

Data Processing Services Agreement



helpIT

CLEANER DATA. BETTER DECISIONS.

IMPORTANT NOTICE: you must read this Agreement carefully before continuing:

These terms and conditions constitute a legal agreement ("Agreement") between you and helpIT systems limited of 15-17 The Crescent, Leatherhead, Surrey KT22 8DY, UK ("helpIT").

1. Definitions

In this Agreement, the following terms shall have the following meanings:-

"Authorised Users" – you, and if you are a business, any individual working for you, who you authorise to use the Services and the Documentation.

"Chargeable Services" – any Services which are not a Trial, a Data Audit or a Support Investigation.

"Client" – where you are acting directly or indirectly on behalf of a Data Controller in your use of the Services, that Data Controller (and his/her employer if he/she is acting on behalf of an employer) is the Client.

"Confidential Information" – all confidential information however recorded or preserved disclosed by one party to the other after the Effective Date in connection with the provision of the Services, including the Input Data and the Output Data, any information developed by either party in the course of carrying out or receiving the Services as well as any information that would be regarded by a reasonable person as being confidential such as the business, affairs, clients, operations, processes, know-how, trade secrets or software of the other party.

"Data Audit" – Services performed at no charge by helpIT reporting on the quality of the Input Data.

"Data Controller" – has the meaning for this or its equivalent term as defined in the Data Protection Legislation.

"Data Enhancements" – any attributes appended to the Output Data by the Services together with any attributes which can be deduced by comparing the Input Data with the Output Data.

"Data Processor" – has the meaning for this or its equivalent term as defined in the Data Protection Legislation.

"Data Protection Legislation" – the General Data Protection Regulation (GDPR, including any modification or re-enactment of it and any subordinate legislation) and any other legislation providing for the protection of personal data whenever such other legislation is brought into force or implemented.

"Data Subject" – has the meaning given to it in the Data Protection Legislation.

"Documentation" – the user guide for the Software available via the Website.

"Effective Date" – the date of this Agreement.

"Flag" – any information in the Output Data which will enable you to delete or update a record in any data that you or any Responsible Party maintain for ongoing use, which deletion or update is as a result of helpIT matching the Input Data against Third Party Reference Data.

"Goneaway" – someone identified to have moved away from the address provided for them in the Input Data.

"Initial Subscription Period" – as defined in Clause 3.2.3 below.

"Input Data" – data submitted by you for performance of the Services.

"Intermediary" – a third party who directly or indirectly provides the Input Data (or any data from which you derive the Input Data) to you on behalf of the Client.

"Job Request" – a request by you for performance of the Services by submission of Input Data.

"Job Submission Form(s)" – the Website or other web page(s) provided by helpIT for you to submit the Input Data for processing.

"New Occupier" – the name of the new occupier at the address from which an individual has moved.

"Order Confirmation" – a form completed by you to request the Chargeable Services entitled "Data Processing Services Order Confirmation".

"Output Data" – where data is returned to you, the Input Data returned to you as updated by the Services performed by helpIT incorporating any updated addresses, New Occupiers, Flags or Temporary Suppressions generated as a result of helpIT matching the data against Third Party Reference Data.

"Permitted Purpose" – your or your Client's business administration and/or marketing purposes in accordance with the terms of this Agreement, **subject to any limitations or restrictions contained in this Agreement or any Third Party Terms.**

"Processing Fees" – the fees payable by you to helpIT for the use of the Services, where the Services are not a Trial, Data Audit or Support Investigation. For Subscription Plans, the Processing Fees are deemed to be the fees charged for the Subscription Period otherwise they are the fees charged for a single job.

“Renewal Period” – any period of one (1) month after the Initial Subscription Period unless otherwise specified on an Order Confirmation.

“Responsible Party/Parties” – you and any Client, Intermediary or other individual who is acting as Data Controller or Data Processor in relation to the Input Data or the Output Data, or his/her employer if he/she is acting on behalf of an employer.

“Services” – the data processing services performed by helpIT for you by making use of the Software to process the Input Data in accordance with the Services Specification.

“Services Specification” – the instructions submitted by you on the Job Submission Form, or the instructions given by you to helpIT via email for Job Requests not submitted via a Job Submission Form.

“Software” – the software provided by helpIT via the Website or used directly by helpIT to provide the Services.

“Subscription Period” – the Initial Subscription Period and including any subsequent Renewal Period.

“Subscription Plan” – purchase of the Services for a fee paid monthly, quarterly or annually which entitles Authorised Users to access and use the Services and the Documentation for multiple jobs in accordance with this agreement.

“Support Email” – the email address for contacting helpIT for support for the Services, DQservices@helpIT.com.

“Support Investigation” – Services performed by helpIT using the Input Data as part of support for its packaged software, for which no Processing Fees are charged.

“Temporary Suppression” – the removal of a record from the Output Data as a result of helpIT matching the Input Data against Third Party Reference Data, use of which is subject to the restrictions in Clause 2.8.

“Third Party Reference Data” – reference data files which are supplied by helpIT for the Services to use, including but not limited to lists of deceased names, people who have changed address and (where available) their new address.

