

The Telephone Preference Service: TPS File Licence

DATE:

PARTIES:

(1) **THE TELEPHONE PREFERENCE SERVICE LTD (TPS)** at 70 Margaret Street, London, W1W 8SS ("Licensor"); and

(2) _____

whose registered office is at

("Licensee")

RECITALS

(A) The Licensor manages the TPS File on behalf of OFCOM.

(B) The Licensee wishes to receive a licence on the terms and conditions of this agreement in order to Use the information contained in the TPS File.

OPERATIVE PROVISIONS

1. Definitions

In this licence the following words and expressions shall have the following meanings:

"Calls"

Any unsolicited call for direct marketing purposes using a public electronic communications service (other than automated calling systems) including but not limited to the use of Voice Over Internet Protocol.

"Data Protection Legislation"

Any UK data protection legislation in place from time to time, including the provisions of the Data Protection Act 1998 and the Privacy and Electronic Communications Regulations 2003 together with any regulations or codes of practice made thereunder.

"File Update"

Any update of the TPS File prepared by the Licensor including but not limited to a revised version of the whole TPS File.

"Group Companies"

The Licensee's subsidiaries, UK holding company and any subsidiaries of its holding company, such terms having the meaning given to them within the Companies Act 1985.

"Individuals"

Consumers, sole traders and (except in Scotland) unlimited partnerships.

"Licence"

A non-exclusive licence to Use the TPS File during the Term on the terms of this agreement.

"Licence Subscription"

The annual fee to be paid for Use of the TPS File, as notified by Licensor in advance each year.

"Royalty"

The amount payable by the Licensee for Third Party Screening, calculated at a rate notified by the Licensor from time to time per thousand numbers screened by the Licensee on behalf of third parties during the Term to the extent that such amount exceeds the Licence Subscription for the Term.

"Term"

This Licence commences on the date it is signed by both parties and shall remain in force on a rolling annual basis until terminated in accordance with clause 6.

"TPS File"

A computer file including all File Updates of telephone numbers of Individuals registered with the Licensor who do not wish to receive Calls.

"Use"

The use of the TPS File by the Licensee for the purpose only of suppressing telephone numbers registered with the Licensor from the lists of telephone numbers of individuals which the Licensee on its own behalf or on behalf of a third party ("**Third Party Screening**") as the case may be uses for making Calls.

2. Grant of licence

The Licensor in consideration of the prior payment by the Licensee of the Licence Subscription hereby grants to the Licensee and its Group Companies the Licence and undertakes to provide to the Licensee all File Updates existing from time to time during the Term.

3. Licensee Obligations

3.1 The Licensee shall at all times during the Term:

3.1.1 use the TPS File only for the purposes of the Use and for no other purpose whatsoever;

3.1.2 ensure that where a File Update is provided in the form of a revised version of the whole TPS File, it shall forthwith destroy all data held on the TPS File which has been replaced;

3.1.3 ensure that it complies with Data Protection Legislation and all other applicable laws, regulations and codes;

3.1.4 ensure that it does not make any Calls to any number listed within the TPS File registered to an Individual;

3.1.5 apply all appropriate technical and organisational measures in compliance with Data Protection Legislation to keep the TPS File secure and to protect against any unauthorised or unlawful processing of the TPS File or its accidental loss or destruction;

3.1.6 maintain records in accordance with usual accounting practice in respect of the number of Calls screened by the Licensee by way of Third Party Screening and Royalties paid to the Licensor. The Licensee shall allow the Licensor (by its own personnel or by a suitably qualified independent auditor) access to all such records during the Term and for 12 months thereafter to ensure the Licensee has paid sufficient Royalties. Any such access shall be on not less than 7 days' written notice and shall be at times during normal business hours as agreed in advance between the parties and the Licensor shall treat any information gained as a result of such an audit as confidential information. Should any audit or inspection of the records by the Licensor reveal that the Licensee has not paid sufficient Royalties, the Licensee shall pay the Licensor all overdue Royalties within 30 days.

3.1.7 inform the Licensor on a monthly basis in the manner prescribed from time to time, of the number of Calls screened by the Licensee by way of Third Party Screening and pay the Licensor the Royalty in addition to the Licence Subscription. Any applicable Royalty will be invoiced by the Licensor on a monthly basis and shall be payable by the Licensee within 30 days of [the Licensee's receipt of / the date of] any such invoice; and

3.1.8 pay the Licence Subscription upon signature of this Licence and also pay the Licence Subscription on each subsequent anniversary of the commencement date in order to renew the Licence for a further year.

3.2 The Licensee shall not: -

3.2.1 copy the whole or any part of the TPS File, although the Licensee is permitted to make one copy of the TPS File for use in the event that the Licensee's IT systems fail and an electronic copy of the TPS File is lost or destroyed;

3.2.2 modify, merge or combine any part of the TPS File with any other information which the Licensee may have; or

3.2.3 assign, transfer, sell, lease, rent, charge or otherwise deal in or encumber the TPS File nor disclose the TPS File to any third party that is not a Group Company or a subcontractor

responsible for the Use of the TPS File on behalf of the Licensee.

- 3.3 The Licensee undertakes to keep the Licensor fully informed as to the identity of all Group Companies and subcontractors that have access to the TPS File from time to time, and the Licensee undertakes to procure that the TPS File shall only be used by Group Companies, subcontractors and employees in accordance with the terms of this Licence.

