

TERMS AND CONDITIONS V2.06

1 DEFINITIONS

“MIGRATE” means MIGRATE Data Limited

“computer services” means the supply of any services that includes the use of computer equipment or the interpretation of any material derived from the use of computer equipment

“Contract” means any contract between the Customer and MIGRATE for the provision of the Services on the conditions appearing herein, including, where Deliverables are provided, the terms appearing in the Licence

“Customer” means the person or entity named in the Proposal

“Deliverables” means any data, datafiles, databases, lists, tagged data stored on any media or in electronic form as specified on any Proposal and/or supporting documentation

“Input Materials” means all those items of data, goods, brochures, materials and associated documentation which are required to be provided by the Customer to MIGRATE in order that MIGRATE may carry out the Services

“Licence” means the terms set out in the Appendix on which Deliverables (if any) shall be licensed to the Customer under the Contract and forming part of it

“Output Materials” means all those items of data (however supplied) and associated documentation (including Deliverables) which are to be provided by MIGRATE to the Customer as a part of the Services

“The Price” means the price which MIGRATE has specified in its Proposal to the Customer for the supply of the Services (including any Deliverables)

“Proposal” means any written proposal or quotation made by MIGRATE to provide any Services to the Customer

“The Services” means those products and/or services (including Deliverables) which MIGRATE has specified in its Proposal to the Customer

“Specification” means the specification(s) in relation to the Services contained in the Proposal and on which the Contract is based

2 APPLICATION OF TERMS AND CONDITIONS

2.1 The Contract for the supply of the Services by MIGRATE to the Customer will be on these conditions (together, in relation to any Deliverables included in the Services, the terms of the Licence) to the exclusion of all other terms and conditions (including any terms and conditions which the Customer purports to apply under any order, confirmation of order, specification or other document and any non-disclosure agreement (applicable to the subject matter of the Contract) entered into by the parties which shall expire on their entering into the Contract).

2.2 No order placed by the Customer shall be deemed to be accepted by MIGRATE until a written acknowledgement of order is issued by MIGRATE or (if earlier) provision of the Services commences or takes place.

2.3 The Specification and the Price will be valid for 30 days unless specifically stated otherwise in the Proposal or any written quotation.

2.4 MIGRATE reserves the right to vary the Contract and the Price at any time to take account of:

2.4.1 Any alteration made to the Specification;

2.4.2 Special deliveries or part deliveries or any other variation of the original order made at the request of the Customer;

2.4.4 Any extra cost borne by MIGRATE as a result of any Government legislation, EEC regulation or the effects of devaluation or fluctuation in the exchange currency rate.

2.5 Where the Customer acts as a broker, intermediary or agent on behalf of another customer (“the End User”), the Customer shall ensure that the End User shall comply with all the undertakings of the Customer under the Contract.

2.6 The Contract shall not be assignable by the Customer.

2.7 MIGRATE shall have the right to assign and/or sub-contract any of its rights or duties or obligations under the Contract

3 PRICE AND PAYMENT

3.1 Unless otherwise specified, the Price and any other charges to be made for the Services are exclusive of:-

i. Value Added Tax; and

ii. Postage (where Services include mailings); and

iii. Any/all other taxes or duties (including royalties) payable by the Customer or MIGRATE (as the case may be) and, if appropriate

an amount in respect of which will be added to MIGRATE’s invoice and will be payable by the Customer in accordance with Clause 3.2.

3.2 The Customer will pay MIGRATE’s invoices in full without any deduction or set-off within 30 days of the date of the invoice. Time for payment shall be of the essence. No payment shall be deemed to have been received until MIGRATE has received cleared funds. MIGRATE may suspend the provision of the Services to the Customer where any amounts are overdue and until all such overdue amounts have been paid.

3.4 MIGRATE shall be entitled to charge additional sums, which in MIGRATE’s sole discretion, are required as a result of the Customer’s instructions or lack of instructions, failure to supply data or poor quality of the same, inaccuracy of the Input Materials or any other cause attributable to the Customer as well as interest on overdue amounts at 2% above the prevailing Lloyds Bank PLC annual base rate both before and after any court judgment.

