

## **TERMS & CONDITIONS**

### **1. DEFINITIONS**

- (i) "The Company" means Oxeva Ltd, 37 Adriatic, 20 Western Gateway, London, E16 1BS.
- (ii) "The Purchaser" means the name of the customer that orders purchasing or otherwise acquiring the Data and includes its representatives, agents and its successors.
- (iii) "The Price" means our charges as set out in the Order Confirmation
- (iv) "The Delivery Date" Means the date the Company supplies the Data to the Purchaser
- (v) "The Data" means any service to be supplied by the Company, as set out in the Order Confirmation and includes any service, which includes the supply of information of any kind whether comprising words, numbers, graphs or otherwise in any other form and whether or not is the property of the Company, which is supplied or made available by the Company
- (vi) "The Order Confirmation means the agreement between the Company and the Purchaser for the supply of data or services by the Company.

### **2. GENERAL**

2.1 The Purchaser and the Company wish the Company to grant to the Purchaser upon the terms set out below a licence entitling the Purchaser to either A or B below as set out and further limited/defined on the Order Confirmation:

#### **A) Use the Data once only. (**Single Use licence**)**

- (i) The Purchaser may only make contact once with each person whose details are the subject matter of the Data (collectively known as the Recipients)
- (ii) Should a Recipient reply to the contact authorised in (i) above the Purchaser is then permitted to contact that Recipient freely from the date of such reply
- (iii) If a Recipient does not reply to the contact authorised above the Purchaser shall not contact that Recipient again

(iv) Breach of (iii) above shall entitle the Company to a further payment of the Price (plus any increase reflecting any changed pricing structure of the Company) for each occasion Recipients are contacted over and above that authorised by clause (i) above. The due date for such a further payment to be made being the date on which the breach occurred. If any such payment is made after the due date the Purchaser shall also pay interest on the outstanding amount at the rate of 4% above the base lending rate of HSBC Bank calculated daily

B) Use the Data for the period as set out on the Order Confirmation (**Multiple use licence**)

- (i) The Purchaser may make contact with each person who's details are the subject matter of the Data (the Recipients) as many times as he wishes within that period
- (ii) Should a Recipient reply to any contact authorised above the Purchaser is then authorised to contact that Recipient freely from the date of such reply and beyond the period set out in (i) above
- (iii) If a Recipient does not reply to any of the contacts authorised above the Purchaser shall not contact that Recipient again after the period in (i) above has expired

Breach of (iii) above shall entitle the Company to a further payment of the Price (plus any increase reflecting any changed pricing structure of the Company) for each occasion the Recipients are contacted over and above that authorised by clause (i) above. The due date for such a further payment to be made being the date on which the breach occurred. If any such payment is made after the due date the Purchaser shall also pay interest on the outstanding amount at the rate of 4% above the base lending rate of HSBC Bank calculated daily

2.2 All Mailing List rentals, fax broadcasting, electronic communications and telemarketing campaigns are to be used within the terms of the License agreed.

2.3 The Licensee and/or it's Nominated Third Party will not assign, transfer or sub-license this agreement without the written permission of Oxeva Ltd.

2.4 Agreement for a Licensee to use Data supplied by Oxeva Ltd, whether by employees of the Licensee or a Nominated Third Party, is subject to the Licensee ensuring that any such use shall conform to the enclosed Terms and Conditions.

2.5 Oxeva Ltd cannot be held responsible for any costs as a result of change to the volume of Data available due to the constant updating taking place. All prices, quantities and delivery times stated in any quotation are not binding upon Oxeva Ltd. They are commercial estimates only, which Oxeva Ltd will make every effort to achieve.

2.6 Where the Purchaser and Licensee are not one and the same, by signing this document the Purchaser warrants that the Licensee has read, understood and agreed to these Terms & Conditions and furthermore that the Purchaser is not authorised to use the Data in any way other than to forward the Data onto the Licensee or their Nominated Third Party and agrees to expunge the Data immediately following completion of the aforementioned transaction.

2.7 Where a Mailing List is released to a Nominated Third Party, by signing this document, the Purchaser warrants that the Nominated Third Party has read, understood and agreed to these Terms & Conditions.

2.8 Data which is deemed unreadable or otherwise disputed will not be re-supplied until it has been returned and checked. Where Oxeva Ltd is found not to be at fault, the Licensee will be liable for all associated processing and delivery charges.

### **3. CONDITIONS APPLICABLE**

3.1 These terms shall apply to all grants of licences for the use of Data by the Company to the Purchaser to the exclusion of all other terms and conditions (except in relation to any amendment as to repeat or subsequent orders as permitted by clause 3.4 hereof). Any terms or conditions which the Purchaser may purport to apply by using any purchase order confirmation of order or similar document are also excluded

3.2 All requests for licences to use the Data shall be deemed to be an offer by the Purchaser to obtain a licence to use the Data pursuant to these terms

3.3 Any variation to these conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by the Company – except as permitted by clause 3.4 below

3.4 Any repeat or subsequent requests for the grant of a licence shall be subject to the terms hereof and clause 1 shall be amended accordingly by any repeat or subsequent Order Confirmation

### **4. THE PRICE AND PAYMENT**

The Company shall not be bound to deliver the Data until the Purchaser has paid for it unless agreed to the contrary by the parties on the Order Confirmation. The price is exclusive of VAT which shall be due at the rate ruling on the date of the VAT invoice. If any payment is made later than the Delivery Date (or later than the date for payment set out on the Order Confirmation if this is different) then the Purchaser shall also pay interest on the outstanding amount at the rate of 4% above the base lending rate for HSBC Bank calculated daily AND an administration charge of £50.00 will be levied for all debts that are passed to our debt recovery department.

