

Schedule 5: NCOA Suppress End User Licence

WARNING: Under no circumstances will Royal Mail authorise the supply of Suppression Data to an End User prior to the Licensed Reseller having obtained the End User's acceptance of the terms of this Licence.

RECITALS:

- A Royal Mail provides the Redirection Service to Redirection Customers who wish to have mail addressed to them forwarded to a new address. To apply for this service, Redirection Customers complete the Redirection Form, including their Old Address and the new address to which they are moving, in addition to the time period during which they wish the Redirection Service to take place. Alternatively, similar details will be provided to Royal Mail when a Redirection Customer orders the service over the telephone or online.
- B Royal Mail has developed and owns the NCOA Suppress Database using the names and Old Addresses of Redirection Customers once the Redirection Service has expired.
- C Royal Mail licenses the Licensed Reseller to use the NCOA Suppress Database to provide suppression services to End Users.
- D The End User has requested that the Licensed Reseller provide the Services in order to update the End User's customers' records contained in the Customer Database. The use of the Suppression Data is conditional upon the End User accepting the terms of this Licence with Royal Mail.

AGREEMENT:

1. Definitions and Interpretation

- 1.1 In this Licence, where the context allows, the following words and expressions have the following meanings:

"Agreement" means Royal Mail's agreement with the Licensed Reseller under the terms of which Royal Mail licenses the Licensed Reseller to use the NCOA Suppress Database for the provision of the Services;

"Batch Processing" means the automated electronic processing of a batch of Customer Records in a Customer Database against Suppression Data in the NCOA Suppress Database for the purpose of identifying Matches;

"Commencement Date" means either: (i) the date on which this Licence is signed by both of the Parties in hard copy form; or (ii) where the Licensed Reseller permits the End User to enter into this Licence other than by signature of a paper version of this Licence, the date on which both Parties have confirmed their acceptance of the terms of this Licence in writing;

"Confidential Information" means any information of a confidential or proprietary nature (irrespective of the form, presentation or communication including computer software and data, physical objects and samples and, in the case of Royal Mail, the Suppression Data, whether before or after it is incorporated into a Customer Database) relating to the business, operations, customers, processes, budgets, product information, know-how and/or strategies of either Party;

"Customer Database" means an electronic compilation of Customer Records;

"Customer Record" means the name and address of a current or lapsed customer or prospective customer of the End User which have been lawfully and fairly obtained by the End User solely for the purposes of marketing,

commercial communications or customer administration and where the End User is a Public Body, such references to "customers" shall be deemed to mean any individuals over whom such Public Body has or exercises competence under its statutory powers or duties;

"Data Protection Requirements" means the DPA, Directive 95/46/EC of the European Parliament, the Electronic Communications Data Protection Directive 2002/58/EC and the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any legislation and/or regulations implementing them or made in pursuance of them including where applicable the guidance and codes of practice issued by the Information Commissioner;

"DPA" means the Data Protection Act 1998;

"EEA" means the European Economic Area comprising, for the time being, the EU member states, Norway, Iceland and Liechtenstein;

"Intellectual Property Rights" means all intellectual property rights including copy right and related rights, database rights, trade marks and trade names, patents, topography rights, design rights, trade secrets, know-how, and all rights of a similar nature or having similar effect which subsist anywhere in the world, whether or not any of them are registered and applications for registrations, extensions and renewals of any of them;

"Law" means:

- (i) any applicable statute or proclamation or any delegated or subordinate legislation;
- (ii) any enforceable Community right within the meaning of section 2(1) of the European Communities Act 1972;
- (iii) any applicable guidance, direction, determination or regulations with which either Party is bound to comply to the extent that the same are publicly available or the existence or contents of them have been notified to the other Party;
- (iv) any applicable judgment of a relevant court of law which is binding precedent in England,

in each case in force at any time during the term of this Licence;

"Licence" means this licence between the Parties;

"Licensed Reseller" means the Licensed Reseller of Royal Mail providing Services to the End User;

"Match" means each instance where, through Batch Processing a name and address contained in the Customer Database is matched to the name and address contained in the NCOA Suppress Database;

"NCOA Suppress Database" means Royal Mail's proprietary database containing Suppression Data selected, arranged and compiled by Royal Mail and stored on electronic media and including any updates to it;

"Old Address" means the address specified by a Redirection Customer as that from which mail should be redirected, as subsequently amended by Royal Mail, if necessary, to ensure that the address information is correct for Royal Mail's postal purposes

