

Terms and Conditions

1. DEFINITIONS

In these terms and conditions (herein called "the Conditions"):

"Charges" means the fees and other charges payable to Graydon by the Client for the Credit Information Services set out in the Service Agreement and/or any tariff attached to the Service Agreement (or such other fees and charges as may be agreed in writing from time to time)

"Client" means client of Graydon whose name and other details are in the Service Agreement

"Credit Information Services" means the business information products and services containing Graydon Data derived from the Graydon Databases provided by Graydon to the Client from time to time pursuant to the Service Agreement

"Graydon or Graydon International" means Graydon UK Limited

"Graydon Data" means any business or financial information and/or data independently produced by Graydon or licensed to Graydon from any Third Party Supplier

"Graydon Databases" means the databases of business and financial information compiled by Graydon using Graydon Data and updates thereto and any database derived therefrom from time to time

"Parties" means Graydon and the Client and 'party' shall be construed accordingly

"Service Agreement" means the contract between Graydon and the Client for the supply of the Credit Information Services to which the Conditions apply

"Third Party Suppliers" means any third party supplier that provides information to Graydon

"Third Party Suppliers Data" means any data provided by a Third Party Supplier

2. ENTIRE AGREEMENT

2.1 The Service Agreement constitutes the entire agreement between the Parties as to the subject matter hereof and supersedes all prior understandings, representations, transactions or communications, whether written or oral, as to the subject matter hereof.

2.2 Each Party warrants to the other that it has not relied on any representation, arrangement, understanding or agreement (whether written or oral) not expressly set forth or referred to in the Service Agreement.

2.3 No provision contained in this Condition or elsewhere in this Service Agreement shall operate so as to exclude any liability of one of the Parties in respect of fraudulent misrepresentation made by a Party to the other or to restrict or exclude any remedy which the other Party may have in respect of such misrepresentation.

2.4 No variation of or waiver of or amendment to the Service Agreement shall be binding on Graydon unless agreed in writing by a Director on its behalf.

3. LICENCE AND CONFIDENTIALITY

3.1 Graydon hereby grants to the Client a non-exclusive non-transferable Licence to use the Graydon Data contained in the Credit Information Services delivered to the Client by whatever means solely for the purpose of the Client's own internal business use and the Client shall not use store copy sell redistribute or deal with the Graydon Data in any other manner or for any other purpose.

3.2 The Graydon Data may contain Third Party Suppliers Data. The Graydon Data and the Third Party Suppliers Data (where supplied) shall be used by the Client to obtain knowledge about a customer's business but should not of itself be used to assess the creditworthiness of that customer. The Client undertakes at all times to exercise its own judgment in the use of the Graydon Data and Third Party Suppliers Data and shall be solely liable for all opinions recommendations forecasts or comments made or actions taken.

3.3 The Client undertakes to keep confidential the Graydon Data and to limit access to those of its employees who either have a need to know or are engaged in their use and shall not disclose the Graydon Data or any part thereof in any format or medium to any third party, unless required to do so by a court governmental or administrative authority, applicable law or with Graydon's written consent.

3.4 The Client shall keep confidential and shall not disclose the identity of the provider of the Credit Information Services, unless required to do so as described in Condition REF_Ref198058286 \r 3.3.

4. TERM

4.1 This Service Agreement shall come into force on the start date specified in the Service Agreement ("the Effective Date") and shall continue in force thereafter unless and until either Party gives to the other not less than 60 days' notice in writing such notice to expire at the end of the minimum term specified in the Service Agreement or any subsequent anniversary of that date.

4.2 This Service Agreement may be subject to earlier termination as provided in Condition REF _Ref198059104 \r 9.

5. PAYMENT

5.1 The Charges are based on the anticipated annual usage of the Credit Information Services by the Client and Graydon reserves the right to vary the Charges on giving the Client 30 days' notice in writing at any time.