“Third Party Data Supplier” – a provider of Third Party Reference Data.

“Third Party Terms” – those terms applicable to use of reference data files from Third Party Data Suppliers, detailed in Schedules A through D and the NCOA® End User Licence Agreement.

“Trial” – a trial of the Software provided at no charge, limited by duration.

“you”, “your” – each refer to you, if you are an individual person submitting the Input Data, but a third party, if you are submitting the Input Data on behalf of a third party (such as an employer or a business for whom you are providing services).

“Website” – the website at <https://app.matchitondemand.com>.

2. The Services

- 2.1. helpIT shall provide to you the Services and where the Services are Chargeable Services, these Services shall be provided in consideration of the payment of the Processing Fees by you to helpIT.
- 2.2. For Subscription Plans, helpIT hereby grants to you a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Period.
- 2.3. helpIT may change the Services or cease providing the whole or part of the Services without prior notice to you, if necessary in order to enable helpIT to comply with laws, regulations and rules or otherwise to comply with any changes made by sub-contractors in any sub-contracted services which are used by helpIT in the provision of the Services. helpIT will give as much prior notice as is reasonably practicable.
- 2.4. helpIT may from time to time change the format of the Services and/or any of the methods used to access the Services and shall use commercially reasonable endeavours to give you prior written notice of such proposed change and shall otherwise give you as much written notice as reasonably practicable.
- 2.5. helpIT may suspend your use of the Services if in its sole opinion you subject them to a commercially unreasonable workload which may adversely impact other users of the services.
- 2.6. You shall ensure that you have the necessary computing and communications facilities and skills to obtain access to the Services.
- 2.7. You shall be responsible for selecting those elements of the Services to ensure that the Output Data is appropriate and lawfully used by the Responsible Parties even though you do not have a direct contractual relationship with the Client. helpIT shall not be responsible for the use made of the Output Data, or the results of such use, or for the possession of the Output Data, or its dissemination to third parties and you shall use reasonable endeavours (including, without limitation, enforcing agreements with Responsible Parties) to ensure that the Responsible Parties comply with any data protection legislation applicable anywhere in the world together with any other rules and regulations applying to the possession, use or dissemination of the Output Data.
- 2.8. **Where you have requested via the Website or in an Order Confirmation that the Input Data be matched against Third Party Reference Data, helpIT licences you or any other Responsible Party (as applicable) to use the Output Data for the Permitted Purpose only.**
- 2.9. **The absence of records in the Output Data due to Temporary Suppressions shall not be used directly or indirectly by you or any Responsible Party to update or delete from any data file.**

- 2.10. Where you are not the Client, helpIT acknowledges and agrees that there may be several parties involved in commercial arrangements linking you with the Client, with the result that you may not have a direct contractual relationship with the Client. In such cases, you recognise the significant importance of, and shall use reasonable endeavours including, without limitation, enforcing agreements with Responsible Parties) to procure that any limitations and restrictions on the Permitted Purpose and compliance with Data Protection Legislation are accepted by each Responsible Party and can provide evidence of such acceptance to helpIT. Where you are or become sole Data Controller of the Output Data, then it is your sole responsibility to comply with the Data Protection Legislation.
- 2.11. In respect of any elements of Chargeable Services provided by third parties, the Third Party Terms shall also apply and accordingly you shall comply with such terms. If any conflict arises between the Third Party Terms and any other provision of this Agreement, the Third Party Terms shall prevail as regards such of the Chargeable Services as fall within the ambit of the Third Party Terms. You are responsible for ensuring that you comply with those terms and for ensuring that any Responsible Party and any other third party to whom the Third Party Terms permit you to disclose any Input or Output Data complies with the provisions in those Third Party Terms.
- 2.12. Where the Data Protection Legislation applies to the Services such that helpIT is a Data Processor and you are the Data Controller, then the provisions of the Data Protection Legislation applicable to the parties' obligations under a data processing contract are hereby incorporated into this contract by this reference. Specifically, the principles and provisions required to be incorporated by Article 28 of the General Data Protection Regulation are deemed incorporated as if set out herein. Each party shall abide by its obligations under the Data Protection Legislation as so incorporated subject to the limitations and exclusions of liability set out in clause 7.

