

STANDARD TERMS AND CONDITIONS

Certain words used in the Agreement are defined in clause 32 of these terms and conditions (**Dictionary**). An expression defined in the Dictionary or elsewhere in the Agreement bears its defined meaning wherever it appears in the Agreement and other grammatical forms of the expression have corresponding meanings.

SUPPLY & USE OF MATERIALS AND SERVICES

1. Licence

1.1 PMM grants to the Client a non-exclusive and non-transferable licence to use the Licensed Materials for the Term (**Licence**).

1.2 Unless either party provides at least three months written notice prior to the end of the Term the Licence will be renewed for a further term, of the same duration as the Term, on the same terms and conditions, except that the Fees payable at the commencement of the renewed term will be the Fees payable at the end of the Term, but adjusted in accordance with clause 8.

2. Use Restrictions

2.1 The Client may only use the Licensed Materials for the Permitted Use and the Licensed Software must be used in accordance with the Documentation and any reasonable direction issued by PMM.

2.2 Subject only to any broader Permitted Use, the Client must use the Licensed Materials for its own marketing and internal operational purposes only and not for the marketing purposes or benefit of any third party. To remove doubt, the Client must not make any of the Licensed Materials available on any publicly-accessible sources, including unrestricted internet access.

2.3 The Client must ensure that access to and use of each part of the Licensed Materials is restricted to the relevant number of Licensed Seats.

2.4 The Client may use the Licensed Software only on the Designated Equipment at the Location unless PMM otherwise consents in writing.

2.5 The Client shall have no right of access to or use of the source code relating to the Licensed Software.

2.6 The Client must not use the Licensed Materials (including any maps or other geographic or urban infrastructure data generated or derived from the Licensed Materials) to:

- (a) manage any mobile asset (including vehicles, animals or portable devices);
- (b) manage land use, natural resources, environment, urban or enterprise facilities or any other fixed assets; or
- (c) calculate, generate or otherwise produce any geospatial coordinates or other data to be used with software or services other than the Licensed Software or Services,

and to the extent that the Client's Permitted Purpose or other restricted use rights above are inconsistent with the use restrictions contained in this clause 2.6, the use restrictions in this clause prevail.

2.7 If, for any Licensed Data, a maximum number of appended records is specified in the Schedule, the client must not, append data from the Licensed Data to more than the specified number of records in databases belonging to or obtained by the Client.

2.8 The Client may make so many copies of the Licensed Data as are necessary for the Permitted Use, and may make one copy of the Licensed Materials for back-up purposes (**Back-Up Copy**). Except as provided in this clause 2.8, the Client must not copy or otherwise reproduce the Licensed Materials. The Client must maintain records of all copies of the Licensed Materials made by it and the place at which such copies are kept and shall provide those records for inspection by PMM promptly upon request.

3. Supply of Materials, Services and Training

3.1 In supplying the Services and Training to the Client, PMM will:

- (a) perform the Services and Training to a professional standard and in accordance with any applicable requirements in the Schedule;
- (b) ensure that appropriately qualified Personnel undertake the performance of the Services and Training; and
- (c) use reasonable commercial efforts to perform the Services and Training in accordance with any estimated timetable, delivery date or response time set out in the Schedule.

3.2 PMM will, in a timely manner after its release to the market, deliver to the Client any revision or update of the Licensed Materials and any related updated Documentation made available during the Support Period.

3.3 The Client acknowledges that, subject to clauses 10 and 13, the Services will be available only during Business Hours.

3.4 PMM may make an additional charge to the Client at PMM's then current rates for any resupply of Services or Licensed Materials or any Services not detailed in the Schedule required for additional training of Personnel or for correction of errors caused by:

- (a) modification, revision or translation of the Licensed Materials not authorised by PMM;
- (b) use of computer programs other than the Licensed Software;
- (c) operator errors and incorrect use of the Licensed Materials;
- (d) faults in the Designated Equipment; or
- (e) the Client's failure to comply with the Agreement, either directly or indirectly.

4. Security and Control

4.1 The Client, for the Licensed Materials, and PMM, for any Client Data, shall at all times effect and maintain adequate security measures to safeguard them from unauthorised access or use.

4.2 PMM acknowledges that the Client may engage a third party to perform part of the Permitted Use on the Client's behalf and in such situations may permit access to the Licensed Materials by that third party or provide the third party with a copy of the Licensed Materials. In such circumstances:

- (a) the Client must notify PMM prior to providing the Licensed Materials, or access to them, to the third party;
- (b) the Client must ensure that the third party complies with the terms of the Agreement as if personally bound by it as the Client, and obtain from the third party such undertakings as PMM reasonably requires concerning the security and use of the Licensed Materials;
- (c) the Client acknowledges that it remains solely responsible for the use, supervision and control of the Licensed Materials; and

4.3 In no circumstances may either the Client permit the Licensed Materials, or PMM permit the Client Data, to be used or accessed in any location outside Australia without the prior written consent of the other party, such consent not to be unreasonably withheld.

