

TRACESMART[®] CORPORATE

TRACESMART SMARTUSER AGREEMENT

This Agreement is made between Tracesmart Limited (the 'Company') whose registered office is situated at Global Reach, Dunleavy Drive, Cardiff, CF11 0SN and the Customer as outlined in the Schedule.

Date	24 th January 2011
Prepared By	LT/CR
Approved By	CR

SCHEDULE

CUSTOMER INFORMATION:	
Customer Name:	Telegraph Media Group Limited
Customer ID:	1476792
Business Address:	111 Buckingham Palace Road, London, SW1W 0DT
Contact Name:	
Telephone Number:	
Fax Number:	
E-Mail:	
Registration Number:	00451593
Registered Office:	111 Buckingham Palace Road, London, SW1W 0DT

SERVICES:	
Access Requested:	HIML
Tracesmart Service:	SMARTUSER Unlimited User Licence
Contract Period:	24 Months
Search Cap allowance:	per annum
DQ look up allowance:	per annum
On-site Training:	Rates Available Upon Request
Tracesmart Service Fee (Exc Vat):	
Payment Terms:	Payable Quarterly in Advance

SYSTEM/SYSTEM DATA
This Schedule relates to access to our self-key HTML electronic tracing tool at www.tracesmartcorporate.co.uk.

Our Unlimited User Licence allows an unlimited number of users to access our system at any one time, subject to a fair usage search cap for the contract period. A single search allows you to search our powerful people and address search solution for a designated name or address and up to a maximum of 200 results can be returned. Should you exceed the allocated DQ lookup allowance you will be charged an additional per lookup. This will be invoiced on a monthly basis.

You will be provided with access to a multitude of the freshest and most comprehensive datasets available, including:

Post & Present Electoral Roll • Tracesmart Register • GRO Data • HM Land Registry Sales • Directory Enquiries

Legal Information:
In signing below both the Company and the Customer agree to be bound by this Agreement and its Terms & Conditions as attached.

Signed for and on behalf of Tracesmart Limited _____ Name _____ Dated _____	Signed for and on behalf of the Customer _____ Name _____ Dated _____
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** REQUESTED AMENDMENT RE:
THIRTY DAY TERMS AS OPPOSED
TO PAYMENT IN ADVANCE.*

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STANDARD TERMS & CONDITIONS

INTRODUCTION:

- (1) The Company has developed and owns a tracing and residency verification system containing a multitude of datasets, which are either owned by the Company or licensed from third party Data Providers.
- (2) The Company has agreed to allow the Customer Access to the System and its associated documentation.

IT IS AGREED as follows:

1. Definitions

In this Agreement, unless the context otherwise requires, the following expressions have the following meanings:

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|--------------------------------|---|
| "Acceptance Date" | the date on which the Schedule is received duly signed by both the Company and the Customer; |
| "Access" | Access granted by the Company pursuant to clause 2.1; |
| "Access Date" | the date on which the Customer settles the Tracesmart Service Fee or such date as may be agreed by the Company and the Customer; |
| "Company" | Tracesmart Limited whose registered office is situated at Global Reach, Dunleavy Drive, Cardiff, CF11 0SN and registered in England with registration number 3827062; |
| "Contract Period" | the period of any contractual agreement detailed in the Schedule; |
| "Customer" | the name of the Customer as detailed in the Schedule; |
| "Data Providers" | A third party provider of data to the Company; |
| "Intellectual Property Rights" | all vested contingent and future intellectual property rights including but not limited to copyright, trademarks, service marks, design rights (whether registered or unregistered), patents, know-how, trade secrets, inventions, get-up, database rights and any applications for the protection or registration of these rights and all renewals and extensions thereof existing in any part of the world whether now known or in the future created to which the Company may be entitled; |
| "Party" | the Company or the Customer as detailed in this Agreement; |
| "Parties" | the Company or the Customer as detailed in this Agreement; |
| "System" | the tracing and residency verification application and associated documentation of the Company specified in the Schedule and all releases and versions thereof; |
| "System Data" | such data as may be specified by the Company from time to time and is as presently listed in the Schedule; |
| "System Documentation" | the operating manuals, user instructions, technical literature and all other related materials in eye-readable form supplied to the Customer by the Company for aiding the use and application of the System. |
| "Tracesmart Service" | the Tracesmart Service purchased as specified in the Schedule enabling Access to a multitude of datasets; |
| "Tracesmart Service Fee" | the fee for the Tracesmart Service as specified in the Schedule; |

2. Grant of Access

- 2.1 The Company grants to the Customer Access to use the System and System Data subject to the terms and conditions contained in this Agreement.
- 2.2 The Customer shall use the System and System Data for processing its own data for its own internal business purposes only.