3. Charges

- 3.1 Where the Services are Chargeable Services, you shall pay the charges as set out on the Job Submission Form or Order Confirmation for the Services. Where payment is not taken for the Services by credit card at the time of submission of the Job Request, via a Subscription Plan or by debiting your credit account balance, then helpIT shall send to you an invoice in respect of the Services purchased. Such invoice shall be paid by you according to the payment terms specified on the Order Confirmation.
- 3.2 For Subscription Plans:
- 3.2.1 You shall pay the Processing Fees to helpIT in accordance with this Clause 3.2 unless otherwise specified on the Order Confirmation.
- 3.2.2 You shall pay the Processing Fees to helpIT monthly in advance, commencing on the Effective Date.
- 3.2.3 The Initial Subscription Period is three (3) months.
- 3.2.4 If the day of the month of the Effective Date is no later than the 28th day of the month, Processing Fees will be payable on the same day of each month of the Subscription Period e.g. if the Initial Subscription Period starts on the 5th day of a month the Processing Fees will be charged on the 5th of each month thereafter. Where the subscription starts on the 29th, 30th, or 31st of a month, each billing date will be adjusted to the last day of the month e.g. if the Initial Subscription Period starts on 29th January and the year is not a leap year, the next billing date will be 28th February, followed by 29th March. The Processing Fees will not be adjusted according to the number of days in each billing cycle.
- 3.2.5 You shall pay the Processing Fees by credit card through the Website. helpIT uses the third party payment processor Braintree (<https://www.braintreepayments.com/en-gb>) to process card payments. Braintree will store the card details used to pay the Processing Fees and will use those same card details to automatically take payment for any Processing Fees in respect of each Renewal Period. helpIT does not store or process your full card details, which are available only to Braintree.
- 3.2.6 helpIT shall be entitled to increase the Processing Fees at the start of each Renewal Period upon at least 30 days' prior notice to you.
- 3.2.7 helpIT shall be entitled to reduce the maximum users, maximum file size, maximum records and maximum number of jobs per month for each level of Subscription Plan upon at least three (3) months' prior notice to you
- 3.2.8 You may, during any Subscription Period, upgrade to the next level of Subscription Plan as set out on the Website by selecting the required Subscription Plan and agreeing to pay the additional Processing Fees. This will trigger a new Initial Subscription Period commencing on the date of the upgrade. If you upgrade on any day other than a monthly billing date, you will be charged pro rata on the day of the upgrade for the difference between the new Subscription Plan rate and the old rate. The billing day of the month will remain unchanged.
- 3.2.9 You may downgrade a Subscription Plan at any time. If you downgrade a Subscription Plan during an Initial Subscription Period, the downgrade will not take effect until the Initial Subscription Period has completed. If you downgrade outside an Initial Subscription Period on any day other than a monthly billing date, you will be credited pro-rata for the number of days from the downgrade date until the end of the monthly billing period. This amount will be credited against subsequent charges for the new Subscription Plan. The billing day of the month will remain unchanged.
- 3.2.10 If helpIT is unable to collect any payment when due, the Subscription Plan will be automatically suspended until the full payment due is made. If payment is not made within 30 days, the Subscription Plan and this Agreement will be automatically terminated.
- 3.3 All amounts and fees stated or referred to in this agreement are, subject to Clause 7.9, non-cancellable and non-refundable.

- 3.4 Except for non-payment under Clause 3.2.10, if you fail to pay any sum due under this Agreement when it is expressed to be due, helpIT shall be entitled to charge interest on a daily basis on all overdue amounts and on outstanding interest from the date of such failure until payment (both before and after judgement) at 3% above the Base Lending Rate from time to time of the Bank of England.
- 3.5 All prices or sums quoted by helpIT or specified herein shall be payable in UK £ and are stated exclusive of any taxes (including without limitation VAT), duties, fees or other government levies, which may be incurred or imposed. If such additional amounts become due and are paid by helpIT, you shall reimburse helpIT within 30 days of the date of an invoice from helpIT for such amounts.

4. Security

- 4.1 helpIT agrees not to publish, transfer or resell the Input Data or reuse it otherwise for commercial purposes. However, the Input Data may be stored and processed by helpIT to enable an audit trail to be maintained and to enable helpIT to meet its legal and contractual reporting obligations. Whilst helpIT will use all commercially reasonable endeavours to ensure the confidentiality and security of the Input Data whilst in its possession or control, it shall not be liable for any losses (whether direct, indirect or consequential) caused by any computer virus or any form of computer hacking.
- 4.2 You shall be responsible at your own expense for maintaining backup copies of the Input Data and Output Data. For the avoidance of doubt, helpIT has no responsibility whatsoever for taking backup copies of the Input Data or Output Data and shall have no liability whatsoever for any loss or damage resulting from loss of or damage to the Input Data or Output Data.
- 4.3 You shall comply with all of helpIT's security rules and regulations in place as communicated to you from time to time by helpIT in respect of access to and use of the Services and the Job Submission Form, including without limitation those relating to restrictions on password use. You shall not transmit Input Data to helpIT via email. You shall not carry out any linking of pages of any part of the Job Submission Form nor incorporate any part of the Job Submission Form as part of your own web site, or that of any other party, without the prior written consent of helpIT.
- 4.4 Each party shall take reasonable steps to keep the other's Confidential Information confidential and shall not use the Confidential Information except for the purpose of performing this Agreement and shall not disclose the Confidential Information to any third party, except for disclosure to employees or other third parties directly engaged in the provision of the Services on a need to know basis and then only where it has secured effective protection no less stringent than in this Agreement.
- 4.5 Clause 4.4 shall not apply to information which:
- i. is or becomes generally available to the public other than as a result of disclosure by the receiving party;
 - ii. was available to the receiving party on a non-confidential basis before disclosure under this Agreement;
 - iii. was, is or becomes available on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality obligation with the disclosing party or otherwise prohibited from disclosing the information to the receiving party.
- 4.6 Clause 4.4 shall not apply to prevent disclosure of Confidential Information which is required to be disclosed by law, by any government agency or other regulatory body, by any court or other competent authority provided that, to the extent it is legally permitted to do so, the party required to make disclosure gives the other party as much notice as reasonably possible and takes the other party's requests into consideration where it is able to do so.