4.4 Any consent under clause 4.3 is subject to the party receiving the consent retaining effective control over access to the relevant materials and ensuring that all persons having access to the materials are subject to privacy requirements at least equivalent to those accepted by the parties under clause 19.

4.5 The Client must notify PMM immediately upon becoming aware of any unauthorised use or copying of the whole or any part of the Licensed Materials and PMM must notify the Client immediately upon becoming aware of any unauthorised use or copying of the whole or any part of the Client Data.

4.6 Upon the expiration or termination of the Agreement, the Client shall, at its expense, but subject to clause 4.8:

- (a) deliver up to PMM the Licensed Materials (including all copies, authorised or otherwise) whether in their original form or modified; or
- (b) if requested by PMM, destroy the same and certify in writing to PMM that they have been destroyed.

4.7 PMM acknowledges that the Client Data is Confidential Information and is subject to the provisions of clause 20, including the obligation to return or destroy such data under clause 20.5.

4.8 If the Client, in using the Licensed Data combines it with or appends it to data from other sources, or if, in the performance of the Services, PMM appends data from its own sources to Client Data the resulting data set is **Combined Data**. The Client acknowledges that, if created by the Client, the Combined Data must be in a form which permits identification of the data derived from the Licensed Data, and that Combined Data is Licensed Data for the purposes of this agreement, but:

- (a) PMM may not use that part of the Combined Data which is derived from Client Data for any purpose other than for the provision of Services;
- (b) nothing in this agreement limits the Client's continued use of any Client Data which may form part of the Combined Data; and
- (c) the Client will not be obliged to destroy all copies of Combined Data or deliver them to PMM under clause 4.6, provided that, at the same time as it is obliged to deliver or destroy the Licensed Materials under clause 4.6, the Client must delete from all copies of the Combined Data any data that has been appended to the original Client Data by PMM in the performance of Services or by the Client in using the Licensed Data, subject to the Client performing such deletions, PMM acknowledges that it has no Intellectual Property Rights or other interest in the resulting data set.

5. Training

5.1 PMM will provide training on the practical operation of each of the Licensed Materials (**User Training**). If the Licensed Materials include:

- (a) Licensed Data, PMM will provide up to eight hours of User Training in each year of the Term (regardless of whether the Licensed Data may comprise more than one data set);
- (b) Micromarketer, PMM will provide up to thirty-two hours of User Training in the first year of the Term and up to sixteen hours of User Training in each subsequent year of the Support Period;

(c) Micromarketer Online, PMM will provide up to sixteen hours of User Training in the first year of the Term and up to eight hours of User Training in each subsequent year of the Support Period; and

(d) either Kaleidoscope Plus or Kaleidoscope Lite, PMM will provide up to two hours of User Training in the first year of the Term;

Any User Training arranged pursuant to this clause will be provided to a maximum of five of the Client's Personnel at any one session.

5.2 The Training will be provided on mutually convenient dates to be agreed between the parties. Each party will make all reasonable efforts to ensure that the first training takes place as soon as reasonably practicable after the Commencement Date (and if there is more than one Commencement Date the first occurring Commencement Date for the Licensed Materials).

5.3 The Client acknowledges that its Personnel attending the User Training will be familiar with the operation of the type of computer system on which the Licensed Materials are installed.

5.4 The Client must make its Personnel available on the agreed dates for the Training and, unless otherwise agreed in writing, must provide all of the facilities reasonably necessary for the performance of the Training. If a User Training session is cancelled by the Client with less than 24 hours' notice, the Client will forfeit the cancelled training hours from the Client's training hour quota for the relevant Licensed Materials.

5.5 The Client acknowledges that PMM may engage third parties to provide some or all of the Training. Notwithstanding any such engagement, PMM remains responsible for the delivery of the Training in accordance with the Agreement.

5.6 The Client is not obliged to use all of the Training hours to which it is entitled under clause 5.1, but any entitlement to Training which remains unused in the year in which it accrues to the Client will be forfeited.

6. Delivery and Installation of Software

6.1 PMM will use reasonable endeavours to deliver and install upon the Designated Equipment the Licensed Software so that it is available for use by the Client on the Commencement Date specified in the Schedule.

6.2 The Client shall give to PMM such assistance, including the provision of Personnel and equipment, as PMM reasonably requires for the installation of the Licensed Software.

6.3 The Client is responsible for procuring the Required Third Party Software and Designated Equipment prior to the Commencement Date. PMM makes no warranty in relation to, and accepts no responsibility for, the Required Third Party Software or Designated Equipment.

