



TERMS AND CONDITIONS

1 General

- 1.1 These terms and conditions apply to all dealings in respect of the Services between MDA Searchflow Limited (registered no. 4084804) whose registered office is at Eversheds House, 70 Great Bridgewater Street, Manchester, M1 5ES, trading as "SearchFlow", ("the Company") and any customer which submits one or more Search Requests in accordance with these terms and conditions ("the Customer").
- 1.2 By signing and returning these terms and conditions or electronically accepting them by submitting one or more Search Requests, the Customer agrees to be bound by the terms and conditions contained herein in relation to the Services. Following acceptance, but subject to Clause 1.3, the Company will initiate the process of delivering the SearchFlow Materials to the Customer, which process normally takes approximately seven (7) days from the date of the Company's receipt of:
- 1.2.1 signed terms and conditions or the Customer's electronic acceptance of them; or
 - 1.2.2 (where applicable) if later the Customer's Direct Debit Mandate Form.
- 1.3 The Company reserves the right to decline the provision of the Services to any Customer and will endeavour to notify the Customer of such decision in writing or electronically within seven (7) days of the Company's receipt of:
- 1.3.1 the signed terms and conditions or of the Customer's electronic acceptance of them; or
 - 1.3.2 (where applicable) if later the Customer's Direct Debit Mandate Form, following which neither party shall be under any further obligation to the other.

1.4 The Company reserves the right to amend these terms and conditions from time to time by posting the amended version of the terms and conditions on the Website. The amended version shall have effect:

1.4.1 30 days from the time of posting; or

1.4.2 from such later time stipulated on the Website

in respect of Search Requests submitted by the Customer on or after such date.

2 Definitions

In these terms and conditions, the following definitions shall apply:

“Agreement” means the agreement incorporating these terms and conditions between the Company and the Customer for the provision of the Services.

“Charges” means the charges for the Services and the Data Provider's charges which will appear on the Customer's screen prior to a request for website Services being made.

“Customer Information Form” means the form to be completed by the Customer with information on contact details, branch addresses and passwords.

“Data Provider” means a third party source (other than a Sub-Contractor) of information, data or other materials included in Search Results.

“Map Charges” means the map print charges specified in the SearchFlow Price List.

“Map Data” means any Ordnance Survey map data provided as part of the Services.

“Payment Agent” means, subject to Clause 4.7, The Conveyancing Channel Limited of Eversheds House, 70 Great Bridgewater Street, Manchester, M1 5ES.

“SearchFlow Materials” means the SearchFlow materials and software (in whatever form and on whatever media), accompanying documentation (including any licences for the provision of data by Data Providers), password, and all other tangible and intangible materials supplied by the Company to the Customer for the transmission of Search Requests and the receipt of the Services.

“SearchFlow Price List” means the list of the charges from time to time applicable for the Services (current versions of the SearchFlow Price List are available upon request and published in paper and electronic format).

“Search Request” means a request from the Customer in the required form to the Company for information in respect of specified property and/or persons.

“Search Results” means any information, data or other materials provided by the Company or the Data Provider in response to a Search Request from the Customer.

“Services” means:

- (i) the provision of assistance to the Customer in identifying applicable property and/or identifying and processing searches in relation to particular property; and/or
- (ii) delivering Search Requests received to selected Data Providers and (except where the Data Provider decides to return the Search Results directly to the Customer or its nominee) returning Search Results to the Customer.

“Sub-Contractor” means a third party (which may be a member of SearchFlow’s group) engaged by SearchFlow pursuant to Clause 8.2 to carry out or compile any search on behalf of SearchFlow (including without limitation any provider of personal local authority searches).

“Website” means the website of the Company from which the Customer can make Search Requests and view their progress (the current address of which is <http://www.searchflow.co.uk> or <http://www.transaction-online.co.uk>).

