

Terms and Conditions – (GDPR) 1. DEFINITIONS

1. (1) '**Prospect360**' is a trading name of Intertec Data Solutions Ltd, registered in England and Wales No. 4802191.
2. (2) '**controller**' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the **processing** of personal data.
3. (3) '**purchaser**' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, to whom **Prospect360** agrees to provide goods and/or services for a consideration.
4. (4) '**data record**' means a single entry of the proprietary information of **Prospect360** typically, but not always, including *inter alia* information about one organisation and one decision maker within the organisation.
5. (5) '**direct marketing list**' means multiple **data records** aggregated into one or more than one list of **data records** typically but not always taking the form of a spreadsheet, data table or other structured data file.
6. (6) '**licensee**' means the natural or legal person, public authority, agency or other body, for whose benefit **Prospect360** is authorising the use of a **direct marketing list**. For the purposes of this **agreement**, **licensee** excludes from its meaning any third-party, including any holding company, group company or subsidiary. The **licensee** is accountable for the usage of any **direct marketing list** provided under this **agreement**.
7. (7) '**processor**' means a natural or legal person, public authority, agency or other body which processes data on behalf of the **controller**.
8. (8) '**processing**' means any operation or set of operations which is performed on the **direct marketing list**, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
9. (9) '**active usage license**' means a license to use the proprietary information of **Prospect360** that has commenced and has not expired and has not been exhausted and has not been cancelled and for which payment has been received by **Prospect360**.
10. (10) '**GDPR**' means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council.
11. (11) '**EU**' means the European Union.
12. (12) '**territory that provides an adequate level of protection under GDPR**' means a territory that is listed in the Official Journal of the European Union as providing an adequate level of protection for personal data.
13. (13) '**professionally relevant direct marketing**' means direct marketing that is relevant to the data subject in their professional capacity.

1. DEFINITIONS (continued)

(14) '**agreement**' means this **agreement** between **Prospect360** and the **licensee** for a license to use a **direct marketing list** on terms specified in this document and in the **Prospect360** Order Form which shall be part of this **agreement**.

2. GOVERNING LAW & JURISDICTION

1. (1) This **agreement** is governed by and shall be construed in accordance with the laws of England.
2. (2) The parties submit all their disputes arising out of or in connection with this **agreement** to the exclusive jurisdiction of the courts of England.

3. ENTIRE AGREEMENT

1. (1) This **agreement** constitutes the entire **agreement** between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between them, whether written or oral, relating to this subject matter.
2. (2) Each party acknowledges that in entering into this **agreement** it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this **agreement**.
3. (3) No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this **agreement**.
4. (4) Each provision, requirement or exclusion contained in this **agreement** shall be severable and shall subsist notwithstanding the inapplicability or unenforceability of any other terms contained herein.
5. (5) Changes to this **agreement** shall be valid and effective only if made in writing and signed by both parties.

4. COPYRIGHT

1. (1) All intellectual property rights pertaining to the **direct marketing list** including without limitation copyright shall remain the sole property of **Prospect360**.
2. (2) The **licensee** is granted a non-transferable license to use the **direct marketing list** for direct marketing purposes only.
3. (3) The **direct marketing list** shall not be used whether in whole or in part to create, develop or augment any list, service or product. It shall not be offered whether for a consideration or otherwise to any other party including *inter alia* internet or intranet-based services or any other service or directory or information resource providing any benefit whatsoever to any other party.
4. (4) The **direct marketing list** may be disclosed by the **licensee** only to a **processor** contractually bound to use the **direct marketing list** only for direct marketing purposes, only for the benefit of the **licensee**.

4. COPYRIGHT (continued)

5. (5) Except as referred to in clause 4 (4) the **direct marketing list** shall not be reproduced, duplicated, shared, transferred or otherwise disclosed, or be used to benefit a third party including without limitation, any business, company or entity associated or affiliated with the **licensee**, unless agreed in writing in advance by **Prospect360**.
6. (6) Where a prospect initially identified through the **direct marketing list** becomes a customer, through making a purchase or commencement in genuine commercial engagement or interest by positive response, explicitly not by a click through, the **licensee** shall be entitled to create a version of the **data record** and will have beneficial ownership, intellectual property rights and copyright of the created customer record. This does not affect the intellectual property and other rights **Prospect360** has over the **data record** in the **direct marketing list**.

