

# STANDARD TERMS AND CONDITIONS FOR THE LICENCING OF DATA

## 1. DEFINITIONS

In these terms and conditions which expression includes the Schedules hereto the following words and expressions have the meanings set out below, unless the context requires otherwise:

**"Order Date"** means the date you place an order for the Data;

**"Licence"** means the licence between you and us upon these terms governing your use of the Data;

**"Data"** means information of any kind, however presented whether comprising words, numbers, graphs, maps, pictures, sketches or otherwise in any other form and whether or not our property which is supplied or made available by us under this Licence, as the same is more particularly described in Schedule 1 herewith;

**"Data Supplier"** a party who has supplied all or part of the Data to us with the right to sub-licence its use;

**"Direct Marketing"** means any form of telephone sales, telephone marketing, direct mail, e-mail marketing, market research or use of circulation list or fax marketing which is targeted at an end user;

**"Licence Fee"** the fee for the use of the Data payable to us as set out at Schedule 2;

**"Material"** means any disks, tapes, documents or other media supplied by us to you or a third Party to carry the Data;

**"Multiple Use"** means repeated use on any number of occasions as set out in Schedule 1;

**"Single Use"** means use on one occasion only for one specific Direct Marketing campaign as set out in Schedule 1;

**"Third Party"** means any individual, partnership, body corporate or other undertaking including any employees, principals, agents, clients or associated companies of you or us (as the context requires);

**"we"** or **"us"** or **"IDSL"** or **"our"** means Intertec Data Solutions Ltd;

**"you"** or **"your"** means you, the Licensee;

**"Undeliverables Threshold"** means for the purposes of this agreement, 19% of the e-mails in any single order made by you.

## 2. LICENCE

2.1 IDSL hereby grants to the Licensee a personal, non-exclusive licence to use the Data strictly in accordance with the provisions set out in Schedule 1 hereto for Direct Marketing only.

2.2 In consideration for the Licence granted herein the Licensee will pay the Licence Fee as set out and calculated in accordance with Schedule 2 hereto.

2.3 The Licence Fee does not include delivery, packing and insurance except where we indicate otherwise.

2.4 The time of payment of the Licence Fee shall be essential to this Licence. All payments shall be made in full without deduction in respect of any set-off or counterclaim.

2.5 Unless otherwise expressly stated in writing payment of the full Licence Fee shall be due to us on or before the 30th day after the date of the invoice.

2.6 We are entitled to charge VAT at the current whether or not it is included in the quotation or invoice.

2.7 If you fail to make payment of the Licence Fee by the due date then without prejudice to any other right or remedy available to us, we shall be entitled to charge interest at the rate of 5% above HSBC Plc base rate from the date of invoice, until you pay in full, calculated on a daily basis.

2.8 Without prejudice to our other rights, failing to make any payments due to us will entitle us, at our sole discretion, to suspend this Licence without incurring any liability to you for any loss caused by any such suspension.

2.9 Subject to clause 2.10, where any Data has been licensed for Single Use and you use the Data more than once then you will be liable to pay an amount equal to the License fee charged for the Single Use multiplied by the number of occasions on which the Data was used.

2.10 Where Data has been licensed for Multiple Use and you use the Data on more occasions than the volumes defined at Schedule 1 you will be charged an additional License Fee according to the following formula:

Where: **X** = Number of Data sends; **Y** = The License Fee for the total amount of sends permitted under Schedule 1; **Z** = The total sends permitted under Schedule 1

Additional License Fee = (Y times (X divided by Z)), minus Y

2.11 Except at our sole discretion, this contract may not be cancelled once it has been accepted.

### **3. DELIVERY**

3.1 Time for delivery of the Data shall not be of the essence unless we have previously agreed to this in writing.

3.2 If we agree with you to deliver the Data, any cost of carriage, package, postage and insurance in transit will be added to the Licence Fee and you must notify us in writing within 14 days of the date upon which you receive the Data from us of any shortage of or damage to the Data.

### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 The copyright and/or data base right and all other intellectual property rights in the Data are, shall be and remain our property, or the property of our Data Supplier.

4.2 Where any of the Data is derived from information supplied to us by a Data Supplier you acknowledge the rights of the Data Supplier and that you will not acquire any rights in relation to such information derived from the Data Supplier's database or other intellectual property rights including, without limitation copyright, data base right, trade marks, service marks or get up other than expressly granted in this Licence.

