR" as well as any amendments or replacements thereof and The Data Protection Act 2018 "DPA".
- 2.3. "Commencement Date" means the earlier of the date of the second signature to the Purchase Order or in the absence of such signature, the date of the Purchase Order or the fulfilment of the Services.
- 2.4. "Confidential Information" means any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or Group Companies in or on any medium or format.
- 2.5. "Consent" has the meaning attributed to it under Article 4(11) of the GDPR and forms one of the legal bases for processing under the Applicable Regulations.
- 2.6. "Consented Data" means any data collected by the Supplier in which the data subject has specifically consented to being contacted the End Clients of PDV for marketing purposes.
- 2.7. "Data Controller" and "Data Processor" shall have the meaning attributed to them under Article 4(7) and Article 4(8) respectively of the GDPR.
- 2.8. "Data Supplier or Supplier" means the party named on the Purchase Order and any associated schedules, who will act as Data Controller and will supply Data to PDV Ltd for use by its End Client for marketing purposes.
- 2.9. "Deliverables" means all documents, products and materials developed and/or supplied by the Supplier in accordance with the Services, or as otherwise supplied by the Supplier to PDV under or in connection with this Agreement, as may be set out in the Purchase Order and as may be updated by agreement between the parties from time to time.
- 2.10. "DPA" means the Data Protection Act 2018 and any subordinate legislation having effect in England.
- 2.11. "EEA" means the European Economic Area.
- 2.12. "Force Majeure" means any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations.
- 2.13. "GDPR" means the General Data Protection Regulation 2016/679 brought into force on 25<sup>th</sup> May 2018.

- 2.14. "Good Industry Practice" means the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator seeking in good faith to comply with all relevant laws and engaged in the provision of the same type of services as the Services under the same or similar circumstances and conditions as set out in the Agreement;
- 2.15. "Group Companies" shall mean and include any company which in relation to either party is a subsidiary, holding company or subsidiary of a holding company as the terms "subsidiary" and "holding company" are defined by Section 1159 of the Companies Act 2006 (as amended).
- 2.16. "ICO" means the Information Commissioners Office at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.
- 2.17. "Intellectual Property Rights" means copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trademarks and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same.
- 2.18. "LI" means Legitimate Interests which form one of the legal bases for processing where it is necessary for the purposes pursued by the Supplier or a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which requires the protection of personal data, in particular where the data subject is a child.
- 2.19. "LIA" means Legitimate Interest Assessment which is represented by the balancing test conducted by the Supplier to justify the processing of any data passed to PDV Ltd or its End Client under Legitimate Interests for marketing purposes.
- 2.20. "PDV Ltd" is a company registered in England and Wales under company registration number 03974954 at Green Heys, Walford Road, Ross-On-Wye, Herefordshire, HR9 5DB, that acts as a Data Processor both on behalf of its End Client and the Data Supplier.
- 2.21. "PECR" means the Privacy and Electronic Communications (EC Directive) Regulations 2003.
- 2.22. "Personal Data" and "Personal Data Breach" shall have the meaning attributed to them under Article 4 (1) and 4 (12), respectively of the GDPR.
- 2.23. "Purchase Order" means each of PDV's purchase orders issued to the Supplier in accordance with these Terms and Conditions.
- 2.24. "RFI" means PDV's Request For Information pertaining to the due diligence it is required to perform on all suppliers of personal information for use by the End Clients of PDV.
- 2.24. "Schedule" means a schedule attached to this Agreement.
- 2.25. "Services" means the services as specified in the Purchase Order and/or any Schedule and all other services supplied by the Supplier to PDV under or in connection with this Agreement.
- 2.26. "Timetable" means any timetable expressly set out or referred to in this Schedule and/or Purchase Order or as otherwise agreed between the parties from time to time and relating to the performance of the Services and/or delivery of any Deliverables.
- 2.27. PDV has the right to revise and amend these Terms and Conditions from time to time as published on [www.dlg-pdv.com](http://www.dlg-pdv.com). The Supplier will be subject to the policies and terms in force at the time that the Supplier accepts PDV's Purchase Order and fulfils that order, but subject to (and to the extent of) any changes therein as may from time to time be required by law or regulatory authority.