"Party" means the End User or Royal Mail, as applicable (together, the "Parties");

"Permitted Purpose" means suppressing existing Customer Records through Matches pursuant to Batch Processing;

"Public Body" means any department, office or agency of Her Majesty's Government or any local government authority or agency or any other public authority;

"Redirection Customer" means a customer of the Redirection Service whose post is, at the relevant time, being redirected by Royal Mail from the relevant Old Address to the relevant new address pursuant to such service;

"Redirection Form" means the application form for individuals who wish to use the Redirection Service;

"Redirection Service" means Royal Mail's service for the redirection of mail provided to members of the public who have requested such service whereby mail which has been addressed to their Old Address is redirected to and delivered at their new address;

"Royal Mail" means Royal Mail Group Limited, a company registered in England & Wales under registered number 04138203 whose registered office is at 100 Victoria Embankment, London, EC4Y 0HQ;

"Services" means the address suppression service which shall be provided by the Licensed Reseller to End Users in accordance with the Agreement, pursuant to which the Licensed Reseller carries out Batch Processing and, in the event of a Match, either: (a) deletes the name and address records which appear in the Customer Records of the relevant existing customer or prospective customer to whom the Match relates, for the purposes of a one-off mailing campaign by the End User; or (b) provides a permanent flag against the address of the relevant existing customer or prospective customer to whom the Match relates;

"Suppression Data" means address data held by Royal Mail on the NCOA Suppress Database and updated on a periodic basis which is derived from the Old Address information provided by Redirections Customers on the Redirections Form once the Redirection Service has expired in relation to the relevant Redirection Customer;

"Working Day" means any day which is not a Saturday, a Sunday or a bank or public holiday in England.

1.2 In this Licence unless the context otherwise requires:

(i) references to one gender include references to all genders and references to the singular include the plural and vice versa;

(ii) clause headings are for convenience only and will not affect the construction of this Licence;

(iii) any reference to an enactment or statutory provision is a reference to it as it may have been or may from time to time be amended, replaced or re-enacted;

(iv) references to "persons" shall include references to individuals, bodies corporate (whether incorporated), unincorporated associations and partnerships;

(v) any phrase introduced by the expressions "including", "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and

(vi) references in this Licence to the "NCOA Suppress Database" shall be deemed to include Suppression Data or any part of it, as the context so requires.

2. Licence

2.1 In consideration of the End User complying with the terms of this Licence, Royal Mail grants to the End User a non-exclusive, non-transferable right in the EEA to access and use the Suppression Data received as part of the Services for the Permitted Purpose, from the Commencement Date until this Licence is terminated in accordance with the terms of this Licence. In no circumstances shall the End User use the Suppression Data for the purpose of detecting fraud or money laundering.

2.2 The End User warrants and undertakes to ensure that any Customer Database (in respect of which the Services are being provided) is owned or licensed by the End User for the End User's own use and comprises only Customer Records used for the purposes of marketing, commercial communications and routine administration. In each case, the address in each Customer Record will be complete to the best of the End User's knowledge prior to Batch Processing.

2.3 Except as expressly permitted in this Licence, the End User must not at any time reproduce, publish, sell, let, lend, extract, utilise, process or otherwise disclose or part with possession of the Suppression Data or the Customer Database after Batch Processing (in whole or in part), either directly or indirectly, and the End User must treat Suppression Data as Confidential Information.

2.4 The End User may only use the Suppression Data for the Permitted Purpose. For the avoidance of doubt, the End User must:

(a) ensure that Suppression Data supplied by way of a Match is immediately integrated into the Customer Records;

(b) not create a list, compilation or database of Matches or matched Customer Records following Batch Processing, or in any way separate out the Customer Records that have been matched with Matches; and

(c) not try to access, extract, utilise or process Suppression Data except through Batch Processing and not carry out any means of looking up Suppression Data concerning a specific individual.

2.5 The End User must pay the Licensed Reseller for all Matches it obtains through the Services.

2.6 The End User agrees to indemnify and keep indemnified Royal Mail against all losses, costs, claims and damages suffered or incurred by Royal Mail directly or indirectly as a result of a breach of any provision of this Licence by the End User.

3. Liability of Royal Mail

3.1 The End User acknowledges that Royal Mail does not warrant:

(a) the accuracy and/or completeness of the Suppression Data; nor

(b) that the NCOA Suppress Database does not infringe the Intellectual Property Rights of any third party.

