

Guidance

The General Data Protection Regulation (GDPR) came into force on 25th May 2018, and we ask you to please comply with this legislation by drawing your attention to the following points in particular:

- only use the data for your own direct marketing
- stop marketing to a data subject if requested to do so.
- take appropriate measures to store the data securely.
- do not pass the data into territories without adequate data protection.
- do not pass the data to other entities either within or outside any group of entities you are a member of.
- apply updates from Target Response to the data to ensure accuracy.
- apply updates from Target Response to the communication preferences.
- inform the data subject that the source of the data is Target Response.
- respect the changing communication preferences of the data subject.
- make data available to the data subject when access is requested.
- delete the data when the license expires.
- advise Target Response of any data errors identified.
- keep records of all data processing.
- ensure that if you are going to contact the data subjects via email that the subject line accurately describes the content of the email, and that there is an unsubscribe option present.

Terms and Conditions

Definitions

- 'Client' means the person or entity ordering the direct marketing list from Target Response as identified with the order.
- 'Controller' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.
- 'Purchaser' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, to whom Target Response agrees to provide goods and/or services for a consideration.
- 'Data record' means a single entry of the proprietary information of Target Response or its suppliers typically, but not always, including inter alia information about one organisation and one decision maker within the organisation.
- 'Direct marketing' list means multiple data records aggregated into one or more than one list of data records typically, but not always taking the form of a spreadsheet, data table or other structured data file.
- 'Licencee' means the natural or legal person, public authority, agency, or other body for whose benefit Target Response is authorising the use of a direct marketing list. For the purposes of this agreement, Licencee excludes from its meaning any third-party, including any holding company, group company or subsidiary. The Licencee is accountable for the usage of any direct marketing list provided under this agreement.
- 'Processor' means a natural or legal person, public authority, agency, or other body which processes data on behalf of the controller. 'Processing' means any operation or set of operations which is performed on the direct marketing list, whether by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
- 'Active Usage' Licence means a Licence to use the proprietary information of Target Response that has commenced, has not expired, has not been exhausted, has not been cancelled and for which payment has been received by Target Response.
- 'GDPR' means the General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council.

- 'EU' means the European Union.
- 'Territory that provides an adequate level of protection under GDPR' means a territory that is listed in the Official Journal of the European Union as providing an adequate level of protection for personal data.
- 'Professionally relevant direct marketing' means direct marketing that is relevant to the data subject in their professional capacity.
- 'Agreement' means this agreement between Target Response and the Licencee for a Licence to use a direct marketing list on terms specified in this document.

GOVERNING LAW & JURISDICTION

- This agreement is governed by and shall be construed in accordance with the laws of England.
- The parties submit all their disputes arising out of or in connection with this agreement to the exclusive jurisdiction of the courts of England.

ENTIRE AGREEMENT

- This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous drafts, agreements, arrangements, and understandings between them, whether written or oral, relating to this subject matter.
- Each party acknowledges that in entering into this agreement it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in this agreement.
- No party shall have any claim for innocent or negligent misrepresentation based upon any statement in this agreement.
- Each provision, requirement or exclusion contained in this agreement shall be severable and shall subsist notwithstanding the inapplicability or unenforceability of any other terms contained herein.
- Changes to this agreement shall be valid and effective only if made in writing and signed by both parties.

COPYRIGHT

- All intellectual property rights pertaining to the direct marketing list including without limitation copyright shall remain the sole property of Target Response.
- The Licencee is granted a non-transferable Licence to use the direct marketing list for direct marketing purposes only for the Licencee and the Licencee's members of their group (including any subsidiaries, holding and sister companies of the Licencee).

- The direct marketing list shall not be used whether in whole or in part to create, develop or augment any list, service, or product. It shall not be offered whether for a consideration or otherwise to any other party including inter alia, internet or intranet based services or any other service or directory or information resource providing any benefit whatsoever to any other party. The direct marketing list may be disclosed by the Licencee only to a processor contractually bound to use the direct marketing list only for direct marketing purposes, only for the benefit of the Licencee (or member of the Licencee's group companies).
- The direct marketing list shall not be reproduced, duplicated, shared, transferred or otherwise disclosed, or be used to benefit a third party including without limitation, any business, company or entity associated or affiliated with the Licencee, unless agreed in writing in advance by Target Response.
- Where a prospect initially identified through the direct marketing list becomes a customer, through making a purchase, the Licencee shall be entitled to create a version of the data record and will have beneficial ownership, intellectual property rights and copyright of the created customer record. This does not affect the intellectual property and other rights Target Response has over the data record in the direct marketing list.

