

## **ADDITIONAL LEAD GENERATION TERMS & CONDITIONS**

**These terms and conditions are appended to the General Terms and Conditions**

### **1. INTERPRETATION**

1.1 In these Terms and Conditions or corresponding paperwork where the context otherwise requires the words and phrases below, shall have the following meaning:

**"Graffiti Media Group Ltd"** Graffiti Media Group Ltd, 28 Bridge Street, Thetford IP24 3AG. company registration number 4622493

**"The Survey Client"** lead purchaser, responsible for payment of such.

**"Order Confirmation"** Graffiti Media Group Ltd OC form signed by the Client to which these conditions are appended.

**"The Survey"** The Survey to be compiled and executed by or in conjunction with leadGENERATOR or brokered survey product, which will contain the Lead Questions.

**"Lead Questions"** Questions to be included in the Survey in relation to the Client's product category or sub-category specified in the OC.

**"Response"** means one lead provided (or to be provided) by Graffiti Media Group Ltd to the Client containing one natural person's answers to the Lead Questions, and that person's name, postal address and / or telephone number and/or other information as specified on the OC.

**"Additional Responses"** means any Response obtained by Graffiti Media Group Ltd which exceed the cap set forth in the OC.

**"The Data"** One copy of the response to the Lead Questions maintained by Graffiti Media Group Ltd or on its behalf provided to the Client in whatever form is requested (or additionally, alternatively stored on Graffiti Media Group Ltd's computer or that of its bureau at an additional rate to be agreed). Graffiti Media Group Ltd reserves the right to provide to the Client all data sourced from Graffiti Media Group Ltd's telephone survey that is generated from the Lead Questions, unless a maximum quantity is specified on the OC.

**"Bad Data"** means any instance of a dead telephone number, postal incorrects (to the extent that such error renders the marketing item undeliverable), or name.

**"The Fee"** The fee payable by the Client to Graffiti Media Group Ltd for the service and licence to be provided by Graffiti Media Group Ltd hereunder and calculated in accordance with clause 4 below a summary of which is set out in the section headed "Payment Details" in the OC..

**"The Licence"** The licence granted under clause 3 below by Graffiti Media Group Ltd to the Client to use the data.

**"The Delivery date"** The date on which the Survey will be ready for delivery.

**"The Start Date"** The date on which telephoning will begin for gathering data from the Survey.

**"Estimated Quantity"** The estimate by Graffiti Media Group Ltd of the number of responses to the Lead Questions which will constitute the Data.

**"The Frequency"** The provision of each of a series of deliveries of data and the accompanying Licence.

**"Names"** The name of each person who completes a Survey and also the name of each person identified on a completed Survey as a spouse/partner of the person who completed a Survey.

### **2. TIMETABLE**

2.1 Graffiti Media Group Ltd reserves the right to alter the wording of the Client's proposed Lead Questions and to refuse to include in the Survey questions which in Graffiti Media Group Ltd or their legal advisors deem may be illegal or offensive.

2.2 Graffiti Media Group Ltd reserves the right at any time prior to the date of execution of the Survey to cancel this agreement and/or the Survey without incurring any liability other than liability which may not by applicable law be excluded or limited, in which event no part of the Fee shall be payable by the Client.

2.3 In the event that any delivery date shall be agreed between Graffiti Media Group Ltd and the Client, the Client acknowledges that such date shall be indicative only and that Graffiti Media Group Ltd shall not be liable for any loss or damage suffered by the Client as a result of late delivery of the data.

### **3. LICENCE**

3.1 Subject to clauses 5.2 and 6 below, in consideration of the Fee Graffiti Media Group Ltd hereby grants to the Clients the Licence upon and subject to these terms and conditions.

3.2 The Client shall have the right to use, but not copy, alter, manipulate, adapt or licence others to use, that part of the Data which is derived from responses to the Lead Questions in accordance with the OC. Graffiti Media Group Ltd shall use reasonable endeavours to keep confidential the said part of the Data which is derived from responses to the Lead Questions.

