

EXPERIAN : TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES 2017

1. APPLICATION OF THESE TERMS

- 1.1. The terms and conditions comprised herein are the only terms and conditions upon which Experian Marketing Services Malaysia Sdn Bhd ("Experian") is prepared to deal with the Supplier. By accepting the Purchase Order issued by Experian, you ("Supplier") agree to be bound by the following terms (the "Agreement"): The terms and conditions comprised in this Agreement are the only terms and conditions upon which Experian is prepared to deal with the Supplier and they shall govern the Agreement to the entire exclusion of all other terms or conditions.
2. MATERIALS
 - 2.1. The Supplier shall, at its own expense, supply everything necessary for provision of the Services except as otherwise agreed in writing between the Supplier and Experian.
 - 2.2. All materials including any drawings, designs, patterns, samples, specifications and photographs (any of which may be in electronic form) made available by Experian to the Supplier in connection with this Agreement shall be and remain the property of Experian and the Supplier shall:
 - 2.2.1. keep those materials in good order and condition;
 - 2.2.2. use those materials only for the purposes of this Agreement; and
 - 2.2.3. return those materials upon Experian's request at any time or, if no request is made, upon completion of this Agreement.
3. PERFORMANCE
 - 3.1. The Supplier shall:
 - 3.1.1. provide the Services and Deliverables to Experian pursuant to this Agreement; and
 - 3.1.2. in carrying out the Services, comply with any reasonable instructions given by Experian.
4. WARRANTIES
 - 4.1. Without prejudice to any other right or remedy available to Experian, the Supplier warrants, represents and undertakes to Experian that:
 - 4.1.1. it has obtained and will continue to hold all necessary licences, consents, permits and agreements required for the provision of the Services and the exercise by Experian of the rights granted by the Supplier to Experian under this Agreement;
 - 4.1.2. the Services will be performed by appropriately qualified and trained personnel with all reasonable care and skill in accordance with Good Industry Practice and this Agreement;
 - 4.1.3. the Services and Deliverables will conform with all descriptions and specifications provided to Experian by the Supplier and with all applicable legislation from time to time in force;
 - 4.1.4. any Deliverables provided shall be free from material defects in design, material and workmanship; and
 - 4.1.5. use of the Services and/or any Deliverables by Experian will not infringe any Intellectual Property Rights of any third party.
 - 4.2. Both parties warrant that they have the full power and authority to enter into this Agreement.
5. CHARGES
 - 5.1. The price payable for the Services and Deliverables shall be as stated on the Purchase Order, and unless otherwise stated shall be exclusive of any applicable sales tax, service tax or goods and services tax ("GST") (which shall be payable by Experian subject to receipt of a valid invoice stating the precise amount of tax payable).
 - 5.2. Experian shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase as customarily granted by the Supplier, unless otherwise agreed between the parties.
 - 5.3. The Supplier shall provide Experian with an invoice on completion of the Services and/or on delivery of the Deliverables together with such other documentation as Experian may from time to time specify. In any event all invoices and correspondence (if appropriate) shall include all details required from time to time by the Royal Malaysian Customs & Excise Department ("Customs") for sales tax, service tax and/or GST purposes.
6. PAYMENT AND INVOICING
 - 6.1. Experian will pay for the Services and Deliverables no later than the last day of the month following the month in which it receives a correct invoice from the Supplier (the "Due Date"). For the avoidance of doubt, if the amount invoiced is otherwise inaccurate, then such an invoice will not be correct for the purpose of this Clause 6.1 and Experian shall be under no obligation to pay the Supplier until the Supplier has provided such correct invoice.
 - 6.2. Experian reserves the right to deduct from or offset against any payment to the Supplier all monies due or becoming due to Experian from the Supplier whether in connection with this Agreement or otherwise.
 - 6.3. Failure to comply with the instructions set out in the Purchase Order may delay payment.
 - 6.4. Experian shall not be obliged to pay any invoice which is received more than 90 days after performance of the Services to which it relates.
 - 6.5. No variation from the price set out in the Purchase Order nor additional charges may be invoiced without the prior consent in writing of Experian.
 - 6.6. If any sum under this Agreement is not paid by the Due Date then, without prejudice to the parties other rights under this Agreement, interest shall become payable upon that sum from the Due Date until payment is made in full, at a rate of 2% above Bank Negara Malaysia's Base Lending Rate as set from time to time. The Supplier is not entitled to suspend any performance of the Services as a result of any sums being outstanding.
 - 6.7. The Supplier shall be responsible for accounting to Customs and all other authorities for all taxes, contributions, duties and other charges and dues for which the Supplier is responsible.
7. CONFIDENTIALITY
 - 7.1. The Supplier shall keep in strictest confidence all Confidential Information disclosed to it by Experian or its agents or otherwise understood or received by it pursuant to fulfilling its obligations under this Agreement and the Supplier shall restrict disclosure of such Confidential Information to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging its obligations to Experian and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind it. At Experian's request or, if no request is made, upon completion of this Agreement, the Supplier shall delete from its systems and return to Experian all such Confidential Information.
 - 7.2. The restrictions in Clause 7.1 do not apply to any information to the extent that it:
 - 7.2.1. is or comes within the public domain other than through a breach of Clause 7.1; or
 - 7.2.2. is in the Supplier's possession (with full right to disclose) before disclosure is made under the terms of this Agreement; or
 - 7.2.3. is lawfully received from a third party (with full right to disclose); or
 - 7.2.4. is independently developed by the Supplier without access to or use of the Confidential Information; or
 - 7.2.5. is required to be disclosed by law or by a court of competent jurisdiction or by any regulatory body.
8. DATA PROTECTION, COMPLIANCE & INFORMATION SECURITY
 - 8.1. Each party undertakes to the other that it will at all times pursuant to this Agreement comply with all applicable legislation, regulations, and other rules having equivalent force (including but not limited to the PDPA) and any subordinate or associated regulations.
 - 8.2. In relation to the PDPA the parties shall in addition to the general obligations under Clause 8.1 and without prejudice to any other provisions of this Agreement:
 - 8.2.1. comply with the PDPA's Personal Data Protection Principles;
 - 8.2.2. comply with the rights of the individuals to whom the provision of the Services relates as set out in the PDPA;
 - 8.2.3. comply with any conditions issued to it by the Personal Data Protection Commissioner.
 - 8.3. Each party warrants that it has in place and undertakes to maintain throughout the duration of this Agreement appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental

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loss or destruction of or damage to or disclosure of Personal Data.

8.4. The Supplier shall not process any Personal Data of Experian other than as reasonably necessary for the provision of the Services or otherwise in accordance with the instructions of Experian, and shall not without the prior written consent of Experian export or process any Personal Data of Experian outside Singapore.

8.5. Information security is a strategically important issue to Experian. The Supplier acknowledges that if it will handle or have access to, or is likely to handle or have access to, any data or other information of Experian ("Experian Information") it will have been required to complete an Experian information security questionnaire ("Security Questionnaire") as part of Experian's supplier selection and management process. If at any time the Supplier is handling or has access to Experian Information and has not completed a Security Questionnaire, Experian shall be entitled to terminate this Agreement by notice in writing to the Supplier (provided that if this is because of any act or omission of Experian, Experian shall give the Supplier a reasonable opportunity to complete a Security Questionnaire before exercising this right);

8.6. The Supplier warrants to Experian that whilst this Agreement remains in force (and without prejudice to the provisions of Clauses 7 and 8.4) it will have and keep in place any information security measure which the Supplier has indicated to Experian (either in its response to the Security Questionnaire, or otherwise in writing) that it has or will have in place;

8.7. The Supplier will comply with the Third Part Security Requirements a copy of which with either have been provided to the Supplier, or is annexed to this Agreement. It is the Supplier's obligation to ensure it has obtained and understands the Third Part Security Requirements.