5. Warranties and Indemnity

- 5.1 Each party warrants that in respect of the subject matter of this Agreement it shall at all times comply with all applicable laws, regulations and rules having equivalent effect. Where you are asking helpIT to process data which is subject to the Data Protection Legislation, you warrant in all such cases that you are authorised to provide data to helpIT for processing and have obtained and will maintain the necessary consents or have and will maintain other grounds for lawful processing by helpIT of that data for the duration of the Services.
- 5.2 Without prejudice to the generality of Clause 5.1, you will have in place legally binding agreements with each Responsible Party to ensure compliance with the Data Protection Legislation and usage of the Output Data in accordance with the Permitted Purposes.
- 5.3 helpIT shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- i. occasional planned maintenance carried out during the maintenance window of 8pm to 6am UK time; and
 - ii. unscheduled maintenance necessary to prevent or resolve any technical problems or issues.

In all cases, helpIT will use reasonable endeavours to give you notice in advance of the unavailability of the Services when you log in to the Website and to promptly reply to emails to the Support Email providing information about the

expected duration of unavailability.

- 5.4 helpIT does not warrant that your use of the Services will be uninterrupted and is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and you acknowledge that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 5.5 helpIT warrants and undertakes to perform the Services with commercially reasonable care and skill and to make commercially reasonable efforts to do so in a timely manner.
- 5.6 helpIT undertakes to respond to emailed support requests when commercially reasonable to do so and within a commercially reasonable timeframe.
- 5.7 Subject to the foregoing, all conditions, warranties, terms and undertakings, express or implied, statutory or otherwise, in respect of the performance by helpIT of the Services or other services provided hereunder are hereby excluded.
- 5.8 You warrant that you have the authority to enter into this Agreement and to supply the Input Data to helpIT in order to perform the Services.
- 5.9 You agree to indemnify helpIT in respect of all costs, claims, demands and expenses incurred or suffered by helpIT as a result of:
- i. helpIT's use of the Input Data in providing the Services in accordance with this Agreement; and/or
 - ii. any claim arising from use made by any Responsible Party of the Output Data and/or arising from the material dispatched by any Responsible Party using the Output Data.
- 5.10 Authorised Users may use the Services to generate reports for your clients and customers, but you may not allow Clients or other third parties to directly access the Services: they must have a separate agreement with helpIT to do so.
- 5.11 In relation to Authorised Users of Subscription Plans, you undertake that:
- i. you will assign each individual Authorised User an individual user login;
 - ii. the maximum number of Authorised Users that you authorise to access and use the Services and the Documentation shall not exceed the number of users allowed for the level of Subscription Plan you have purchased from time to time;
 - iii. you will not allow or suffer any user login to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation; and
 - iv. each Authorised User shall keep a secure password for their use of the Services and Documentation and that each Authorised User shall keep their password confidential.
- 5.12 You may not resell, transfer, disclose or permit the use of the Output Data to or by any third party, except to a Responsible Party. Where your purchase of the Services is for and on behalf of your Client, you may hold the Output Data solely on behalf of only that Client and you may not use the Output Data on behalf of any other clients or third parties.
- 5.13 You shall not:
- i. except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - ii. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - iii. access all or any part of the Services or Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - iv. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services or Documentation available to any third party except the Authorised Users; or
 - v. attempt to obtain, or assist third parties in obtaining, access to the Services or Documentation, other than as provided under this Clause 5.
- 5.14 You shall use best endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify helpIT.
- 5.15 You undertake to ensure that each Responsible Party complies with the terms of this Agreement as if it were a party to the Agreement and you hereby fully indemnify helpIT against any claim, loss or liability or damage:

- i. arising from this Agreement as a result of any act or omission on the part of any Responsible Party; or
- ii. arising from any failure by any Responsible Party to comply with the terms of this Agreement.

5.16 You also warrant that you will prevent others under your control from violating any term of this Agreement.

5.17 You hereby warrant that you have not been induced to enter into this Agreement by any prior representations whether oral or written except as expressly contained in this Agreement and you hereby waive any claim for breach of any such representations which are not so contained.

6. Intellectual Property Rights

6.1 Title, copyright and all other intellectual property rights in the Services, Third Party Reference Data, the Data Enhancements, the Software and the Documentation shall at all times remain vested in helpIT or its third party licensors and neither you nor your Client (as applicable) shall acquire any rights whatsoever therein save as expressly provided in this Agreement.

6.2 Title, copyright and all other intellectual property rights in the Input Data and those elements of the Output Data that are not contained within the Data Enhancements shall at all times remain vested in you or your Client and helpIT shall acquire no rights whatsoever therein save as expressly provided in this Agreement.

6.3 You or your Client (as applicable) grant to helpIT a non-transferable, non-exclusive licence to the extent and for the period necessary to use and copy the Input Data to enable helpIT to carry out its obligations under this Agreement.

6.4 Any copyright or other proprietary notices in the Services or the Output Data shall not be deleted or altered by any Responsible Party.