3.5 In the event of any amounts owed by the Customer to MIGRATE, MIGRATE shall be entitled to grant a licence of the Customer’s data and any such grant of licence shall not entitle the Customer to receive any form of royalty or duty.

4 DELIVERY AND PERFORMANCE

4.1 The Customer shall be responsible for delivering to MIGRATE at its own expense and at a location specified by MIGRATE, all necessary Input Materials in the manner, quantity, form, condition and delivery timescale agreed by MIGRATE, and in accordance with any delivery notice provided to the Customer by MIGRATE. The Customer will ensure the accuracy of all Input Materials.

4.3 MIGRATE will endeavour to meet all performance timescales agreed with the Customer but shall be under no liability for any delay caused by the failure of the Customer or of its agents to fulfil its delivery obligations under Clause 4.1 or 4.2 hereof, and in any event the date agreed for commencement or completion of the Services shall be an estimate only and shall not be of the essence of the Contract. MIGRATE shall not be liable to the Customer or any third party for any loss or damage costs charges or expenses whatsoever (including loss of profit) arising directly or indirectly from any failure to perform the Services by the agreed date (even if caused by MIGRATE’s negligence), nor will any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 180 days.

4.4 Unless otherwise agreed, any data to be supplied by the Customer to MIGRATE must be in accordance with our “Transmitting your data to MIGRATE” policy which is set out on MIGRATE’s website.

4.5 MIGRATE is not responsible for any liability in respect of data or other Input Material which is damaged or tampered with before arriving at MIGRATE, and this includes any information transmitted through the Internet.

4.6 Re-processing of data required or any additional cost or expense incurred by MIGRATE resulting from the failure of the Customer to fulfil its delivery obligations under Clause 4.1 hereof shall be borne by the Customer.

4.7 Re-processing of data required due to any fault on the part of MIGRATE or its employees to exercise reasonable skill and care shall be met at MIGRATE’s expense subject always to a maximum cost to MIGRATE of £10,000 inclusive of VAT or the Price (if lower) and to the Customer making available any Input Materials necessary for such re-processing.

4.8 Unless otherwise agreed, MIGRATE shall be responsible for delivery of all Output Materials to the agreed delivery point and shall charge the Customer for making such delivery such amount as set out in the Proposal or as otherwise agreed in writing by the parties.

4.9 All disclosure or transmission of Input Materials and Output Materials shall be carried out by MIGRATE as agent for the Customer and not as principal.

4.10 MIGRATE shall not be liable for a breach of the warranties in clause 5.1 unless the Customer gives written notice of the defect to MIGRATE within 14 days of the time when the Customer discovers or ought to have discovered the defect.

4.11 Subject to clause 4.10, if any of the Services do not conform with any of the warranties in clause 5.1, MIGRATE shall at its option rectify or re-supply such Service.

4.12 If MIGRATE complies with condition 4.11 it shall have no further liability for a breach of the warranties in condition 5.1 in respect of the Services.

5 LIABILITY

5.1 MIGRATE warrants that it shall carry out the Services in accordance with the Proposal and Specification and with reasonable skill and care. MIGRATE may at any time and without notification to the Customer make any changes to the Services which are necessary to comply with any applicable safety or statutory requirements or which do not materially affect the nature or quality of the Services.

5.2 If any breach of contract by or negligence of MIGRATE or its employees shall necessitate any repeat mailing by the Customer, MIGRATE shall be responsible for the MIGRATE’s direct production costs of any part of the mailing which requires repeat mailing, subject always to a maximum cost to MIGRATE of £10,000 inclusive of VAT or the Price (if lower).

5.3 Subject to Clause 4 and save as provided by Clause 5.4 below, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer. MIGRATE’s aggregate liability to the Customer for breach of contract, negligence, misrepresentation, or otherwise whether committed by MIGRATE, its subcontractors or agents, shall be limited to £10,000 inclusive of VAT or the Price (if lower). In no circumstances shall MIGRATE be liable for any indirect or consequential loss (including without limitation loss of profits, business or anticipated savings) howsoever arising save as provided by Clause 5.2 above.