5. LIMITATION OF LIABILITY

1. (1) **Prospect360** shall not be liable for any claim arising from inappropriate or unauthorised use of the **direct marketing list**, including without limitation electronic communications, spamming, contraventions of data protection or privacy regulations.
2. (2) The information included in the **direct marketing list** is on the date of supply accurate to the best of the ability of **Prospect360**. Notwithstanding any terms of this **agreement**, **Prospect360** shall not be liable for any claim arising out of the performance, non-performance, delay in delivery of, or defect in the **direct marketing list**, nor for any special, indirect, economic or consequential loss or damage however so arising or however so caused (including loss of profit or revenue) whether from negligence, or otherwise in connection with the supply, functionality or use of the **direct marketing list** or any breach of this **agreement**.
3. (3) Any liability of **Prospect360** in respect of this **agreement** shall be limited to the value of the invoice or invoices raised by **Prospect360** against the **licensee** in respect to this **agreement**.
4. (4) The **direct marketing list** shall only be used in compliance with all legislation, including *inter alia* data protection, privacy, direct marketing, consumer protection, distance selling and advertising standards.

6. GENERAL

1. (1) The **direct marketing list** supplied by **Prospect360** shall only be processed while an **active usage license** for the **direct marketing list** from **Prospect360** concerned exists.
2. (2) The **controller** shall only process the **direct marketing list** or cause the **direct marketing list** to be processed by a third-party **processor** when that **processing** is governed by a written contract.
3. (3) The **controller** shall only process the **direct marketing list** or cause the **direct marketing list** to be processed by a third-party **processor** when that **processor** and

processing is located within the *EU* or in a *territory that provides an adequate level of protection under GDPR*.

6. GENERAL (continued)

4. (4) The *controller* shall ensure the *direct marketing list* is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful *processing* and against accidental loss, destruction or damage, using appropriate technical or organisational measures.
5. (5) *Prospect360* shall not be liable and shall not be held responsible for any costs as a result of changes in the volume of *data records* available. Estimates provided in any quotation provided by *Prospect360* are not binding upon *Prospect360*. *Prospect360* will make its best efforts to achieve the estimates.
6. (6) Where the *purchaser* and the *licensee* are not one and the same entity, by signing this *agreement* the *purchaser* warrants that the *licensee* has read, understood and agrees to be bound by the terms of this *agreement*. The *purchaser* shall not process the *direct marketing list* except to transmit the *direct marketing list* to the *licensee* or a *processor* as referred to in clause 4 (4) nominated by the *licensee* and shall expunge the *direct marketing list* immediately after successful onward transmission.
7. (7) The *licensee* shall prior to receiving a license to use the *direct marketing list* inform *Prospect360* of the intended products and services that the *direct marketing list* will be used to promote. *Prospect360* shall grant a license based upon the expressed usage being a *professionally relevant direct marketing* message for the data subject to receive. Any change to the products and services to be promoted must be approved in writing, by *Prospect360*, in advance of using the *direct marketing list* for new products or services.

7. COMPLIANCE

1. (1) All data derived from *data records* included in the *direct marketing list* including *inter alia* duplicates, copies, and other version of the *direct marketing list* shall be appropriately marked so the source of the data is identifiable and shall have an expiry date for usage of the *data record*.
2. (2) Where personal data elements of a *data record* are combined with data elements from other sources to form a composite record, the *licensee* shall ensure each personal data element can be identified, including its source, and removed or changed as required.
3. (3) *Prospect360* shall not be in any way responsible for *data records* or data elements or the usage of data elements or *data records* where the data elements or *data records* are sourced in whole in part from other sources.

8. UNAUTHORISED USAGE

(1) Unauthorised usage includes *inter alia* disclosure, transfer, resale, reuse, continued usage beyond the end of the *active usage license*, data capture or copying and modification in part or on whole.