3.3. Graffiti Media Group Ltd shall have the right to analyse that part of the Data which is derived from responses to the Lead Questions and to formulate conclusions from such analysis and extract information from such part of the Data and shall be entitled to use such information (including information comprising such conclusions) at its sole discretion by way of the grant of licenses to third parties or otherwise provided that nothing herein shall permit Graffiti Media Group Ltd to reveal to any third party the replies to any Lead Questions that related exclusively to the business of the Client. For the avoidance of doubt, the Client shall be entitled to rent the Data to its client for the purpose of its client carrying out a direct marketing campaign.

3.4 Graffiti Media Group Ltd will deliver the data to the address specified on the OC.

### **4. CALCULATION AND PAYMENT OF THE FEE**

4.1 The Fee will be calculated by multiplying the Unit Price stated on the Order Confirmation, by the number of Responses actually delivered.

4.2 Graffiti Media Group Ltd reserves the right to offer any Additional Responses not acquired by the Client to its any of its customers on such terms as Graffiti Media Group Ltd may determine.

4.3 In the event that Graffiti Media Group Ltd agrees to supply the Data for the purpose of de-duplication against other data held by the buyer and on the basis that the Client shall only pay a proportion of the price reflecting the "Net Names" actually used, any claim for credit for the unused portion of the Data:

a) Must be made within a period not exceeding three months from the date of delivery, unless otherwise agreed in writing by Graffiti Media Group Ltd ; and

b) Must be supported by a de-duplication report or certificate from a recognised data processing bureau approved by Graffiti Media Group Ltd.

4.4 The Fee is exclusive of any VAT which may be payable by the Client.

4.5 Graffiti Media Group Ltd reserves the right to charge interest on any sum not paid on a due date for payment at the rate of 2.5% above prime per month or part thereof from the date due to the date such sum is received by Graffiti Media Group Ltd.

### **5. COPYRIGHT AND PROPRIETARY RIGHTS**

5.1 Copyright and all other intellectual property rights of whatever nature in the Data, the Survey and the Product/Core Questions, including any right to prevent extraction and/or re-utilise, are and shall remain at all times the property of Graffiti Media Group Ltd, and nothing in these Terms and Conditions shall constitute a transfer, assignment or license of any copyright or intellectual property right of Graffiti Media Group Ltd.

5.2 Subject to sub-clause 3.2 and 3.3 above Graffiti Media Group Ltd reserves the right to grant licenses in respect of the Data to any other party or parties.

5.3 The Client shall notify Graffiti Media Group Ltd immediately if the Client becomes aware of any suspected or actual unauthorised use of the whole or any part of the Data or the Reports by any person.

### **6. CLIENT'S OBLIGATIONS**

6.1 The Client undertakes to Graffiti Media Group Ltd that it will use the Data solely for the internal business purpose of the Client and/or Client's client, and for the purpose only of use as a source of reference for its circulation by mail or by telephone or if applicable electronic mail if applicable to some of all of the individuals listed in the Data.

6.2 Save for the purpose specified in sub-clause 6.1 the Client shall not without Graffiti Media Group Ltd's prior written consent reproduce, duplicate or copy the Data or any part thereof or information extracted there from, nor pass on, transmit or otherwise communicate the Data or any part thereof or any information extracted there from to any third party.

6.3 The Client agrees with and warrants to Graffiti Media Group Ltd that any documents or other items mailed by or on behalf of the Client as a result of or following its use of Data will at all times comply with the current British Code of Advertising Practice, the British Code of Sales Promotion Practice and the ICSTIS Code and will contain nothing which infringes copyright or any other right of

any third party or is defamatory, obscene, indecent or otherwise illegal or unlawful whether or not such a claim is justified or upheld. The Client further agrees and warrants that it will upon request by Graffiti Media Group Ltd forthwith supply to Graffiti Media Group Ltd copies of any such documents or other items.

6.4 In the event that any recipient of any documents or other items mailed by the Client objects to such mailing or requests that it ceases or asks for his or its name to be removed from any list the Client shall procure that such mailing ceases forthwith and shall inform Graffiti Media Group Ltd and provide Graffiti Media Group Ltd on a quarterly basis with particulars of any documents and other items mailed to that recipient and of the name and address to which they were sent.