5.4 The Customer acknowledges that the Price is calculated by reference to the limits of liability set out in this Clause 5. The Customer may by written notice request MIGRATE to agree a higher limit of liability to which MIGRATE shall agree if insurance cover is available, on condition that any insurance premium or costs associated with obtaining such cover shall be borne exclusively by the Customer.

5.5 The Contract (together with the Proposal, the Specification and, where the Services include Deliverables, the Licence) contains the entire agreement between the parties and supersedes all previous agreements and representations, including any non-disclosure or confidentiality agreement previously entered into with the Customer which are hereby terminated by mutual consent, effective from the date of the Contract, and may not be varied except in writing between the parties. Such termination shall be without prejudice to any payment or other obligation of either party arising prior to termination.

5.6 Save as expressly provided in the Contract and in particular by Clause 5.5 above, all other conditions, warranties, terms or representations whether statutory or otherwise are (to the fullest extent permitted by law) excluded.

5.7 The Customer shall indemnify MIGRATE in respect of any liability (including but not limited to breach of third party intellectual property rights) arising from the performance of MIGRATE’s obligations as agent to the Customer in disclosing and transmitting Input Materials or Output Materials.

6 DATA PROTECTION AND STANDARDS OF PRACTICE

MIGRATE is covered and works within The EU General Data Protection Regulation 2016/679 25 May 2018 and the Data Protection Act 2018

6.1 MIGRATE and the Customer warrant to each other that they each hold all necessary registrations, licences and consents including, but not limited to, those required by law and in particular under the Data Protection Act 2018 and will comply with and keep in force all such registrations, licences or consents and produce evidence of the same to the other upon request.

6.2 Each party will in so far as it relates to the provision of the services comply with all applicable provisions of the EU General Data Protection Regulation 2016/679, Data Protection Act 2018 (including the Data Protection Principles) and any regulations relevant codes of practice published by the Information Commissioner’s Office (ICO).

6.3 The Customer warrants that all data in relation to individuals provided by the Customer to MIGRATE has been fairly and lawfully obtained in compliance with all relevant data protection legislation for use as contemplated by the Contract. The Customer further warrants that none of the activities for which it has engaged the services of MIGRATE will constitute, involve or facilitate, directly or indirectly, the commission by MIGRATE of any unlawful or illegal action or any offence (including without limitation the infringement of any laws relating to defamation, obscenity or indecency) or the infringement of the rights of any other person.

6.4 Each party shall indemnify the other against any and all claims, costs, liabilities, penalties or expenses incurred by reason of or its failure to comply with the warranties and undertakings given in 6.1, 6.2 and 6.3 above.

6.5 The Customer shall indemnify MIGRATE against any damage caused to MIGRATE’s equipment arising from the receipt of and use of any the Customer’s Input Materials.

6.6 MIGRATE may in its sole discretion withhold Output Materials or refuse to carry out or complete any activity in connection with any Proposal (despite acceptance of such Proposal) if in the reasonable opinion of MIGRATE that activity would involve a breach of any of the standards of practice referred to in this Clause 6. If MIGRATE refuses to carry out or complete any activity in connection with any Proposal on any of the above grounds, the Customer shall re-imburse MIGRATE for any costs or expenses incurred by MIGRATE up to the date of such refusal.

7 COMPUTER SERVICES

7.1 If the Services include Deliverables, the Deliverables shall be licensed by MIGRATE to the Customer on the terms and conditions of the Licence. If the Services include computer services, additional and specific terms and conditions of business shall (if supplied by MIGRATE) apply.

8 INTELLECTUAL PROPERTY RIGHTS AND RIGHTS OVER DATA

8.1 Save as provided in Clause 8.3 below all rights (including without limitation any and all copyrights, and other intellectual property rights) in or relating to computer software, databases and documents (including Deliverables) created by or for MIGRATE before or after the date of any agreement between MIGRATE and the Customer or the Contract shall vest in and be the property of MIGRATE.

