

# Transactis' Standard Terms and Conditions

Last updated: 3<sup>rd</sup> June 2021

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these TRANSACTIS Standard Terms and Conditions and the Order Confirmation unless the context shall otherwise require the following words and expressions shall have these meanings assigned to them:

**Act** means as relevant the Data Protection Act 2018, the UK General Data Protection Regulation ("UK GDPR") and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as well as any amendments or replacements thereof, including any legislation implementing EC Directives 67/66/EC and 2002/58/EC).

**Applicable Regulations** means those provisions of any Act together with all Codes of Practice applicable from time to time in relation to the handling, processing, provision and use of data for direct marketing purposes pursuant to the Agreement or any Order Confirmation;

**Agreement** means these TRANSACTIS Standard Terms and Conditions and any associated Order Confirmation including where relevant any Term Supply Agreement, Data Processing Agreement, standard contractual clauses, binding corporate rules, non-disclosure agreement or variation;

**Codes of Practice** means best practice guidelines issued from time to time by any regulator or regulators in relation to the Act.

**Confidential Information** means any information, data or know-how including but not limited to that which relates to (in the case of TRANSACTIS any TRANSACTIS database or databases or extracts from any of them or to any part or parts of any TRANSACTIS database or databases and all TRANSACTIS Data), research, plans, ideas, products, services, customers, markets, software developments, inventions,

processes, designs, drawings, statistics, marketing or finances, or other business or technical information which is treated confidentially. Confidential Information does not include information that:

- is in the possession of the receiving Party at the time of the disclosure;
- becomes public knowledge without any action of either Party;
- was independently developed or prepared by either Party; or
- is required to be disclosed by law or by any regulator to whose regulation the disclosing Party is subject.

**Contact Channel** means the media channel or channels permitted for use in respect of TRANSACTIS Data supplied which will be via Post.

**Control** means control as defined in section 840 of the Income and Corporation Taxes Act 1988;

**Customer** means the Party or Parties to the Agreement other than TRANSACTIS;

**Data Controller, Data Processor and Data Subject** shall all have the meanings attributed to them under Article 4 of the UK GDPR.

**Data Owner** means TRANSACTIS Members;

**TRANSACTIS** means Transactis 2017 Limited, Company No. 10850674, with its registered office located at Green Heys, Walford Road, Ross on Wye, HR9 5DB;

**TRANSACTIS Data** means data as more particularly described in the Order Confirmation;

---

Transactis 2017 Limited

Sunningdale, The Belfry Business Park, 13 Colonial Way, Watford, Hertfordshire, WD24 4WH.

T:+44(0)1923 281 700

Registered in England :10850674 | Registered Address: Green Heys, Walford Road, Ross On Wye, Herefordshire, HR9 5DB.

**TRANSACTIS Standard Terms and Conditions** means these terms and conditions;

**Data Processing Agreement** means an agreement put in place to ensure a Processor shall be governed by a contract or other legal act that is binding on the Processor with regard to the Controller and sets out the subject matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of Data Subjects and the obligations and rights of the Controller as defined in Article 29 (3) of the UK GDPR;

**End User** means as relevant the Customer and/or the third party specified in the Order Confirmation that is acquiring or being granted or is permitted to acquire or be granted the right to have an End User Licence to use or broker TRANSACTIS Data;

**End User Licence** means the non-exclusive temporary and restricted licence granted to the End User to use TRANSACTIS Data subject to the terms of the Agreement including but not limited to the Licence Terms and the terms of the Order Confirmation;

**Enquirer** means either a) an individual who during the course of a postal campaign responds to the End User by expressing purchasing interest in the specific offer of the campaign for which TRANSACTIS Data has been provided, with a firm intention to purchase;

**Intellectual Property Rights** means in respect of all TRANSACTIS Data, all and any copyrights, database rights, design rights, topography rights, trade marks, trade names, rights in respect of passing off, inventions, patents, know how, confidential information and ideas, subsisting in all and any of the countries of the world and applications for protections available in respect thereof or any of them in all and any countries of the world;

**Legal Basis** means the basis on which Personal Data may be processed as defined under Article 6 of the UK GDPR. Data will be supplied by

TRANSACTIS on the basis of the Legitimate Interest of the Data Owner for Postal campaigns where the Data Subject has not objected to processing by registering with the Mailing Preference Service ("MPS") unless the Data Subject has given a clear indication of their wish to receive direct marketing from the End User in which case data will be supplied on the basis of consent;

**Licence Period** means the period during which time the End User may make use of the TRANSACTIS Data concerned;

**Licence Terms** means together the specific terms of the End User Licence listed on the Order Confirmation which terms shall include but not be limited to the Contact Channel, Usage Terms and Licence Period;