9. **PUBLICITY**

9.1. The Supplier shall not disclose the making of this Agreement in any journal/magazine/publication or other medium or otherwise use Experian's name or logo or the name or logo of any of Experian's customers in any of its advertising or publicity material (including without limitation in any press release or statement) without first receiving written consent from Experian's Head of Procurement and/or Public Relations Director, which may be withheld or given in Experian's absolute discretion.

10. **INTELLECTUAL PROPERTY & OPEN SOURCE SOFTWARE**

10.1. The Supplier shall acquire no rights or interests in any Intellectual Property Rights of Experian by virtue of this Agreement.

10.2. The Supplier shall make no use whatsoever of any Intellectual Property Rights of Experian unless authorised in advance in writing to do so by Experian. If and to the extent that Experian so authorises the Supplier, the Supplier warrants, represents and undertakes that it shall:

10.2.1. only use such Intellectual Property Rights as Experian authorises, for the specified purposes that Experian authorises and no other purposes whatsoever; and

10.2.2. comply with the directions from time to time issued by Experian about the use of Experian's Intellectual Property Rights.

10.3. To the extent it does not vest in Experian by operation of law or under this Agreement, the Supplier shall assign to Experian all rights, title and interest with full title guarantee, free from any adverse rights or claims, in all present and future Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables) produced by the Supplier in performance of the Services, which assignment shall include but shall not be limited to all rights of action for damages for Intellectual Property Rights infringement, all rights in any modifications or enhancements to existing software, whether owned by Experian, the Supplier or a third party, and if necessary it shall procure the assignment to Experian by the author or creator of such Intellectual Property Rights produced during the performance of the Services.

10.4. The Supplier shall:

10.4.1. immediately upon creation of any Intellectual Property Right in performance of the Services, disclose and deliver to Experian all information and data in its possession, power or control necessary for a full understanding, application and, where applicable, registration of the Intellectual Property Right; and

10.4.2. promptly, and at Experian's request, do all such further acts and execute all such documents as Experian may from time to time require for the purpose of securing for Experian the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to Experian in accordance with this Agreement, in any or all countries and free from any adverse rights or claims.

10.5. The Supplier shall irrevocably and unconditionally waive any and all moral rights to any Intellectual Property Rights produced by the Supplier pursuant to performance of the Services under the Copyright Act 1987 Part III or any rights or a similar nature under any law in any other jurisdiction.

10.6. For the avoidance of doubt, the know-how, techniques or principles used which are the property of the Supplier at the start of the Services shall remain the property of the Supplier.

10.7. The Supplier shall indemnify and keep Experian indemnified against any and all losses, costs, damages, liabilities, claims, demands and expenses suffered or incurred by Experian (including legal expenses reasonably and properly incurred) arising out of any claim brought against Experian by any third party alleging that its Intellectual Property Rights are infringed by the use by Experian of the Services and/or the Deliverables provided that Experian:

10.7.1. informs the Supplier of such claim;

10.7.2. does not make any admissions that prejudice, or might prejudice the defence of such claim;

10.7.3. allows the Supplier complete control over the defence of, and over all negotiations relating to, such claim; and

10.7.4. provides the Supplier with all reasonable assistance as requested by the Supplier.

11. **INSURANCE**

11.1. The Supplier shall effect with a reputable insurance company duly licensed under the Malaysian Insurance Act 1996 and keep in effect for the term of this Agreement adequate public liability insurance, professional indemnity insurance and, in respect of the Deliverables, product liability insurance. Each policy shall be effected for no less than RM 5,000,000.

11.2. The Supplier shall on request from time to time provide Experian with such evidence of insurance, and payment of premiums in connection with the policies as Experian may reasonably require.

12. **TERM AND TERMINATION**

12.1. This Agreement shall be effective from the Commencement Date and shall remain in effect unless otherwise terminated in accordance with its terms ("Term").

