



# PDV Supplier (Data) Terms and Conditions of Purchase

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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, acting as a Processor on the instructions of its End Clients and as appropriate, Data Locator Group Limited or MyOffers 2019 Limited, 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 implied 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 Supplier (Data) Terms and Conditions of Purchase and any associated Purchase Orders and Schedules;
- 2.2 "Applicable Laws" means as relevant the Data Protection Act 2018 "DPA", the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 "UK GDPR" and The Privacy and Electronic Communications (EC Directive) Regulations 2003, which implement European Directive 2002/58/EC, also known as 'the e-privacy Directive' "PECR"
- 2.3 "Clients or End Clients" means Commercial businesses, including Data Locator Group Limited or MyOffers 2019 Limited, who have instructed PDV, acting as a Processor, to acquire data on their behalf for direct marketing purposes.
- 2.4 "Controller", "Processor", "Data Subject", "Personal Data" and "Personal Data Breach" have the meanings applied to them in the Applicable Laws.
- 2.5 "Commencement Date" means the earlier of the date of the signature to the Purchase Order by the Supplier or in the absence of such signature, the date of the Purchase Order or the fulfilment of the Services.

- 2.6 “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.
- 2.7 “Data Supplier or Supplier” means the party named on the relevant Purchase Order and any associated Schedules, who will supply data to PDV for use by its End Client for marketing purposes.
- 2.8 “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.
- 2.9 “EEA” means the European Economic Area.
- 2.10 “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.
- 2.11 “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;
- 2.12 “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).
- 2.13 “ICO” means the Information Commissioners Office at Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.
- 2.14 “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.
- 2.15 “LI” means Legitimate Interests, which are one of six 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.
- 2.16 “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 or its End Client under Legitimate Interests for marketing purposes.



- 2.17 "Purchase Order" means each of PDV's Purchase Orders issued to the Supplier in accordance with these Terms and Conditions.
- 2.18 "RFI" means a request for information pertaining to the due diligence checks PDV is required to carry out on all Suppliers of Personal Data for use by PDV's End Clients.
- 2.19 "Schedule" means a Schedule attached to this Agreement or Purchase Order.
- 2.20 "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.
- 2.21 "Timetable" means any timetable expressly set out or referred to in a 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.

### 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 or PDV's End Client 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, acting on the instructions of the End Client, at any time or, if no request is made, upon completion of this Services.

## 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, who will be acting on the instructions of the End Client.

## 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 collected all data in accordance with Applicable Laws and where necessary has obtained the Consent of all Data Subjects to share their Personal Data with PDV and/or its End Client, to be used to contact the Data Subject using a specified contact channel for marketing purposes; Or;
  - 6.1.2 it has conducted an LIA to prove that PDV's End Client may properly rely on the Legitimate Interests of PDV's End Client in order to use data supplied under LI for marketing purposes. A copy of the LIA will be provided to PDV on request;
  - 6.1.3 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;
  - 6.1.4 the Services and Deliverables will conform with all descriptions and specifications provided to PDV by the Supplier including as set out in the Order Form and/or Schedule;
  - 6.1.5 the Services and Deliverables will be provided in accordance with the Timetable and all Applicable Laws from time to time in force;
  - 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, email or postal address is incorrect, a business number or address, a deadline or a fax number or an email that bounces back;

7.4.2 the Data Subject name given is wrong, a profane or fake name, the consumer has gone away or is under 18;

7.4.3 the data supplied has not been supplied using the criteria specified by PDV or the End Client;

7.4.4 the data is a duplicate of that already held by PDV or the 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 Unless otherwise agreed in writing between the Parties, 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 8.1 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 Metro 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, its End Client 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 or its End Client 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 or its End Client and unless otherwise expressly agreed in this Agreement, the Supplier shall assign to PDV or its End Client 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 or its End Client 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 or its End Client 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 hold harmless PDV 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 It is understood and agreed that PDV acts as an intermediary in the sourcing and supply of Personal Data from Suppliers on behalf of its End Clients for direct marketing purposes. PDV only sources Personal Data on the written instructions of its End Clients who decide on the categories of Data Subjects and Personal Data to be selected. The Supplier is the Controller of the Personal Data it collects from Data Subjects ensuring that it has a valid legal basis to share this Personal Data for direct marketing purposes with PDV's End Clients. PDV will then share the Personal Data with its End Clients, who become the Controller of the Personal Data, under a separate legal agreement, placing such commercial restrictions as are required by the Supplier on the End Clients use of the Personal Data. For the avoidance of doubt the Supplier supplies Personal Data for one time use by PDV's End Clients unless otherwise agreed in





writing by the Supplier. The following highlights the roles and responsibilities of the Supplier acting as Controller and PDV acting as Processor;