7. Liability

7.1 You shall inspect the Output Data within 15 (fifteen) working days of helpIT generating an email notification to you that the Output Data is available for you to download. You shall notify helpIT of any claim by any Responsible Party which is based on any defect or failure of the Output Data to correspond with the Services within 60 (sixty) working days of the date of such email notification. If you do not notify helpIT accordingly, helpIT shall have no liability for such defect or failure notified after the expiry of 60 (sixty) days. Where any valid claim in respect of at least part of the Output Data which is based on any defect or failure of that part of the Output Data to meet the Services is notified to helpIT in accordance with this Clause, helpIT may remedy the defect or failure in that part of the Output Data free of charge or, at helpIT's sole discretion, refund any charges (or a proportionate part of such charges) paid by you to helpIT in respect of the Output Data, but helpIT's total liability for any loss or damage flowing from any defect or deficiency in the provision of the Services or the Output Data shall be as set out in this Clause.

7.2 You acknowledge:

- i. that the Third Party Reference Data is supplied to helpIT by the Third Party Data Suppliers over whom helpIT has no control and this data is in turn is derived from data provided to the Third Party Data Suppliers by other third parties and as such the Third Party Data Suppliers do not control the accuracy or completeness of the Third Party Reference Data. Due to the volume and nature of the Third Party Reference Data it is impracticable for the Third Party Data Suppliers to verify such information;
- ii. that where Input Data, Output Data or other information is transferred over the Internet it may be subject to interference by third parties; and
- iii. the Processing Fees are low compared with the value to you, the Client and the Responsible Parties of the Output Data and the use that can lawfully be made of it.

Therefore, subject always to helpIT's obligation under Clause 5.5, neither helpIT nor the Third Party Data Suppliers can give any further or other warranties as to the accuracy or completeness of the Output Data.

7.3 helpIT makes no warranties or representations as to the suitability of the Output Data for any particular purpose. You are responsible for satisfying yourself that the Output Data is suitable for any use to which you or your Client (as applicable) wish to put the Output Data. helpIT's responsibility is simply to comply with the Services Specification using reasonable care and skill for the purpose of performing the Services.

7.4 Neither you nor your Client (as applicable) should use the Services as the sole basis for any business decision and neither helpIT nor any Third Party Data Supplier shall be liable for any losses suffered as a result of you or your Client (as applicable) doing so. You and your Client (as applicable) accept and agree that helpIT does not warrant any decisions taken by you and/or your Client (as applicable) as a result of the Output Data to any extent whatsoever.

7.5 You acknowledge that you have not entered into any contractual arrangements with any Third Party Data Supplier and you agree not to commence proceedings against any Third Party Data Supplier for any reason arising out of any defects or omissions in Output Data created by the use of Third Party Reference Data.

- 7.6 Except as expressly provided in this Agreement, all conditions and warranties or terms of equivalent effect whether express or implied (by statute or otherwise) are excluded to the fullest extent permitted by law.
- 7.7 helpIT shall have no liability in respect of:
- i. any claim made by any Responsible Party for any loss, damage, costs, expenses or other claims for compensation arising from any Input Data or Output Data based on instructions supplied by you which are incomplete, incorrect, inaccurate, illegible, out of sequence, or in the wrong form, or arising from their late arrival or non-arrival, or any other fault of you or your Client (as applicable);
 - ii. any loss or damage of whatsoever nature suffered by you arising out of or in connection with any breach of this Agreement by you or any act, misrepresentation, error or omission made by or on behalf of you or arising from any cause beyond helpIT's reasonable control;
 - iii. any indirect or consequential loss howsoever arising suffered by you and arising in any way in connection with this Agreement or any other agreement entered into between you and helpIT or for any liability of you to any third party; or
 - iv. any claims in the nature of loss or profits or failure to make anticipated savings, whether such claims are direct or indirect or consequential.
- 7.8 Where the Services are not Chargeable Services, helpIT shall have no liability in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 7.1 – 7.7 or otherwise) whether such claim arises in contract or in tort (including negligence) or otherwise howsoever.
- 7.9 Subject to Clauses 7.7 and 7.8, no matter how many claims are made and whatever the basis of such claims, helpIT's maximum aggregate liability to you under or in connection with this Agreement, in respect of any direct loss (or any other loss to the extent that such loss is not excluded by Clauses 7.1 – 7.7 above or otherwise) whether such claim arises in contract or in tort (including negligence) or any otherwise howsoever, shall not exceed a sum equal to:
- i. for Subscription Plans, the fees charged for the Initial Subscription Period
 - ii. otherwise, the Processing Fees.
- 7.10 None of the clauses above shall apply so as to restrict liability for death or personal injury resulting from the negligence of helpIT, its appointed agents or suppliers, or to restrict liability for fraud or fraudulent misrepresentation.
- 7.11 You agree that you are in a better position to foresee and evaluate any loss you or any other Responsible Party may suffer in connection with this Agreement and that the Processing Charges have been calculated on the basis of the limitations and exclusions in this Clause 7 and that you will effect such insurance as is suitable with regard to the particular circumstances and the terms of this Clause 7.