6.5 The Client hereby undertakes to Graffiti Media Group Ltd that it will deliver to Graffiti Media Group Ltd any notice or other communication in respect of the Data received from the Data Protection Registrar on its receipt thereof.

6.6 The Client undertakes to Graffiti Media Group Ltd that it will at all times comply with the provisions of the Data Protection Act 1984 in respect of its use and storage of the data.

6.7 The Client hereby undertakes that the instruction to Graffiti Media Group Ltd in respect of the Responses and output format are correct in every respect and that should re-output of Data be required as a result of errors or omissions in these output instructions Graffiti Media Group Ltd shall be entitled to charge the Client for such re-output according to its standard charges for Data output.

6.8 Final output instructions shall be supplied to Graffiti Media Group Ltd by the Client at least 28 days prior to the proposed output date. In the event that instructions are not received by the due date Graffiti Media Group Ltd reserves the right to supply the output according to the specifications contained on the confirmation or order and to charge the Client in respect of any additional costs arising as a result of such late supply.

## **7. COMPLAINT CAUSES**

7.1 any complaint cause must be notified to the account manager immediately.

7.2 in case of a valid complaint cause concerning a particular lead, the lead is not to be remunerated.

A valid complaint cause is given in the following cases:

Missing attributes in contractually agreed required fields

Duplicate delivery of a data set within one calendar week

Dead telephone number

7.3 Queried data must be returned for internal investigation within 14 days of delivery

## **7. SECURITY AND CONTROL**

7.1 The client shall at all times effect and maintain adequate security measures to safeguard the Data from access, copying, manipulation, or use by any unauthorised person.

7.3 The Client shall retain the Data under its own effective control.

7.4 A small percentage of seed names and addresses may be included in the Data to enable Graffiti Media Group Ltd to monitor usage.

## **8. LIMITATION OF GRAFFITI MEDIA GROUP LTD'S LIABILITY**

8.1 Graffiti Media Group Ltd neither warrants nor undertakes nor represents nor is it a term or condition of any sale or agreement for any supply of the Data that the Data are accurate or complete or that any information contained therein is accurate or complete and (except for any liability for death or personal injury resulting from the negligence of Graffiti Media Group Ltd or that of its servants or agents, or in relation to any other liability which may not by applicable law be excluded or limited) Graffiti Media Group Ltd shall not be liable for any damages, losses, costs, charges or expenses of whatever nature (even if Graffiti Media Group Ltd has been advised of the possibility of such damages) including any indirect or consequential loss or damage howsoever arising and including loss of profits, loss of sales, loss of turnover, loss of bargain, loss of opportunity, damage or corruption to or loss of use of computer equipment, software or data or loss of time on the part of management or other staff, caused by, arising out of or in any way connected with any such inaccuracy or omission.

8.2 Subject to the exception in clause 8.1 above Graffiti Media Group Ltd shall not be liable for any damages, losses, costs, charges or expenses of whatever nature either consequential or otherwise which may arise as a result of the actual quantity of response which constitute the Data being less than the Estimated Quantity.

8.3 Subject to the exception in clause 8.1 above, Graffiti Media Group Ltd shall not be liable for any damages, losses, costs, charges or expenses of whatever nature caused by, arising out of or in any way connected with, or for any failure by, Graffiti Media Group Ltd to perform any obligation

hereunder due to causes beyond its reasonable control (including without limitation industrial disputes, fires, acts of God and hostilities) or any other circumstances which Graffiti Media Group Ltd could not reasonably foresee and provide against.

8.4 The Client shall not institute proceedings for damages for breach of these Terms and Conditions after the expiration of one year from the date on which the Client became aware of the same or the date on which it ought reasonably to have become aware of the same.

8.5 Subject to the exception in clause 8.1 above, Graffiti Media Group Ltd shall not be liable to the Client for any indirect or consequential losses or damage (including without limitation loss of profits) in respect of any breach of these Terms and Conditions.