**Mailing Piece/Creative** means promotional material which the End User may intend to communicate to individuals whose details are contained in the TRANSACTIS Data;

**Names** mean the names of individuals whose details are contained in the TRANSACTIS Data;

**Net Names** means that the End User may be eligible for a percentage rebate for verified duplication of individuals within TRANSACTIS Data and the End User's other data files. The percentage shown is the absolute minimum number of individuals that an End User will pay for;

**Order Confirmation** means an order confirmation emanating from TRANSACTIS to the End User granting an End User Licence for the End User to make use of TRANSACTIS Data;

**Output** means an upload from TRANSACTIS of TRANSACTIS Data to specified SFTP account for the Customer;

**Party** means either TRANSACTIS or the End User;

**Personal Data** means the personal data (as that term is defined in the Act, contained in the TRANSACTIS Data;

**Post** means the Contact Channel of mailing;

**Purchaser** means an individual who purchases from the End User a specific product or service (which can be evidenced by a contract) promoted to the consumer through a mailing piece in which TRANSACTIS Data has been provided;

**Purpose** means the purpose of supplying TRANSACTIS Data pursuant to the Agreement or any Order Confirmation which unless stated otherwise in the Order Confirmation is as a source for Direct Marketing;

**Rental Fee** means the amount payable by an End User for use of TRANSACTIS Data calculated and specified on the Order Confirmation as a cost per thousand;

**Run-On Costs** means the amount charged for Names deemed to have been classified as part of the allowable Net Names;

**Seed Names** means as relevant security names and postal addresses included in each Output of TRANSACTIS Data which inclusion monitors the timing of delivery of TRANSACTIS Data, the terms of the Agreement and the usage of TRANSACTIS Data in compliance with the Agreement.

**Software** means a secure file transfer protocol, a protocol used to transfer files between a PC and an embedded device using RS-232 or any other similar secure protocols which allows an End User to download TRANSACTIS Data;

**Term Supply Agreement** means any agreement entitled Term Supply Agreement between TRANSACTIS and the Customer;

**Usage Terms** means the number of times as specified on the Order Confirmation that the End User is permitted to contact Names;

**Volume** means the number of Names to be supplied in the Order Confirmation;

1.2 TRANSACTIS has the right to revise and amend these Terms and Conditions from time to

time as published on [www.Transactis.co.uk](http://www.Transactis.co.uk). The End User will be subject to the policies and terms in force at the time that the End User orders the TRANSACTIS Data as evidenced by the Order Confirmation, but subject to (and to the extent of) any changes therein as may from time to time be required by law or regulatory authority.

## 2. GRANT OF LICENCE AND DATA SUPPLY

2.1 The End Client will assume the role and responsibility of Data Controller as defined by the Article 4 Clause 7 of the UK General Data Protection Regulation (UK GDPR) for all TRANSACTIS Data transferred to the End Client, or by request from the End Client, to its Processor's, Sub-Processor's, Agents, Affiliates or Officers and will;

2.1.1 abide by the Applicable Regulations including but not limited to the Data Protection Act 2018, the UK General Data Protection Regulation and the Privacy and Electronic Communications (EC Directive) Regulations 2013;

2.1.2 ensure that, all Processor's of TRANSACTIS Data, appointed by the End Client shall be subject to a Data Processor Agreement highlighting the roles and responsibilities of the Data Processor.

2.1.3 sign a Data Processing Agreement, which will be supplied by TRANSACTIS, if TRANSACTIS specifically appoints the End Client to act as a Data Processor.

2.2 Subject to the terms of the Agreement TRANSACTIS hereby grants the End User an End User Licence under Licence Terms as prescribed in the Agreement to use TRANSACTIS Data solely for the Purpose.

2.3 End User shall have the right in accordance with the Licence Terms and the Agreement only to use the TRANSACTIS Data concerned but without limitation not to copy, alter, manipulate, adapt or license others to use TRANSACTIS Data.

2.4 End User warrants that any TRANSACTIS Data shall not be used for the purposes of data enhancement or used for combining with the End User's or another third party's data unless as otherwise specified in the Order Confirmation and then only to that extent.

2.5 End User alone will be permitted to extract information from the TRANSACTIS Data and to print it in documentary form on condition only that:

2.5.1 any documents produced in this way and any copies of such documents will be retained in the possession of End User; and:

2.5.2 neither the electronic form nor any information extracted, nor any printed copies or parts of printed copies shall be passed on, disclosed or otherwise communicated to any third party; and:

2.5.3 TRANSACTIS Data held in electronic form is deleted and any copies of it destroyed within twelve weeks from the date of Output.

2.6 The Usage Terms for the TRANSACTIS Data concerned shall be for one time only unless stated otherwise in the Order Confirmation.