### 3. INTERPRETATION

- 3.1. In this Agreement:
- 3.1.1. any reference to a statutory provision includes a reference to any modification or re-enactment of it from time to time;

- 3.1.2. references to clauses, Purchase Orders and schedules are to the clauses of these Terms and Conditions, the Purchase Order and Schedule of this Agreement;
- 3.1.3. references to any gender includes any other gender and the singular includes the plural and vice versa;
- 3.1.4. the headings are for ease of reference only and shall not affect the construction or interpretation of this Agreement;
- 3.1.5. words beginning with capital letters are intended to have the meaning given to them either in these Terms and Conditions or in the Purchase Order or Schedule;
- 3.1.6. where any matter is to be agreed, such agreement must be recorded in writing; and
- 3.1.7. wherever the words "including", "include", "includes" or "included" are used they shall be deemed to be followed by the words "without limitation" unless the context otherwise requires.
- 3.2. If there is any conflict or inconsistency between the various documents forming this Agreement, the following order of precedence shall apply to the extent of any conflict or inconsistency (the first mentioned documents prevailing over the later mentioned documents):
  - 3.2.1. the Purchase Order;
  - 3.2.2. the Schedule; and
  - 3.2.3. these Terms and Conditions.

#### **4. MATERIALS**

- 4.1. The Supplier shall, at its own expense, supply everything necessary for provision of the Services except as otherwise agreed in writing between the Supplier and PDV.
- 4.2. All materials including any drawings, designs, patterns, samples, specifications and photographs (any of which may be in electronic form) made available by PDV to the Supplier in connection with this Agreement shall be and remain the property of PDV and the Supplier shall:
  - 4.2.1. keep those materials in good order and condition;
  - 4.2.2. use those materials only for the purposes of this Agreement; and
  - 4.2.3. return those materials upon PDV's request at any time or, if no request is made, upon completion of this Agreement.

#### **5. PERFORMANCE**

- 5.1. The Supplier shall:
  - 5.1.1. provide the Services and Deliverables to PDV pursuant to this Agreement; and
  - 5.1.2. in carrying out the Services, comply with any reasonable instructions given by PDV.

#### **6. WARRANTIES**

- 6.1. Without prejudice to any other right or remedy available to PDV, the Supplier warrants, represents and undertakes to PDV that:
  - 6.1.1. it has obtained and will continue to hold all necessary licences, consents, permits and agreements required for the provision of the Services and the exercise by PDV of the rights granted by the Supplier to PDV under this Agreement;

- 6.1.2. it has collected all Data in line with Applicable Regulations and where necessary has obtained the Consent of the data subjects to pass their data to PDV and/or its End Client to be used to contact the data subject via a specified contact channel for marketing purposes; Or
- 6.1.3. it has conducted an LIA to prove that PDV and/or its End Client may properly rely on the Legitimate Interests of PDV and/or its End Client in order to process the data supplied under LI for marketing purposes.
- 6.1.2. the Services will be performed by appropriately qualified and trained personnel with all reasonable care and skill in accordance with good Industry Practice and this Agreement;
- 6.1.3. the Services and Deliverables will conform with all descriptions and specifications provided to PDV by the Supplier including as set out in the Schedule;
- 6.1.4. the Services and Deliverables will be provided in accordance with the Timetable and with all applicable legislation from time to time in force;
- 6.1.5. any Deliverables provided shall be free from material defects in design, material and workmanship; and
- 6.1.6. use of the Services and/or any Deliverables by PDV will not infringe any Intellectual Property Rights of any third party.
- 6.2. Both parties warrant that they have the full power and authority to enter into this Agreement.

## **7. CHARGES**

- 7.1. The price payable for the Services and Deliverables shall be as stated on the Purchase Order or in the Schedule, and unless otherwise stated shall be exclusive of any applicable value added tax (which shall be payable by PDV subject to receipt of a VAT invoice).
- 7.2. PDV shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase as customarily granted by the Supplier, unless otherwise agreed between the parties.
- 7.3. The Supplier shall provide PDV with an invoice on completion of the Services and/or on delivery of the Deliverables (or as otherwise set out in the Schedule) together with such other documentation as PDV may from time to time specify. In any event all invoices and correspondence (if appropriate) shall include all details required from time to time by HM Revenue and Customs for VAT purposes and in particular shall include those details as set out in the Schedule.
- 7.4. The Supplier hereby agrees that PDV will not be expected to pay any charges for invalid data in circumstances where:
  - 7.4.1. the telephone number, mobile number, mobile number, email or postal address is incorrect, a business number or address, a dead line or a fax number or an email that bounces back;
  - 7.4.2. the consumer name given is wrong, a profane or fake name, the consumer has goneaway or under 18;
  - 7.4.3. the data supplied has not been supplied using the criteria specified by PDV;
  - 7.4.5. the data is a duplicate of that already held by PDV or PDV's End Client.
- 7.5. Invalid data will be returned to the Supplier within 60 days of supply and the Supplier will issue a credit or refund equal to the number of records returned multiplied by the price per record plus any applicable VAT.