3 Rights Granted And Services Provided

In consideration of the mutual rights and obligations of the parties:

3.1 The Company shall:

3.1.1 license to the Customer the right to install and use the SearchFlow Materials for the purposes of obtaining the Services for its internal purposes or its business of providing legal services; and

3.1.2 provide the Services to the Customer.

3.2 The Customer shall be permitted to:

3.2.1 make and store electronic or hard copies of the Search Results (other than Map Data) for its own internal purposes;

3.2.2 incorporate the Search Results (other than Map Data) into written advice prepared by the Customer in the normal course of its business; and

3.2.3 disclose the Search Results (subject in the case of Map Data to Clause 3.3) in the normal course of the Customer's business to:

- (i) the client of the Customer for whom the Search Request was made;
- (ii) a person (or persons) who is/are acquiring (or is/are considering acquiring) an interest in or charge over the property to which the Search Results relate; or
- (iii) any person who acts in a professional or advisory capacity for any person in Clause 3.2.3 (ii).

3.3 In respect of the Map Data the Customer shall be entitled to print out, subject to payment to the Company of the Map Charges, a single hard copy, which may be photocopied a further five times, of the Map Data using the SearchFlow map print facility comprised in the SearchFlow Materials for the Customer's own internal use. Should the Customer wish to make multiple hard copies of the Map Data or pass the hard copy on to another party then the Customer must have in place and have paid for a current Ordnance Survey copyright licence which may be obtained directly from Ordnance Survey.

4. Charges

4.1 The Charges will be those included in the SearchFlow Price List applicable on the date of the relevant Search Request and will appear on the Customer's screen prior to a request for Website Services being made.

4.2 Unless otherwise indicated, all Charges included in the SearchFlow Price List are exclusive of any Value Added Tax for which the Customer shall be additionally liable at the applicable rate from time to time.

4.3 The Company may revise the SearchFlow Price List from time to time. A copy of the SearchFlow Price List is available on request. Any alterations shall not have effect retrospectively.

4.4 The Customer will be charged for the provision of the Services when the relevant key to confirm the request for the Services is pressed or (in any other case) when the Customer agrees to proceed with the request for Services after being informed of the Charges.

4.5 The risk of input or submission of information is with the Customer. The Customer entering an incorrect address or requesting searches in error will not remove or limit the Customer's obligation to pay the Charges in respect of any Search Request.

- 4.6 The Company will either manually or electronically (at its discretion) invoice the Customer daily at the address provided by the Customer on the Customer Information Form. The Customer shall discharge the invoiced sums within 7 days of the date of the invoice via a direct debit arrangement.
- 4.7 Where the Company specifically confirms to the Customer, either before or after the date of this Agreement, that the Customer shall be entitled to pay the Charges to the Payment Agent, the Customer shall pay the Charges to the Payment Agent as the Company's agent and the Company shall accept such payment to the Payment Agent (provided the Charges are paid in full) in full discharge of the Charges owing to the Company under this Agreement. For the avoidance of doubt, for the purposes of Clause 4.8, receipt of the Charges by the Payment Agent shall be deemed to be receipt of such Charges by the Company.
- 4.8 The Company shall be entitled to charge the Customer interest at 4% over the base rate of Barclays Bank plc from time to time in force in respect of any invoices not so discharged and reserves the right to suspend or discontinue the Services without notice to the Customer until such invoices have been paid in full.

5. Liability

- 5.1 The Company does not exclude or restrict its liability for personal injury or death caused by negligence or any other liability the exclusion or restriction of which is expressly prohibited by law.
- 5.2 Subject to Clause 5.4, the Customer acknowledges and accepts that the Company only provides the Services to it on the express condition that the Company will not be responsible for nor shall it have any liability to the Customer, the Customer's clients or any other third party directly or indirectly whether in contract tort or otherwise for:
- 5.2.1 inaccuracies or errors in or omissions from any Search Results provided by a Data Provider;
 - 5.2.2 inaccuracies or errors in or omissions from any register or other information source maintained or used by a Data Provider; or
 - 5.2.3 any act or omission of a Data Provider.
- 5.3 Without prejudice to Clause 5.2 and subject to Clauses 5.1 and 5.4, the Company shall not be liable for any loss or damage sustained by the Customer, the Customer's clients or any other third party directly or indirectly whether in contract tort or otherwise making use of or

relying on the Search Results including but not limited to any loss or damage resulting as a consequence of:

5.3.1 any failure by the Customer to have in place all necessary means of receiving the Search Results (including those specified in the SearchFlow Materials), the maintenance of Internet access, appropriate email facilities and security measures; or

5.3.2

- (i) inaccuracies or errors in or omissions from any Search Results; or
- (ii) any Search Request which is inaccurate, incomplete, illegible, out of sequence or in the wrong form or in respect of the wrong property or arising from late arrival or non-arrival thereof,

unless, and then only to the extent that, the loss and damage sustained shall be a direct consequence of the negligent act or omission of the Company.

5.4 Subject to Clause 5.1, the Company shall indemnify the Customer from and against any and all actions, claims, demands, liabilities, damages, costs and fees (including reasonable professional and legal fees on a solicitor and own client basis) (collectively an "Indemnified Claim") provided that:

5.4.1 such Indemnified Claim arises solely and directly out of any inaccuracies or errors in or omissions from information contained in any Search Results provided by any Data Provider;

5.4.2 the relevant Data Provider's terms and conditions require the Data Provider to indemnify the Customer in respect of any losses or liabilities the Customer suffers as a result of such inaccuracies or errors or omissions;

5.4.3 notwithstanding the requirements of the Data Provider's own terms and conditions, the Data Provider fails to indemnify the Customer (in breach of the Data Provider's terms and conditions) despite the Customer using all reasonable efforts to obtain the indemnity from the Data Provider; and

5.4.4 the Customer uses all reasonable endeavours to mitigate any loss or damage it suffers as a result of the inaccuracies or errors in or omissions from the information in such Search Results.

The amount of the indemnity payable by the Company under this Clause 5.4 shall not exceed the amount that would have been payable by the relevant Data Provider had such Data Provider complied with its own terms and conditions, subject always to the limitations of liability set out in Clause 5.5 (save that, for the purposes of the indemnity provided in this Clause 5.4 only, Clause 5.5.3 shall be deemed to read “the sum of five hundred thousand pounds”).

5.5 Without prejudice and subject to the foregoing provisions, the liability of the Company for all claims by the Customer, the Customer’s clients or any third parties whether in contract, tort or otherwise for any breach of the obligations of the Company or any default, act, omission, negligence, breach of this Agreement by or statement of the Company, its employees, servants, agents or sub-contractors in connection with or in relation to services provided by the Company shall not exceed the lesser of:

5.5.1

(iii) the value of the interest(s) being acquired; or

(iv) the amount of the loan(s) being made; or

(v) the purchase price(s) paid,

(as the case may be) by the claiming parties in or for (or against the security of) the property/properties in respect of which the Search Request(s) was/were made; or

5.5.2 where the Search Request(s) is/are being made for a purpose other than specified in Clause 5.5.1, the value of the property/properties in respect of which the Search Request(s) was/were made as at the date of the Search Request(s); or

5.5.3 the sum of five million pounds.

5.6 Subject to Clause 5.1, but notwithstanding anything else contained in these Terms and Conditions, the Company shall not be liable to the Customer or any third party for any loss of profits or contracts (whether direct or indirect) or for any indirect or consequential loss whether arising from negligence, breach of contract or howsoever.

5.7 The Customer acknowledges and accepts:

- 5.7.1 that electronic information sent via the Internet can be affected by errors in transmission, destructive programs and or information introduced maliciously by third parties such as viruses, worms, Trojan horses or other code that manifests contaminating or destructive properties. Whilst the Company will use its reasonable endeavours to procure that such destructive programs are restricted it is not liable for the presence of such programs in the Search Results or SearchFlow Materials except to the extent to which the presence of destructive programs is caused by the failure of the Company to use such reasonable endeavours; and
 - 5.7.2 that the Company has no control over the Internet or documentation transmitted by email or via the Internet. The Services do not include protection for or privacy of such information.
- 5.8 Subject to Clause 5.1, the Company shall not have any liability to any third party except in accordance with the Company's terms and conditions or except as otherwise expressly agreed in writing by the Company.

