

# Databank™, Trust Banking™, The Bond Buyers Municipal Marketplace® and Mailing List Terms and Conditions of Use

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The following terms and conditions (this “Agreement”) govern Your use of any Databank, Trust Banking, Bond Buyers Municipal Marketplace or Mailing List data or other content or any part or component of the foregoing licensed materials (“Data”) made available by Accuity Inc. (“Accuity”) to You. As used herein, the term “Subscriber” means the subscribing entity (e.g., company, corporation, partnership, government organization, agency) or the sole proprietor or other business entity that enters into an agreement with Accuity for the license of the Data and payment of the applicable fees (the “Order Form”), together with the Subscriber’s Authorized Users. “Authorized Users” refers to Subscriber’s employees, temporary employees, and contractors that perform work for the sole benefit of the Subscriber. “You” and “your” in uppercase or lowercase means either a Subscriber or an Authorized User or both, as applicable.

## 1. Defined Terms

In addition to the terms defined elsewhere in this Agreement, the following terms shall have the meanings set forth below:

1.1 “Affiliate” means any entity that, directly or indirectly, controls, is controlled by, or is under common control with a party; and “control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract or otherwise.

1.2 “Business Hours” means Monday – Friday 9:00am – 5:00pm US Central, excluding holidays observed by Accuity.

1.3 “Bond Buyers Municipal Marketplace” contains contact information of the municipal bond firms, issuers and individuals who are listed in Accuity’s Red Book. The flat file format allows flexibility in data analysis for research and marketing purposes. The file is available in Microsoft® Excel® format via e-mail or CD-ROM and is updated semi-annually. The delivery method and update frequency licensed by You is specified on the Order Form.

1.4 “Databank” is an electronic data file that contains listings of financial institutions and associated contact and marketing related information. Databank Updates are available in February, May, August and November. All data is provided in fixed-byte format in Text or Microsoft® Excel® files. Databank provides information on global financial institutions, including both head offices and branches. The flat file format allows unlimited flexibility in data analysis for Your internal business purposes. Databank can be utilized to perform the following activities: market research, market segmentation, sales territory segmentation and analysis, identification of new prospects, Customer Relationship Management (“CRM”) system updates, direct mailings and internally operated telemarketing programs. Databank is

available on CD-ROM (full files only), e-mail or through FTP (Pull). The delivery method and update frequency licensed by You is specified on the Order Form.

1.5 "Derivative Work(s)" means a work(s) based upon or derived from one or more pre-existing works, such as a translation, abridgement, condensation, or any other form in which a work may be recast, transformed, or adapted.

1.6 "Mailing List" is an electronic file that contains contact names for worldwide bank head offices, US bank branches, savings and loan head offices and branches, credit union head offices and branches and bank holding companies. Mailing List contacts are organized by 140 job functions. Other selection criteria include assets or deposits, number of branches, number of employees and geographic information. In addition to traditional mailings, the Data can be used to create personalized letters and customized labels and to improve telemarketing campaign results with phone/fax numbers. Mailing List is available in Microsoft® Excel® format and is delivered via e-mail. Mailing List data can be licensed with monthly Updates. Your update frequency is specified on the Order Form.

1.7 "Scope of Use" means any restriction contained in the Order Form limiting or restricting Your use of the Data.

1.8 "Standard Support" means support provided by Accuity to You in connection with Your license of the Data. Standard Support allows You to submit e-mail queries to Accuity support technicians using the designated support e-mail address: support@Accuity.com. Accuity will acknowledge receipt of the support inquiry within two business days, during Business Hours. The acknowledgement of receipt may also include suggestions for resolving the issue or an estimate of the time it will take to resolve the issue. You may request detail from Accuity's data experts about a single data element included (or not included) in the Data.

1.9 "Trust Banking" contains information on approximately 2420 businesses to boost Your marketing efforts, internal analysis and many other operations. The Trust Banking data file enables You to (i) reach nearly every U.S. bank and trust company with investment discretion; (ii) conduct searches based on financial strength, applied investment instruments or collective investment funds; and (iii) find the types and numbers of fiduciary accounts each company offers to target the right firms. Each institution listing contains key decision makers by department such as operations, trust administration, marketing and employee benefits. The Trust Banking data file can be integrated into software programs such as Microsoft® Excel® and Word or linked to Your existing database. The Trust Banking data file is updated each December and is provided in fixed-byte Microsoft® Excel® format. The delivery method licensed by You is specified on the Order Form.

1.10 "Updates" means all releases, modifications, refinements, and enhancements which are made available as part of the Data, in accordance with the terms of the Order Form, and are not separately or additionally priced or marketed by Accuity.

## **2. General Rights Granted**

Accuity grants You a limited, non-exclusive, non-transferable right to access and use the Data for Your internal business purposes during the Term (as defined in the Order Form).

2.1 The license granted to Subscriber is for use by Subscriber's Authorized Users, for Subscriber's own internal business purposes, subject to the Scope of Use, solely on Subscriber's computer system at the sites/locations specified on the relevant Order Form. The Data will be made available in the format specified on the Order Form.