6.4 Without limiting clause 6.1, the Client acknowledges that PMM accepts no responsibility for the performance of the Licensed Software in circumstances where:

- (a) the Client fails to procure the Required Third Party Software, irrespective of whether or not PMM knew of that failure; or
- (b) the Designated Equipment is, in the reasonable opinion of PMM, inadequate for the proper operation of the Licensed Software.

6.5 The Client warrants that it will perform a thorough test before live operation of any Licensed Software installation.

PAYMENT

7. Fees and Payment

7.1 If the Client obtains PMM credit approval, the Client will pay PMM the Fees in full within 30 days of the date of PMM's invoice, which shall be a tax invoice. If the Client does not obtain PMM credit approval or is otherwise required to pay "up front", all PMM tax invoices must be paid immediately upon receipt by the Client.

7.2 If the Client fails to pay any invoice in full within the required time, PMM may refuse, without any liability to the Client:

- (a) to provide any further Services; and
- (b) to supply any Licensed Materials not yet supplied and that are the subject of the unpaid invoice.

7.3 PMM may charge interest on any overdue sum payable under the Agreement at the rate of 1.5% per month.

8. Adjustment of fees

The Fees will be adjusted on each anniversary of the Commencement Date in proportion to any change in the consumer price index (all groups, weighted average for all capital cities) in the 12 months immediately preceding the date on which the adjustment is made.

9. GST

The Fees are exclusive of GST. In addition to any Fees, the Client must pay to PMM, at the same time as the Fees, all applicable GST on the goods and services to which the Fees relate.

SPECIFIC PRODUCTS & SERVICES

10. Micromarketer Online

10.1 If the Services include Micromarketer Online then any data appended to the Client Data submitted by the Client to that Service is Licensed Data, any resulting data set incorporating both Client Data and Licensed Data is Combined Data for the purposes of clause 4.8, and the following provisions of this clause 10 apply to that data.

10.2 The Client must not remove any copyright or other statement of ownership appearing on any maps or geographic data generated by the Client in using Micromarketer Online.

10.3 PMM will make all reasonable commercial efforts to ensure that the Micromarketer Online Website is operational at all times, however the Client acknowledges that PMM cannot guarantee uninterrupted or continuous access to the Micromarketer Online Website, due to circumstances beyond the control of PMM (including ISP, Internet or communications link downtime and problems associated with the equipment or facilities used by Client to access the Micromarketer Online Website). The client further acknowledges that from time to time the Service will be inaccessible in order to permit maintenance of the Micromarketer Online Website, the underlying software or the equipment on which it is hosted to be carried out. PMM agrees to take all reasonable steps to minimise the inconvenience caused by any downtime wherever possible including notifying the Client of scheduled downtime.

10.4 The Client must format all data submitted to Micromarketer Online in accordance with the specifications as either published from time to time on the Micromarketer Online Website or as advised by PMM and accepts responsibility for all errors resulting from incorrect formatting.

10.5 The Client must keep secure the user ID and password used for access to Micromarketer Online (**Account Details**) and will be responsible for all access to and use of Micromarketer Online using its Account Details. If the Client becomes aware that a third party has obtained its Account Details, the Client must promptly notify PMM and PMM will cancel the existing Account Details and issue replacement Account Details at no charge..

10.6 While accessing the Micromarketer Online Website, the Client must not, whether by use of any automatic device, program or methodology, or any equivalent manual process:

- (a) access, acquire, copy or monitor any portion of the Micromarketer Online Website;
- (b) obtain any materials, documents or information through any means not purposely made available through the Micromarketer Online Website;
- (c) interfere with the operation of the Micromarketer Online Website;
- (d) scan or test the vulnerability of the Micromarketer Online Website or any network connected to it, nor breach its security or authentication measures or any network connected to the Website.

10.7 The Client acknowledges and agrees that:

- (a) the Client must use the Micromarketer Online Service for its own marketing and internal operational purposes only and not for the marketing purposes or benefit of any third party;
- (b) the Client will access the Micromarketer Online Website via the Internet, and unless otherwise agreed in writing by PMM, the Client shall be responsible (at its own cost) for providing its own facilities (including terminal, software to browse the Internet, modem and telecommunications facilities);
- (c) access to Micromarketer Online and the retrieval of any product of that Service is dependent upon the customer's Internet service provider and internet connection speed;
- (d) the Micromarketer Online Website is hosted on equipment controlled by PMM, PMM's agreement to allow access to the Client to Micromarketer Online does not entitle the Client to obtain a copy of the files comprising the Micromarketer Online Website or any underlying software; and
- (e) although PMM will use reasonable efforts to ensure that any Client Data stored on PMM's equipment in relation to its use of Micromarketer Online is kept secure, the Internet is an inherently unsecure network and PMM cannot guarantee the security of any data communications between the Client and PMM in relation to the Client's use of Micromarketer Online.