2.7 The Licence Terms for use of Post, permit the despatch by the End User of one Mailing Piece/Creative to each Name supplied, unless stated otherwise in the Order Confirmation.

2.8 Individuals provided in the TRANSACTIS Data concerned who do not become either an Enquirer or a Purchaser immediately following the execution of the campaign as permitted in this Agreement, may only be contacted again by the End User if and to the extent that the Licence Terms permit repeat contact unless the Data Subject has provided their consent to the End User for further communication;

2.9 Contact details of an Enquirer may be retained by the End User for a period of no more than ninety days following initial first contact via the campaign as permitted under the terms of the Agreement, unless the Data Subject has

provided their consent to the End User for further communication, provided that:

2.9.1 This period of retention is permitted solely to allow the End User a reasonable time to convert an Enquirer into a Purchaser;

2.9.2 No further contact of any kind may be made by the End User after the permitted ninety day period of retention unless the Enquirer has become a Purchaser or has provided their consent for further communication by the End User;

2.10 The End User Licence is terminated immediately the TRANSACTIS Data concerned has been used under the Licence Terms as stated in the Order Confirmation. Following such termination of the End User Licence any question as to the extent of contact pursuant to unauthorised use of the TRANSACTIS Data comprised in any Output concerned shall for all purposes be determined conclusively as follows:

2.10.1 Seed Names contacted will be taken to have been contacted by the Customer irrespective of how and by whom such contact has been made;

2.10.2 each unauthorised contact with a Seed Name will evidence unauthorised contact also with such proportion of the TRANSACTIS Data to which the Order Confirmation relates as is equal to the fraction ("the Specified Fraction") that the contacted Seed Name bears to all of the Seed Names included within such TRANSACTIS Data, so that for example each unauthorised contact made with a Seed Name where a total of five Seed Names shall have been included within the TRANSACTIS Data concerned shall mean that one fifth of all of the TRANSACTIS Data to which the Order Confirmation relates shall have been contacted without authorisation; and

2.10.3 the written certificate by a director of TRANSACTIS as to the number of Seed Names included within the TRANSACTIS Data concerned shall be conclusive and binding on the Customer and on TRANSACTIS.

2.11 The Licence Period is a maximum of eight weeks from the date of Output. No use of the TRANSACTIS Data concerned after the expiry of the Licence Period is permitted.

2.12 Upon each occasion of unauthorised contact with a Seed Name the Customer will pay to TRANSACTIS on TRANSACTIS' first written demand such sum as shall be equal to the Specified Fraction of the entire value of the Order Confirmation concerned. The Parties each agree, warrant, represent and acknowledge that payment of such sum for each such unauthorised contact represents genuine pre-estimate of TRANSACTIS' loss since:

2.12.1 establishing the extent of use of the TRANSACTIS Data concerned by reference to contact with Seed Names represents the only practicable method of monitoring the use of the TRANSACTIS Data concerned;

2.12.2 the number of Seed Names included within the TRANSACTIS Data concerned is necessarily limited so as to preserve for the mutual benefit of both Parties the value of the TRANSACTIS Data concerned;

2.12.3 the market for usage of data is a volume market such that contact with Seed Names is deemed, and/or conclusively presumed, for economic and statistical reasons to be done only in conjunction with proportionate contact with the rest of the TRANSACTIS Data concerned;

2.12.4 the value attributable to each use of the TRANSACTIS Data concerned is fairly demonstrated and established between TRANSACTIS and the Customer by proportionate reference to the amount payable by the Customer originally pursuant to the Order Confirmation for lawful use; and

2.12.5 accordingly that the appropriate recompense for TRANSACTIS's loss in respect of each occasion of unauthorised contact with the TRANSACTIS Data concerned is that TRANSACTIS should be paid by the Customer a sum equal to the Specified Fraction of the amount payable in respect of the TRANSACTIS

Data concerned for lawful use as set out in the Order Confirmation.

2.13 The End User accepts that TRANSACTIS Data may contain goneaways, deceased's, dead and wrong numbers, e-mail bouncebacks and inaccuracies.

2.14 The End User accepts that no guarantees are offered for response or contact through the Contact Channel in respect of TRANSACTIS Data.

2.15 TRANSACTIS will deliver TRANSACTIS Data to the address specified in the Order Confirmation.

2.16 Once a delivery date of an Output has been agreed the End User:

2.16.1 acknowledges that such date shall be indicative only;

2.16.2 agrees that TRANSACTIS shall not be liable for any loss or damage suffered by End User as a result of late delivery of TRANSACTIS Data;

2.16.3 agrees that whilst TRANSACTIS shall make every effort to complete the Output within the time quoted, time shall not be of the essence of the Output.