12.2. Either party may terminate this Agreement immediately without liability to the other and without prejudice to its other rights at any time by giving notice in writing to the other party:

12.2.1. if the other party is in material breach of any of the terms of this Agreement which is not capable of remedy;

12.2.2. if the other party is in material breach of any of the terms of this Agreement and, where remedial, has failed to remedy that breach within 30 days of being notified in writing of it;

12.2.3. if the other party enters into liquidation (apart from solvent liquidation for the purposes of amalgamation or reconstruction), is dissolved, is declared bankrupt, has a receiver, administrator or administrative receiver appointed over all or part of its assets, enters into an arrangement with its creditors, or takes or suffers any action similar to those set out above; or

12.2.4. if the other party's financial position deteriorates to such an extent that in the reasonable opinion of the other party its capability to adequately fulfil its obligations hereunder has been placed in jeopardy.

12.3. Experian shall be entitled to terminate this Agreement without liability to the Supplier and without prejudice to Experian's other rights at any time by giving notice in writing to the Supplier:

12.3.1. if there is a change of control or change in the ownership of the Supplier.

12.3.2. for convenience upon the provision of thirty days' written notice.

12.4. Termination of this Agreement (or any element of it) shall not affect any rights, obligations or liabilities of either party which

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have accrued before termination or which are intended to continue to have effect beyond termination.

12.5. On termination for any reason the Supplier shall immediately deliver to Experian all specifications, programs, materials and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not complete. All Intellectual Property Rights in such materials shall automatically pass to Experian (save to the extent they have not already done so by virtue of Clauses 10.3 and 10.4). In the event the Supplier fails to deliver within 30 days of the date of termination, Experian shall be entitled to enter the Supplier's premises to take possession of all such materials.

13. HEALTH AND SAFETY

13.1. The Supplier shall ensure that any Services and/or Deliverables supplied or installed under this Agreement comply with all legal requirements of Malaysia and any relevant international requirements and in particular the Supplier agrees before delivery to furnish Experian with a list in writing of any harmful or potentially harmful properties or ingredients in the Services and/or Deliverables supplied.

13.2. Experian will rely on the supply of information from the Supplier under Clause 13.1 in order to satisfy its own obligations under the Occupational Safety and Health Act 1994 and the Environmental Quality Act 1974 (as respectively amended and updated) and their various subsidiary legislation.

14. ETHICAL STANDARDS AND STAFF VETTING

14.1. The Supplier warrants, undertakes and represents that it:

14.1.1. shall not employ or use any person below the age of 14 or 15 (depending on country) or below the legal minimum age (where this is higher) in all countries in which it operates or sources goods or services;

14.1.2. shall not use forced labour in any form (prison, indentured, bonded or otherwise) and staff are not required to lodge papers or deposits on starting work;

14.1.3. shall comply with all applicable local environmental, safety and health regulations and shall provide a safe and healthy workplace, presenting no immediate hazards to its staff;

14.1.4. shall at all times adopt Social Accountability International's SA8000 as a guiding principle in the absence of local regulations;

14.1.5. within the customs and practices of the countries in which the supplier operates, shall not discriminate against any worker on any grounds (including race, religion, disability, age or gender);

14.1.6. shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse;

14.1.7. shall pay each employee at least the minimum wage, or the prevailing industry wage, (whichever is higher) and provides each employee with all legally mandated benefits;

14.1.8. shall comply with the laws on working hours and employment rights in the countries in which it operates;

14.1.9. shall comply with all relevant environmental legislation in the regions in which it operates;

14.1.10. has identified all the hazardous or toxic waste that it or its contractors or agents produce and that it is confident that all waste is disposed of by competent bodies via authorised disposal routes;

14.1.11. supports the rights of workers to form or join trade unions which are free to meet without hindrance; and

14.1.12. shall refrain from, and shall cause its employees, agents and subcontractors who perform the services to refrain from, paying, offering, receiving, soliciting or agreeing to receive any improper bribes, facilitation payments, gratuities or kickbacks.

14.2. The Supplier shall at its own cost comply with Experian's generic requirements from time to time relating to the vetting of individuals employed in sensitive roles or as communicated separately to the Supplier from time to time. Experian shall not be liable to the Supplier for any revenue which the Supplier fails to earn as a result of any delay by the Supplier in complying with these requirements.