3.2 The End User agrees that Royal Mail will not be liable for any loss or damage (whether direct or indirect) however arising from the use by the End User, or performance of, Suppression Data, with the exception of death or personal injury caused by Royal Mail's negligence.

3.3 The End User acknowledges that Royal Mail will not be liable to the End User in respect of the Services.

3.4 The End User acknowledges that Royal Mail will not be obliged in any circumstances to provide Suppression Data or related services directly to the End User.

- 4. Property Rights in Suppression Data**
- 4.1 Royal Mail represents that it is entitled to enter into this Licence and that there are no known encumbrances on the Intellectual Property Rights in Suppression Data and any list or compilation of Suppression Data. The Intellectual Property Rights in Suppression Data supplied to the End User as part of the provision of the Services shall remain at all times the property of Royal Mail.
- 4.2 The licence to use the Suppression Data is personal to the End User. The End User may not license or assign the Intellectual Property Rights in the Suppression Data except as expressly permitted under this Licence or as otherwise agreed in writing by Royal Mail. For the avoidance of doubt, this Licence does not operate as an assignment by Royal Mail to the End User of any Intellectual Property Rights that might subsist in or relate to the Suppression Data.
- 4.3 The End User acknowledges that it will not acquire any rights of any nature in or in relation to the Suppression Data as a result of the End User's use beyond those rights specifically granted in this Licence. If the End User challenges the validity of the Intellectual Property Rights in or relating to the Suppression Data or Royal Mail's title to those Intellectual Property Rights Royal Mail may suspend or terminate this Licence with immediate effect by giving notice to the End User.
- 4.5 The End User will not do or permit the doing of any thing within its control which will prejudice in any way whatsoever the name of Royal Mail or the rights of Royal Mail in the Suppression Data and will give immediate notice to Royal Mail upon the End User becoming aware of anything which may prejudice the name of Royal Mail or the rights of Royal Mail in the Suppression Data.
- 4.5 The End User undertakes to Royal Mail that it will give immediate notice to Royal Mail upon its becoming aware of any unauthorised use of the Suppression Data or any other of the Intellectual Property Rights of Royal Mail.
- 4.6 Royal Mail may bring any action for any such unauthorised use on behalf of itself and at its cost and the End User shall co-operate fully in any such action. The End User is not granted any separate right of action relating to Royal Mail's Intellectual Property Rights in respect of any such unauthorised use and disclaims any such separate right that it may have as far as such a disclaimer is permitted by Law.
- 4.7 Upon termination of this Licence, the licence in Clause 2 shall continue in respect of Suppression Data that has been supplied to the End User through the Licensed Reseller's performance of the Services and incorporated into the End User's Customer Database as at the date of termination provided that the End User continues to use such Suppression Data for the Permitted Purpose and in accordance with the limits on use of Suppression Data contained in this Licence which shall continue to operate in respect of such Suppression Data after the termination of this Licence.
- 4.8 The provisions of this Clause will continue to operate after the termination of this Licence.
- 5. Data Protection**
- 5.1 The Parties' attention is drawn to the Data Protection Requirements. The End User acknowledges that Royal Mail is the data controller in respect of any personal data contained in the Suppression Data. Royal Mail acknowledges that the End User is the data controller in respect of any personal data contained in the Customer Database.
- 5.2 The End User acknowledges that the terms of this Licence are structured in order to comply with the Data Protection Requirements. The End User undertakes that it will use the Suppression Data only in accordance with the Permitted Purpose and will not do or omit to do any act which would place it or Royal Mail in breach of the Data Protection Requirements.
- 5.3 Each Party undertakes to the other that it will duly observe all its obligations under the Data Protection Requirements which arise in connection with the performance of this Licence.
- 5.4 In processing personal data, the End User shall at all times take all appropriate technical and organisational measures against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
- 5.5 The End User agrees to comply with the Data Protection Requirements as they apply to its use of Suppression Data (including compliance with any data protection notices and opt out wording on the Redirections Form as amended from time to time by Royal Mail) and to make any notification required under the DPA.
- 5.6 The End User must not disclose, pass or sell all or part of the Suppression Data outside the EEA without the prior written consent of Royal Mail.
- 6. Assignment**
- The End User must not assign, sub-contract or otherwise deal with this Licence, or any part of it.
- 7. Termination**
- 7.1 If the Agreement expires or is terminated for any reason, this Licence will automatically be terminated.
- 7.2 Royal Mail may terminate this Licence at any time if the End User fails to comply with any of its terms.
- 7.3 Royal Mail may terminate this Licence immediately if the End User brings Royal Mail into disrepute.
- 7.4 Royal Mail may terminate this Licence immediately if the End User becomes unable to pay its debts (within the meaning of section 123(1)(e) or (2) of the Insolvency Act 1986), admits its inability to pay its debts or becomes insolvent; or (ii) a petition is presented, an order made or a resolution passed for the liquidation (otherwise than for the purposes of a solvent amalgamation or reconstruction), administration, bankruptcy or dissolution of the End User; or (iii) an administrative or other receiver, manager, trustee, liquidator, administrator or similar person or officer is appointed to the End User and/or over all or any part of the assets of the End User; or (iv) the End User enters into or proposes any composition or arrangement concerning its debts with its creditors (or any class of its creditors) generally; or (v) anything equivalent to any of the events or circumstances stated in (i) to (iv) inclusive occurs in any applicable jurisdiction.
- 7.5 The termination of this Licence will not affect liability for preceding breaches.
- 8. Confidentiality**
- 8.1 The End User agrees that it shall, in relation to any Confidential Information:
- (a) keep it confidential and not disclose it to any other person other than to its professional advisers, employees, agents and sub-contractors on a need to know basis;
- (b) not copy or reproduce any part of the Confidential Information except as permitted under this Licence without the prior written approval of the other Party;
- (c) apply to the Confidential Information no lesser security measures and degree of care than those which it takes in protecting its own confidential information and in any event no less than that which a reasonable person or business would take in protecting its own confidential information; and