11. Prospect Data Rental

If the Services include Prospect Data Rental then the records provided to the Client as the output of Prospect Data Rental are Licensed Data and if the records are provided by means of appending Licensed Data to Client Data, then the data set supplied is also Combined Data for the purposes of clause 4.8, and the following provisions of this clause 11 apply to that data.

11.1 Clauses 1.2 and 3.2 will not apply to the Licensed Data supplied as output of Prospect Data Rental.

11.2 PMM may include in the Licensed Data a small proportion of seeded names and addresses to enable PMM to monitor usage of the Licensed Data.

11.3 The Licence granted under clause 1 permits the Client to use the Licensed Data only the number of times specified in the Schedule and during the Term specified in the Schedule. The Licence terminates with regard to all of the Licensed Data at the end of the Term regardless of whether all or any of the Licensed Data has been used by the Client.

11.4 PMM warrants that at least the Threshold Proportion of communications addressed to the contact details contained in the Licensed Data will be Deliverable.

11.5 For the purpose of clause 11.4:

- (a) for telephone numbers, Threshold Proportion means 80% and Deliverable means the number is valid and corresponds to the name and address with which it is associated; and
- (b) for postal addresses, Threshold Proportion means 96% and Deliverable means mail sent to that address is not returned as undeliverable.

11.6 The Client acknowledges that its sole remedy for a breach of the warranty provided under clause 11.4 will be a credit of the amount paid by the Client for the records in

excess of the Threshold Proportion which were not Deliverable, such credit to be redeemable solely against future purchases of Prospect Data Rental services.

- 11.7 The Client must claim any credit under clause 11.5 within 14 days or the end of the relevant Term, for a claim relating to telephone numbers or email addresses, or within 60 days of the end of the relevant Term, for a claim relating to postal addresses, and must provide to PMM a list in an electronic format reasonably specified by PMM detailing each record not Deliverable, and identifying:

- (a) the name of the addressee;
- (b) the telephone number or mailing address which is apparently incorrect;
- (c) the reason for the failure; and
- (d) the PMM URN for each record as notified to the Client by PMM at the time of delivery of the Licensed Data.

- 11.8 If the Client is claiming a credit under clause 11.5 for non-Deliverable postal addresses, the Client may, as an alternative to providing a list under clause 11.7, deliver to PMM all of the returned mail. If the Client chooses to provide a list in accordance with clause 11.7, the Client must keep all of the returned mail for a period of three months after the provision of the list to PMM and, if so requested, make available the envelopes for audit purposes.

- 11.9 The Client acknowledges that PMM makes no warranties concerning the proportion of email addresses that will be deliverable in the Licensed Data. If any email addresses provided are undeliverable due to incorrect formatting or due to the user name or domain name being unknown, the Client may, as its sole remedy, require PMM to provide additional email address records, up to a maximum of 10% of the total number of records ordered. The Client acknowledges that PMM may elect to supply such additional records at the same time as delivering the Licensed Data and that such additional records form part of the Licensed Data for all purposes other than calculating the Fees.

12. PSMA Data

- 12.1 If the Licensed Data include the PSMA Data then, in addition to any other obligations imposed under these terms and conditions:

- (a) The Client agrees that it will not make changes to the spatial coordinates of the PSMA Data.
- (b) The Client may not display or distribute (whether for consideration or not) the PSMA Data in vector format over an open electronic network (including the internet).
- (c) The Client acknowledges that the Rights Owners disclaim all non-excludable warranties in relation to the PSMA Data, make no representations as to the accuracy or completeness of the data and are not under any liability to the Client for any loss or damage (including consequential loss or damage) suffered by any person arising from the Client's use of the PSMA Data.
- (d) The Client must not make, distribute or sell paper copies of textual and/or graphic information produced through the use of the PSMA Data, except to the extent necessary for the Permitted Use.

13. Database Management

If the Services include the hosting by PMM of Client Data and the provision of remote access to that data (**Database Management**), then in addition to the other provisions of these terms and conditions, this clause 13 applies.

- 13.1 The Client acknowledges that PMM may engage a third party to provide the Database Management. If such a third party is engaged:

- (a) PMM must ensure that the third party complies with the terms of the Agreement with regard to the security of Client Data, confidentiality and privacy, as if personally bound by those obligations; and
- (b) PMM acknowledges that it remains solely responsible for the supervision and control of the Client Data.

- 13.2 PMM will make all reasonable commercial efforts to ensure that access to the Client Data is available at all times.