2.2 Accuity will provide Updates for the Data. You acknowledge that failure promptly to implement any solutions, corrections, modifications, enhancements or new releases issued by Accuity relating to the Data may render the Data unusable or nonconforming and You agree to assume all risks arising therefrom. Any unauthorized modification made to the Data by You or on Your behalf will invalidate Accuity's obligations under this Agreement.

2.3 Accuity may suspend Updates to the Data for any breach of this Agreement. You agree to promptly notify Accuity if You become aware of any misuse of the Data and to cooperate with Accuity to take any necessary corrective actions. You will immediately inform Accuity of any use of the Data which is outside the Scope of Use or the terms of this Agreement.

2.4 Upon the termination, cancellation or expiration of this Agreement for any reason and by either party, You agree to, and to cause all Authorized Users to, promptly cease all use of the Data and to purge/delete or direct the permanent deletion of all electronic or magnetic copies of the Data from all systems and to provide written certification to Accuity that the Data has been returned or destroyed.

2.5 Accuity reserves the right to enhance, add, withdraw or change the content and format of the Data at any time without notice.

2.6 You agree to keep an accurate record of the usage of all Data. Accuity may, by giving 10 days' written notice, require Subscriber to provide written verification, certified by an officer of Subscriber, that all Data is being used, and has been used throughout the Term, in accordance with the Order Form and this Agreement ("Verification"). If Accuity learns, whether pursuant to Verification or otherwise, that Subscriber has used any Data outside the license and/or Scope of Use, in addition to any other remedies that Accuity may have, Subscriber shall pay to Accuity the applicable fees for such outside use.

2.7 If the Order Form provides for a perpetual license to the Data, Section 2.4 is not applicable to You. You agree to use the Data in accordance with all other terms of this Agreement.

2.8 If the Order Form allows Your Affiliates to access or benefit from the Data, You agree to (i) ensure that the authorized Affiliate complies with all of the terms of this Agreement; (ii) pay Accuity for all use of the Data by or on behalf of Your Affiliates, and (iii) be primarily liable for any breach of this Agreement by Your Affiliate.

### **3. Restrictions on Use**

Except as expressly permitted herein, You may not, nor permit others to:

3.1 copy, reverse engineer, decompile, disassemble, modify, or create compilations or Derivative Works of the Data;

3.2 resell or redistribute the Data;

3.3 except as otherwise provided herein or in the Order Form, provide any person that is not an Authorized User access to or use of the Data, or any portion thereof, without the express written permission of Accuity;

3.4 use the Data to develop a database, infobase, online or similar database service, or other information resource in any media (print, electronic or otherwise, now existing or developed in the future) for commercial sale or use by others or make the Data available through any timesharing system, service bureau, the Internet, or any other similar technology now existing or developed in the future;

3.5 use the Data in any fashion that may infringe any copyright, intellectual property right, or proprietary or property right or interest of Accuity or its data suppliers; or

3.6 remove or obscure any copyright notice or other notice or terms of use contained in the Data.

### **4. Data Security**

4.1 Subscriber will implement and maintain reasonable measures to ensure that only Authorized Users have access to the Data and to prevent unwarranted intrusion into the Data.

4.2 Each party shall comply with all data protection and privacy regulations applicable to it in respect of any personally identifying information relating to any individual ("Personal Data") contained in the Data. Subscriber may make no use of such Personal Data except as expressly authorized herein or by applicable law.

### **5. Ownership of the Data; Trademarks**

5.1 Accuity and its licensors hold exclusive ownership of the Data and all intellectual property rights embodied therein including any trademarks, logos, and service marks (collectively, "Accuity Trademarks"). The Data is protected by United States and international copyright laws and international treaty provisions. You do not acquire any right or interest in the Data other than the limited license set forth herein.

5.2 You agree that the Data, including all changes made to the Data by anyone and any materials related to the Data whether or not supplied by or developed by Accuity, are the valuable property of Accuity.

## **6. Disclaimer of Warranty, Limitation of Liability**

6.1 Accuity warrants that it has the right and authority to provide the Data on the terms set forth herein. Except for the foregoing warranty, ACCUITY, ON BEHALF OF ITSELF AND ITS LICENSORS (“COLLECTIVELY, “ACCUITY PARTIES”), DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE DATA AND THE STANDARD SUPPORT. FOR THE AVOIDANCE OF DOUBT, ACCUITY MAKES NO WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE TIMELINESS, ACCURACY OR THE COMPLETENESS OF THE DATA. THE DATA IS FURNISHED ON AN “AS IS”, “AS AVAILABLE” BASIS. The Data is not intended to be a substitute for the exercise of Your professional judgment and independent verification of the Data. Accuity disclaims any and all liability associated with use of outdated Data, if any.

6.2 IN NO EVENT SHALL THE ACCUITY PARTIES BE LIABLE TO SUBSCRIBER OR ITS AUTHORIZED USERS FOR ANY DAMAGES ARISING FROM OR RELATED TO THE DATA, OR FOR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF OPPORTUNITY, LOSS OF USE, OR OTHER LOSS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR USE OF THE DATA. EXCEPT WITH REGARD TO ACCUITY’S OBLIGATIONS UNDER SECTION 7, IN NO EVENT SHALL THE ACCUITY PARTIES’ LIABILITY HEREUNDER EXCEED THE TOTAL AMOUNT PAID BY SUBSCRIBER FOR THE DATA UNDER THIS AGREEMENT DURING THE ANNUAL TERM IN WHICH THE CLAIM ARISES.