## **8. PAYMENT AND INVOICING**

- 8.1. PDV will pay for the Services and Deliverables no later than the last day of the month following the month in which it receives a correct invoice from the Supplier (the "Due Date"). For the avoidance of doubt, if the Supplier does not include in such invoice the information specified in the Purchase Order or Schedule, or if the amount invoiced is otherwise inaccurate, then such an invoice will not be correct for

the purpose of this Clause 7.1 and PDV shall be under no obligation to pay the Supplier until the Supplier has provided such correct invoice.

- 8.2 PDV reserves the right not to pay any invoice which is the subject of a dispute or non payment by its End Client due to a dispute.
- 8.3. PDV reserves the right to deduct from or offset against any payment to the Supplier all monies due or becoming due to PDV from the Supplier whether in connection with this Agreement or otherwise.
- 8.4. Failure to comply with the instructions set out in the Purchase Order or in the Schedule may delay payment.
- 8.5. PDV shall not be obliged to pay any invoice which is received more than 90 days after performance of the Services to which it relates.
- 8.6. No variation from the price set out in the Purchase Order or in the Schedule nor additional charges may be invoiced without the prior consent in writing of PDV.
- 8.7. If any sum under this Agreement is not paid by the Due Date then, without prejudice to the parties other rights under this Agreement, interest shall become payable upon that sum from the Due Date until payment is made in full, at a rate of 2% above Barclays Bank base rate as set from time to time. The Supplier is not entitled to suspend any performance of the Services as a result of any sums being outstanding where: i) the sums outstanding are disputed; and/or ii) correct invoice procedure not followed by the Supplier, or iii) circumstances outside of either party's control.
- 8.8. The Supplier shall be responsible for accounting to HM Revenue and Customs and all other authorities for all taxes, insurance contributions and other liability charges and dues for which the Supplier is responsible.

## **9. CONFIDENTIALITY**

- 9.1. The Supplier shall keep in strictest confidence all Confidential Information disclosed to it by PDV or its agents or otherwise understood or received by it pursuant to fulfilling its obligations under this Agreement and the Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging its obligations to PDV and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind it. At PDV's request or, if no request is made, upon completion of this Agreement, the Supplier shall delete from its systems and return to PDV all such Confidential Information.
- 9.2. The restrictions in Clause 9.1 do not apply to any information to the extent that it:
  - 9.2.1. is or comes within the public domain other than through a breach of Clause 9.1; or
  - 9.2.2. is in the Supplier's possession (with full right to disclose) before disclosure is made under the terms of this Agreement; or
  - 9.2.3. is lawfully received from a third party (with full right to disclose); or
  - 9.2.4. is independently developed by the Supplier without access to or use of the Confidential Information; or
  - 9.2.5. is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body.
- 9.3. The Supplier shall not disclose the making of this Agreement in any journal/magazine/publication or other medium or otherwise use PDV's name or logo or the name or logo of any of PDV 's customers in any of its advertising or publicity material (including without limitation in any press release or statement) without first receiving written consent from PDV's Data Director and/or Managing Director, which may be withheld or given in PDV's absolute discretion.