LIMITATION OF LIABILITY

- Target Response shall not be liable for any claim arising from inappropriate or unauthorised use of the direct marketing list, including without limitation electronic communications, spamming, contraventions of data protection or privacy regulations.
- Target Response undertake, warrant, and represent that they have assessed and put in place adequate procedures, processes and policies to ensure lawful transfer of the Direct Marketing List under the GDPR and Data Protection Act 2018.
- The information included in the direct marketing list is on the date of supply accurate to the best of the ability of Target Response, notwithstanding any terms of this agreement.
- Target Response shall not be liable for any claim arising out of the performance, non-performance, delay in delivery of, or defect in the direct marketing list, nor for any special, indirect, economic or consequential loss or damage however so arising or however so caused, (including loss of profit or revenue) whether from negligence, or otherwise in connection with the supply, functionality or use of the direct marketing list or any breach of this agreement.
- Any liability of Target Response in respect of this agreement shall be limited to the value of the invoice or invoices raised by Target Response against the Licencee in respect to this agreement.

- The direct marketing list shall only be used in compliance with all legislation, including inter alia data protection, privacy, direct marketing, consumer protection, distance selling and advertising standards.
- The Client's total aggregate liability to Target Response in respect of all causes of action arising out of or in connection with the agreement (whether for breach of contract, strict liability, tort (including negligence), misrepresentation or otherwise shall not exceed the total fees payable by the Client to Target Response.
- Nothing in this agreement shall limit or exclude either parties' liability for death or personal injury caused by its negligence, for fraud or fraudulent misrepresentation.

GENERAL

- Target Response undertake, warrant and represent that they comply and shall continue to comply with the terms and obligations as set out in the GDPR due diligence statement.
- - The direct marketing list supplied by Target Response shall only be processed while an active usage Licence for the direct marketing list issued by Target Response exists.
- In supplying the direct marketing list Target Response undertake, warrant and represent that they shall frequently screen the data against the Corporate Telephone Preference Service and Telephone Preference Service and update the direct marketing list shared with the Client with any changes to the preferences of the data subjects and inform the Client should a data subject exercise any of their rights under the GDPR (including the right to be forgotten, right to withdraw consent to marketing) whereby such request effects the marketing ability of the Client.
- The controller shall only process the direct marketing list or cause the direct marketing list to be processed by a third-party processor when that processing is governed by a written contract.
- The controller shall only process the direct marketing list or cause the direct marketing list to be processed by a third-party processor when that processor and processing is located within the EU or in a territory that provides an adequate level of protection under GDPR.
- The controller shall ensure the direct marketing list is processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction, or damage, using appropriate technical or organisational measures.

- Target Response shall not be liable and shall not be held responsible for any costs as a result of changes in the volume of data records available. Estimates provided in any quotation provided by Target Response are not binding upon Target Response. Target Response will make its best endeavours to achieve the estimates.
- Where the purchaser and the Licencee are not one and the same entity, by signing this agreement the purchaser warrants that the Licencee has read, understood and agrees to be bound by the terms of this agreement.
- The purchaser shall not process the direct marketing list except to transmit the direct marketing list to the Licencee or a processor nominated by the Licencee and shall expunge the direct marketing list immediately after successful onward transmission.
- The Licencee shall prior to receiving a Licence to use the direct marketing list inform Target Response of the intended products and services that the direct marketing list will be used to promote. Target Response shall grant a Licence based upon the expressed usage being a professionally relevant direct marketing message for the data subject to receive. Any change to the products and services to be promoted must be approved in writing, by Target Response, in advance of using the direct marketing list for new products or services.
- Either party shall be entitled to terminate the Contract by notice in writing if the other party:
 - a) commits an irremediable breach of the agreement or persistently repeats a remediable breach or commits any remediable breach of this agreement.
 - b) makes an agreement with or enters a compromise with its creditors, becomes the subject of a voluntary arrangement, receivership, administration, liquidation or winding up, is unable to pay its debts or otherwise becomes insolvent or suffers or is the subject of any distraint, execution, event of insolvency or event of bankruptcy or any other similar process or event, whether in the United Kingdom or otherwise.
- In performing the obligations under this agreement, Target Response will comply with all applicable legislation as replaced and/or amended from time-to-time, including but not limited to any or all:
 - a) anti-slavery and human trafficking laws including the Modern Slavery Act 2015.
 - b) anti-bribery and anti-corruption laws including the Bribery Act 2010.
 - c) data protection legislation including the EU Data Protection Regulation 2016/679 and the Data protection Act 2018 (and any replacement legislation; and
 - d) prevention of tax evasion legislation including the Criminal Finances Act 2017.