### **5. CONFIDENTIALITY**

5.1 We acknowledge a duty not to disclose without your permission any confidential information resulting from studies or surveys commissioned and paid for by you and any data given to us by you concerning your customer and prospect database.

5.2 Any information and documents (including financial information and information relating to our intellectual property) disclosed by us to you shall be and remain confidential and you shall not disclose it to any person without our written authority.

5.3 The Data supplied to you under this Licence is supplied in strict confidence and for your internal business use only. You warrant and undertake not to transmit or otherwise reveal such information to any person not employed in your own business in any form or manner. You may, with our prior written consent supply lists of addresses or parts of such lists to agents for addressing correspondence provided that you procure that any such agents comply with all the restrictions contained in this Licence. You will not without our prior written consent ask for the Data knowingly for the use of others or wilfully or negligently permit such requests to be made by others.

5.4 You may not make any copies of the Data other than one copy of the Data for archiving purposes. You must store the Data separately from other data in a secure environment. You must not permit any other person to copy the Data.

5.5 You may disclose part of the Data to any of your customers only as necessary to do so by law. You agree to indemnify us on a full and unqualified basis for any loss or damage whatsoever caused by breach of this clause 5 by you.

5.6 You warrant that you will inform all persons employed by you who have access to the Data of the restrictions and obligations under the terms of this Licence and procure compliance by them.

5.7 You will keep the Data confidential and require your employees to do likewise. You will at all times take all reasonable steps in relation to your employees, authorised or duly appointed agents to ensure that no Third Party reproduces or publishes the Data. You will neither during nor after the subsistence of this Licence, disclose the Data to your customers or any Third Party except in accordance with the terms of this Licence.

5.8 Your obligations of confidentiality set out in this Licence shall not apply to any information, which was already legitimately in the possession of the recipient, or is subsequently obtained from a Third Party which did not obtain the same under conditions of confidentiality.

5.9 You agree to notify us immediately upon becoming aware of any unauthorised use of the Data.

## **6. RESTRICTIONS**

6.1 You will ensure the Data is not used as a component of a product marketed by you to compete with a product of ours or of a Data Supplier and in particular will not use or permit the use of the Data for any purposes connected with the business of publishing directories (local, regional or national) on printed or electronic media whose content is primarily either classified advertising or "white pages" (ie name, address, telephone number data) listings or to provide or enable the provision of a telephone directory enquiry service to the general public.

6.2 You will ensure that the Data is used only from within the United Kingdom and Eire.

6.3 You may use the Data only for Direct Marketing and are not permitted to include the Data in any product or service that you sell.

6.4 We may mark the Data to show our and our Data Supplier's proprietary rights in respect of the Data by, for example, placing notices of our or the Data Supplier's copyright conspicuously on products incorporating the Data. You will ensure that such notices remain incorporated.

6.5 We and/or the Data Supplier may insert a number of seed (dummy) records into the Data for the purpose of ensuring that no breaches of this Licence occur and you agree not to delete or alter such records.

6.6 All Data must be removed from your database at the expiry of this Licence agreement unless by agreement with us.

## **7. USE OF INFORMATION**

7.1 You warrant that the purpose for which the Data is to be used is only as stated in Schedule 1.

7.2 If this is a Single Use Licence you undertake that on completion of the use of the Data, you will return to us or at our option destroy the Data.

7.3 In addition to clauses 2.9 and 2.10, in the event that you use any of the Data for any purpose which is outside the purposes contained in Schedule 1, that misuse shall be construed as the misuse of all the Data supplied by us. You agree to compensate us to the full value of the Data Order for such misuse and such compensation shall not limit in whole or in part and additional remedy under this agreement.

## **8. E-MAIL**

8.1 Where the Data includes our e-mail field, the following provisions shall apply in respect of the e-mail Data:

8.2 If you wish us to exclude certain criteria from our range of criteria you must provide a suppression file to us that clearly states your requested exclusions prior to the Order Date.

8.3 If you wish us to exclude general e-mail addresses from the e-mail Data field you must request this prior to the Order Date.

8.4 Subject to any restrictions of use stated in the Order Form your use of the e-mail Data may not exceed more than 12 e-mails to any one addressee in a 12 month period.

8.5 We are not responsible or liable for e-mail addresses that prove to be undeliverable save that where the number of undeliverable addresses exceeds the Undeliverables Threshold and subject to you providing proof of non-delivery within 30 days of the Order Date, we will endeavour to provide additional e-mail addresses so as to ensure that the percentage of undeliverable e-mails is brought within the Undeliverables Threshold.