## **10. INTELLECTUAL PROPERTY**

- 10.1. The Supplier shall acquire no rights or interests in any Intellectual Property Rights of PDV by virtue of this Agreement.
- 10.2. The Supplier shall make no use whatsoever of any Intellectual Property Rights of PDV unless authorised in advance in writing to do so by PDV. If and to the extent that PDV so authorises the Supplier, the Supplier warrants, represents and undertakes that it shall:
  - 10.2.1. only use such Intellectual Property Rights as PDV authorises, for the specified purposes that PDV authorises and no other purposes whatsoever; and
  - 10.2.2. comply with the directions from time to time issued by PDV about the use of PDV's Intellectual Property Rights.
- 10.3. Where Services are provided and/or Deliverables are created specifically for PDV and unless otherwise expressly agreed in this Agreement, the Supplier shall assign to PDV all rights, title and interest with full title guarantee, free from any adverse rights or claims, in all present and future Intellectual Property Rights and all other rights in the products of such Services (and/or in such Deliverables) ("the Assigned Materials"), to the extent that they do not already vest in PDV by operation of law or under this Agreement. This assignment shall include but shall not be to all rights of action for damages for Intellectual Property Rights infringement, all rights in any modifications or enhancements to existing software, whether owned by PDV, the Supplier or a third party, and if necessary the Supplier shall procure the assignment to PDV by the author or creator of such Intellectual Property Rights produced during the performance of the Services.
- 10.4. The Supplier shall:
  - 10.4.1. immediately upon creation of any Intellectual Property Right in performance of the Services, disclose and deliver to PDV all information and data in its possession, power or control necessary for a full understanding, application and, where applicable, registration of the Intellectual Property Right; and
  - 10.4.2. promptly, and at PDV's request, do all such further acts and execute all such documents as PDV may from time to time require for the purpose of securing for PDV the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to PDV in accordance with this Agreement, in any or all countries and free from any adverse rights or claims.
- 10.5. The Supplier shall irrevocably and unconditionally waive any and all moral rights to any Intellectual Property Rights produced by the Supplier pursuant to performance of the Services under the Copyright Design and Patents Act 1988 Chapter IV or any rights or a similar nature under any law in any other jurisdiction.
- 10.6. For the avoidance of doubt, the know-how, techniques or principles used which are the property of the Supplier at the start of the Services shall remain the property of the Supplier.
- 10.7. The Supplier shall indemnify and keep PDV indemnified against any and all losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by PDV (including legal expenses reasonably and properly incurred) arising out of any claim brought against PDV by any third party alleging that its Intellectual Property Rights are infringed by the use by PDV of the Services and/or the Deliverables provided that PDV:
  - 10.7.1. informs the Supplier of such claim;
  - 10.7.2. does not make any admissions that prejudice, or might prejudice the defence of such claim;
  - 10.7.3. allows the Supplier complete control over the defence of, and over all negotiations relating to, such claim; and
  - 10.7.4. provides the Supplier with all reasonable assistance as requested by the Supplier.
- 10.8. The Supplier shall:
  - 10.8.1. not, without the specific, prior, written consent of PDV include any Open Source Software in any Deliverables which it is aware (or ought reasonably to be aware) will or may be incorporated within PDV's products/services or provided by PDV to third parties if the terms on which the Open Source



Software is made available would require PDV to disclose code in which it owns the Intellectual Property Rights to any third party.;

- 10.8.2. notify PDV at PDV's request from time to time of any Open Source Software which has been included within any other Deliverables.

## **11. DATA PROTECTION**

- 11.1. Each party undertakes to the other that it will at all times pursuant to this Agreement comply with all Applicable Regulations and any other rules having equivalent force.
- 11.2. Each party will maintain registration with its own Supervisory body and in particular the ICO in the UK, providing such proof of registration as may be required from time to time.
- 11.2. PDV will act as the Data Processor and will only act under these terms and conditions and the written instructions of the Supplier and End Client (unless required by law to act without such instructions).
- 11.2.1. PDV will ensure that the individuals and staff processing the Data Controllers data are subject to a duty of confidence.
- 11.3. PDV will ensure that any and all of its employees and sub-contractors who will handle Data Subject's Information supplied by the Data Controller are suitably trained and understand their responsibility in the lawful processing of Data Subjects Personal Information.
- 11.4. PDV will take appropriate and technical and organisational measures to ensure the security of processing ensuring that it meets its obligations under Article 32 of the GDPR.
- 11.5. PDV will ensure by way of its IT Security Policy and Procedures that employees handling Personal Information are unable to print, download, transfer or otherwise disseminate Personal Information unless it is for the lawful purposes of this Agreement.
- 11.6. PDV will ensure that all persons and employees authorised to process Personal Information have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 11.7. PDV will, where necessary, provide all reasonable assistance to the Supplier in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments.
- 11.8. PDV will assist, where necessary, at its own cost, the Supplier in notifying data subjects of any data breach in whatever manner is required, where the breach is as a result of PDV's negligence;
- 11.9. PDV will assist the Supplier with the provision of information, documentation and explanation as required to the ICO.
- 11.10. PDV will delete, return or destroy all Supplier data originating from and supplied by the Supplier at the request of the Supplier and in any event on the Termination or expiry of this Agreement;
- 11.11. PDV will submit to audits and inspections, including those of a Regulator and provide the Supplier with the information it needs to ensure that both parties meet their Article 28 obligations under the GDPR, and tell the Supplier immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state.
- 11.12. Nothing in this Agreement relieves PDV of its own direct responsibilities and liabilities under GDPR.
- 11.13. PDV shall indemnify and hold harmless the Supplier for all claims, losses, fines and costs directly attributable to the negligent actions of PDV, excluding all consequential loss, including but not limited to loss of profits and any regulatory fines, subject to a maximum aggregate in any twelve (12) month period of £500,000.