- 11.2 Both PDV and the Supplier will comply with all Applicable Regulations. This Agreement is in addition to, and does not relieve, remove or replace, either party's obligations under the Applicable Regulations;
- 11.3 Both PDV and the Supplier 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;

## 12 Data Processing Agreement

- 12.1 As set out on Clause 11, PDV shall only process the Personal Data to the extent and in such a manner as is necessary for the purpose of this Agreement and Applicable Laws. All instructions given by the Supplier shall be made in writing and shall always be in compliance with Applicable Laws. PDV shall act only on the written instructions of the Supplier unless PDV is required to do so by United Kingdom Law (in accordance with Article 29 of the UK GDPR) in which case PDV shall inform the Supplier of any such requirement;
- 12.2 PDV will inform the Supplier promptly if, in its opinion, any instructions given by the Supplier to PDV do not comply with Applicable Laws;
- 12.3 PDV shall promptly comply with any reasonable and lawful written request from the Supplier to cease, amend, transfer, delete or return to the Supplier any Personal Data in the possession of PDV or Its End Client;
- 12.4 PDV shall provide all reasonable assistance to the Supplier in complying with its obligations under Applicable Laws including, but not limited to, the protection of Data Subject's rights, the security of processing, the notification of Personal Data Breaches, the conduct of data protection impact assessments and providing information and documentation, as required, to the Information Commissioners Office;
- 12.5 PDV shall maintain the Personal Data in confidence but in accordance with the terms of this Agreement the Supplier grants PDV permission to share the Personal Data with any End Client named by PDV in the associated Purchase Order Form and schedules or as otherwise agreed by the Supplier;
- 12.6 Nothing in this Agreement shall prevent PDV from complying with any requirement to disclose or process the Personal Data where such disclosure or processing is required by United Kingdom Law, court or regulator (including but not limited to the Information Commissioner). In such cases PDV shall notify the Supplier of the disclosure processing (unless such notification is prohibited by United Kingdom Law);
- 12.7 Taking into account the state of the art, the costs of implementation and the nature, scope and context of processing and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier and PDV shall implement technical and organisational measures to ensure a level of security appropriate to the risk;

- 12.8 PDV will ensure that the individuals and staff processing the Suppliers data are subject to a duty of confidence and that any and all of its employees and sub-contractors who will handle Personal Data provided by the Supplier are suitably trained and understand their responsibility in the lawful processing of the Data Subjects Personal Data;
- 12.9 Both parties will submit to audits and inspections, including those of a Regulator and PDV will provide the Supplier with any information required to ensure that both parties meet their Article 28 obligations under the UK GDPR;
- 12.10 Each party will appoint a single point of contact (SPoC) who will work together to reach agreement regarding any issues arising from the processing of the Suppliers data. Each SPoC 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;
- 12.11 The SPoC for PDV is Miss Samantha Pocock, Data Protection Officer, PDV Limited.
- 12.12 The parties agree to provide all assistance as necessary to each other to guarantee that the Data Subject Is able to exercise their rights and to respond to any other queries or complaints from Data Subjects. PDV will where necessary or instructed to do so respond to provide the Data Subject with the contact Information of the Supplier;
- 12.13 Supplier supplied data shall be processed on one of the following legal bases (a) the Data Subject has given their Consent or (b) processing is pursuant to the Legitimate Interests of the Data Controller except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms of the Data Subject;
- 12.14 The Supplier warrants to PDV that whilst this Agreement remains in force (and without prejudice to the provisions of the Clauses of this Agreement) 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.
- 12.15 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.

### 13 Third Party Data

- 13.1 Where the Supplier uses third parties to provide the Service the Supplier:
- 13.2 shall inform PDV immediately it becomes aware that the third-party is under investigation by the Information Commissioner's Office or any other regulator relative to the provision of the Services;



- 13.3 warrants that all third-party data has been collected in accordance with Applicable Laws and may be used for marketing purposes by the End Clients of PDV.
- 13.4 will provide PDV, as part of the RFI process full details of all third parties the Supplier intends to use for the purposes of the supply of Personal Data;
- 13.5 will provide PDV, as part of the RFI process as appropriate, copies of all registration statements and Privacy Notices under which all Personal Data collected and supplied to PDV for use by its End Clients;
- 13.6 will inform PDV immediately of any change of third-party, registration statements and Privacy Notices relative to Personal Data which is being collected and supplied to PDV for use by its End Clients;
- 13.7 will ensure that, specific named consent is obtained on behalf of PDV's End Clients when required to do so;
- 13.8 will cease to use any third-party who, in the reasonable opinion of PDV or their End Client, are unable to comply with the requirements of these Terms and conditions and the Data Processing Agreement.