- 13.3 The Client is responsible for the security of any access codes, user names or other information used for access to the Database Management Service (**Access Details**) and PMM will have no liability to the Client for any breach of its obligations in relation to the security and confidentiality of the Client Data if such breach arises due to a third party obtaining Access Details from the Client. If the Client becomes aware that a third party has obtained its Access Details, the Client must promptly notify PMM and PMM will cancel the existing Access Details and issue the Client with replacement Access Details at no charge.

14. Do Not Call Register

- 14.1 PMM at the Client's request may wash the Client's telephone numbers against the Do Not Call Register in accordance with the procedures set out in the Do Not Call Register Act 2006. PMM will use reasonable endeavours to have the clients telephone numbers washed on a certain date.

- 14.2 PMM will follow the ACMA approved process for telephone number data washing. PMM cannot guarantee the accuracy of the ACMA approved process.

- 14.3 PMM in undertaking the data washing may not include in the numbers to be washed, those numbers that are known to PMM as have been previously flagged as a number on the Do Not Call Register. These numbers that are known to be flagged will be provided to the client as a flagged number.

- 14.4 PMM will inform the client of the date on which the numbers were washed. PMM has no responsibility for the accuracy of the washed telephone list after that date that it has been provided.

- 14.5 PMM will charge the fee set out in Item 5 in the Schedule of Services for undertaking this Service.

GENERAL TERMS

15. Risk

Risk in the Licensed Materials passes to the Client on their delivery to the Client.

16. Intellectual Property Rights

- 16.1 The Client acknowledges that it has no, and will not assert any, Intellectual Property Rights in the Licensed Materials, apart from the rights granted under the Licence, and that title to the Licensed Materials remains vested in the relevant Rights Owner. The Client must not remove or alter any copyright or other ownership statements appearing on any of the Licensed Materials (including if any of those Materials are reproduced).

- 16.2 The Client may not directly or indirectly modify, adapt, translate, reverse engineer, disassemble, assemble, compile, decompile or create derivative works based on the Licensed Software or allow a third party to do any of those things.

- 16.3 The Client acknowledges that no new Intellectual Property Rights will arise in any data set as a result of the thinning, reduction, or manipulation of the Licensed Data.

- 16.4 PMM warrants in relation to the Licensed Materials that in Australia:

- (a) it is the Rights Owner or is entitled under an agreement with the Rights Owner to grant the Licence;
- (b) it is the owner or licensee of all Intellectual Property Rights necessary to perform the Services; and
- (c) it has the right to enter the Agreement.

- 16.5 The Client warrants that it is the owner of all Intellectual Property Rights in the Client Data and the use by PMM of the Client Data in performance of the Agreement will not infringe the Intellectual Property Rights of any third party or cause PMM to breach any provision of the Agreement, including clause 19.

- 16.6 PMM warrants that the Licensed Materials and the Client warrants that the Client Data:

- (a) do not contain any trojan horse, worm, password breaker, virus or packet observer;
- (b) they have taken all reasonable precautions, including installing appropriate firewalls and anti-virus programs, to protect the Licensed Materials and Client Data and their own businesses against the introduction of a trojan horse, worm, password breaker, virus or packet observer by a third party.

17. Indemnities

- 17.1 The Client indemnifies and must keep indemnified PMM and its Personnel against all claims, liabilities, expenses, losses, damages and costs incurred by them arising out of the use by the Client of the Services or the Licensed Materials in breach of the Agreement or out of the use of the Licensed Materials by any third party to whom the Client has provided access under clause 4.2.

- 17.2 Subject to clause 17.3, PMM indemnifies and must keep indemnified the Client and its Personnel against all claims, liabilities, expenses, losses, damages and costs reasonably incurred by them which arise as a direct result of any claim that the Licensed Materials infringe the Intellectual Property rights of any third party (**Claim**).

- 17.3 PMM will not be liable under clause 17.2 if:

- (a) the Client fails to notify PMM of the Claim within 14 days of becoming aware of it;
- (b) PMM's ability to defend the Claim has been materially prejudiced by the Client's non-compliance with the Agreement;
- (c) the Claim has arisen directly or indirectly because of the misuse or modification of the Licensed Materials by the Client or its Personnel or the use of the Licensed Materials in combination with equipment, materials or software not supplied or approved by PMM;
- (d) the Client has failed to apply any correction, update or enhancement made available by PMM; or
- (e) the Claim has arisen directly or indirectly because of PMM's compliance with the Client's directions.

18. Limitation of liability

- 18.1 The Client acknowledges and agrees that:

- (a) except to the extent expressly stated in the Schedule, PMM does not guarantee that the Services or Licensed Materials will achieve any particular outcome;
- (b) it has determined that the Licensed Materials and Services are fit for its purpose; and
- (c) the exclusions and limitations in this clause 18 are customary for supply of products and services equivalent to the Licensed Materials and Services and are fair and reasonable given the nature of the Licensed Materials and Services and the Fees charged for them.