2.16.4 agrees to receive the Output of TRANSACTIS Data, return any TRANSACTIS Data or send any other data owned by the End User to TRANSACTIS by the Software.

2.16.5 TRANSACTIS will not be liable for any direct or indirect loss, damage or inconvenience whatsoever caused by use of the Software.

2.17 The End User shall comply at all times with clause 7.

2.18 TRANSACTIS reserves the right to grant licences in respect of TRANSACTIS Data to any other party or parties.

### **3. CALCULATION AND PAYMENT OF FEES**



3.1 Subject to the minimum payment to be paid as specified in the Order Confirmation the Rental Fee will be calculated by reference to the Volume and will be charged per thousand at the rates set out in the Order Confirmation.

3.2 In the event that TRANSACTIS agrees to Net Names and the supply of TRANSACTIS Data for the purpose of de-duplication against other data held by the End User and on the basis that the End User shall only pay a proportion of the price reflecting the Net Names actually used any claim for credit for the unused portion of the TRANSACTIS Data:

3.2.1 must be made within a period not exceeding three months from the date of Output;

3.2.2 must be supported by a de-duplication report from a recognised data processing bureau approved by TRANSACTIS. Certificates produced by the End User will not be accepted as proof of valid Net Names;

3.2.3 will have Run-On Costs applied to all approved Net Names.

3.3 On signing the Order Confirmation the End User agrees to be bound by the terms of the Agreement including fee calculations regardless of whether any TRANSACTIS Data Output is used by End User.

3.4 If there are any issues or deficiencies relating to TRANSACTIS Data:

3.4.1 the End User must submit any queries in respect of the TRANSACTIS Data concerned in writing to TRANSACTIS within eight weeks from date of Output, or by the end of the Licence Period whichever is sooner;

3.4.2 the End User must submit all queries in a format required by TRANSACTIS;

3.5 The End User acknowledges any queries relating to TRANSACTIS Data may not be used by the End User as a reason for payment to be withheld or delayed;

3.6 In the event of a dispute in respect of TRANSACTIS Data, the End User acknowledges that TRANSACTIS may resolve any dispute by:

3.6.1 a re-supply of TRANSACTIS Data; or

3.6.2 a goodwill credit on account;

only once TRANSACTIS has investigated all queries relating to TRANSACTIS Data and after the End User has submitted TRANSACTIS Data in accordance with clause 3.4.1 and 3.4.2.

3.7 The End User acknowledges that any re-supply of TRANSACTIS Data or goodwill credit on account will be at TRANSACTIS' sole discretion.

3.8 The End User acknowledges that queries submitted to TRANSACTIS by the End User will only be investigated if the End User has fully complied with clause 3.4.1 and 3.4.2 and the total of queried TRANSACTIS Data exceeds 5% of the total Output in any Order Confirmation.

3.9 In the event that TRANSACTIS does not receive a written notification of a query in respect to the TRANSACTIS Data with rationale and support in accordance with clause 3.4, then any invoice issued for TRANSACTIS Data will be deemed valid and payable and may not thereafter be disputed.

3.10 Any queries in respect of the contents of an invoice must be received no later than 10 days from the date of receipt after which point the invoice shall be deemed valid and payable and may not thereafter be disputed.

3.11 TRANSACTIS reserves the right to charge interest on any sums not paid by the due date for payment at the greater of:

- 4% per annum over the base rate of Barclays Bank PLC; or
- 8% per annum.

In addition, TRANSACTIS reserves the right to charge the End User for its legal and other costs plus any VAT should any sums not be paid but

due for payment be referred to TRANSACTIS' solicitors or other representatives.

#### 4. DATA USAGE

4.1 The End User is responsible for maintaining the cleanliness of TRANSACTIS Data prior to its use by screening against internal and proprietary suppression files as required by the Applicable Regulations and accepted industry best practice.

4.2 The End User undertakes that it will at all times comply with the provisions of Applicable Regulations in respect of the use, storage and transfer of TRANSACTIS Data and that it will not violate any law including but not limited to the Act and all laws of the United Kingdom governing advertising practices (including but not limited to advertising on the internet), and/or any Applicable Regulations.

4.3 The End User agrees to request written approval from TRANSACTIS if the End User is situated outside of the United Kingdom and/or the European Economic Area and shall supply the name and address of any agents, subsidiaries, affiliates, branches or professional advisers of the End User who are sent TRANSACTIS Data who exist outside the United Kingdom and/or the European Economic Area who process, analyse, format, review or otherwise hold TRANSACTIS Data on behalf of the End User.