## 14 International Data Transfers

- 14.1 PDV will not, without the written agreement of the Supplier, transfer any data provided by the Supplier outside of the United Kingdom, EEA or country that has an adequacy decision from the Information Commissioners Office;
- 14.2 where the Supplier grants permission to restricted transfer of its data to a country outside of the United Kingdom, EEA or country that has an adequacy decision PDV will only do so pursuant to Article 46 of the UK GDPR by providing appropriate safeguards and on condition that enforceable data subject rights and effective legal remedies for Data Subjects are available;
- 14.3 accordingly PDV will put in place appropriate safeguards such as an International Data Transfer Agreement "IDTA", an addendum to the EU SCC's "Addendum" or Binding Corporate Rules "BCRs" approved by the United Kingdom Information Commissioner, having first conducted a transfer risk assessment "TRA", in accordance with Article 46 of the UK GDPR.

## 15 Audit

- 15.1 Both PDV and the Supplier will submit to audits and inspections by a Supervisory Authority (including but not limited to the Information Commissioners Office) and PDV's End Client;
- 15.2 Where an audit is to be conducted by PDV's End Client or a representative acting on behalf of PDV's End Client then reasonable notice of no less than 5 working days will be provided in writing, the audit will take place during the normal business hours of PDV or the Supplier, causing a minimum of disruption to the business of PDV or the Supplier who will provide reasonable access premises, staff, systems and records of the Supplier to allow for an effective audit to be conducted.

- 15.3 if an audit determines inadequacy or breach of Applicable Laws and the terms of this Agreement then PDV, acting on the authority of the End Client will have the right to terminate this Agreement with immediate written notice;

## 16 Liability

- 16.1 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:
- 16.1.1 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;
  - 16.1.2 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 last 12 month period;
- 16.2 Neither Party shall not be liable for any indirect or consequential loss including but not limited to financial loss; loss of profits; loss of earnings; loss of business or goodwill; business interruption; even if either Party had notice of the possibility of the other incurring such losses.
- 16.3 Neither Party shall 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 either Party had notice of the possibility of the other incurring such losses.

## 17 Insurance

- 17.1 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.
- 17.2 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 that party may reasonably require.

## 18 Termination

- 18.1 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:
- 18.1.1 if the other party is in material breach of any of the terms of this Agreement which is not capable of remedy;
  - 18.1.2 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;
  - 18.1.3 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

- 18.1.4 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.
- 18.2 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:
  - 18.2.1 if the Supplier fails to deliver any part of the Services and/or the Deliverables in accordance with this Agreement; or
  - 18.2.2 if there is a change of control or change in the ownership of the Supplier.
- 18.3 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.
- 18.4 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.
- 18.5 The parties agree that all Confidential Information of each party shall, on termination of this Agreement or a Schedule:
  - 18.5.1 be returned to the disclosing party where possible; and
  - 18.5.2 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.

## 19 Vetting and Standards

- 19.1 The Supplier warrants, undertakes and represents that it:
  - 19.1.1 shall not employ or use any person below the legal minimum age in all countries in which it operates;
  - 19.1.2 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;

- 19.1.3 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;
  - 19.1.4 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);
  - 19.1.5 shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse;
  - 19.1.6 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;
  - 19.1.7 shall comply with the laws on working hours and employment rights in the countries in which it operates;
  - 19.1.8 shall comply with all relevant environmental legislation in the regions in which it operates;
  - 19.1.9 supports the rights of workers to form or join trade unions which are free to meet without hindrance.
- 19.2 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.

## 20 Force Majeure

- 20.1 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.
- 20.2 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.
- 20.3 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).

## 21 Entire Agreement

- 21.1 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.

- 21.2 No amendment or variation of this Agreement shall be valid or binding unless it is made in writing and signed by an authorised representative for each party to this Agreement;
- 21.3 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.
- 21.4 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.
- 21.5 PDV has the right to revise and amend these Terms and Conditions from time to time as published on [www.pdv.agency](http://www.pdv.agency). The Supplier will be subject to the policies and terms in force at the time that the Supplier accepts a 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.

## 22 Assignment

- 22.1 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.

## 23 Waiver

- 23.1 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.
- 23.2 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.



23.3 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.

## 24 No Partnership

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

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

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

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

## 25 Notices

25.1 Notices shall be In writing and shall be sent to the other Party marked for the attention of the person noted as the signatory of the Purchase Order or In the case of PDV, The Chairman, PDV Limited, Green Heys, Walford Road, Ross-On-Wye, Herefordshire, HR9 5DB. Written notices sent by first class mail shall be deemed to have been received within seventy two hours after posting. Notices sent by email shall be deemed to have been received within 24 hours of sending assuming this corresponds with the normal working hours of the other Party.

## 26 Third Party Rights

26.1 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.

## 27 Law and Jurisdiction

27.1 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 sole jurisdiction of the Courts of England & Wales.

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| Last Updated | 21 <sup>st</sup> April 2023 |
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