APPENDIX LICENCE TERMS

8.2 Copyright in any computer software, databases and documents (including Deliverables) supplied to the Customer will at all times remain the property of MIGRATE and in the case of third party software or data copyright shall always remain the property of the copyright owner, unless otherwise expressly agreed in writing, and the Customer shall have no rights or interests whatsoever therein except to use the same in relation to its business which the Customer represents and warrants to MIGRATE does not involve disclosure of the software, databases and documents (including Deliverables) to any third party except employees of the Customer in the course of their employment and legitimate agents of the Customer who require such disclosure in order to fulfil their duties.

8.3 Subject to Clause 3.5 above, any right, title or interest of the Customer in data or other materials supplied by the Customer to MIGRATE pursuant to the Contract shall remain with the Customer. Data held by MIGRATE uniquely for the Customer whether supplied by the Customer or a third party shall be confidential to the Customer and MIGRATE undertakes to hold the same subject to the provisions of Clause 9 below. All other data shall be confidential to MIGRATE and if and in so far as the same is disclosed to the Customer the Customer undertakes to hold the same subject to the provisions of Clause 9 below.

8.4 MIGRATE reserves the right to delete any data provided by the Customer whether supplied by the Customer or by a third party once the Services have been provided. Due to the way MIGRATE's information technology system is set up, back-up files of all software are automatically kept under the guidelines of GDPR. MIGRATE therefore reserve the right to keep back-up files of any data provided by the Customer whether supplied by the Customer or by a third party, subject always to the provisions of Clause 9 below.

8.5 The Customer should retain duplicates of all data supplied to MIGRATE and MIGRATE does not accept any responsibility for loss of or damages to it while in its possession or control except to replace or credit the value of any physical media on which the data was supplied.

9 CONFIDENTIAL INFORMATION

9.1 Subject to the provisions contained in Clause 3.5, each party agrees and undertakes that it will keep confidential and will not use for its own purposes nor without prior written consent of the other party or disclose to any third party except (Experian, Equifax, Data Ireland, Deutsche Post, GB Group, Merit Outsource and Puma Source India under the relevant GDPR documentation (Data Protection Addendum Principal Agreement for data capture in India) any information of a confidential nature (including trade secrets and information of commercial value) which has become or at any time after the date of the Contract may become known to such party from the other party, directly or indirectly, unless such information is public knowledge or already known, without restrictions, to such party at the time of disclosure, is disclosed with the prior written approval of the other party or subsequently becomes public knowledge, without restrictions and other than by breach of the Contract or subsequently comes lawfully into the possession of such party from a third party. Each party shall take all reasonable steps to safeguard and prevent any unauthorised disclosure by its officers, employees, agents or representatives.

9.2 The receiving party acknowledges and agrees that the property and copyright in confidential information disclosed to it by the disclosing party, including documents, files and other items containing any confidential information, belong to the disclosing party. At the disclosing party's written request, the receiving party will return immediately to the disclosing party all confidential information which the receiving party has received under the Contract and which may still be in its possession, (including any copies made but excluding any archived back-up tapes archived under usual archiving procedures of the receiving party), and make no further use or disclosure of any of the confidential information.

10 TERMINATION AND CANCELLATION

10.1 If the Services provided to the Customer are regular, either party may terminate the Contract by giving the other not less than 3 months' written notice.

10.3 If the Services provided to the Customer include provision of Deliverables, MIGRATE may terminate the Contract or the provision of any of the Services under it by written notice to the Customer in the event of breach of the Licence by the Customer.

10.4 If there is a change of ownership of the Customer which MIGRATE deems to be material in its business relationship with the Customer, MIGRATE may terminate the Contract or the provision of any of the Services under it immediately by written notice to the Customer.