4. Confidentiality and intellectual property rights

- 4.1 The Licensee acknowledges that the TPS File contains confidential information belonging to the Licensor and any intellectual property rights vesting in the TPS File are the exclusive property of OFCOM.
- 4.2 The Licensee shall:
- 4.2.1 keep confidential the TPS File and limit access to the same to those of its employees, agents and sub-contractors who either have a need to know or who are engaged in the Use of the TPS File;
- 4.2.2 maintain an up to date written record of all Use of the TPS File under this Licence and upon request forthwith produce such records to the Licensor; and
- 4.2.3 without prejudice to the foregoing take all such other steps as shall from time to time be necessary to protect the confidential information and intellectual property rights of the Licensor and OFCOM in the TPS File.

5. Limitation on Licensor's Liability

- 5.1 The Licensee agrees to indemnify and hold harmless the Licensor against any and all liability, loss, damage, costs and expenses which the Licensor may incur or suffer whether direct or consequential as a result of any dispute or contractual, tortious or other claims however arising as a result of this Licence by the Licensee.
- 5.2 Neither party excludes liability for death or personal injury arising as a result of the negligence of its employees, agents or authorised representatives.
- 5.3 Except as provided in clause 5.2, the Licensor shall not be liable to the Licensee for any damages, losses, expenses, costs (including reasonable legal expenses) or charges that the Licensee may suffer in connection with the Use of the TPS File to the extent that such loss is (a) indirect, consequential, special or of a type that would not normally be expected to flow from the relevant breach or negligence or other default of the defaulting party or (b) special, punitive, aggravated or exemplary damages; or (c) loss to the extent that it is a loss of indirect profits, or anticipated savings.
- 5.4 Except as provided for in clause 5.2, the Licensor's liability to the Licensee shall to the extent permitted by law, not exceed the Licence Subscription paid by the Licensee for the year concerned.
- 5.5 Save as expressly referred to in this Licence, representations or warranties of any kind, either express or implied, regarding this Licence are excluded by the Licensor to the extent permitted by law.

6. Termination

- 6.1 The Licensor shall be entitled to terminate this Licence forthwith if, in the reasonable opinion of the Licensor, or the information commissioner as the case may be, the Licensee has failed to comply with this Licence.
- 6.2 If the Licensee fails to pay any Licence Subscription or Royalty on the due date for payment this Licence shall terminate automatically.
- 6.3 Immediately upon termination of this Licence for whatever reason, the Licensee shall deliver up to the licensor all copies of the TPS File in the possession of either the Licensee, its Group Companies or subcontractors.

7. General

- 7.1 In the event of a breach of this Licence by the Licensee, the Licensor retains the right to issue a public statement to that effect at its sole discretion upon prior notice to the Licensee.
- 7.2 The Licensee agrees that the Licensor may assign this licence to OFCOM or a successor supplier selected by OFCOM, in the event that the licensor no longer manages the TPS File.
- 7.3 The failure of either party to enforce or to exercise at any time or for any period any right pursuant to this Licence shall not be construed as a waiver of any such term or right and shall in no way affect that party's right later to enforce or exercise it.
- 7.4 A person who is not a party to this agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Licence.
- 7.5 Neither party shall be deemed to be in breach of this Licence, or otherwise be liable to the other, by reason of any delay in performance or non-performance of any of its obligations under this Licence to the extent that such delay or non-performance is due to any cause beyond its reasonable control including but not limited to the acts, defaults or omissions of suppliers or sub-contractors or strike, lockout or other form of industrial action (an "**Event of Force Majeure**"). The party affected by an Event of Force Majeure shall immediately give the other party written notification of the nature and extent of the Event of Force Majeure and the parties shall enter into bona fide discussions with a view to alleviating its effects or to agreeing upon such alternative arrangements as may be fair and reasonable.
- 7.6 This Licence constitutes the entire agreement and understanding of the parties relating to the subject matter of this Licence. Each party agrees that it has not been induced to enter into this Licence in reliance upon any warranty, representation, statement, agreement or undertaking of any kind (whether negligently or innocently made) of any person other than as expressly set out in this licence. Nothing in this clause 7.6 shall, however, operate to limit or exclude any liability for any fraudulent statement or act. No variation of this licence shall be valid unless it is in writing and signed by or on behalf of each of the parties.
- 7.7 Any notice to be given under this Licence by either party shall be in writing signed by or on behalf of the party giving it and (i) delivered personally, (ii) sent by prepaid recorded delivery post to the address of the party as set out in this licence or as otherwise notified in writing from time to time to the other party or (iii) sent by fax to the number of the other party as notified in writing from time to time. Notice shall be deemed to be received if delivered personally at the time of receipt, if sent by post at the expiration of forty-eight (48) hours after being placed in the post (having been correctly addressed), or if by fax twenty-four (24) hours after despatch to the correct fax number.
- 7.8 The terms and conditions of this Licence are severable in that if any provision is determined to be illegal or unenforceable by any court of competent jurisdiction, such provisions shall be deemed to have been deleted without affecting the remaining provisions of these terms and conditions.
- 7.9 This Licence shall be governed by and construed in accordance with English law and the parties shall submit to the exclusive jurisdiction of the English Courts.

SIGNED by

for and on behalf of
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