**TERMS AND CONDITIONS**

It is important that you read the following terms and conditions before you progress further, as it is a requirement that you agree with these Terms and Conditions before you access the full functionality of the Market Location Data Search Tool.

**PARTIES:** 1. Market Location Ltd (‘the Company’) a company registered in England under Number 01864009 whose registered office is Rossmore House, 10 Newbold Terrace, Leamington Spa CV32 4EA. 2. "The Subscriber" the named person on the Data Search Tool Sales Supply Agreement documentation. This is a legal agreement between the Subscriber and Market Location. You agree to be bound by the terms and conditions of this Agreement when you sign the supply agreement or place an order online.

1. **GENERAL**

In so far as the context admits these terms and conditions are deemed to be incorporated into any agreement entered into with ML for the provision of the use of the Data Search Tool and any data purchased with credits. Subscribers can buy credits from ML through the Data Search Tool or via an account manager. Data can be delivered by via an email link or downloaded. The Data Search Tool can be accessed via a subscription for a period of 12 months, the cost for this is £299 (+VAT) and ML reserves the right to change the price from time to time. The subscription price and any credits purchased are non-refundable.

* 1. Subscription - if the service is not renewed credits cannot be reinstated or refunded. Should a subscription be reinstated at a point after the renewal date, this will not result in previously unused credits being reinstated.
1. **DEFINITIONS** In this Agreement the following expressions shall have the following meanings:-

"this Agreement" means the Supply Agreement and the terms and conditions set out hereunder

“the Company” means Market Location (ML)

“Data” means all of the information, records and data fields stored on and/or derived from the Data Search Tool;

“Direct Marketing” means any method of telephone sales, telephone marketing, direct mail, market research or use of circulation lists which is targeted directly at the end user;

 “Subscriber” means a user who has purchased a subscription to use the Data Search Tool for a period of 12 months in order to take advantage of the Subscriber Benefits (lower volume-related prices for data) accorded to a Subscriber;

"the Service" means the Data Search Tool provided by ML containing information on 1.8 million UK business listings which enables users to search the information by a number of criteria and refine searches;

1. **SUBSCRIPTION**
	1. Payment of a subscription fee entitles you to use of the Subscriber Benefits on the Data Search Tool for a period of 12 months. Only one login and password will be issued for the sole use of the Subscriber.
2. **GRANT OF LICENSE OF DATA**
	1. ML grants the Subscriber a non-exclusive, non-transferable limited license to use the Data Search Tool to purchase Data and to use that Data for the period of:
		* 12 months from the date of purchase in accordance with the terms and conditions of this Agreement.
		* Subscribers may purchase credits (“Credits”) from ML through a credit metering system, which will allow them to purchase records and to export records in accordance with the terms of this Agreement, by reference to the number of Credits purchased. No refunds will be made in respect of Credits purchased, but not used.
		* The fee for the Subscription is non-refundable.
3. **DATA**

(A) The Data contained in Data Search Tool contains material proprietary to ML and/or other right holders and is protected by copyright and/or database right and/or other intellectual property rights. Except for the licence granted herein, all rights, title and interest in the Data in all formats and media throughout the world including all copyrights and/or database right and/or other intellectual property rights are and shall continue to be the exclusive property of ML and/or other right holders.

(B) At the end of the period of use set out in Condition 3(A) the Subscriber does not retain any rights to use Data that has been purchased.

(C) The Subscriber agrees that on completion of the 12 month period and unless the Company and the Subscriber have agreed to extend the period of the Subscription, that the Subscriber will return to the Company, or at the Company’s option, destroy the Data and the media upon which the Data is supplied to the Subscriber. The Subscriber acknowledges that the price of the Data has been calculated strictly on the basis of such undertakings.

#  EMAIL DATA

* 1. The Subscriber agrees to send email communications to each email address supplied by the Company up to a maximum of twelve times over a 12 month period and/or send more than four (4) communications to any Email in any one calendar month.