14A. BRIBERY AND CORRUPTION

The Supplier warrants, undertakes and represents that it (i) shall comply with all applicable laws and regulations on bribery, corruption, and prohibited business practices; (ii) has in place appropriate policies and procedures to prevent bribery and corruption and has a zero tolerance attitude towards bribery and corruption.

15. AUDIT

15.1. During the Term of this Agreement and for 3 (three) years following its expiration or termination, Experian shall have the right, subject to reasonable notice, to conduct audits to ensure Supplier's compliance with the terms of this Agreement, to: (i) examine and verify: (a) the integrity of the Supplier systems that process, store and transmit Experian Confidential Information; (b) the internal controls (information technology, human resources, finance and accounting, procurement, organizational, input/output, system modification, processing, system design and access controls) and the security, disaster recovery, business continuity and back-up practices and procedures; (c) the accuracy of fees, costs and expenses charged to Experian; (d) the financial controls, processes and procedures; (e) Supplier's performance of the Services; and (ii) enable Experian to meet applicable legal, regulatory and contractual requirements applicable to the Services.

15.2. Upon Experian's request Supplier will provide Experian or obtain for Experian (i) access to such properties, records and personnel as Experian may reasonably require for the audits purpose; (ii) a completed audited statement of the financial condition of Supplier's organization, including: audited year-end results for the three (3) previous years, including revenues, expenses, net income, total assets, liabilities and footnotes; and the most recent financial interim statement.

16. FORCE MAJEURE

16.1. Neither party will be liable for any delay or failure in the performance of its obligations under this Agreement if such delay or failure is due to an event of Force Majeure.

16.2. If Force Majeure occurs, the delaying party shall be entitled to an extension of time for so long as the Force Majeure persists on condition that it promptly notifies the other party ("unaffected party") of the event of Force Majeure and discusses with it possible action to be taken to overcome the effect of Force Majeure and provided it uses all reasonable endeavours to overcome the event of Force Majeure.

16.3. If the Force Majeure persists for a period of 28 days or longer, the unaffected party may give notice to the other to terminate this Agreement with effect from a date specified in the notice without penalty or other liability (except for any liability on the Supplier to pay any refund to Experian).

17. GENERAL PROVISIONS

17.1. This Agreement and all documents referred to in it constitutes the parties' complete agreement relating to its subject matter and supersedes any previous agreements or arrangements between the parties relating to the same subject matter and, save for fraudulent misrepresentations, neither of the parties shall be bound by, or liable to the other party for, any representation, promise or inducement made by any agent or person on behalf of such party that is not contained in this Agreement.

17.2. No amendment or variation of this Agreement shall be valid or binding unless it is made in writing and signed by an authorized representative for each party to this Agreement.

17.3. Both parties intend and agree that the legal relationship created by this Agreement is one of the provision of independent specialist services. Nothing in this Agreement shall give rise to the presumption that the Supplier is an employee of Experian.

17.4. Where the Supplier is an agency providing consultants to Experian; if for any reason any member or members of the Supplier's personnel (including but not limited to employees, contractors and/or agency workers) is adjudged by a court or tribunal or statutory or administrative body or other authority of competent jurisdiction to be an Experian employee for employment, tax or other purposes ("a Claim"), the Supplier shall indemnify (and keep indemnified) Experian against any and all losses, damages, liabilities, claims, demands, compensatory awards, taxes, fines and expenses suffered or incurred by Experian (including legal expenses reasonably and properly incurred) arising out of or in connection with such Claim.

17.5. The Supplier may not assign, transfer, charge or deal in any other manner with this Agreement or any of its rights under

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it, or purport to do any of these things, or sub-contract any or all of its obligations under this Agreement without the prior written consent of Experian. Experian may assign, transfer, charge, sub-license or deal in any other manner with this Agreement or any of its rights under it to its Group Companies without the prior written consent of the Supplier.

17.6. If either party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that party from exercising that right or remedy subsequently in respect of that or any other incident.

17.7. A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed on behalf of the party who is waiving the breach or provision. Any waiver of a breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach and shall not affect the enforceability of any other term of this Agreement.