4.4 In the event of TRANSACTIS Data being released to a source outside the United Kingdom and/or the European Economic Area, the End User must:

4.4.1 ensure that an appropriate agreement such as a Model Clauses Agreement, approved by the UK regulator and incorporating the relevant standard contractual clauses is in place between the signatory and the source or;

4.4.2 only use bureaux that are accredited to BS7799 / ISO 27001 International Data Security Standards

4.5 End User hereby undertakes that the instructions to TRANSACTIS in respect of TRANSACTIS Data and the format of Output:

4.5.1 are correct in every respect;

4.5.2 should a re-Output of TRANSACTIS Data be required as a result of errors or omissions, or a change of requirements TRANSACTIS shall be entitled to:

4.5.2.1 additionally charge the End User £60 for each re-Output at the sole discretion of TRANSACTIS; or

4.5.2.2 re-charge at the full rate for re-use of TRANSACTIS Data if it has already been used;

4.6 Output instructions shall be supplied to TRANSACTIS. In the form of an associated Order Confirmation, by the End User at least seven days prior to the proposed Output date and in the event that instructions are not received by this time TRANSACTIS reserves the right to:

4.6.1 supply TRANSACTIS Data according to a standard format;

4.6.2 charge the End User in respect of any additional costs arising as a result of late instruction or changes in such instructions.

4.7 Following use of TRANSACTIS Data and no later than one month after the end of the Licence Period the End User shall return all unsubscribe requests and goneaways to TRANSACTIS indicating which of these categories are applicable to each set of Names.

#### 5. OBLIGATIONS OF THE END USER

5.1 The End User warrants that any material sent or quoted during or following the use of TRANSACTIS Data or any of it for the Purpose will at all times comply with Applicable Regulations; and that:

5.1.1 it will upon request by TRANSACTIS forthwith supply to TRANSACTIS copies of any such documents, creatives or other items which will be used for the Purpose in advance, during

or following the use of TRANSACTIS Data or any of it;

5.1.2 it will not make any statement or provide any other information that is unlawful, fraudulent, untrue, false, incorrect or misleading including but not limited to information relating to the End Users identity and contact details. The End User warrants that any and all information the End User issues, produces or originates shall be true in every respect throughout the term of this Agreement and the End User shall promptly notify TRANSACTIS of any changes to such information;

5.1.3 it shall inform TRANSACTIS as soon as is practicable and within the timeframes required by the Applicable Regulations in the event that any recipient of a Mailing Piece/Creative objects or requests that such contact ceases or asks for their name to be removed from the TRANSACTIS Data;

5.1.4 it agrees that the raising of a Order Confirmation by TRANSACTIS in no way constitutes acceptance or acknowledgement that the End User is in compliance with the law or with Applicable Regulations or any of them or that of the content of its communication or its product or the Contact Channel is proper, acceptable or compliant with the Agreement.

5.1.5 The End User may at any time before any Output or broadcast as specified in the Order Confirmation, cancel or amend an Order Confirmation by providing TRANSACTIS with immediate written notice. If the End User amends or cancels an Order Confirmation, the End User liability to TRANSACTIS shall be limited to payment to TRANSACTIS of all costs TRANSACTIS incurs in fulfilling the Order Confirmation until TRANSACTIS receives the End User's cancellation. For the avoidance of doubt, TRANSACTIS shall have the right of consent as to whether to amend or cancel an Order Confirmation in TRANSACTIS's sole discretion.

5.1.6 The End User should not use TRANSACTIS Data to send or procure the sending of, any unauthorised advertising or

promotional material or any other form of similar solicitation (spam) or transmit any TRANSACTIS Data or send any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to or which might adversely affect the operation of any computer software or hardware.

5.2 TRANSACTIS reserves the right to halt the End User from using TRANSACTIS Data or any of it for the Purpose if it is deemed in TRANSACTIS' own discretion that such material contravenes clause 5.1 in any way.

5.3 The End User hereby undertakes to deliver promptly to TRANSACTIS any written notice or other communication in respect of TRANSACTIS Data received from any other official or legislative body.

## 6. INTELLECTUAL PROPERTY RIGHTS

6.1 All Intellectual Property Rights relating to or arising out of or in connection with TRANSACTIS Data are the exclusive property of the TRANSACTIS Members and nothing in the Agreement shall constitute a sale, transfer or assignment of (or an agreement to sell, transfer or assign) any such Intellectual Property Rights whatsoever.

6.2 The End User shall not in any way question or dispute the validity of or ownership by the TRANSACTIS Members of any Intellectual Property Rights relating to or arising out of or in connection with TRANSACTIS Data.

6.3 The End User is hereby licensed only to use the Intellectual Property Rights of TRANSACTIS for the Purpose and not further or otherwise. Upon expiry of the End User Licence, the End User shall immediately discontinue such use without compensation for such discontinuation.