- 11.14 Each party shall appoint a single point of contact (**SPoC**) who will work together to reach an agreement with regards to any issues arising from the processing of the Suppliers data;
- 11.15 The SPoC's of each Party shall be responsible for maintaining a record of individual requests for information, the decisions made and any information that was exchanged. Records must include copies of the request for information, details of the data accessed and shared and where relevant, notes of any meeting, correspondence or phone calls relating to the request.
- 11.15.1. The Spoc for the Data Processor is;
- 11.15.1.1 Miss Samantha Pocock, Compliance Manger, PDV Limited.
- 11.16. The parties agree to provide all assistance as is necessary to each other to enable them to comply with Subject Access Requests and to respond to any other queries or complaints from Data Subjects.
- 11.17. PDV shall not at any time transfer or otherwise disseminate data provided by the Supplier to any party outside of the EEA without the explicit written permission of the Supplier.
- 11.18. Data shall be processed on the basis of one of the following grounds;
- 11.18.1.The Data Subject has given his or her consent;
- 11.18.2.Processing is necessary for the purposes of the legitimate interests pursued by the Data Controller except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.
- 11.5. The Supplier acknowledges that it will be required to complete a PDV request for information questionnaire ("RFI") as part of PDV's supplier selection and management process. If at any time the Supplier has not completed an "RFI", PDV shall be entitled to terminate this Agreement by notice in writing to the Supplier (provided that if this is because of any act or omission of PDV, PDV shall give the Supplier a reasonable opportunity to complete an "RFI" before exercising this right).
- 11.6. The Supplier warrants to PDV that whilst this Agreement remains in force (and without prejudice to the provisions of Clauses 9 and 11.4) it will have and keep in place any information security measure which the Supplier has indicated to PDV (either in its response to the "RFI", or otherwise in writing) that it has or will have in place.
- 11.7. The Supplier acknowledges that in deciding whether to place business under any agreement with a supplier, and/or whether to renew or extend any such agreement, PDV will have regard to the principles and requirements of its "RFI" document a copy of which will either have been provided to the Supplier, or which can be made available on request. The Supplier will act reasonably in assisting PDV in measuring its performance against, and achieving compliance with, all security requirements.
- 11.8. PDV acknowledges that it and the Supplier must, to the extent relevant, comply with the Privacy and Electronic Communications (EC Directive) Regulations 2003 ("PECR") in performing their respective obligations under this Agreement and accordingly, PDV acknowledges and agrees that the Supplier may at its sole discretion and without liability to PDV refuse to undertake any email broadcast which would cause it or PDV to contravene PECR.
- 11.9. Accordingly, but without limitation, the Supplier may at its sole discretion and without liability to PDV refuse to:
- 11.9.1. transmit unsolicited emails unless either (i) the recipient of the email has notified the Supplier or PDV that he consents for the time being to such communications being sent by or on behalf of PDV or its End Client; or (ii) PECR otherwise permits; or
- 11.9.2. transmit any email where (i) the identity of PDV or its End Client has been disguised or concealed or (ii) where a valid address to which the recipient of the email may send a request that such emails cease has not been provided or (iii) where the selections made by PDV are not consistent with the marketing consents given by the relevant consumers to the Supplier.