8. UNAUTHORISED USAGE (continued)

2. (2) Where unauthorised usage is detected and confirmed upon investigation, the **licensee** shall be liable for a sum of ten times the original value of all invoices relating to this **agreement**. The value is payable immediately. Additionally, the **licensee** shall certify they have expunged all versions of the **direct marketing list** and all data derived from the **direct marketing list**, including versions held by **processors**.
3. (3) Where the **direct marketing list** has been resold **Prospect360** additionally reserve the right to seek legal redress and recoup costs and damages including legal costs, damages and punitive damages.
4. (4) Exercise of clauses 8 (2) and 8 (3) by **Prospect360** shall be without prejudice to other rights **Prospect360** may have and remedies it may seek.
5. (5) **Prospect360** reserves the right to inform the Information Commissioner's Office of unauthorised usage as a data breach notification.

9. QUALITY GUARANTEE

1. (1) **Prospect360** offer a 'two for one' replacement or refund policy on all Post Office marked gone-away **data records** and telephone verified gone-away **data records** and confirmed undeliverable email address **data records**. This guarantee shall only for up to thirty calendar days after the **direct marketing list** is supplied by **Prospect360** to the **licensee**.
2. (2) The guarantee shall be satisfied by replacing each gone away **data record** with two other valid, within target **data records** that do not already form part of the **direct marketing list**. Where there are insufficient valid, within target **data records** that do not already form part of the **direct marketing list**, **Prospect360** shall refund double the single **data record** cost as invoiced for each gone-away **data record**.
3. (3) **Prospect360** shall not be liable for direct or indirect loss, consequential loss or loss of profits suffered by the user of email addresses supplied by **Prospect360** for any reason whatsoever including *inter alia* non-connection or inaccurate data.

10. PAYMENT

1. (1) The **Prospect360** Order Form forms part of this **agreement**.
2. (2) Payment must be received by **Prospect360** within the terms agreed to on the **Prospect360** Order Form, or another written document agreed in advance by **Prospect360** and the **licensee**.
3. (3) Any query relating to an invoice must be made within seven calendar days of receipt of the invoice.
4. (4) Invoices not settled within terms referred to in clause 10 (2) will be subject to interest at the rate of 2% above the Bank of England Base Rate on a daily basis or 5% whichever is greater. In addition, where invoices are not settled within terms referred to in clause 10 (2) administrative and legal fees will be added to the outstanding amount where credit control and enforcement activities are undertaken.

11. END OF ACTIVE USAGE LICENSE TERM

(1) Upon expiry of the **active usage license** the **licensee** shall certify they have expunged all versions of the **direct marketing list** and all data derived from the **direct marketing list**, including versions held by **processors**.

12. DELIVERY

1. (1) The **direct marketing list** will be available to download from **Prospect360** within one working day of **Prospect360** receiving payment in full.
2. (2) Other payment and delivery arrangements may be agreed between **Prospect360** and the **licensee** in writing in advance.

13. CANCELLATION

1. (1) An order may be cancelled at any time prior to downloading the **direct marketing list**.
2. (2) The order can be cancelled by the **licensee** by notifying **Prospect360** prior to the **direct marketing list** being downloaded.
3. (3) Downloading of the data shall be demonstrated by **Prospect360** by reference to server logs and database entries.

14. SINGLE USE LICENSE

(1) The **licensee** shall be entitled to use the **direct marketing list** on one occasion only within 28 days of supply.

15. ROLLING LICENSE

1. (1) The **licensee** shall be entitled to use the **direct marketing list** for as long as an **active usage license** exists.
2. (2) The license may be cancelled at any time by either party with notice of one calendar month.
3. (3) **Prospect360** shall invoice for initial data creation, and monthly for the rolling license.
4. (4) **Prospect360** reserves the right to cancel any license immediately without notice if payment of the related invoice is overdue by more than one calendar month.
5. (5) The **controller** shall ensure the **direct marketing list** is accurate and kept up to date by synchronising the **direct marketing list** under their control with updates of the **direct marketing list** as provided from time to time by **Prospect360**.