Special Conditions of Use for Optimizely Campaign SMS

1. Subject matter of agreement and provision of subject matter

(1) The subject matter of these Special Conditions of Use for Optimizely Campaign SMS is the dispatch of short text messages (SMS) via Optimizely Campaign (additional function). Optimizely Campaign enables a Customer to send advertising or other information to his contacts by mobile radio telephone service. Further information on basic performance parameters, use and data processing are provided in the technical specifications, which will be provided upon request. In addition thereto, the technical specifications of the Agreement shall apply.

(2) These Special Conditions of Use for Optimizely Campaign SMS supplement the Optimizely Master Services Agreement and other Optimizely ordering document(s) where Optimizely Campaign is purchased, as applicable.

(3) Optimizely shall be obliged to operate Campaign according to the specifications and to transfer the SMS to the network operator.

2. Implementation

(1) The additional function shall be implemented in Campaign without undue delay after placement of the order. To do so, Optimizely's technical support shall contact the Customer and shall request the Customer to provide the information required for implementing and performing the service.

(2) Optimizely explicitly draws attention to the fact that the Customer will not be able to use his own telephone numbers for the purpose of SMS dispatch, but only alphanumeric codes or short-code selections and standard numbers to be applied for from Optimizely. The Customer shall take note of the fact that the short-code selections or standard numbers can be assigned to the network operator or to any other or instance involved in the management of such numbers at any point and shall be subject to the conditions imposed by such parties. Optimizely can apply for the temporary assignment of short-code selections or standard numbers on the Customer's behalf in so far as the Customer requests this and the desired number is available. The provision of a short-code selection or standard number may thus take some time. Please see the contract for information on the exact periods of time.

3. Customer obligations

(1) The Customer shall make information for dispatching an SMS available to Optimizely. The scope, procedure and data processing method used shall comply with the specifications detailed in Clause 1(1).

(2) Whether and to what extent this service is legally permissible in a concrete case shall solely be subject to an assessment by the Customer (e.g. competition regulations, consumer protection, telecommunication and data privacy law). The Customer must ensure that the collection, transfer, processing and any other utilisation of the data shall only take place in a permissible form. Customer shall obtain the explicit approval of the persons involved or take other measures in order to ensure an utilisation of the additional function in compliance with pertinent law. Optimizely refers to the fact that the prior, explicit and informed consent of the end users in question shall be required for the performance of the service (Opt-in). It is therefore up to the Customer to inform the end user in detail with regard to the data processing performed by Optimizely; to implement and perform the procedure in accordance with the law; to obtain the end user's approval in accordance with the law and, in particular, to inform the end customer on existing rights and on the

procedure for opting out of future short text messages (SMS Opt-out). An opt-out must be implemented by the Customer without undue delay, at the latest within 24 hours. Network operators and regulation authorities may set a shorter deadline. The Customer shall send documentation of the Customer's opt-in and opt-out within 24 hours after an explicit request by Optimizely. Any documentation thereof must be retained and surrendered up to one year following the termination of this agreement.

(3) Paragraph 2 shall apply accordingly if and in so far as the Customer sends an SMS under an alphanumeric code. The Customer shall be responsible for the use of such codes in compliance with the law.

(4) The Customer must perform a test dispatch prior to the first proper use of the additional functions being the subject matter of this agreement and immediately following modifications to the system settings in order to exclude faulty dispatch. For this purpose the Customer should send a test SMS to an intracompany telephone number and examine it to ensure that it is correct and complete. The same shall apply accordingly if there are any doubts with regard to the length of and the way an SMS is displayed. Alternatively, the Customer can also contact Optimizely's customer support for advice.

(5) The Customer shall be solely responsible for all data processing matters.

(6) The Customer guarantees that the receiving party shall be informed that it is responsible for the SMS and must comply with the statutory specifications on provider identification.

(7) The Customer guarantees that the texts and any other contents provided are up to date, correct and complete and that the Customer disposes of any and all rights to utilise such within the additional function. The Customer grants Optimizely a non-exclusive, world-wide license free of charge and limited to the contractual term to copy, distribute, process, publish, make reference to and make accessible the collected and provided data.

(8) Minor technical conversions during SMS dispatch shall be jointly approved with the Customer and implemented. Conversions may become necessary to ensure a smooth performance of the service or to implement standards of the network operator.

4. Fees

(1) Fees to be paid on the part of the Customer shall depend on the contract.

(2) Optimizely depends on cooperation with network providers for rendering its services, namely the dispatch of short-text messages (SMS). The price agreed upon in the contract shall therefore be subject to changes that are not fully within the control of Optimizely. The parties therefore agree that Optimizely shall be authorised to adapt the prices stated in the contract. Optimizely shall inform the Customer hereof in text form by submitting an updated price list. In the event of a price increase the Customer's approval shall be required. The approval shall be deemed to be given, unless the Customer terminates the SMS service module in writing within one month as of the date of receipt of the change notification. Optimizely agrees to specially draw the Customer's attention to the consequences of failing to terminate the contract when sending the change notification and latest price list.

5. Termination and blocking

(1) Optimizely is authorised to limit or block the dispatch of SMS. In addition thereto Optimizely furthermore has the right to immediately deactivate the service if the Customer's dispatches violate statutory regulations or third-party rights.

(2) One-time installation fees as well as other agreements (Optimizely Campaign) shall not be affected by a termination or blocking.

6. Concluding terms

(1) Optimizely shall be authorised to forward data to third parties for the purpose of legal defense (e.g. opt-in data and evidence, company data provided when registering short code selections or standard numbers with the telecommunications service provider) and as set forth in the Agreement.

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