- 18.2 PMM excludes all legislated guarantees and implied conditions and warranties except any legislated guarantee, implied condition or warranty the exclusion of which would contravene any statute or cause any part of these terms and conditions to be void (**Non-excludable guarantee**).

- 18.3 To the extent permitted by law, PMM's liability to the Client arising out of or in connection with the Agreement, whether in contract, tort (including negligence), pursuant to statute, breach of a Non-excludable guarantee or otherwise is limited, at PMM's option, to:

- (a) refunding the Fees paid by the Client for the Licensed Materials and/or Services in respect of which the liability arose; or

- (b) providing, replacing or repairing those Licensed Materials and/or providing those Services again.
- 18.4 Except for liability for breach of any Non-excludable guarantee and to the extent permitted by law, in no event shall PMM be liable under or in connection with the Agreement (whether arising in contract, tort (including negligence), pursuant to statute or otherwise) for the Client's loss of use, production, profit, revenue or data, or for the Client's consequential or indirect loss or damage.
- 19. Privacy**
- 19.1 The Client, in using the Licensed Materials and PMM, in the performance of the Services and the supply of the Licensed Materials, agree to:
- (a) comply with all laws relating to the collection, storage, use and disclosure of the Licensed Data;
- (b) comply with the National Privacy Principles and the *Privacy Act 1988* (Cth) as if they were both "organisations" for the purpose of that act;
- (c) comply with the Australian Direct Marketing Association Code of Practice; and
- (d) to destroy or de-identify all Personal Information obtained in relation to the provision of the Services at the later of either the expiration or termination of the Agreement, or three months from the date of completion of any work under the Agreement.
- 19.2 The Client agrees to:
- (a) comply with any directions of PMM which are reasonably necessary for compliance with the provisions of this clause 19;
- (b) promptly advise PMM of any complaints relating to breaches of privacy, and of any requests for access to Personal Information received by the Client;
- (c) unless otherwise agreed, manage its own opt-out and consumer handling obligations; and
- (d) submit to PMM a copy of any direct marketing materials, whether in the form of printed materials, electronic communications or telephone script, which the Client proposes to use in connection with the Licensed Data obtained through Prospect Data Rental for approval by PMM.
- 19.3 The Client must not use any materials submitted to PMM under clause 19.2(d) prior to the receipt of PMM's approval. Such approval will not be withheld unless, in the reasonable opinion of PMM, the use of the submitted materials would cause either the Client or PMM to breach their obligations under the Agreement.
- 19.4 PMM warrants that the use within Australia for the Permitted Use of any Personal Information which forms part of the Licensed Data and which is obtained from publicly available sources is consistent with applicable legislation.
- 19.5 The Client acknowledges that PMM may use the Client Data to the extent authorised by the *Privacy Act*, but only to the extent so authorised, for the purpose of PMM meeting its obligations under National Privacy Principle 3 (Data Quality) in respect of its own data.
- 20. Confidentiality**
- Each party agrees that:
- 20.1 it will only disclose the Confidential Information of the other party to those of its Personnel who require access to it for the performance of the Agreement;
- 20.2 it and its Personnel will only use of any Confidential Information of the other party for a purpose provided for under the Agreement;
- 20.3 it and its Personnel will guard against the direct or indirect disclosure of the Confidential Information of the other party to any third person;
- 20.4 it will not make or permit to be made any copies of any Confidential Information of the other party, in whole or in part, nor will it enter the Confidential Information of the other party into any database or other electronic storage system, except as expressly permitted under the Agreement;
- 20.5 it will return all documents and other materials containing or relating to Confidential Information and will destroy all Confidential Information of the other party held in databases or in other machine-readable form either immediately on receipt of a request from the other party or otherwise within 3 months of the information no longer being required.
- 21. Disclosure of Agreement**
- The Client acknowledges that, notwithstanding clause 20, PMM may identify the Client as its customer and use the Client's name and corporate logo in any promotional or marketing material, provided that PMM obtains the Client's written consent, such consent not to be unreasonably withheld.
- 22. Termination**
- 22.1 Either party (**Terminating Party**) may terminate the Agreement by written notice to the other if the other party:
- (a) commits a breach of the Agreement which is incapable of remedy or fails to remedy a breach of the Agreement within seven (7) days after notice requiring it to do so;
- (b) ceases to be able to pay its debts as they fall due or becomes the subject of any form of financial administration or insolvency;
- 22.2 PMM reserves the right to terminate the Licence if any agreement between PMM and a Rights Owner under which PMM is entitled to use or sub-licence the Licensed Materials, or any part of them, is terminated.
- 22.3 If the Licence is terminated prior to its expiry date by PMM under clause 20.2, provided that the Client has complied with clause 4.6 and is not in breach of the Agreement, or any other agreement with PMM relating to the use of the Licensed Data, PMM will refund to the Client on a pro rata basis the amount of any Fee paid by the Client for the period between the date of termination and the end of the Term.