8.6 IDSL's obligations stated in clause 8.5 above shall not apply where you decide to use a method of delivery that has not been approved in writing by IDSL.

8.7 We reserve the right to require you to cease or modify use of our e-mail Data where we discover that the content of e-mails sent by you is in our reasonable opinion inappropriate or you have misled us about the content.

8.8 Where you procure the use of the e-mail Data to send e-mails, you must ensure that the recipient is given a simple means to opt-out of receiving further communications and you must forward to IDSL the details of any recipients who do exercise their right to opt-out including any comments that may be made by such recipients in an excel or comma separated format.

## **9. ADVERTISING STANDARDS AND DATA PROTECTION**

9.1 We will endeavour to comply with the British Codes of Advertising and Sales Promotion and with the DMA UK Direct Marketing Code of Practice and other codes of advertising standards laid down on a self-regulatory basis.

9.2 Nothing in these Terms relating to the confidentiality or secrecy of the Data shall prevent or hinder either us or you from complying with our legal obligations as to disclosure or otherwise under the Consumer Credit Act 1974 and the Data Protection Act 1998.

9.3 You will ensure that any use to which the Data is put complies with the current regulations of the Post Office and the Universal Postal Union and with the current codes of practice of any applicable regulatory bodies.

#### **10. WARRANTY**

10.1 We warrant that any services we provide to you will be provided in a good and workmanlike manner. Where the Material is a disk or tape, we warrant that the disk or tape will be free from material defects in material and workmanship for a period of 90 days from delivery. We will replace free of charge any disk or tape which is defective if you return the disk or tape to us at your risk and expense within the 90 day period. We are not liable for any defect if it is caused by wear and tear, or intentional damage, or failure to follow instructions.

10.2 We do not warrant that the Data shall be fit for any particular purpose.

#### **11. LIMITATION OF LIABILITY**

11.1 Time for us to perform any obligations is not and may not be made of the essence.

11.2 Notwithstanding anything contained in this Licence, except in respect of death or personal injury caused by our negligence, we will not be liable for any consequential, economic, or indirect loss including but not limited to loss of profits, loss of revenue, loss of contracts, loss of anticipated savings, arising in any way in connection with the supply or non-supply of the Data to you.

11.3 Whilst we attempt to ensure that the Data is accurate and complete, by reason of the immense quantity of matter dealt with in providing and in compiling the Data and the fact that part of the Data may be supplied by sources not controlled by us, which cannot always be verified, as well as the possibility of negligence or mistake, we do not guarantee the correctness or accuracy of the Data and you agree not to hold us responsible for any error therein or omissions there from.

11.4 Save in respect of death or personal injury due to our negligence for which no limit shall apply, our aggregate liability under this Licence for any one cause of action or series of connected causes of action shall not exceed one and a half times the Licence Fee paid.

#### **12. TERMINATION**

12.1 We shall be entitled (without affecting any other rights we may have) immediately to suspend or terminate this Licence if:

- i your business becomes subject to legal distress or execution; or
- ii you offer to make any arrangements with your creditors or become bankrupt or being a limited company have a receiver, administrative receiver or administrator appointed over the whole or part of the property; or
- iii any order is made or a resolution is passed or proceedings are taken for your winding up; or
- iv you cease to carry on or threaten to cease to carry on all or a substantial part of your business.

#### **13. FORCE MAJEURE**

We shall not be liable to you or be deemed to be in breach of this License by reason of any delay in performing, or any failure to perform any of our obligations in relation to the provision of the Services if the delay or failure was due to any cause beyond our reasonable control.

#### **14. NOTICE**

Notices may be given by either of us to the other by sending them to the registered office of the other party. Any such notice will be valid if sent by first class post or fax and deemed to be received on the second business day following posting or transmitting.

#### **15. ENTIRE AGREEMENT**

This contract comprises the entire agreement between the parties and there are not any agreements, understandings, promises or conditions, oral or written, expressed or implied, concerning the subject matter which are not merged into this contract and superseded hereby. This contract may be amended in the future only in writing executed by the parties.

#### **16. LAW AND JURISDICTION**

This Licence is governed by and interpreted in accordance with English law. The parties agree that the English courts will have non-exclusive jurisdiction to hear any disputes relating to this Licence.