8. Audit

- 8.1 Where the Services make use of reference data files from Third Party Data Suppliers, you will provide helpIT, its Third Party Data Suppliers and their auditors with access to such premises and to such information as is reasonably required to audit your compliance with the terms of this Agreement, provided that in the exercise of this right helpIT and its Third Party Data Suppliers shall (and shall procure that their auditors shall) cause as little disruption to your business as is reasonably practicable. Should any audit or inspection of your premises reveal that you have not complied with the terms of this Agreement then helpIT or its Third Party Data Suppliers may charge you the reasonable costs of carrying out such audit.

9. Term and Termination

- 9.1 This Agreement shall commence on the Effective Date.
- 9.2 For Subscription Plans paid by credit card, this agreement shall, unless otherwise terminated as provided in this Clause 9, continue for the Initial Subscription Period and thereafter shall be automatically renewed for successive Renewal Periods, unless:
- i. you cancel your subscription through the 'Billing' section of our website; or
 - ii. it is otherwise terminated in accordance with the provisions of this agreement;
- 9.3 For Subscription Plans paid by Direct Debit, either party notifies the other party of termination, in writing, at least 7 days before the end of the Initial Subscription Period or any Renewal Period.
- 9.4 On cancellation under Clauses 9.2 or 9.3, this agreement shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period.
- 9.5 helpIT shall be entitled to suspend the Services immediately:
- i. if you breach any of your obligations under this Agreement; or

- ii. in response to or in compliance with any law, statute, legislation, order, regulation or guidance issued by government, a court of law, an emergency service or any other competent regulatory authority, or if the security processes set up to protect the Services are breached in any way.
- 9.6 helpIT may terminate this Agreement immediately on notice if you fail to pay any amount due hereunder within 14 days of its due date.
- 9.7 Either party may terminate this Agreement immediately by written notice to the other in the event that any of the following occur:-
- i. the other party breaches any term of this Agreement and such breach is incapable of remedy or continues for a period of 30 days after notice requiring the same to be remedied has been given by the terminating party to the other party; or
 - ii. an order is made or a resolution is passed for the winding up of the other party, or if a provisional liquidator is appointed in respect of the other party, or if an administration order is made in respect of the other party, or if a receiver is appointed in respect of the other party or all or any of its assets, or if the other party is unable to pay any of its debts within the meaning of Section 123 of the Insolvency Act 1986, or if any voluntary arrangement is proposed under Part 1 of the Insolvency Act 1986 in respect of the other.
- 9.8 helpIT may terminate this Agreement forthwith if you purport to breach Clause 10.4 hereunder.
- 9.9 Termination of this Agreement shall be without prejudice to any other rights or remedies of the terminating party.

10. General

- 10.1 Subject to Clause 10.2, this written Agreement together with Schedules A through D, constitutes the entire agreement between the parties hereto relating to the subject matter of this Agreement and each party warrants to the other that it has not relied on any representation made by the other party prior to this contract coming into effect unless such representation has been expressly included herein.
- 10.2 No change, alteration or modification to this Agreement shall be valid unless in writing and signed by duly authorised representatives of both parties.
- 10.3 If any provision of this Agreement or part thereof shall be void for whatever reason, it shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 10.4 Your rights and obligations under this Agreement are personal to you and you undertake that you shall not, without the prior written consent of helpIT, assign, lease, charge, sub-license, or otherwise transfer such rights and obligations in whole or in part.
- 10.5 helpIT reserves the right to sub-contract any of the work required to fulfil its obligations hereunder without prior notice.
- 10.6 Any notice given pursuant hereto shall be in writing and shall be sent by reputable courier or recorded delivery to (for helpIT) the address given above or (for you) to the address given by you on the Job Submission Form. Such notice shall be deemed to have been duly served upon and received by the addressee on date of receipt.
- 10.7 Neither party shall be liable for any loss suffered by the other party or be deemed to be in default for any delays or failures in performance hereunder (other than in relation to any obligation of yours to make payment) resulting from acts or causes beyond its reasonable control or from any acts of God, acts or regulations of any governmental or supra-national authority having the force of law.
- 10.8 Any delay or forbearance by either party in enforcing any provisions of this Agreement or any of its rights hereunder shall not be construed as a waiver of such provision or right thereafter to enforce the same.
- 10.9 Clause headings have been included in this Agreement for convenience only and shall not be considered part of, or be used in interpreting, this Agreement.
- 10.10 This Agreement shall be governed by the laws of England and the parties submit to the exclusive jurisdiction of the Courts of England.

Schedules – Third Party Terms

The following schedules contain agreements specifying the terms for licensing of specific third party data files used in performance of the Services. These schedules are listed here for reference:

- A. Equifax file: disConnect
- B. The Read Group files: Gone Away Suppression File (GAS), The Bereavement Register (TBR) and GAS Reactive
- C. The Ark files: National Deceased Register (NDR) and Re-Mover
- D. Millennium file: Mortascreen

Schedule A: Equifax File

helpIT may use the disConnect File for the purposes of identifying Goneaways, deceased persons and people who do not want to be mailed in the Input Data. Equifax is the source of the disConnect File and any information contained within the disConnect File. As a condition of Equifax allowing helpIT to provide Flags and/or Suppressions using the disConnect File, Equifax requires you to agree to the following terms and conditions (“Equifax Terms”). Where you are dealing with an End User, you shall procure that the End User agrees to the Equifax Terms.