- The Client acknowledges that the refund of Fees under this clause 22.3 is its sole remedy for the termination of the Agreement by PMM under clause 22.2.
- 22.4 Except as specifically provided in clause 22.3, nothing in this clause 22 limits or affects any other remedy which may be available to the Terminating Party or any accrued rights or liabilities of either party.
- 23. Audit and Inspection**
- Subject to the provision by PMM of reasonable notice, the Client must allow PMM and any person(s) authorised by PMM, access to the Client's premises, both during the Term and for a period of six months after the termination or expiry of the Agreement, to inspect the records maintained by the Client in connection with the Agreement and the data then held by the Client, for the purpose of enabling PMM to verify the Client's compliance with the requirements of the Agreement. The Client must, at its cost, provide such co-operation and assistance as PMM reasonably requires in relation to the performance of any inspection under this clause 23.
- 24. Force Majeure**
- Neither party will be liable for any failure or delay in the performance of its obligations under the Agreement (other than an obligation to pay money) if that failure or delay is due to circumstances beyond its reasonable control including, but not limited to, unavailability of equipment or other materials, natural disasters, Government restrictions, wars, insurrections, industrial action, or disruption to power supplies or communications systems (**Force Majeure Event**). If a failure or delay in performance arising due to a Force Majeure Event exceeds 60 days, either party may immediately terminate the Agreement by written notice to the other party.
- 25. Entire Agreement**
- 25.1 The Agreement (including all documents referred to or incorporated in the Agreement) constitutes the entire agreement of the parties in relation to the supply of the Services and the Licensed Materials and supersedes any previous understandings or agreements in relation to the supply of the Services and the Licensed Materials.
- 25.2 The Client acknowledges that in deciding to enter into the Agreement, it has not relied on any representation made by PMM (including, to avoid doubt, any written, oral or electronic specifications, diagrams or other materials) or conduct engaged in by PMM or any person on behalf of PMM, other than as expressly referred to in the Agreement.
- 26. Jurisdiction**
- Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria and courts entitled to hear appeals from the courts of that state in respect of all proceedings arising out of or in relation to the Agreement.
- 27. Assignment**
- Neither party may assign or otherwise deal with its rights or obligations under the Agreement without the prior written consent of the other party.
- 28. Severance**
- If part or all of any provision of these terms and conditions or its application to any person or circumstance is illegal or unenforceable, the provision will be read down to such extent as may be necessary to ensure that it is not illegal or unenforceable. If any provision or part of it cannot be so read down, the provision or part of it will be severed from these terms and conditions and the remaining provisions of these terms and conditions continue in force.
- 29. Priority and Inconsistency**
- The Special Conditions form part of the Agreement and if there is any inconsistency between the Special Conditions and these terms and conditions, then the Special Conditions will prevail to the extent of the inconsistency.
- 30. Commissions**
- (a) The Client acknowledges that the Fees may include any commission, fees, rebates or other remuneration or benefits (**Rewards**) payable to any broker, agent, dealer or other person who introduces you to us. The Client also acknowledges that PMM may receive Rewards for introducing the Client to another person for any purpose relating to the provision of the Licensed Materials or Services.
- (b) If PMM has agreed to supply the Licensed Materials or Services to the Client where those Licensed Materials or Services are for the benefit of another person (**End Customer**), the Client must make all necessary disclosures to the End Customer in relation to any Rewards exchanged between PMM and the Client so as to comply with all applicable laws. To the extent that the Client acts or purports to act on behalf of an End Customer in any way, the Client warrants that it holds all necessary authority from that End Customer to do so.
- 31. Public Representations**
- The client must not publicly represent the source, nature or content of the Licensed Materials or the Services without PMM's prior consent.
- 32. Dictionary**
- In these terms and conditions, unless the context requires otherwise, the following words have the following meanings:
- Agreement** means the agreement comprised of the Licence and Services Agreement to which these terms and conditions are annexed and the Schedule.
- Business Day** means a day, not being a Saturday, Sunday or public holiday gazetted as such in the State of Victoria.
- Business Hours** means 9.00am to 5.00pm AEST on Business Days.
- Client Data** means all data relating to the Client and its operations, personnel, products and customers which is made available to PMM for the performance of the Services.

Commencement Date means, for each of the Licensed Materials, either the date specified in the Schedule or the date the relevant Licensed Materials are supplied to the Client, whichever is the later, and for Services, the date of this agreement.