# The Subscriber agrees to comply with the DMA (Direct Marketing Association) Code of Practice. In particular:-

1. Commercial communications sent by email must be clearly identifiable as such to the recipient at the time of receipt of the communication. The Subscriber must operate and maintain an in-house suppression file, listing recipients who have indicated that they do not wish to receive further commercial communications via email. The Subscriber must screen email marketing lists from the Company against in-house suppression files prior to each email marketing campaign.
2. The Subscriber must not send marketing communications to business email addresses for goods or services that the recipient would only purchase in an individual capacity.
3. Email recipients must be offered a simple mechanism by which to unsubscribe / opt-out of receiving further email marketing messages from the Subscriber.
4. **USE AND RESTRICTIONS**

(A) Only Subscribers may search and, upon payment, retrieve Data for their use.  The Data may be used only to carry out Direct Marketing activity to the businesses contained in the Data in relation to your own products and services (the "Permitted Purpose").

(B) Access to and use of the Data Search Tool for Subscribers is through the use of a login name and password.  You agree to ensure that your Login name and password are kept confidential and not to permit any unauthorized third party to use the same.  You agree to notify ML immediately of any unauthorized use of Data Search Tool on your account or any other relevant breach of security known to you.

(C) You may not:

1. reproduce, publish in any form of media, distribute, sell, loan, lease or transfer any part of the Data to or for third parties in any manner whatsoever, or otherwise infringe any copyright, database right and/or other proprietary interest of ML;
2. sell, loan, lease or transfer this Agreement or any rights under it to any other person;
3. modify, adapt, translate, reverse engineer, disassemble or decompile any part of the Data Search Tool or the Data to enhance it in any way, save to the extent expressly permitted by law;
4. copy or transfer any of the Data onto any other medium or make any part of the Data available to the public, except as expressly permitted by this Agreement;
5. contact any of the businesses or individuals listed on the Data Search Tool for any purpose except for the Permitted Purpose and in particular may not contact any such businesses or individuals for the purposes of creating a database or directory, whether in electronic format or otherwise, for publication or sale or other than for the authorised uses as set out in this Agreement;
6. destroy, modify or tamper with any of the credit metering system forming part of the Data Search Tool or alter or attempt to alter the number of Credits applicable to the Subscriber;
7. use any of the Data to send or make communications which are defamatory, obscene, offensive or in breach of any law.

(D) No cancellations for the subscription or annual agreed volume of credits will be accepted after instructions to commence Subscription have been issued by ML. Subscription is sold on a 12 month basis and the Subscriber does not have the right to cancel during this period or reduce the total annual amount of credits ordered within the agreement.

1. **FAILURE TO PAY**

If payment cannot be charged to your credit card or there is a chargeback for whatever reason, or if you fail to pay any amount due, ML reserves the right to block access to the areas of the Data Search Tool for which such payments are pre-requisite.

ML may charge you any reasonable legal and administration costs for recovering amounts owed.  This may involve registering non-payment details to credit reference agencies.

Time of payment of the price shall be of the essence of this Agreement and ML may charge interest at the rate of 1.5% per month on any overdue payments of the price by you from the date payment became due until the date actual payment is made (inclusive).

1. **LIABILITY**

Please note that the following provisions restrict and exclude ML’s liability to you.

(A) NOTHING IN THIS CONDITION 9 SHALL LIMIT ML’S LIABILITY FOR FRAUD, DEATH OR PERSONAL INJURY.

(B) WHILST ML ENDEAVOURS TO ENSURE THAT ALL DATA PROVIDED IS ACCURATE, NEITHER ML NOR ITS AGENTS OR EMPLOYEES CAN, SUBJECT TO CONDITION 9(A), ACCEPT LIABILITY FOR ANY LOSS OR DAMAGE RESULTING FROM OMISSIONS OR INACCURACIES RELATING TO THE DATA REGARDLESS OF HOW CAUSED.