10.5 Notwithstanding Clauses 10.1 to 10.43 above, either party may terminate the Contract or the provision of any Services under it immediately by written notice if the other:-

(a) breaks any of these terms and (upon written notice by the other) does not remedy the position within two weeks; or
(b) makes any arrangement or composition with or arrangement for the benefit of its creditors; or
(c) becomes subject to bankruptcy or insolvency proceedings (including suffering any action which may lead to the appointment of a liquidator, administrator, receiver or administrative receiver).

10.6 The giving of notice and/or termination pursuant to this Clause 10 by the Customer does not avoid its liability to pay for any Services already provided by MIGRATE or any of its sub-contractors or agents, nor for MIGRATE to deliver any Services already paid for.

10.7 In the event of the Customer cancelling an accepted Proposal/order, and MIGRATE having incurred costs in preparation of completing the Proposal/order, MIGRATE is entitled to payment of the costs it has incurred or agreed to incur prior to the date of cancellation.

10.8 If the Customer shall fail to pay MIGRATE on the due date any sum payable under the Contract or any other contract with MIGRATE, or if the Contract should be terminated under Clause 10.5, MIGRATE shall be entitled, without prejudice to its rights and remedies, to a general lien on all materials of the Customer in MIGRATE's possession (although such materials or some of them may have been paid for) for the unpaid price of such Services sold and delivered to or for the Customer by MIGRATE under any such contract.

10.9 Termination shall be without prejudice to the aMigrateued rights and/or liabilities of the parties.

11 EMPLOYMENT OF PERSONNEL

During the term of this Contract and for twelve months thereafter the Customer shall not employ any person who is employed by MIGRATE, whether as an employee, agent, partner or consultant of MIGRATE, without prior agreement of MIGRATE. The parties agree that a reasonable forecast of the damages from breaching this clause would be (and the breaching party agrees to pay) an amount equal to the annual salary for the employee as of the date of the breach of this clause as liquidated damages, unless waived by the other party.

12 FORCE MAJEURE

MIGRATE shall not be liable to the Customer for any loss or damage which may be suffered by the Customer as a direct or indirect result of the supply of Services by MIGRATE being prevented, hindered, delayed or rendered uneconomic by reason of circumstances or events beyond MIGRATE's reasonable control, including but not limited to an Act of God, war, riot, strike, lock-out, trade dispute or labour disturbance, accident, breakdown of plant or machinery, fire, flood or storm.

13 HEADINGS

Clause headings used in this document do not form part of it and shall not affect its interpretation.

14 WAIVER

Failure or delay by either party to exercise or enforce any right hereunder shall not be deemed to be a waiver of such right nor operate so as to bar the exercise of enforcement thereof at any time thereafter.

15 NOTICES

Any notice must be in writing and may be sent by hand, post or fax to the addressee at the last known address. Notices shall be deemed to have been given if sent by hand when delivered, if sent by post four days after posting, and if sent by fax when transmitted.

16 GOVERNING LAW

This Contract shall be governed by and construed in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

17 GENERAL

Any provision of these terms and conditions which is void or unenforceable shall to the extent of such invalidity or unenforceability be deemed severable and shall be severed from and shall not affect any other provision hereof.

The Customer has requested MIGRATE and MIGRATE has agreed to license to the Customer the Deliverables specified in the Proposal or any supporting documentation on the terms and conditions below. Expressions used in this Licence shall have the meaning ascribed to them herein or in the Terms and Conditions of which this Licence forms a part.