6. Warranties

- 6.1 The Company warrants that:
- 6.1.1 the Services will be performed with reasonable skill and care;
 - 6.1.2 it is authorised to provide the Services on the terms set out in this Agreement; and
 - 6.1.3 the provision of the Services will not infringe any third party rights.
- 6.2 The Company does not warrant that:
- 6.2.1 the Services will meet the Customer's individual requirements or the individual requirements of the Customer's clients or any other third party and the Customer acknowledges that it is the responsibility of the Customer (or the Customer's client) to ensure that the Services and Search Requests (including without limitation the property identification) meet its requirements; nor that
 - 6.2.2 any information provided by a Data Provider will be accurate or complete, but the Company shall, if so reasonably requested and where possible, assign to the Customer at the Customer's cost the benefit of any warranty, guarantee or indemnity given by such Data Provider to the Company.

6.3 The Customer warrants that:

6.3.1 the information supplied by the Customer when completing and submitting the Customer Information Form is true, accurate and complete and that it will notify the Company in writing of any changes in such information; and that

6.3.2 it/he/she:

- (vi) will not allow any third party to use any SearchFlow Materials; and
- (vii) is authorised to receive the Services on the terms set out in this Agreement; and
- (viii) in its use of the Services will comply with all applicable laws, regulations and codes of practice; and
- (ix) will keep confidential and secure all user names and passwords used in relation to the Services and accepts that use of a user name and password allocated to a Customer shall constitute sufficient authority to the Company to perform the Services and be entitled to payment for so doing; and
- (x) will obtain and maintain suitable equipment including hardware, software and communication links necessary to allow the Customer to access the Services and receive electronic communications from the Company.

6.4 The terms set out in this Agreement are in lieu of all warranties, conditions, terms, undertakings and obligations implied by statute, common law, custom, trade usage, course of dealing or otherwise, all of which are hereby excluded to the fullest extent permitted by law.

7. Intellectual Property Rights

7.1 All intellectual property rights to any SearchFlow Materials and Search Results provided to the Customer by the Company shall at all times remain the property of the Company, the Company's licensors or the relevant Data Provider. The Customer undertakes that it shall not at any time make any copy of any such material or otherwise deal with such material or disclose the same whether directly or indirectly to any third party except in accordance with this Agreement.

7.2 The SearchFlow Materials and Search Results provided in electronic or hard copy form will include the Company's logo and name, and the logos and names of its licensors and relevant

Data Providers. Such documentation shall not be altered or adulterated so as to remove, reduce in size or obliterate such logos and names.

8. Assignment

- 8.1 The right to be provided with the Services is personal to the Customer and is not transferable. In no circumstances is access to the Services to be permitted, facilitated or resold by the Customer to any other person or entity.
- 8.2 The Customer acknowledges that the Company may use one or more Sub-Contractors to fulfil provision of the Services on the terms set out in this Agreement. Subject to the other terms of this Agreement, the Company will remain responsible for, and liable to the Customer in respect of, the provision of the Services by such Sub-Contractors.

9. Termination

- 9.1 Where the Customer is a consumer within the meaning of The Consumer Protection (Distance Selling) Regulations 2000 (“the Regulations”), then Regulation 10 thereof gives the Customer the right to cancel this Agreement within seven business days after the day on which the contract with the Company is concluded unless in the meantime the Company has been requested to and commences performance of the Service. By transmitting or otherwise submitting a Search Request to the Company the Customer confirms that it requests and agrees to the Company commencing the Services and acknowledges that the processing by the Company of the Search Request constitutes commencement by the Company of the performance of the Service and accordingly the Customer has no right thereafter to cancel this Agreement pursuant to the Regulations.
- 9.2 This Agreement (and any licence granted under this Agreement) may be terminated by either party at any time on giving 30 days’ written notice to the other party.
- 9.3 This Agreement (and any licence granted under this Agreement) may be terminated by either party forthwith if the other party is in material breach of its obligations hereunder.
- 9.4 Upon termination the Company will continue to provide to the Customer the Search Results paid for before the date of such termination.