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- 2.3 The Customer is prohibited from using the System and System Data for any form of marketing purpose or activity.
- 2.4 The Agreement shall not be deemed to extend to any services or products of the Company other than the System Data unless specifically agreed to in writing by the Company.
- 2.5 The Customer acknowledges that it is authorised to use the System Data only in accordance with the express terms of this Agreement and not further or otherwise.
- 2.6 The Customer shall not export or permit the export of any of the System Data to a country which is not within the European Economic Union without prior written consent from the Company.
3. **Term**
- 3.1 The Agreement shall commence on the Acceptance Date and, unless terminated in accordance with any of the provisions of clause 12, shall continue for the length of the Contract Period. It will subsequently continue for the same Contract Period thereafter until or unless terminated in accordance with any of the provisions of clause 12 or any other clause of this Agreement.
- 3.2 Any remaining element of the Tracesmart Service will expire at the end of Contract Period and will not be available to be carried over.
4. **Payment**
- 4.1 The Tracesmart Service Fee shall be paid by the Customer as provided in the Schedule.
- 4.2 The Tracesmart Service Fee and other charges payable under this Agreement are exclusive of any applicable VAT and other sales tax which shall be payable by the Customer at the rate and in the manner prescribed by law against submission of a valid tax invoice.
- 4.3 Any charges payable by the Customer under this Agreement in addition to the Tracesmart Service Fee shall be paid within 14 days after the receipt by the Customer of the Company invoice.
- 4.4 The Company shall have the right to charge interest on overdue invoices at the rate of 5% per year above the base rate of National Westminster Bank PLC calculated from the date when payment of the invoice becomes due for payment up to and including the date of actual payment whether before or after judgment.
5. **Access**
- On and from the Access Date the Company shall grant access to the System to the Customer and provide System Documentation or telephone training, if required.
6. **Security and Control**
- 6.1 The Customer shall during the continuance of the Access period:
- 6.1.1 effect and maintain adequate security measures to safeguard the System Data from access or use by any unauthorised person;
- 6.1.2 maintain a full and accurate record of the disclosure of the System Data by the Company and shall produce such record to the Company on request from time to time.
7. **Intellectual Property Rights**
- 7.1 The Customer acknowledges that the System Data, System Documentation and the Intellectual Property Rights of whatever nature in the System are and shall remain the property of the Company or relevant Data Providers and furthermore the Intellectual Property Rights cannot be used or copied without prior written consent from the Company and relevant Data Providers
- 7.2 The Customer undertakes not to translate, adapt, vary, modify, disassemble, decompile or reverse engineer the System, System Data or System Documentation without the prior written consent of the Company.
- 7.3 The Customer shall notify the Company immediately if the Customer becomes aware of any unauthorised use of the whole or any part of the System or System Data by any person.
- 7.4 The Customer shall notify the Company within 7 business days in writing of any potential infringement claim or misuse of the System or System Data.
- 7.5 The Customer shall not make any admission as to liability, agree or compromise to any claim of any infringement without the prior written consent of the Company.
- 7.6 The Customer will give the Company and its third party Data Providers all reasonable assistance in relation to either defending an infringement claim or the prosecution of their rights.
8. **Fair Usage Policy**
- 8.1 The Company reserve the right to include specific usage restrictions in the Schedule.

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- 8.2 The Company reserves the right to suspend Access to any Customer who they suspect is attempting to abuse its Fair Usage Policy.