6.4 The End User shall indemnify TRANSACTIS against liabilities, costs and expenses TRANSACTIS may incur as a result of the combining or use of TRANSACTIS Data or any of it with other data, software or equipment



not supplied by TRANSACTIS which gives rise to an infringement of any copyright, patent, or other Intellectual Property or other proprietary right.

6.5 The End User shall promptly notify TRANSACTIS if it becomes aware of any infringement or suspected infringement by any person of the Intellectual Property Rights relating to or arising out of or in connection with TRANSACTIS Data or any of it, and shall give all reasonable assistance in connection with any claims or proceedings made or instituted against such person for such infringement or suspected infringement.

6.6 Retention of title does not apply for the use of TRANSACTIS Data in the event of transfer of assets from the End User to another party even for Order Confirmations with Usage Terms of more than one time.

## 7. SECURITY AND CONTROL

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

7.2 The End User shall implement appropriate technical and organisational measures to ensure the security of processing, detailed in a suitable Data Security Policy in place which shall be signed off by the End Users senior Management and reviewed at least once per year and employees should be given suitable training on the policy and;

### 7.3 Data Storage

7.3.1 Data Files must on logged on receipt and saved in a secure area of the network. This includes any copies of the data that have been created for processing reasons.

7.3.2 Data must only be accessible and processed by authorised employees and this should be based on job function. Additional Data Security training should be in place for these employees.

7.3.3 Data must not be stored locally on workstations, laptops or any external media, such as USB devices or in paper format.

Data must not be stored on public facing platforms (e.g. FTP sites).

### 7.4 Physical Security

7.4.1 Network devices must be stored in secure location and only accessible by authorised individuals.

### 7.5 Operating System

7.5.1 Devices must be running a fully licensed and vendor supported Operating System.

7.5.2 Operating Systems must be kept up to date and updates/patches must be applied in a timely manner.

### 7.6 Network Security

7.6.1 All network devices must have suitable and robust Anti-Virus software in place.

7.6.2 Automatic updates to the AV databases must be set up.

7.6.3 Reviews of the state of the AV software should occur at least once a day.

7.6.4 A suitable Firewall must be in place.

7.6.5 Network authentication software (such as Active Directory) must be used.

7.6.6 Appropriate email and web filters must be set up.

7.6.7 Public facing site's, must be regularly tested for vulnerabilities.

7.6.8 User passwords must be sufficiently complex and set to change at regular intervals.

7.6.9 An account termination process must be in place to deal with employees who leave.

### 7.7 Cloud Security

7.7.1 Data must be stored within the UK or EU, unless otherwise pre-authorised.

7.7.2 Cloud Providers should have a suitable accreditation in Data Security, such as ISO2700017.8 Data Backup

7.8.1 Data that is backed up or replicated must apply the same level of security as the live environment.

7.8.2 Tape backups must be encrypted and if stored offsite must be with a contracted supplier. Tape logs containing data must be kept.

7.8.3 Data replicated over the internet must be done using a secure VPN or via private circuit.

#### 7.9 Data Destruction

7.9.1 Data (all copies) must be fully destroyed in line with the agreed retention/usage period. This must include any backups of the data. Logs should be kept.

#### 7.10 Data Transmission

7.10.1 Data Controllers must not send the data onto any other 3rd parties, unless a Data Processing agreement has been approved.

7.10.2 Data that has been approved to be sent onto by the 3rd party must be sent via an encrypted protocol. Data should be removed from the site once received.

7.10.3 Data sent either to or from TRANSACTIS, must be via the TRANSACTIS SFTP site, unless otherwise approved.

7.11 The End User will promptly notify TRANSACTIS of any breach or suspected breach of such security measures.

7.12 TRANSACTIS, reserves the right to include Seed Names to ensure that TRANSACTIS Data is used in accordance with this Agreement. In the event that TRANSACTIS, determines that TRANSACTIS Data has not been used or suspects it has not been used in accordance with this Agreement, TRANSACTIS shall be permitted to conduct an investigation in accordance with this clause 7 and the End User hereby undertakes to TRANSACTIS to co-operate fully with such investigation.

7.12.1 The End User will permit with reasonable written notice from TRANSACTIS for TRANSACTIS and/or its authorised representative(s), to have access to the End Users premises to:

7.12.2 examine hardware, software, data and any other records, documents or other relevant information relating to the End Users use of TRANSACTIS Data and to compliance with the Applicable Regulations, and to take copies thereof;

7.12.3 ask for and receive explanations in respect of such matters from the End User to the extent necessary for TRANSACTIS to be satisfied that the terms of the Agreement are being complied with.

7.12.4 TRANSACTIS may also inspect, audit and take copies from the relevant books, records and to appoint an independent auditor to review the accounts and other records (in each case including but not limited to those in machine readable form) of the End User for the purposes of ensuring the accuracy of the records of all supplies of TRANSACTIS Data to the End Users.