8.6 Without prejudice to the provisions of sub-clause 8.1 to 8.5 hereof any liability of Graffiti Media Group Ltd in respect of any claims of whatever nature arising out of or in any way connected with the Data or their sale, supply or use of or in respect of any breach by Graffiti Media Group Ltd of any obligation or duty pertaining to the Data or to their supply or use (including any other liability of Graffiti Media Group Ltd for negligence or breach of copyright) shall not in any circumstances whatsoever exceed in total the contract price of the Data unless separately agreed in writing by the Client and Graffiti Media Group Ltd, before the Order Confirmation is returned.

## **9. CONFIDENTIALITY**

9.1 The Client shall keep confidential all information (whether written or oral) concerning the business of Graffiti Media Group Ltd that it has obtained or received as a result of the performance of the agreement between Graffiti Media Group Ltd and the Client.

## **10. TERMINATION**

10.1 Graffiti Media Group Ltd may terminate this agreement and Licence forthwith on giving written notice to the Client if:

10.1.1 The Client commits a serious breach of these Terms and Conditions and (in the case of a breach capable of being remedied) shall have failed to remedy the breach within 14 days after the receipt of a request in writing from Graffiti Media Group Ltd to do so or:

10.1.2 The Client fails to comply with a statutory demand or goes into liquidation (other than for the purpose of reconstruction or amalgamation) or has a resolution passed for its winding-up or had an administration receiver appointed or has a petition presented to the court for an administrative order under Part 11 of the Insolvency Act 1986 or has a voluntary arrangement approved under Part 1 of the Insolvency Act 1986.

10.2 Cancellation by Graffiti Media Group Ltd under clause 2.2 above incurs.

10.3 Upon termination of this agreement and Licence the Client shall forthwith return the Data to Graffiti Media Group Ltd.

10.4 Termination of this agreement and Licence between Graffiti Media Group Ltd and the Client for whatever reason shall not affect the accrued rights or liabilities of either party.

## **11. ASSIGNMENT**

11.1 The Client shall not be entitled to assign, sub-licence or otherwise transfer this Licence or the benefit or burden of this agreement and this Licence shall be personal to the Client only Graffiti Media Group Limited reserves the right to assign the benefit or burden of this agreement with the Client.

## **12. ENTIRE AGREEMENT**

12.1 These Terms and Conditions shall apply to all services provided by Graffiti Media Group Ltd in connection with the agreement on lead generation.

12.2 Any general terms and conditions of the client are excluded.

Graffiti Media Group Ltd hereby expressly rejects the applicability of any general terms of business of the Client verbally or in writing. Any formal provision of services does not constitute Graffiti Media Group Ltd's acceptance of the clients Terms and Conditions.

## **13. WAIVER**

13.1 The failure by Graffiti Media Group Ltd to exercise a right or remedy hereunder shall in no manner affect Graffiti Media Group Ltd's ability to exercise its right or remedy at a later time. No waiver by Graffiti Media Group Ltd of the breach of any provision hereof whether by conduct or otherwise on any one or more instances shall be deemed to be further or continuing waiver of such provision.

#### **14. NOTICE**

14.1 All notices which are required to be give hereunder shall be in writing and shall be sent to the address of the recipient set out in the IO or such other address as the provisions of this clause.

14.2 Any termination/notice period in the event that services are discontinued are to be received in writing with 5 working days notice..

#### **15. PROPER LAW AND JURISDICTION**

15.1 These Terms and Conditions shall be governed by and constructed in accordance with the Laws of England. Any dispute which may arise between the parties concerning these Terms and Conditions shall be determined by the English Courts and the parties hereby submit themselves to the jurisdiction of those courts for such purposes.

#### **16. CANCELLATIONS**

16.1 Graffiti Media Group Ltd reserves the right to refuse cancellation of this order, or any order by the Client which form part of a series.

16.2 Each execution within a series will be treated as a separate order for execution in respect of cancellation.

16.3 Requests for cancellation of any order for execution must be made in writing stating all reasons for cancellation; these must be addressed to the Managing Director and must be received by Graffiti Media Group Ltd at least 5 months prior to the execution date or copy date, whichever is the earlier.

16.4 If the Client shall cancel part of a series, the cost per unit as contained in the Order Confirmation shall apply to all Data supplied under this order for Execution, irrespective of the date of supply of the Data.