10. Force Majeure

- 10.1 Neither party shall be responsible for delays or failures in performance resulting from Force Majeure.

- 10.2 The operation of this Agreement shall be suspended during the period and only during the period in which the Force Majeure continues to have effect.
- 10.3 For the purposes of this Agreement, "Force Majeure" means any event or series of events beyond the reasonable control of either party and which could not have been prevented or overcome by the exercise of due care, caution and diligence by the party affected. Events beyond the reasonable control of the parties shall include (without limitation):
- 10.3.1 act of God, storm, flood, epidemic or other natural physical disaster; and
 - 10.3.2 accidents, fire, explosion; and
 - 10.3.3 any war or preparation for war, hostilities, revolution, riot or civil disorder, insurrection, terrorism; and
 - 10.3.4 failures of public utility supplies (electricity, post, telecommunications) or general failure of the Internet; and
 - 10.3.5 the introduction of, or any amendment to, a law or regulation, or any change in its interpretation or application by any authority; and
 - 10.3.6 any breach of contract, termination of contract, default by, or insolvency of, a third party on whom the Company relies for the provision of the Services (including Local Government Information House Limited, any other NLIS authority and any Data Provider), other than a company in the same group as the Company or an officer or employee of the Company or of such a company.

11. Applicable Law

The construction validity and performance of this Agreement shall be governed by English law and the Customer irrevocably submits to the exclusive jurisdiction of the English Courts.

12. Acquiescence, Forbearance & Waiver

- 12.1 The parties agree that:
- 12.1.1 for a waiver of any right to be effective it must be given expressly in writing by a duly authorised representative;
 - 12.1.2 any acquiescence to a breach or forbearance to enforce a right does not amount to consent to the breach nor prejudice enforcement of the right unless the consent or forbearance is given expressly in writing by a duly authorised representative;

- 12.1.3 any other form of purported acquiescence, forbearance, consent or waiver will not be of any effect;
- 12.1.4 no failure or delay on the part of either of the parties to exercise any right or remedy under this Agreement is to be construed or to be treated as a waiver of or bar to the exercise or enforcement of the right or remedy;
- 12.1.5 any effective waiver or acquiescence to or forbearance in any breach of any provision of or to the exercise or enforcement of any right or remedy is not to be taken or held to prejudice the subsequent enforcement or exercise of a right remedy or provision.

13. Notices

- 13.1 Any notice to be given under this Agreement must be in writing signed by a duly authorised representative of the relevant party.
- 13.2 All notices, documents, communications and any other data to be provided under this Agreement must be in the English language unless otherwise agreed.
- 13.3 Notices are to be sent to the address of the other party as given herein or to such other address as that party may have previously notified to the party giving notice as its address for such service.
- 13.4 Notices can be delivered (properly addressed) by registered post or by hand.
- 13.5 A party shall not attempt to prevent or delay the service on it of a notice connected with this Agreement.
- 13.6 In the absence of acknowledgement of receipt from the recipient party proof of delivery of a notice remains with the sender.

14. Rights of Third Parties

- 14.1 This Agreement is not intended to, and does not, give any person who is not a party to this Agreement any rights to enforce any provisions contained herein for the purposes of the Contracts (Rights of Third Parties) Act 1999.

[CUSTOMER

Signed: _____

(Authorised signatory)

Name: _____

Position: _____

Date: _____

MDA SEARCHFLOW LIMITED

Signed: _____

(Authorised signatory)

Name: _____

Position: _____

Date: _____]

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