7.12.5 Access shall be granted for these purposes at any time during which the relevant premises are ordinarily open for business. Written notice will not need to be given if access is required by regulation or if TRANSACTIS has reason to suspect a breach of the Applicable Regulations or a breach of the security and confidentiality clauses of the Agreement.

7.12.6 If an audit determines inadequacy or breach then TRANSACTIS has the right to terminate the Agreement forthwith with all fees due from the End User becoming immediately payable in full.

**7.13 THE CUSTOMER SHALL INDEMNIFY AND HOLD HARMLESS TRANSACTIS FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, LOSSES, DEMANDS, CLAIMS, COSTS AND EXPENSES (INCLUDING BUT NOT LIMITED TO LEGAL COSTS AND EXPENSES) ARISING OUT OF OR IN**

**CONNECTION WITH ANY AND ALL USE OF TRANSACTIS DATA UNAUTHORISED BY TRANSACTIS, BY ANY THIRD PARTY (INCLUDING BUT NOT LIMITED TO THE END USER WHERE THE END USER IS NOT THE CUSTOMER).**

7.14 For all of the purposes of this clause 7 unauthorised use is evidenced as set out in clause 2.10.

**8. WARRANTIES AND LIABILITY**

8.1 The Parties warrant to each other that they each have full power, right and authority to enter into the Agreement.

8.2 TRANSACTIS warrants that:

8.2.1 has full rights to license TRANSACTIS Data to the End User for the Purpose;

8.2.2 TRANSACTIS Data has been collected in compliance with the Applicable Regulations.

8.3 The End User acknowledges and agrees that:

8.3.1 TRANSACTIS Members are the Data Owner;

8.3.2 TRANSACTIS can make no (and has not made any) representation nor give (and has not given) any warranty or undertaking as to the suitability of TRANSACTIS Data for any purposes of the End User save for its collection in accordance with Applicable Regulations;

8.3.3 TRANSACTIS will not be liable for any loss, damage or inconvenience whatsoever caused by any inaccuracies in the TRANSACTIS Data;

8.3.4 TRANSACTIS shall not be liable to the End User or to any other person for any loss or damage whatsoever or howsoever caused arising directly or indirectly in connection with TRANSACTIS Data or its use by the End User;

8.3.5 notwithstanding the generality of clause 8.3.6 TRANSACTIS expressly excludes all liability for consequential loss or damage including but

not limited to loss of profit, business, revenue, goodwill or anticipated savings, other than any liability which may not by applicable law be excluded;

8.3.7 it will take out and maintain adequate insurance cover of up to £3 million with a reputable insurance company against liability which the End User may incur to any person in connection with TRANSACTIS Data which shall include cover but without limitation against liability for death or personal injury to any customer, employee of the End User or to any third party and damage to or loss of property. The End User will on demand from TRANSACTIS produce to TRANSACTIS evidence of such insurance and of its inception and maintenance.

8.4 The End User warrants that it will:

8.4.1 fully and effectively indemnify TRANSACTIS against liability (including but not limited to all claims, judgments, costs and other liabilities) which TRANSACTIS may incur by reason of the End User's activities in connection with TRANSACTIS Data, other than for the reasons detailed in clause 8.2;

8.4.2 maintain the confidentiality and integrity of any Personal Data received from or on behalf of TRANSACTIS;

8.4.3 implement and maintain appropriate technical and organisational security measures against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of or damage to Personal Data in accordance with relevant data protection law;

8.4.4 ensure that its employees and its agents and permitted sub-contractors will comply with all relevant laws, regulations, bye-laws, British Standards and EU or international standards including but not limited to the Applicable Regulations;

8.4.5 not undertake any activity or make any claims which will bring TRANSACTIS into disrepute;

8.4.6 not institute proceedings for damages for breach of the Agreement after the expiration of thirty days from the date on which the End User became aware of the same or the date on which it ought reasonably to have become aware of the same.

8.5 The End User warrants that where TRANSACTIS Data has been sent by the End User to any of its associated companies, subsidiaries, affiliates, professional advisers, agents, individuals, customers or clients, TRANSACTIS shall be permitted to promptly receive a complete and full list of the names and contact details of any and all the recipients of TRANSACTIS Data upon TRANSACTIS providing written notice to the End User.

8.6 The Customer and/or any agency or broker executing the Agreement represents and warrants that it has the authority to bind the End User to the terms stated herein and remains jointly and severally liable for all obligations under this Agreement.

8.7 Except as expressly stated in this Agreement all warranties and conditions, whether express or implied by statute, common law or otherwise are hereby excluded to the extent permitted by law.