A1 Definitions and interpretation

The definitions in this clause are in addition to the definitions in Clause 1 of the main body of the Agreement.

“**Applicable Regulations**” means the Consumer Credit Act 1974, the Data Protection Legislation, the DMA Guidelines, the Representation of the Peoples (England and Wales) Regulations 2001, the Money Laundering Regulations 2003, the Financial Services and Markets Act 2000 (Money Laundering Regulations 2001), regulations made by the Steering Committee on Reciprocity and any other applicable law, regulation or code.

“**disConnect File**” means an Equifax database which is derived from Equifax Goneaways, Equifax deceased persons and the Equifax Do Not Mail file, access to which is provided by helpIT for performance of the Services.

“**End User**” means any third party that has provided data to you for processing using the disConnect File or to whom you provide data for further processing subsequent to helpIT matching the data against disConnect File.

“**Equifax**” means Equifax Plc, a company incorporated in England and Wales with registered number 2425920, whose registered office is Capital House, 25 Chapel Street, London NW1 5DS;

“**Equifax Screened Data**” means anything produced using or derived from the disConnect File.

A2 Restrictions on use of the Equifax Screened Data

A2.1 Except as allowed for in Clause A2.2:

- i. You shall not use any information derived directly or indirectly from the Equifax Screened Data for any purpose.
- ii. You shall not conduct or participate in any business involving the re-supply to third parties of the Equifax Screened Data, disConnect Suppressions or any other information derived from the Equifax Screened Data.

A2.2 You may provide data which includes information which has been derived from disConnect Suppressions to the End User for the sole benefit of the Data Controller for the data that has been provided for processing, for use only in a direct marketing or direct mail application or campaign, or an account management application. This provision shall be subject to you having in place an agreement with the End User for the processing, supplying and/or using the data which includes the Equifax Terms and does not conflict with the Equifax Terms.

A2.3 You may not make the Equifax Screened Data available to any of these organisations:

- The REaD Group Limited
- Millennium ADMP Limited
- Experian Limited
- Skipton Building Society
- Callcredit PLC
- EuroDirect Database Marketing Limited
- CACI Limited
- Wegener DM Group PLC
- Acxiom Limited
- Data Locator Group plc
- UK Investigations Limited (or UK Investigations Services Limited)
- Fair Isaac Services Limited
- Crossit Target Marketing Limited (or Crossit Telemarketing Limited)

and all the above company’s group members, holding and subsidiary companies as defined in s736 Companies Act 1985 and s53 Companies Act 1989 (as appropriate).

Equifax reserves the right to review and amend this list from time to time.

Schedule B: Read Group Files

helpIT may use the Read Group files for the purposes of identifying Goneaways and deceased persons in the Input Data. The Read Group is the source of the Read Group Files and any information contained within these files. As a condition of The Read Group allowing helpIT to provide Flags and/or Suppressions using these files, The Read Group requires you to agree to the following terms and conditions ("Read Group Terms"). Where you are dealing with other Responsible Parties, you shall procure that each Responsible Party agrees to the Read Group Terms.

B1 Definitions and interpretation

The definitions in this clause are in addition to the definitions in Clause 1 of the main body of the Agreement.

"Read Group" means Read Group Ltd, company registration number 2959244, whose registered office is The Pavilion, 1 Newhams Row, Bermondsey Street, London SE1 3UZ.

"Read Group Files" means the Gone Away Suppression File (GAS), The Bereavement Register (TBR) and GAS Reactive, which are supplied by The Read Group to helpIT.

"Read Group Screened Data" means anything produced using or derived from the Read Group Files.

"GAS Reactive" means a product consisting of details of individuals with postal addresses within the UK who have moved and the new address of the individual who has moved and where available the new occupier of the address from which the individual has moved or both.

"Gone Away Suppression File" (also known and referred to herein as **"GAS"**) means a product consisting of details of individuals with postal addresses within the United Kingdom who have moved.

"The Bereavement Register" (also known and referred to herein as **"TBR"**) means a product consisting of details of individuals with residential postal addresses within the United Kingdom who have died.

B2 Restrictions on use of the Read Group Screened Data

B2.1 You shall be entitled to use the Read Group Files to flag and suppress records within either (but not both) of the following:

- i. Input Data belonging to you as the Data Controller; or
- ii. Input Data belonging to Data Controllers to enable you to provide Output Data to another Responsible Party and/or for mailing Output Data.

B2.2 You shall not be entitled to use the Read Group Files to:

- i. to directly target households who have suffered a bereavement;
- ii. for the purpose of assessing creditworthiness (other than for the analysis or pre-screening of its prospects or customers);
- iii. for sub-licensing, selling or otherwise disclosing or making Read Group Screened Data to any third party acting as a credit reference agency or as a supplier of information used for assessing creditworthiness other than for the analysis or pre-screening of its prospects or customers);
- iv. for debtor tracing;
- v. in the cases of new addresses for individuals who have moved and New Occupiers, for contacting anyone other than an existing customer or prospect of the owner of the Input Data;
- vi. in the case of credit data, for targeting or appending any information to a database.
- vii. to use any part of the Read Group Screened Data otherwise than for and in accordance with this Clause B2.