## **7. Indemnification**

7.1 Accuity agrees to defend, indemnify and hold Subscriber harmless, and at Accuity’s option, settle any action or proceeding of any kind based upon a third Party’s claim of patent, copyright or trademark infringement asserted against Subscriber in relation to the Data (a ‘Claim’), provided: (i) the Data is used in accordance with this Agreement; (ii) Accuity is given prompt, written notice of any Claim; (iii) Accuity is given the right to control and direct the investigation, defense and settlement of each Claim; and (iv) Subscriber reasonably cooperates with Accuity, at Accuity’s expense, in connection with the foregoing and makes no admission or offer of settlement without the prior written consent of Accuity. This indemnity does not extend to any modifications to the Data by Subscriber where; (i) the modification is the cause of the Claim; or (ii) Subscriber’s use of the Data in combination with any other product or service not furnished or authorized by Accuity where such combination is the cause of the Claim.

7.2 Should the Data, become, or in Accuity’s opinion is likely to become, the subject of a Claim, Subscriber shall permit Accuity, at Accuity’s option and expense, and as Subscriber’s sole and exclusive remedy, either: (i) to procure for Subscriber the right to continue using the Data; (ii) to replace or modify the same so that they become non-infringing; or (iii) to grant Subscriber a refund of the unused portion of the fees paid by Subscriber in relation to the relevant Data.

## **8. Termination and Default**

This Agreement may be terminated by either party on written notice if the other party: (i) breaches any other material term or condition and fails to remedy any breach within 30 days after receiving notice; (ii) becomes the subject of any voluntary or involuntary proceeding under the U.S. Bankruptcy Code or any state insolvency proceeding; (iii) ceases to be actively engaged in business. This Agreement may be terminated immediately by Accuity without liability in the event that Subscriber, any permitted beneficiary or any Authorized User is listed on the U.S. Commerce Department's Denied Persons List, Entity List or on the Treasury Department's List of Specially Designated Nationals or Blocked Persons or any other list of any such departments of sanctioned persons and entities.

Sections 1, 2.4, 2.6, 2.7, 2.8, 3, 5, 6, 8, 9, 11, 12, 13 and 14 shall survive termination or expiration of this Agreement.

## **9. Governing Law**

This Agreement shall be governed by the laws and construed in accordance with the laws of the State of New York regardless of the law that might otherwise apply under applicable principles of conflicts of law.

## **10. Changes**

Accuity may amend this Agreement immediately upon notice to You via the e-mail address provided by You on the Order Form, as updated by You from time to time by providing written notice to Accuity. This Agreement may be terminated by You upon written notice to Accuity if any such change is unacceptable to You. For termination to be effective under this Section 10, the written notice of termination must be provided to Accuity in writing within 30 days of the effective date of the change. Your continued use of the Data following notice to You of a change shall constitute Your acceptance of the respective change.

## **11. Assignment**

Subscriber may not assign or transfer its interest, rights or obligations in or under this Agreement by written agreement, merger, consolidation, operation of law, or otherwise, without Accuity's prior written consent, which consent may be withheld for any reason. Any assignment by Subscriber without consent shall be null and void. Accuity reserves the right to assess a reasonable assignment fee.

## **12. Notices**

All notices and other communications under the Agreement shall be in writing. Notices shall be deemed given on the date deposited in the U.S. mail, if mailed; or on the date received, if delivered in any other manner. Notices to Accuity shall be sent to Your Accuity sales representative with a copy to: Accuity Inc. Attn: Legal Department, 4709 Golf Rd., Suite 600, Skokie, Illinois 60076.

### **13. Additional Terms for Databank Subscribers**

Use of ABA Routing and Transit Number information contained within the Data is restricted to use involving marketing or database management activities only, and shall not include any use(s) related to accounting, finance, treasury, cash management, payment validation/verification, or transaction processing purposes of any kind. Use of the Data to compile or print an electronic directory, reporting service, payment processing service, or any other service, whether in print or electronic form is expressly prohibited.

Use of the Data within any internet/intranet based application without prior written consent of Accuity is prohibited. Use of the Data, or the content provided therein, within any list or data services that are then provided to any clients or customers of Subscriber, or incorporated into the product(s) of Subscriber is expressly prohibited.

### **14. Additional Terms for Mailing List Subscribers**

Subscribers are prohibited from using the data in Mailing List in any CRM application. Use of the Data to compile or print an electronic directory, reporting service, payment processing service, or any other service, whether in print or electronic form is expressly prohibited.

Use of the Data within any internet/intranet based application without prior written consent of Accuity is prohibited. Use of the Data, or the content provided therein, within any list or data services that are then provided to any clients or customers of Subscriber, or incorporated into the product(s) of Subscriber is expressly prohibited.

v.1 in effect October 10, 2014