- 1 MIGRATE grants to the Customer a non-exclusive non-transferable right to use the Deliverables for the sole purpose set out in the Proposal and the legitimate purpose of the Customer's own business ("the Permitted Purpose"). This includes, where applicable the customer agreeing to the terms of the Royal Mail end user licence agreement v1 which is published on MIGRATE's website. The Deliverables shall not be used by the Customer for any purpose other than the Permitted Purpose and the Customer may not, including but without limitation, copy, publish, sell, let, lend, permanently record or retain or otherwise disclose or part with possession of the Deliverables, either directly or indirectly. The Deliverables shall be treated as being secret and confidential.
- 2 While MIGRATE confirms that Deliverables have been produced by it in good faith and in accordance with normal relevant industry standards, MIGRATE does not warrant the accuracy or completeness of the Deliverables. The Customer agrees that MIGRATE shall not be liable for any loss or damage (whether direct or indirect or consequential) howsoever arising from the use of the Deliverables by the Customer, with the exception of death or personal injury caused by MIGRATE's negligence or fraudulent misrepresentation on the part of MIGRATE.
- 3 Copyright and any other such intellectual or other property rights as subsist in any Deliverable shall (whether during or after the period of the licence hereby granted) be and remain at all times the property of MIGRATE or any third party owner of the intellectual property rights in such Deliverable and if derived from any United Kingdom governmental source are supplied subject to Crown Copyright. The Customer shall not remove or allow removal of any proprietary notices on or affixed to any Deliverable. Nothing in this Licence gives the Customer any right to use any trade mark or brand name associated with MIGRATE or any third person.
- 4 The Customer warrants that all items, delivered or supplied to any third party using the Deliverables shall contain nothing which infringes copyright or is defamatory, obscene, misleading, incorrect, indecent or otherwise illegal or in contravention of the Data Protection Act 2018 and/or the Advertising Standards Agency Codes of Practice regarding advertising and sales promotion.
- 5 The Customer warrants that in making available to MIGRATE at any time the Customer's database for the purpose of MIGRATE's provision of the Services, the Customer's database shall be a list of its existing bona fide customers containing in relation to each individual a name and full address which the Customer has fairly and lawfully obtained in good faith for the purpose of mailing communications to those customers in its own name and on its own behalf for the legitimate furtherance of its own business.
- 6 The Customer shall upon three days prior written notice grant MIGRATE or its representative reasonable access, during working hours, to its premises, accounts, computer systems and records (and permit MIGRATE or its agent to question employees) for the purpose of verifying the Customer's compliance with its obligations under this Licence.
- 7 The Customer shall indemnify MIGRATE against all losses, liabilities, costs (including legal expenses), claims, actions, demands and damages suffered or incurred directly or indirectly as a result of breach of any provision of the Licence or arising out of or in connection with any of the Contract terms relation to this Licence.
- 8 MIGRATE considers the Deliverables, information concerning the Deliverables not generally available and its techniques and know-how developed to use the Deliverables to be trade secrets and the Customer agrees to hold these matters in confidence and to disclose them only in accordance with this Licence and the Contract.
- 9 MIGRATE confirms that it is included in the register maintained under section 19 of the Data Protection Act 2018 pursuant to its compliance under section 18 of the Act ("the Act"). The Customer warrants to MIGRATE that it will comply with all relevant provisions of the Act in respect of its use of the Deliverables and that it will do everything which MIGRATE may request for the purpose of enabling MIGRATE to comply with the Act or which may be necessary or desirable for that purpose.
- 10 This Licence shall commence on the date of the Contract and shall, subject to Clause 10 of the Contract and, as follows, continue in perpetuity.
 - 10.1 If any third party licence which enables MIGRATE to licence the Deliverables and provide the Services hereunder is terminated, this Licence will automatically be terminated forthwith.
 - 10.2 MIGRATE may terminate this Licence and/or the Contract at any time if the Customer fails to comply with its terms or fails to apply or continue to apply to the Deliverables all necessary cleaning and suppressions as required by the Data Protection Act 2018, the DMA Code of Practice and accepted industry standards.
 - 10.3 MIGRATE may terminate this Licence and/or the Contract at any time if the Customer brings MIGRATE or the owner of any intellectual property rights in the Deliverables into dispute.
 - 10.4 This Licence shall terminate on termination of the Contract for any reason.In the event of termination as contemplated above, the Customer shall refrain immediately from using the Deliverables, return the Deliverables and all copies to MIGRATE and delete from the Customer's files any extracts from the Deliverables.
- 11 The Customer shall not assign, sub-contract or otherwise deal with this Licence.
- 12 In the event of any conflict between the terms of this Licence and the other terms of the Contract the terms of this Licence shall prevail.