5.2 The Charges are exclusive of Value Added Tax which, where applicable, shall be payable at the rate prevailing from time to time.

5.3 The Charges shall be payable within thirty (30) days of the date of Graydon's invoice and shall be paid in full without deduction or set off. Time for payment shall be of the essence of the Service Agreement.

5.4 Without prejudice to any other right or remedy that it may have, if the Client fails to pay Graydon on the due date, Graydon may:

(a) charge interest on such sum from the due date for payment at the annual rate of 2% above the base lending rate from time to time of Natwest Bank plc accruing on a daily basis and being compounded quarterly until payment is made; and

(b) suspend all Credit Information Services until payment is made in full.

5.5 If in any year of the Service Agreement the aggregate value of the Credit Information Services ordered by the client from Graydon at the prices set out in the Service Agreement falls short of the contract value, as also set out, the client will remain liable to pay a sum equal to the shortfall plus V.A.T.

5.6 For the avoidance of doubt, the Client shall pay all Charges relating to any Credit Information Services ordered by the Client in excess of the contract value or agreed volumes at the prices set out in the Service Agreement or, if not so set out, at Graydon's standard tariffs.

6. LIABILITY

6.1 The Credit Information Services supplied under this Service Agreement may in whole or part represent be compiled from or contain advice or opinions based on information and/or data supplied to Graydon by Third Party Suppliers the accuracy or completeness of which Graydon is unable to verify in every case. Whilst Graydon will use its reasonable endeavours to ensure that such information and/or data is accurate and complete Graydon does not warrant the accuracy or completeness of any information and/or data provided to the Client or the validity of any advice or opinion contained therein and will accept no liability for any error therein or omission therefrom.

6.2 Graydon shall use its best endeavours to deliver the Credit Information Services in accordance with its published delivery times which may be subject to variation from time to time.