9 Warranties

- 9.1 The Company warrants to the Customer that:
- 9.1.1 the System and System Data complies with any specification agreed for them;
 - 9.1.2 the System Documentation or telephone training will provide adequate instructions to enable them to make proper use of the System;
 - 9.1.3 it is not aware of any third party rights which would or potentially render the use of the System or the System Data and any intellectual property in relation to the System or System Data unlawful;
 - 9.1.4 it complies with all laws and regulations applicable in the United Kingdom.
- 9.2 To the extent permitted by applicable law, the Company:
- 9.2.1 disclaims all other warranties with respect to the System Data, either express or implied, including but not limited to any implied warranties relating to quality, fitness for any particular purpose or ability to achieve a particular result;
 - 9.2.2 makes no warranty that the System and System Data are error free or that its use will be uninterrupted and the Customer acknowledges and agrees that the existence of such errors shall not constitute a breach of this Agreement.

10. Liability

- 10.1 The Company shall indemnify the Customer for personal injury or death caused by the negligence of its employees, agents or sub-contractors, in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement.
- 10.2 The Company will indemnify the Customer for direct damage to tangible property caused by the negligence of its employees, agents or sub-contractors in connection with the performance of their duties under this Agreement or by defects in any product supplied pursuant to this Agreement. The total liability of the Company under this clause shall be limited to £5,000 for any one event or series of connected events.
- 10.3 Except in respect of claims for death or personal injury arising from the negligence of the Company, in no event will the Company be liable for any damages resulting from loss of profits, goodwill or any type of indirect or consequential loss, nor for any damages that are an indirect or secondary consequence of any act or omission of the Company whether such damages were reasonably foreseeable or actually foreseen.

11. Confidential Information

- 11.1 Both Parties to this Agreement undertake, except as provided below, to treat as confidential and keep secret all information marked "confidential" or which may reasonably be supposed to be confidential, including, without limitation, information contained or embodied in the System, System Data, System Documentation, Schedule and other information supplied by the Company and Customer (in this Agreement collectively referred to as "the Information") with the same degree of care as it employs with regard to its own confidential information of a like nature and in any event in accordance with best current commercial security practices, provided that, this clause shall not extend to any information which was rightfully in the possession of either Party prior to the commencement of the negotiations leading to this Agreement or which is already public knowledge or becomes so at a future date (otherwise than as a result of a breach of this clause).
- 11.2 Both Parties shall not without the prior written consent of the other Party divulge any part of the Information to any person except:
- 11.2.1 to their own employees and then only to those employees who need to know the same;
 - 11.2.2 to the auditors of either Party, an officer of HM Revenue and Customs, a court of competent jurisdiction, governmental body or applicable regulatory authority and any other persons or bodies having a right duty or obligation to know the business of the other Party and then only in pursuance of such right duty or obligation;
 - 11.2.3 any person who is for the time being appointed by either Party to maintain the System and then only to the extent necessary to enable such person to properly maintain the System.
- 11.3 Both Parties undertake to ensure that persons and bodies referred to in clause 11.2 are made aware before the disclosure of any part of the information that the same is confidential and that they owe a duty of confidence to the other Party.

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- 11.4 Each Party to this Agreement shall promptly notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Information and shall give the other Party all reasonable assistance in connection with any proceedings which the other Party may institute against such person for breach of confidence.
- 11.5 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Agreement.