- 11.10. As the Supplier is the source of the data and provider of the email broadcast services, primary responsibility for compliance with PECR rests with the Supplier.
- 11.11. Where the Supplier uses 3rd parties to provide the Service the Supplier must:
  - 11.11.1 immediately notify PDV in the event that the Supplier is made aware that the 3rd party is under investigation by the Information Commissioner's Office, the Direct Marketing Association or any other relevant regulatory body, and cease to use the 3rd party;
  - 11.11.2 warrant that it has examined all consent statements and Privacy Notices of the 3<sup>rd</sup> Party to ensure that PDV may legally use all personal data supplied for marketing purposes for the End Clients of PDV;
  - 11.11.3 will provide PDV, as part of the RFI process, details of all 3<sup>rd</sup> parties the Supplier intends to use for the purposes of the supply of personal data;
  - 11.11.4 will provide PDV, as part of the RFI process, copies of all consent statements, privacy notices and where applicable LIA's under which all personal data, that is to be supplied to PDV and its End Client, has been collected;
  - 11.11.5 will inform PDV immediately of any change of 3<sup>rd</sup> parties, consent statements, privacy notices and where applicable LIA's relative to personal data which is being collected on behalf of the End Client of PDV;
  - 11.11.6 will ensure that, where required, specific named consent is obtained on behalf of PDV's End Client when asked to do so;
  - 11.11.7 will cease to use any 3<sup>rd</sup> party who, in the reasonable opinion of PDV, are unable to comply with the requirements of these Terms and conditions and the DPA.
- 11.12 The Supplier will permit, with reasonable written notice from PDV, for PDV and/or its authorised representative(s) to have access to the Suppliers premises to:
  - 11.12.1 examine hardware, software, data and any other records, documents or other relevant information relating to the collection of Personal data and to compliance with the Applicable Regulations, and to take copies thereof;
  - 11.12.2 ask for and receive explanations in respect of such matters from the Supplier to the extent necessary for PDV to be satisfied that the terms of the Agreement are being complied with;
  - 11.12.3 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 Supplier for the purposes of ensuring the accuracy of the records of all supplies of Personal data to PDV and its End Clients;
  - 11.12.4 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;
  - 11.12.5 if an audit determines inadequacy or breach then PDV has the right to terminate the Agreement forthwith with no obligation on the part of PDV to pay for any services provided by the Supplier up to the date of termination.

## **12. LIABILITY**

- 12.1. PDV's liability to the Supplier in respect of any claim for breach of contract, negligence, breach of statutory duty or under any indemnity or otherwise shall be limited as follows:
  - 12.1.1. in respect of any claim for personal injury or death caused by PDV's negligence or that of its employees, agents and/or sub-contractors, no limit shall apply;
  - 12.1.2. in respect of other claims for personal injury or death however caused and claims for the damage to or loss of tangible property (excluding claims for loss or corruption of, or damage to, data contained on any

tangible media), liability shall be limited to £10,000 per claim or series of claims arising from any one incident;

- 12.1.3. in respect of any other claim, PDV's liability to the Supplier shall be limited in aggregate to the sums (excluding VAT) paid by PDV to the Supplier under this Agreement in the Agreement Year in which the claim arose.
- 12.2. Neither party shall be liable (including under any indemnity given in this Agreement) for and to the extent that any proceedings, actions, claims or demands arise as a result of:
  - 12.2.1. use of infringing materials supplied or made by the other;
  - 12.2.2. the failure of any product or services supplied by a third party directly to the party making the claim.
- 12.3. PDV shall not be liable for any indirect or consequential loss.
- 12.4. PDV shall not be liable for the following types of financial loss; loss of profits; loss of earnings; loss of business or goodwill; business interruption; even if PDV had notice of the possibility of the Supplier incurring such losses.
- 12.5. PDV shall not be liable for the following types of anticipated or incidental losses; loss of anticipated savings; increase in bad debt; loss of sales or revenue; failure to reduce bad debt; reduction in the value of an asset; even if PDV had notice of the possibility of the Supplier incurring such losses.

### 13. INSURANCE

- 13.1. Each party shall effect with a reputable insurance company and keep in effect for the term of this Agreement adequate public liability insurance, professional indemnity insurance and, in respect of the Deliverables, product liability insurance. Each policy shall be for no less than £1,000,000.
- 13.2. Each party shall on request from time to time provide the other party with such evidence of insurance, and payment of premiums in connection with the policies as PDV may reasonably require.