6.3 Subject to Conditions 6.1 and 6.4, neither Graydon nor any Third Party Supplier shall be liable in respect

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- of any damage or loss suffered by the Client caused or contributed to by Graydon's (or any Third Party Supplier's) wilful default or negligence save to the extent that such damage or loss is wholly attributable to and caused by such misconduct or negligence.
- 6.4 Where any matter gives rise to a valid claim against Graydon its liability shall be limited to a sum equal to the charges referable to the Credit Information Services concerned.
- 7. COPYRIGHT**
- 7.1 The Client acknowledges that any and all of the copyright, trademarks and other intellectual property rights subsisting in or used in connection with the Graydon Data, the Graydon Databases and the Credit Information Services including the manner in which it is presented or appears and all information, documentation and manuals relating thereto whether or not capable of registration are the property of Graydon or a Third Party Supplier (as the case may be) and the Client shall not during or at any time after the expiry or termination of the Service Agreement in any way question or dispute the ownership by Graydon or the Third Party Supplier (as the case may be) of any such rights.
- 7.2 The Client acknowledges that Graydon has spent and continues to spend considerable time and resources on the selection and arrangement of the Graydon Database as an original intellectual creation and to collect collate compile reformat and verify the accuracy of the contents of the Graydon Database and the Graydon Data. Accordingly Graydon owns copyright in the contents of the Graydon Database and its selection and arrangement and the electronic materials necessary for its operation without prejudice to the rights of the Third Party Suppliers.
- 7.3 Where the Credit Information Services supplied by Graydon are wholly or partly subject to a claim for copyright or rights in the nature of copyright whether or not capable of registration then Graydon gives no warranty as to non-infringement of any such third party rights.
- 8. FORCE MAJEURE**
- Neither Party shall be under any liability to the other in respect of any failure to carry out or delay in carrying out its obligations under this Service Agreement (except payment pursuant to Condition 5) attributable to any cause of whatever nature outside its reasonable control, including (without limitation) terrorism, war, riot, flood, Act of God, strike or other labour dispute (including those affecting government officials), change in the law, lack of electrical or other power, or failure, malfunction, or overload in telecommunications or computer facilities or the Internet.
- 9. TERMINATION**
- 9.1 Graydon may terminate the Service Agreement without notice if the Client fails to pay Graydon the Charges in accordance with this Service Agreement.
- 9.2 A waiver by Graydon (whether express or implied) of a breach of the same or any provision of the Service Agreement shall not be considered as a waiver of any subsequent breach of the same or any other provision hereof.
- 9.3 The right to terminate the Service Agreement shall be without prejudice to any other right or remedy of Graydon in respect of any breach of the Service Agreement by the Client and without prejudice to any right expressed to survive termination or expiry.
- 9.4 Either Party may terminate the Service Agreement forthwith at any time by giving to the other written notice if the other:
- (a) commits a material breach of any of the terms of the Service Agreement and, where such a breach is capable of remedy, fails to remedy the same within 30 days of receiving written notice of the breach; or
- (b) if the other Party goes into liquidation either compulsory or voluntary (save for the purpose of a bona fide solvent reconstruction or amalgamation) or if the other Party is unable to pay its debts as they fall due or if a petition is presented or meeting convened for winding up of the other or if a receiver is appointed in respect of the whole or a substantial part of the other's assets or if the other Party becomes subject to an administration order or if the other Party makes an assignment for the benefit of or composition with its creditors generally or if the other Party ceases to carry on business or threatens any of the foregoing.
- 10. SECURITY**
- 10.1 Graydon warrants that all user Id's and passwords shall be unique.
- 10.2 The Client shall maintain adequate security measures to protect the integrity and security of user Id's and passwords issued by Graydon. This shall include (but not be limited to) the Client limiting access to those employees who either have a need to know or are engaged in the use of Graydon Id's and passwords. The Client must protect confidential information
- 10.3 The Client shall not (and shall procure that its employees and agents shall not) under any circumstances write down user Id's and/or Passwords or disclose them to any third party.
- 10.4 The Client will be liable for any abuse or misuse of user Id's and Passwords or security breaches resulting from the Client's (or its employees' or agents') failure to comply with Conditions REF_Ref198058923 \r 10.2 and REF_Ref198058926 \r 10.3
- 10.5 If the Client becomes aware of or suspects any breach of security it will inform Graydon immediately.
- 11. NOTICES**
- Any notice to be served on either of the Parties by the other shall be in writing (except notice pursuant to Condition REF_Ref198059070 \r 9.1) shall be sent first class post, prepaid recorded delivery, registered post, facsimile transmission or electronic transmission and shall be deemed to have been received by the addressee within 72 hours of posting or 24 hours if sent by facsimile or electronic transmission to the correct facsimile number/e-mail address of the addressee.
- 12. GENERAL**
- 12.1 Graydon may monitor/record all calls for the purpose of training and improvement to customer service.
- 12.2 Nothing in these Conditions shall prevent or hinder either Graydon or the Client from complying with their respective obligations as to disclosure or otherwise under the Consumer Credit Act 1974 and the Data Protection Act 1998 and any amendments thereto.
- 12.3 Graydon warrants to the Client that the Graydon Data will not contain any personal data as defined by section 1 (1) of the Data Protection Act 1998 or that if it does the processing (if any) of such data by Graydon under this Service Agreement will not be processing as defined in section 1 (1) and paragraph 5 of schedule 8 of that Act or that Graydon will be exempt from notifying in respect of the Graydon Data under the Act.
- 12.4 If the Client comprises more than one person or entity all agreements on their part shall be joint and several and the neuter or singular gender throughout the Service Agreement shall include all genders and the plural and the successor in title to the Parties.
- 12.5 The Service Agreement shall be governed by and interpreted in accordance with the laws of England and the Client submits and consents to the exclusive jurisdiction of the English Courts in all matters regarding the Service Agreement.
- 12.6 Headings are included for ease of reference only and shall not affect the interpretation of these Conditions.