B2.3 You may return data which includes information which has been derived from the Read Group Screened Data to the third party that has provided the data to you for processing, for the sole benefit and use of the Data Controller of the data that has been provided for processing and for use only in accordance with this Clause B2.

B2.4 The source of all Flags, indicators and any other information in the Read Group Screened Data and appended to the Output Data must not be evident to or able to be identified as being derived from the Read Group Files by any third party. For the avoidance of doubt: a third party expressly includes other companies within the corporate group of companies of which Licensee is a party and any party other than the parties to this Agreement.

Schedule C: The Ark Files

helpIT may use the NDR and Re-Mover files for the purposes of identifying Goneaways and deceased persons in the Input Data. The Ark is the source of the NDR and Re-Mover files and any information contained within these files. As a condition of The Ark allowing helpIT to provide Flags and/or Suppressions using these files, The Ark requires you to agree to the following terms and conditions ("Ark Terms"). Where you are dealing with other Responsible Parties, you shall procure that each Responsible Party agrees to the Ark Terms.

C1 Definitions and interpretation

The definitions in this clause are in addition to the definitions in Clause 1 of the main body of the Agreement.

"The Ark" means The ARK (CM) Limited (company number 04659992), 261 Alcester Road South, Kings Heath, Birmingham B14 6DT.

"Ark Screened Data" means anything produced using or derived from the NDR and Re-Mover files.

"NDR" means the National Deceased Register, a database of personal information of deceased individuals supplied by The Ark to helpIT.

"Re-mover" means a database of personal information of "gone away" names and addresses supplied by The Ark to helpIT.

C2 Restrictions on use of the Ark Screened Data

C2.1 You shall be entitled to use the Ark Screened Data either:

- i. on Lists belonging to you for the purpose of creating Output Data for your own internal business purposes; or
- ii. on Lists belonging to Clients to enable you to provide Output Data to Clients and/or for mailing Output Data.

C2.2 You shall not be entitled, save as expressly provided by this Agreement:

- i. to use the Products for purposes other than direct mail suppression and address updates, such as in connection with the management of annuities or pension schemes, credit screening, fraud prevention, billing, credit control or customer verification;
- ii. to use the NDR to directly target households who have suffered a bereavement;
- iii. to use any part of the Ark Screened Data otherwise than for and in accordance with this Clause C2.

C2.3 You may return data which includes information which has been derived from the Ark Screened Data to the third party that has provided the data to you for processing, for the sole benefit and use of the Data Controller of the data that has been provided for processing and for use only in accordance with this Clause C2.

C2.4 You may not make the Ark Screened Data available to any of these organisations:

- The REaD Group Limited
- The Data Agency
- Wilmington PLC
- Tracesmart
- Marketing Source Ltd
- WhenFresh Limited
- Information Works London Limited

Schedule D: Millennium File

helpIT may use the Mortascreen file for the purposes of identifying deceased persons in the Input Data. Millennium is the source of the Mortascreen file and any information contained within the Mortascreen file. As a condition of Millennium allowing helpIT to provide Flags and/or Suppressions using the Mortascreen file, Millennium requires you to agree to the following terms and conditions ("Millennium Terms"). Where you are dealing with other Responsible Parties, you shall procure that each Responsible Party agrees to the Millennium Terms.

D1 Definitions and interpretation

The definitions in this clause are in addition to the definitions in Clause 1 of the main body of the Agreement.

"**Millennium**" means Wilmington Millennium Ltd whose registered office is 6-14 Underwood Street, London, N1 7JQ.

"**Mortascreen**" means an electronic dataset supplied to helpIT by Millennium which includes names and addresses of deceased persons.

"**Millennium Screened Data**" means anything produced using or derived from the Mortascreen file.

D2 Restrictions on use of the Millennium Screened Data

D2.1 You shall be entitled to use the Millennium Screened Data either:

- i. on Lists belonging to you for the purpose of creating Output Data for your own internal business purposes; or
- ii. on Lists belonging to Clients to enable you to provide Output Data to Clients and/or for mailing Output Data.

D2.2 You shall not be entitled, save as expressly provided by this Agreement:

- i. to use the Products for purposes other than direct mail suppression and address updates, such as in connection with the management of annuities or pension schemes, credit screening, fraud prevention, billing, credit control or customer verification;
- ii. to use the Mortascreen file to directly target households who have suffered a bereavement;
- iii. to use any part of the Millennium Screened Data otherwise than for and in accordance with this Clause D2.
- iv. to utilise the Mortascreen™, trademark or trade name in anyway whatsoever without the express written permission of Millennium;

D2.3 You may return data which includes information which has been derived from the Millennium Screened Data to the third party that has provided the data to you for processing, for the sole benefit and use of the Data Controller of the data that has been provided for processing and for use only in accordance with this Clause D2.