### 14. TERMINATION

- 14.1. Either party may terminate this Agreement immediately without liability to the other and without prejudice to its other rights at any time by giving notice in writing to the other party:
  - 14.1.1. if the other party is in material breach of any of the terms of this Agreement which is not capable of remedy;
  - 14.1.2. if the other party is in material breach of any of the terms of this Agreement and, where remedial action, has failed to remedy that breach within 30 days of being notified in writing of it;
  - 14.1.3. if the other party enters into liquidation (apart from solvent liquidation for the purposes of amalgamation or reconstruction), is dissolved, is declared bankrupt, has a receiver, administrator or administrative receiver appointed over all or part of its assets, enters into an arrangement with its creditors, or takes or suffers any action similar to those set out above; or
  - 14.1.4. if the other party's financial position deteriorates to such an extent that in the reasonable opinion of the other party its capability to adequately fulfil its obligations hereunder has been placed in jeopardy.
- 14.2. PDV shall be entitled to terminate this Agreement without liability to the Supplier and without prejudice to PDV's other rights at any time by giving notice in writing to the Supplier if any of the following occurs:
  - 14.2.1. if the Supplier fails to deliver any part of the Services and/or the Deliverables in accordance with this Agreement; or
  - 14.2.2. if there is a change of control or change in the ownership of the Supplier.

- 14.3. Termination of this Agreement (or any element of it) shall not affect any rights, obligations or liabilities of either party which have accrued before termination or which are intended to continue to have effect beyond termination.
- 14.4. On termination for any reason the Supplier shall immediately deliver to PDV all specifications, programs, materials and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not complete. All Intellectual Property Rights in such materials shall automatically pass to PDV (save to the extent they have not already done so by virtue of Clauses 10.3 and 10.4). In the event the Supplier fails to deliver within 30 days of the date of termination, PDV shall be entitled to enter the Supplier's premises to take possession of all such materials.
- 14.5. The parties agree that all Confidential Information of each party shall, on termination of this Agreement or a Schedule:
- 14.5.1. be returned to the disclosing party where possible; and
- 14.5.2. where the Confidential Information cannot be returned, deleted from any magnetic or optical disk or memory, including computer networks, e-mail accounts and all other sources which is in the possession or under the control of the receiving party.

## 15. HEALTH AND SAFETY

- 15.1. The Supplier shall ensure that any Services and/or Deliverables supplied or installed under this Agreement comply with all legal requirements of the UK, the EU and any relevant international requirements and in particular the Supplier agrees before delivery to furnish PDV with a list in writing of any harmful or potentially harmful properties or ingredients in the Services and/or Deliverables supplied.
- 15.2. PDV will rely on the supply of information from the Supplier under Clause 15.1 in order to satisfy its own obligations under the Health and Safety at Work etc Act 1974 (as amended and updated) and the Health and Safety at Work Regulations 1992 (Display Screen Equipment).

## 16. ETHICAL STANDARDS AND STAFF VETTING

- 16.1. The Supplier warrants, undertakes and represents that it:
- 16.1.1. shall not employ or use any person below the age of 14 or 15 (depending on country) or below the legal minimum age (where this is higher) in all countries in which it operates or sources goods or services;
- 16.1.2. shall not use forced labour in any form (prison, indentured, bonded or otherwise) and staff are not required to lodge papers or deposits on starting work;
- 16.1.3. shall comply with all applicable local environmental, health and safety regulations and shall provide a safe and healthy workplace, presenting no immediate hazards to its staff;
- 16.1.4. within the customs and practices of the countries in which the supplier operates, shall not discriminate against any worker on any grounds (including race, religion, disability, age or gender);
- 16.1.5. shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse;
- 16.1.6. shall pay each employee at least the minimum wage, or the prevailing industry wage, (whichever is higher) and provides each employee with all legally mandated benefits;
- 16.1.7. shall comply with the laws on working hours and employment rights in the countries in which it operates;
- 16.1.8. shall comply with all relevant environmental legislation in the regions in which it operates; and
- 16.1.9. has identified all the hazardous or toxic waste that it or its contractors or agents produce and that it is confident that all waste is disposed of by competent bodies via authorised disposal routes; and
- 16.1.10. supports the rights of workers to form or join trade unions which are free to meet without hindrance.

16.2. The Supplier shall at its own cost comply with PDV's generic requirements from time to time relating to the vetting of individuals employed in sensitive roles as set out in the Schedule or as communicated separately to the Supplier from time to time. PDV shall not be liable to the Supplier for any revenue which the Supplier fails to earn as a result of any delay by the Supplier in complying with these requirements.