12. Termination

- 12.1 The Company may terminate this Agreement:
- 12.1.1 at any time by giving at least 30 days prior written notice to the Customer;
- 12.1.2 forthwith on giving notice in writing to the Customer if the Customer commits any serious breach of any term of this Agreement and (in the case of a breach capable of being remedied) shall have failed, within 30 days after the receipt of a request in writing from the Company to do so, to remedy the breach (such request to contain a warning of the intention of the Company to terminate).
- 12.2 Except where expressly provided elsewhere in this Agreement the Tracesmart Service may not be terminated.
- 12.3 If the Tracesmart Service Fee has been paid in full to the Company, the Customer may terminate the Tracesmart Service at any time after a period of 15 months from the Acceptance Date by providing at least 3 months' prior written notice, or at the end of the Contract Period by providing at least 3 months' prior written notice. Such notice will not have effect if, at the time of service, or at the date upon which it is due to expire, the Customer has not paid the Service Fee which was due to have been paid. This notice must be served by recorded delivery to the Company or by email to cancellations@tracesmart.cp.uk. The Company, upon receipt of notice to terminate under this clause, will provide the Customer with a Unique Early Cancellation Number (UECN) which will be sent directly to the Customer via the email address which the Customer has previously supplied to the Company.
- 12.4 If the Customer fails to terminate under Clause 12.3, the Tracesmart Service will automatically renew at the discretion of the Company for the Contract Period at the same Tracesmart Service Fee contained in the Schedule plus an inflationary increase linked to the Retail Price Index. The Tracesmart Service will continue to be renewed thereafter or until the Customer terminates the Agreement under Clause 12.3 by providing 3 months prior written notice.
- 12.5 Should the Customer utilise the Tracesmart Service in full during the Contract Period they should contact their account manager to discuss early renewal.
- 12.6 The Tracesmart Service may be terminated if:
- 12.6.1 either Party appoints a receiver over any of its property or assets;
- 12.6.2 either Party makes a voluntary arrangement with its creditors or becomes subject to an administration order;
- 12.6.3 either Party enters into liquidation (except for the purposes of restructuring or amalgamation);
- 12.6.4 either Party ceases to carry on business.
- 12.7 Forthwith upon the termination of the Tracesmart Service, the Customer shall return to the Company the System Documentation and all copies of the whole or any part thereof or, if requested by the Company, shall destroy the same and certify in writing to the Company that they have been destroyed.
- 12.8 Forthwith upon the termination of the Tracesmart Service, the Customer shall cease to login to the System and securely destroy access logins and certify in writing to the Company that they have been destroyed.
- 12.9 Any termination of the Tracesmart Service or this Agreement (howsoever occasioned) shall not affect any accrued rights or liabilities of either Party nor shall it affect the coming into force or the continuance in force of any provision in this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- 12.10 For the avoidance of doubt, and with the exception of clause 12.1.1, there will be no refund of any monies paid by the Customer to the Company and any remaining element of the Tracesmart Service will be forfeited.

13. Data Protection

The Parties undertake to comply with the provisions of the Data Protection Act 1998 and any related legislation in so far as the same relates to the provisions and obligations of this Agreement.

14. Amendments

This Agreement may not be released, discharged, supplemented, interpreted, amended, varied or modified in any

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manner except by an instrument in writing signed by a duly authorised officer or representative of each of the Parties.

15. **Announcements**

15.1 The Company reserves the right, for public relation objectives, to release onto its corporate website and when appropriate, to the media in general, information relating to the Customer agreement to retain the services of the Company. The Customer name will routinely be entered onto the unrestricted client list of the Company.

15.2 The Customer shall not issue or make any public announcement or disclose any information regarding this Agreement unless prior written consent has been obtained from the Company.

16. **Assignment**

This Agreement is personal to the Parties and neither this Agreement nor any rights, licences or obligations under it may be assigned by either Party without the prior written approval of the other Party.

17. **Entire Agreement**

This Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter of this Agreement. However the obligations of the Parties under any pre-existing non-disclosure agreement shall remain in full force and effect in so far as there is no conflict between the same. The Parties confirm that they have not entered into this Agreement on the basis of any representation that is not expressly incorporated into this Agreement.

18. **Force Majeure**

Neither Party shall be liable for any delay or failure to perform any of its obligations under this Agreement if such failure is due to any circumstances beyond its control.

19. **Notices**

19.1 All notices under this Agreement shall be in writing.

19.2 Notices shall be deemed to have been duly given:

19.2.1 when delivered by Recorded Delivery during normal business hours of the recipient;

19.2.2 when sent, if transmitted by fax or e-mail and a successful transmission report or return receipt is generated.

20. **Waiver**

No delay, neglect or forbearance by any Party in enforcing this agreement shall prejudice its rights. No Waiver of any right or breach under this Agreement shall be effective unless in writing and signed by the Party making the waiver. Any such Waiver shall not be constructed as a waiver of any other right or breach of this Agreement.

21. **Third Parties**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from such Act.

22. **Compliance with Relevant Law**

Both Parties will comply with all applicable laws, rules and regulations in respect of all activities conducted under this Agreement and hereby submit themselves to the jurisdiction of the English Courts.