(C) ML DOES NOT MAKE ANY WARRANTIES OR REPRESENTATIONS WITH RESPECT TO THE DATA SEARCH TOOL OR THE DATA WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, TRADE USAGE, COURSE OF DEALING OR OTHERWISE ALL OF WHICH ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

(D) ML DOES NOT WARRANT THAT THE DATA C0UNT TOOL WILL MEET YOUR REQUIREMENTS OR THAT THE OPERATION OR AVAILABILITY OF THE DATA SEARCH TOOL WILL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS IN THE DATA SEARCH TOOL WILL BE CORRECTED.

 (E) IN NO EVENT WILL ML BE LIABLE TO YOU IN CONTRACT, TORT OR OTHERWISE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSS OR DAMAGE.

(F)  ML SHALL NOT BE LIABLE FOR LOSS OF PROFITS, LOSS OF EARNINGS, LOSS OF BUSINESS OR GOODWILL OR FOR BUSINESS INTERRUPTION EVEN IF IT HAD NOTICE OF THE POSSIBILITY OF YOU INCURRING SUCH LOSSES.

(G) ML DOES NOT WARRANT THAT THE DATA OR ANY FILE DELIVERED ARE FREE FROM ANY ERRORS, VIRUSES, WORMS OR OTHER DESTRUCTIVE FEATURES AND WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE SUFFERED AS A RESULT OF THEM.

(H) IN ANY EVENT DRC'S ENTIRE LIABILITY SHALL BE LIMITED TO THE PURCHASE PRICE OF THE DATA IN RELATION TO WHICH ML'S LIABILITY ARISES.

**10.** **DATA PROTECTION**

You agree that you will:

(i) at all times conform with all relevant rules and regulations governing the holding or use of data including without limitation the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any subordinate or associated regulations (in each case as may be amended from time to time).  In particular you will be responsible for ensuring that data used for telemarketing or fax marketing is screened against the Telephone Preference Service (TPS) register or the Fax Preference Service (FPS) register, as the case may be;

(ii) ensure that any uses to which the Data is put comply with the codes of practice from time to time of the appropriate supervisory bodies whose current codes are as follows:

The British Code of Advertising, Sales Promotion and Direct Marketing

The Direct Marketing Association Code of Practice.

1. **INDEMNITY**

You shall indemnify ML and/or its officers and/or agents in respect of any loss or damage whatsoever (including costs) which it or they may suffer or incur directly or indirectly from any failure to comply with the terms of this Agreement by you or by your employees.

1. **BREACH AND TERMINATION**

Your rights to use the Data Search Tool and the Data or any part thereof automatically terminate at the end of the period of use set out in Condition 4(A) and may be terminated at any time by ML with immediate effect on written notice to you if you, the Subscriber, breach this Agreement.  On termination any outstanding payments shall become immediately due and payable. No refunds for unused credits will be given.

1. **ENTIRE AGREEMENT**

This Agreement sets out the entire complete and exclusive agreement and understanding between you and ML relating to its subject matter and each of the parties hereby acknowledges and agrees that in entering into this Agreement it has not relied on any representation, conditions or warranties including without limitation any implied representations, conditions or warranties otherwise than as expressly set out in this Agreement.

1. **NOTICES**

Any notice or other communication served under this Agreement shall be in writing standard conditions shall be by electronic mail, facsimile or in writing and shall be deemed delivered upon receipt by the party to whom the communication is directed at the address specified below.  If to ML, the email notice shall be addressed to **info@marketlocation.com** and other written notices addressed to:

Market Location

Rossmore House

10 Newbold Terrace

Leamington Spa

CV32 4EA.

If to you, the notice shall be addressed to the most up to date contact details provided by you.

1. **GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with English law and the parties irrevocably submit to the non-exclusive jurisdiction of the English Courts in respect of any dispute which may arise.

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