## 9. CONFIDENTIALITY

9.1 Each Party agrees not to use or reveal the Confidential Information disclosed to it by the other Party for any purpose except to further the objective of the Agreement. Each Party agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of Confidential Information of the other in order to prevent it from falling into the public domain or possession of persons other than those persons authorized hereunder to have any such information, which measures shall include at least a reasonable degree of care. This provision shall be binding on the Parties and shall be treated and safeguarded hereunder by the receiving Party notwithstanding the termination or expiry of this Agreement.

9.2 Each Party shall keep confidential all provisions of the Agreement and shall not make any public announcement of it or its subject matter without the other Party's prior written consent.

9.3 The End User acknowledges that TRANSACTIS shall have the right in TRANSACTIS' sole discretion to require the return of any Confidential Information or TRANSACTIS Data in respect of any Output of TRANSACTIS Data where TRANSACTIS deems the TRANSACTIS Data has been used outside the terms of the End User Licence as specified in the Order Confirmation or; (a) where the End User is unable to destroy any TRANSACTIS Data; or (b) the Order Confirmation has been cancelled in accordance with clause 10 or (c) upon termination of the Agreement. For the avoidance of doubt, any TRANSACTIS Data or Confidential Information shall be returned in accordance with clause 2.16.4.

## 10. TERMINATION

10.1 Upon termination of the Agreement the End User shall immediately return all TRANSACTIS Data or any other Confidential Information in accordance with this Agreement or confirm its destruction, save for the Personal Data of Data Subjects who have consented to the continued processing of their data by the End User or have entered into a contract with or become a customer of the End User. For the avoidance of doubt, TRANSACTIS will advise the End User in writing if the TRANSACTIS Data is to be returned or destroyed.

10.2 TRANSACTIS may terminate the Agreement with immediate effect on giving written notice to End User if the End User:

10.2.1 has used TRANSACTIS Data outside the terms of the Agreement;

10.2.2 commits any breach of the Agreement which in the sole discretion of TRANSACTIS cannot be remedied within twenty-eight days of being served written notice to remedy the same;

10.2.3 commits any breach of the Agreement which is capable of being remedied but has not been remedied within twenty-eight days of written notice being given to the End User;

10.2.4 convenes a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the End User shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of the business or assets of the End User or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the End User or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction of a solvent company) or any other analogous event occurs in respect of or relating to the End User; or

10.2.5 suffers a change of Control

10.3 Any termination of the Agreement shall be without prejudice to any other rights or remedies to which a Party may be entitled under the Agreement or at law and shall not affect any accrued rights or liabilities of either Party nor the coming into or continuance in force of any provision of the Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

10.4 Upon the termination of the Agreement for any reason the licence set out in clause 2.1 shall forthwith terminate and clauses 2.10, 2.12, 7 and 9 hereof shall continue in force in accordance with their terms.

## **11. GENERAL**

11.1 The End User shall not be entitled to assign or save as may be provided for in the Order Confirmation sub-license or otherwise transfer the End User Licence, the End User Licence shall be personal to the End User only.

11.2 The Agreement contains the whole agreement and understanding between the Parties and supersedes any prior written or oral agreement between them relating to the subject matter of the Agreement and the End User hereby agrees that it has not entered into the Agreement on the basis of any representation not set out in the Agreement.

11.3 Any notice under the Agreement shall be in writing and shall be deemed duly given if sent by first class post or delivered by hand or facsimile transmission to the address of the Party to be served set out in the Order Confirmation or to the registered office of that Party. Any notice so served shall be deemed delivered if by post two business days after posting, if by hand on the date of delivery and if by facsimile transmission upon receipt of electronic confirmation of transmission.

## **12. VAT**

Save insofar as otherwise expressly provided, all amounts stated in the Order Confirmation are exclusive of amounts in respect of Value Added Tax chargeable for the time being ("VAT"). Where any taxable supply for VAT purposes are made under the Order Confirmation the End User shall, on receipt of a valid VAT invoice from TRANSACTIS, pay to TRANSACTIS such additional amounts in respect of VAT as are chargeable on the supply of TRANSACTIS Data as at the same time as payment is due for the supply of the TRANSACTIS Data.

## **13. GOVERNING LAW AND SUBMISSION TO JURISDICTION**

13.1 The construction, validity and performance of the Agreement shall be governed by and construed in all respects in accordance with English law.

13.2 All disputes arising in any way out of or affecting this Agreement shall be subject to the exclusive jurisdiction of the English Courts to which the Parties agree to submit.

Transactis 2017 Limited

Sunningdale, The Belfry Business Park, 13 Colonial Way, Watford, Hertfordshire, WD24 4WH.

T:+44(0)1923 281 700

Registered in England :10850674 | Registered Address: Green Heys, Walford Road, Ross On Wye, Herefordshire, HR9 5DB.