## **5. CANCELLATION**

5.1 Between entering this Agreement and the Delivery Date the Purchaser cancels his order for the Data the Purchaser shall pay to the Company the sum of £250.00 or 50% of the signed Order Confirmation Value (whichever is the greater) within seven days of the cancellation.

5.2 Such cancellation shall only be effective if provided in writing from the Purchaser to the Company

## **6. DELIVERY**

6.1 All dates set out in the Order Confirmation for delivery are approximate only and the Company shall not be liable for any loss or damage whatsoever suffered by the Purchaser from any delay, however caused, nor will any delay entitle the Purchaser to cancel or alter its obligations under this agreement.

## **7. WARRANTIES AND LIABILITY**

7.1 The Company warrants that the Data will at the time of delivery correspond to the description given by the Company. All other warranties, conditions or terms relating to fitness for purpose satisfactory quality or condition of the Data and whether implied by statute or common law or otherwise are excluded

7.2 Whilst the Company has used all reasonable endeavours to ensure the accuracy of the information contained in the Data the Purchaser acknowledges that in the compilation and supply of the Data to the Purchaser the Company often has to rely on information supplied by a third party and that such information may have been incorrectly provided and that by the very nature and volume of such Data accuracy cannot be verified. Therefore the Company does not guarantee or warrant that the Data is without errors or omissions and the accuracy of the Data is not a condition of the contract and the Purchaser will not be entitled to refuse to pay any amount due or part thereof by reason of errors or omissions in the Data supplied under this licence

7.3 Without prejudice to the aforesaid the Company's entire liability in respect of any single claim arising out of or in connection with this licence or its subject matter whether for breach of contract negligence or otherwise shall be limited to the amount of the total price as defined in clause 1 hereof or to the total price paid by the Purchaser to the Company for the Data whichever is the lower

7.4 The Purchaser hereby fully and effectually indemnifies the Company in respect of all costs charges fines and other liabilities arising out of the use or misuse of the Data by the Purchaser his agents or employees or any third party and any breach of the terms hereof

7.5 The Purchaser acknowledges that the Company may plant no more than three 'seeds' per 1,000 Recipients for the purpose of enforcing any breaches of this Licence

## **8. DESTRUCTION OF DATA**

On termination of the licence or any repeat or subsequent licence the Purchaser shall destroy and or delete details of all the Recipients who are the subject matter of the Data whether these details are held on computer file or otherwise or the Purchaser hereby agrees to accept and settle a further invoice for the Price

## **9. ASSIGNMENT**

9.1 The Purchaser shall not be entitled to assign or otherwise deal with the benefit or burden of this licence without the prior written consent of the Company but the Company shall be entitled to assign or sub-contract the fulfilment of the Contract or any part thereof

9.2 In the event the Company consents to an assignment or other dealing of this Licence the Purchaser's indemnity to the Company at clause 7.4 hereof shall continue to apply and be enforceable by the Company notwithstanding the cause of the circumstances giving rise to the enforcement is the fault of a third party

## **10. COPYRIGHT AND CONFIDENTIAL INFORMATION**

10.1 The Purchaser hereby acknowledges the Company's copyright in the Data and nothing contained herein will be construed as an assignment of any such copyright to the Purchaser. Copyright shall at all times vest in the Company or its suppliers

10.2 The Purchaser shall have no rights or interests of whatever nature in the Data except to use the same in accordance with the terms of this licence

10.3 The Purchaser shall not supply disclose or make available the Data to a third party except in accordance with the terms of this licence

10.4 Should the Purchaser supply disclose or make available the Data to a third party whether permitted by this licence or not the Purchaser shall indemnify the Company against any damages that it may be ordered to pay in respect of such disclosure

10.5 The Purchaser shall maintain adequate security measures to protect the integrity and security of the Data. Any breach or suspected breach of security shall be promptly notified to the Company

10.6 Breach of this clause 8 by the Purchaser shall entitle the Company to revoke this licence forthwith

## **11. TERMINATION**

11.1 If between the date of this Agreement and the date on which payment is received by the Company either party:

- A) Makes any arrangement or composition with or arrangement for the benefit of its creditors or
- B) Becomes subject to bankruptcy or insolvency proceedings (including suffering any action for or which may lead to the appointment of a liquidator administrator receiver or administrative receiver then the other party may forthwith terminate this Agreement in writing to the other party such notice shall only be effective provided payment has been received for all Data supplied to date

## **12. FORCE MAJEURE**

The Company shall not be liable for any loss suffered or incurred by the Purchaser as a result of any delay in or failure of the Company performing it's obligations under this licence arising from any cause beyond the Company's control including any act of god war lock-out strike fire flood explosion civil commotion transit postal delay failure in information technology or any other unexpected or exceptional cause or circumstance beyond the Company's control in which case the Company shall be entitled to revoke the licence forthwith or delay the granting thereof for as long as reasonably necessary

## **13. ENFORCEABILITY**

If at any time one or more of these terms becomes invalid illegal or unenforceable under any law or is held by the Court to be invalid illegal or unenforceable the validity and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby

## **14. JURISDICTION**

This licence shall be governed by and construed in all respects in accordance with the laws of England and the Company and the Purchaser hereby agree to submit to the exclusive jurisdiction of the courts of England