Confidential Information means information of either party (**Owner**) that is provided to or becomes known to the other party (**Recipient**) in the performance of the Agreement that is by its nature confidential, is designated by its Owner as confidential or the Recipient knows or ought to know is confidential, provided that it is not information in the public domain when it is provided to or obtained by the Recipient or which, after it is provided to or obtained by the Recipient, enters the public domain other than through a breach by the Recipient of the Agreement, nor is it information which the Recipient is required to disclose by law.

Designated Equipment means the computer equipment nominated by the Client for installation of the Licensed Software, and which must comply with the Specification.

Documentation means the user manual or other instructions or information concerning the use of the Licensed Software, as provided to the Client by PMM from time to time.

Fees means, for each of the Licensed Materials and each Service, the fee payable for those Licensed Materials or that Service as specified at Item 5 of the Schedule.

GST has the same meaning as in section 195.1 of the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Intellectual Property Rights means all intellectual property rights including copyright, trade marks, trade secrets, know how and confidential information, and any application or right to apply for registration of any such rights.

Licence is defined in clause 1.

Licensed Data means the data set(s) identified at Item 2 of the Schedule and data supplied by PMM in the performance of the Micromarketer Online or Prospect Data Rental Services.

Licensed Materials means the Licensed Data and the Licensed Software.

Licensed Seats means, for each of the Licensed Materials, the number of seats specified in the Schedule. For the PSMA Data, each computer, whether stand alone or networked, which has access to the PSMA Data, counts as one Licensed Seat. For all other Licensed Materials, each computer, whether stand alone or networked which has concurrent access to the Licensed Materials is one Licensed Seat.

Licensed Software means the software identified at Item 3 of the Schedule.

Location means the location specified in the Schedule for the relevant Licensed Software.

Micromarketer means the Licensed Software, Micromarketer Generation 3 (MMG3), as may be particularised in Item 3 of the Schedule.

Micromarketer Online means the web based tool provided via the Micromarketer Online Website which provides tools for the geodemographic analysis of customer data or geographic regions.

Micromarketer Online Website means the website and content maintained by PMM at the domain www.micromarketeronline.com.au.

Permitted Use means the use identified at Item 6 of the Schedule or if no such use is specified, the use described in clause 2.2 above.

Personal Information bears its meaning as defined in the *Privacy Act 1988* (Cth).

Personnel includes a party's employees, directors, agents and contractors.

Prospect Data Rental means the Service of preparing a data set according to criteria specified by the Client and the provision of that data to the Client, subject to a licence permitting its use for a specified period and/or a specified number of times.

PSMA means PSMA Australia Limited (ABN 23 089 912 710).

PSMA Data means the Geocoded National Address File (G-NAF) as compiled by PSMA.

Required Third Party Software means any software notified by PMM to the Client as being necessary for the use of Licensed Materials or delivery of the Services.

Rights Owner means the owner of the Intellectual Property Rights in the Licensed Materials, and specifically in relation to:

- (a) the PSMA Data, means PSMA and the mapping agencies of each State, Territory and Commonwealth Government of Australia;
- (b) the iMarketer and IMS software, means Alterian Technology Ltd;
- (c) the Mosaic classification of Australia and Mosaic Factor Scores, means PMM and Experian Asia Pacific Pty Ltd, jointly;
- (d) Micromarketer, Mosaic Selector, and Mosaic Multimedia Support, means Experian Asia Pacific Pty Ltd;
- (e) Kaleidoscope Plus, means Capscan Limited;
- (f) Kaleidoscope Lite, means PMM and Complete Micro Solutions Pty Ltd (ACN 055 500 925) trading as Direct Marketing Software, jointly;
- (g) all other Licensed Materials, means PMM.

Schedule means the schedule to the Licence and Services Agreement to which these terms and conditions are annexed.

Services means the services specified at Item 4 of the Schedule.

Special Conditions means any terms identified in the Schedule as special conditions.

Specification means the required specification of the Designated Equipment (if any) as notified to the Client by PMM on or before the date of the Agreement.

Support Period means, for each of the Licensed Materials, the Term.

Term means, for each of the Licensed Materials and Services, the period specified in the Schedule, or in the absence of any specified period, 12 months, commencing on the Commencement Date.

Training means, for each of the Licensed Materials the training specified in clause 5.

URN means unique reference number.

33. Interpretation

In these terms and conditions, unless the contrary intention appears:

- 33.1 headings are for ease of reference only and do not affect the meaning of these terms and conditions;
- 33.2 the singular includes the plural and vice versa and words importing a gender include other genders;
- 33.3 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 33.4 words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local authorities and agencies;
- 33.5 a reference to any statute or other legislation is to a statute or other legislation as amended or replaced from time to time; and
- 33.6 "including" is not, and should not be read as, a term of limitation.