17.8. If any part of this Agreement is found to be invalid or unenforceable by any Court or other competent body, such invalidity or unenforceability shall not affect the other provisions of this Agreement and such other provisions shall remain in full force and effect.

17.9. Nothing in this Agreement is intended to, or shall, operate to:

- 17.9.1. create a partnership or joint venture of any kind between the Supplier and Experian;
- 17.9.2. authorise either party to act as agent for the other party; or
- 17.9.3. authorise either party to act in the name or on behalf of, or otherwise to bind, the other party in any way.

17.10. Each party shall, at the reasonable request and cost of the other party, do whatever is reasonably required to give the other party the full benefit of all the provisions of this Agreement.

17.11. Any notices to be sent by one party to the other in connection with this Agreement except for the service of Court proceedings shall be in writing and shall be delivered personally or sent by special delivery post (or equivalent service offered by the postal service from time to time) or fax to the addresses of each party as set out on the signature page to this Agreement or as otherwise notified in accordance with the provisions of this Clause.

17.12. Notices shall be deemed to have been duly given as follows:

- 17.12.1. If delivered personally, upon delivery;
- 17.12.2. If sent by post, two clear days after the date of posting;
- 17.12.3. If sent by fax, when transmitted provided that a confirmatory copy is sent by special delivery by the end of the next business day after transmission.

17.13. If either party notifies the other party of a change to its details for the purposes of Clause 17.11, such notification shall only be effective on the date specified in such notice or seven days after notice is given, whichever is later.

17.14. Persons who are not a party to this Agreement shall not have any rights under this Agreement and for the avoidance of doubt the parties agree that nothing in this Agreement shall be construed as creating a right which is enforceable by any person who is not a party to this Agreement.

17.15. This Agreement and all matters arising out of it shall be governed by, and construed in accordance with, the laws of Malaysia and the parties submit to the exclusive jurisdiction of the Malaysia Courts.

18. **DEFINITIONS**

18.1. **“Agreement”** is as defined on the signature sheet;

18.2. **“Commencement Date”** means the earlier of the date of the second signature to the signature sheet of this Agreement or the date of the first Purchase Order.

18.3. **“Confidential Information”** means any and all information relating to the trade secrets, operations, processes, plans, intentions, product information, prices, know-how, designs, customer lists, market opportunities, transactions, affairs and/or business of the parties and/or to their customers, suppliers, clients or Group Companies in or on any medium or format.

18.4. **“Deliverables”** means all documents, products and materials developed and/or supplied by the Supplier in accordance with the Services, or as otherwise supplied by the Supplier to Experian under or in connection with this Agreement, as may be set out in a Purchase Order and as may be updated by agreement between the parties from time to time.

18.5. **“Force Majeure”** means any act of government or state, civil commotion, epidemic, fire, flood, industrial action or organised protests by third parties, natural disaster, war, failure of payment systems or any event beyond the reasonable control of the party claiming to be excused from performance of its obligations.

18.6. **“Good Industry Practice”** means the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator seeking in good faith to comply with all relevant laws and engaged in the provision of the same type of services as the Services under the same or similar circumstances and conditions as set out in the Agreement;

18.7. **“Group Companies”** shall mean and include any company which in relation to either party is a subsidiary, holding company or subsidiary of a holding company as the terms “subsidiary” and “holding company” are defined by section 4 of the Companies Act 2016.

18.8. **“Intellectual Property Rights”** means copyright, database rights, patents, registered and unregistered design rights, registered and unregistered trade marks and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same.

18.9. **“PDPA”** means the Personal Data Protection Act 2010 and any subordinate legislation having effect in Malaysia.

18.10. **“Personal Data”** shall have the meaning specified in the PDPA.

18.11. **“Purchase Order”** means each of Experian’s purchase orders issued to the Supplier in accordance with this Agreement.

18.12. **“Services”** means the services as specified in the Purchase Order and all other services supplied by the Supplier to Experian under or in connection with this Agreement.