- A person who is not a party to the Contract has no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of the Contract.
- This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

COMPLIANCE

- All data derived from data records included in the direct marketing list including inter alia duplicates, copies, and other versions of the direct marketing list shall be appropriately marked so the source of the data is identifiable and shall have an expiry date for usage of the data record.
- Where personal data elements of a data record are combined with data elements from other sources to form a composite record, the Licencee shall ensure each data element can be identified and removed or changed as required.
- Target Response shall not be in any way responsible for data records or data elements or the usage of data elements or data records where the data elements or data records are sourced in whole in part from other sources.

UNAUTHORISED USAGE

- Unauthorised usage includes inter alia disclosure, transfer, resale, reuse, continued usage beyond the end of the active usage Licence, data capture or copying and modification in part or on whole.
- Where unauthorised use is detected and confirmed upon investigation, the licencees shall be liable for a sum of ten times the original value of all invoices relating to this agreement. This value is payable immediately. Additionally, the licencee shall certify they have expunged all versions of the direct marketing list and all data derived from the direct marketing list, including versions held by processors.
- The Licencee shall certify they have expunged all versions of the direct marketing list and all data derived from the direct marketing list, including versions held by processors.
- Where the direct marketing list has been resold Target Response additionally reserve the right to seek legal redress and recoup costs and damages including legal costs and damages.
- Exercise of the above clauses by Target Response shall be without prejudice to other rights Target Response may have and remedies it may seek.

- Target Response reserves the right to inform the Information Commissioner's Office of unauthorised usage as a data breach notification. In the event whereby Target Response exercises this right, Target Response shall notify the Client immediately of their intention.

QUALITY GUARANTEE

- Target Response offer a 'like for like' replacement on all Post Office marked gone-away data records, telephone verified gone-away data records and confirmed undeliverable email address data records. This guarantee shall only apply for up to thirty calendar days after the direct marketing list was supplied by Target Response to the Licencee.
- The guarantee shall be satisfied by replacing each faulty data record with another valid, within target data record that does not already form part of the direct marketing list. Where there are insufficient valid, within target data records that do not already form part of the direct marketing list, Target Response will provide another valid data record that matches the target data as closely as possible.
- Target Response shall not be liable for direct or indirect loss, consequential loss or loss of profits suffered by the user of email addresses supplied by Target Response for any reason whatsoever including inter alia non-connection or inaccurate data.

PAYMENT

- The Target Response order confirmation to the customer whether verbally or by email forms part of this agreement.
- Upon order confirmation, Target Response shall be entitled to raise an invoice addressed to the Client which is payable by the Client within 30 days of receipt of an undisputed invoice.
- Once the order has been confirmed and Target Response have completed and signed their GDPR balancing test, necessity test and legitimate interest assessment this constitutes a binding agreement. Any query relating to an invoice must be made within seven calendar days of receipt of the invoice.
- Invoices not settled within the agreed terms will be subject to interest at the rate of 2% above the Bank of England Base Rate on a daily basis.

END OF ACTIVE USAGE LICENCE TERM

- Upon expiry of the active usage Licence the Licencee shall certify they have expunged all versions of the direct marketing list and all data derived from the direct marketing list, including versions held by processors.

DELIVERY

- The direct marketing list will be available to download from a secure website shortly after order confirmation and when we have completed our GDPR balancing test, necessity test and legitimate interest assessment.
- Other delivery arrangements may be agreed between Target Response and the Licencee in writing in advance.

SINGLE USE LICENCE

- The licencee shall be intitled to use the direct marketing list on one occasion only within 28 days of supply.

CONTINUED USE LICENCE

- The licencee shall be entitled to use the direct marketing list for as long as an active usage licence exists.
- The controller shall ensure the direct marketing list is accurate and kept up to date by synchronising the direct marketing list under their control with updates of the direct marketing list as provided from time to time by Target Response.

LICENCE

- The Licencee shall be entitled to use the direct marketing list for as long as an active usage Licence exists.
- Target Response reserves the right to cancel any Licence immediately without notice if payment of the related invoice is overdue by more than one calendar month.
- The controller shall ensure the direct marketing list is accurate and kept up to date by synchronising the direct marketing list under their control with updates of the direct marketing list as provided from time to time by Target Response.