## **17. FORCE MAJEURE**

17.1. Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure.

17.2. If Force Majeure occurs, the delaying party shall be entitled to an extension of time for so long as the Force Majeure persists on condition that it promptly notifies the other party ("unaffected party") of the event of Force Majeure and discusses with it possible action to be taken to overcome the effect of Force Majeure and provided it uses all reasonable endeavours to overcome the event of Force Majeure.

17.3. If the Force Majeure persists for a period of 28 days or longer, the unaffected party may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on the Supplier to pay any refund to PDV).

## **18. ENTIRE AGREEMENT**

18.1. This Agreement and all documents referred to in it constitutes the parties' complete agreement relating to its subject matter and supersedes any previous agreements or arrangements between the parties relating to the same subject matter and, save for fraudulent misrepresentations, neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement made by any agent or person on behalf of such party that is not contained in this Agreement.

18.2. No amendment or variation of this Agreement shall be valid or binding unless:

18.2.1. it is made in writing and signed by an authorised representative for each party to this Agreement; or

18.2.2. it is an electronic communication from PDV's electronic procurement system with the sender identified as PDVaccounts@PDV.co.uk and expressly states such communication to be contractually binding.

18.3. Both parties intend and agree that the legal relationship created by this Agreement is one of the provision of independent specialist services. Nothing in this Agreement shall give rise to the presumption that the Supplier is an employee of PDV.

18.4. Where the Supplier is an agency providing consultants to PDV; if for any reason any member or members of the Supplier's personnel (including but not limited to employees, contractors and/or agency workers) is adjudged by a court or tribunal or statutory or administrative body or other authority of competent jurisdiction to be an PDV employee for employment, tax or other purposes ("a Claim"), the Supplier shall indemnify (and keep indemnified) PDV against any and all losses, damages, liabilities, claims, demands, compensatory awards, taxes, fines and expenses suffered or incurred by PDV (including legal expenses reasonably and properly incurred) arising out of or in connection with such Claim.

## **19. ASSIGNMENT**

19.1. The Supplier may not assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under it, or purport to do any of these things, or sub-contract any or all of its obligations under this Agreement without the prior written consent of PDV. PDV may assign, transfer, charge, sub-license or deal in any other manner with this Agreement or any of its rights under it to its Group Companies without the prior written consent of the Supplier.

## **20. WAIVER**

20.1. If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.

20.2. A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provision. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.

20.3. If any part of this Agreement is found to be invalid or unenforceable by any Court or other competent body, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.

## **21. NO PARTNERSHIP**

21.1. Nothing in this Agreement is intended to, or shall, operate to:

21.1.1. create a partnership or joint venture of any kind between the Supplier and PDV;

21.1.2. authorise either party to act as agent for the other party; or

21.1.3. authorise either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.

## **22. NOTICES**

22.1. Any notices to be sent by one party to the other in connection with this Agreement except for the service of Court proceedings shall be in writing and shall be delivered personally or sent by special delivery post (or equivalent service offered by the postal service from time to time) or fax to the addresses of each party as set out on the signature page to this Agreement or as otherwise notified in accordance with the provisions of this Clause.

22.2. Notices shall be deemed to have been duly given as follows:

22.2.1. If delivered personally, upon delivery;

22.2.2. If sent by post, two clear days after the date of posting;

22.2.3. If sent by fax, when transmitted provided that a confirmatory copy is sent by special delivery by the end of the next business day after transmission.

22.3. If either party notifies the other party of a change to its details for the purposes of Clause 22, such notification shall only be effective on the date specified in such notice or seven days after notice is given, whichever is later.

22.4. If the address for service of notices under Clause 22 is outside the United Kingdom, the Supplier elects the person or organisation named in the Purchase Order or Schedule for the purposes of accepting service of notices within the United Kingdom on the Supplier's behalf. Any notices sent to the Supplier in accordance with this Clause 22.4 are deemed given in accordance with Clause 22.2.

## **23. THIRD PARTY RIGHTS**

23.1. Persons who are not a party to this Agreement shall not have any rights under this Agreement and for the avoidance of doubt the parties agree that nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement.

## **24. LAW AND JURISDICTION**

24.1. This Agreement and all matters arising out of it shall be governed by, and construed in accordance with, the laws of England and Wales and the parties submit to the exclusive jurisdiction of the English Courts.