- (d) use the Confidential Information only for the purposes of this Licence.
- 8.2 The End User shall take all reasonable measures to ensure that its professional advisers, employees, agents and sub-contractors comply with the terms of this Clause 8.
- 8.3 The obligations contained in this Clause 8 shall not apply to any Confidential Information which:
- (a) was, is or has become lawfully available to the public otherwise than through breach of this Licence;
- (b) was disclosed to either Party by a third party legally in possession of the Confidential Information and who was not restricted from disclosing it; and
- (c) was independently created by or already in the possession of either Party.
- 8.4 The Parties agree that Clause 8.3(a) shall not apply to any Suppression Data.
- 8.5 Either Party who is required by a court of law or other competent jurisdiction or any other regulatory authority to disclose any Confidential Information in order to comply with any such law or order of any such Court or regulatory authority may do so, but that Party must, where reasonably practicable, give the other Party not less than seven (7) days' notice of such disclosure.
- 9. General**
- 9.1 If a communication relating to redirections is received from or in relation to a Redirection Customer, the End User undertakes to pass it to Royal Mail (to the Royal Mail Data Services Helpdesk at the address set out below) within five (5) Working Days of receipt, and to comply as soon as practicable with any subsequent instruction issued by Royal Mail.

Address:
 The Ledger Room- Data Services
 Doncaster Mail Centre
 Doncaster
 DN4 5NE

Email address:
 datasales@royalmail.com
 Telephone: 0845 6000098

- 9.2 This Licence records the entire agreement between the Parties and supersedes all earlier agreements and representations by the Parties on the subject matter of the Licence. This Clause does not exclude liability for any fraudulent misrepresentation by either Party.
- 9.3 The rights, powers and remedies provided in this Licence are (except as expressly provided) cumulative and not exclusive of any rights, powers and remedies provided by Law, or otherwise.
- 9.4 Nothing in this Licence shall (except as expressly provided) be deemed to constitute a partnership, or create a relationship of principal and agent for any purpose between the Parties.
- 9.5 The failure to exercise, or delay in exercising, a right, power or remedy provided by this Licence or by Law shall not constitute a waiver of that right, power or remedy. If a Party waives a breach of any provision of this Licence this shall not operate as a waiver of a subsequent breach of that provision, or as a waiver of a breach of any other provision.
- 9.6 This Licence is subject to English Law. The Parties agree to submit to the exclusive jurisdiction of the English courts.
- 9.7 In the event that the Licensed Reseller and the End User enter into a separate licence relating to the provision of the Services, the terms of this Licence may not be varied or superseded by, and will prevail over, any such licence.