



USADATA, INC.

SL360 TERMS OF USE

("Agreement")

Version: 2016-09.01

## NOTICE TO SUBSCRIBERS:

THIS IS A LEGALLY BINDING AGREEMENT. READ IT CAREFULLY. BY CHOOSING "ACCEPT", YOU ACCEPT ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT WHICH SHALL GOVERN YOUR USE OF THE SL360 APPLICATION ("SL360"). IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, SIMPLY RETURN TO THE PREVIOUS PAGE. Whether you are licensing the Product for your own internal use or placing an order for your client, you may be referred to in this Agreement as "Customer." If you are acting in a broker capacity in the placement of orders on behalf your client ("Client"), then by accepting the terms and conditions of this Agreement, you hereby certify that you have the authority as a legal agent to bind your client, who is the ultimate user of the Product, to the terms set forth herein. In the event that you act beyond the scope of your authority by accepting this Agreement on behalf of your Client, then you shall guaranty your Client's performance and shall be responsible for any breach of this Agreement by your Client. Further, you hereby agree to obtain your Client's written agreement to the terms and conditions set forth in this Agreement with respect to use of the Product. In the event that you have access to or use of the Product on behalf of your Client, then your use of the Product shall be subject to the terms and conditions of this Agreement as if you were the Client. For good and valuable consideration, the sufficiency of which is hereby acknowledged, USADATA grants to you a limited, non-transferable, non-exclusive license to use the Product (as defined below), subject to the following:

**Fees.** Customer agrees to pay the fees for the Products as set forth in the SL360 system or via invoices issued by USADATA. Except where Customer is paying with a credit card at check out, all amounts that are invoiced are

SL360™

800-399-8611

[info@SL360.com](mailto:info@SL360.com)

<http://www.SL360.com>

due within thirty (30) days of Customer's receipt of an invoice unless otherwise granted in writing by USADATA. In the event of a good faith dispute as to the calculation of an invoice, Customer shall immediately give written notice to USADATA stating the details of any such dispute and shall promptly pay any undisputed amount. The acceptance by USADATA of such partial payment shall not constitute a waiver of payment in full by USADATA of the disputed amount. Any undisputed amounts not paid within thirty (30) days of receipt of invoice shall accrue interest at a rate of one percent (1%) per month or the maximum lawful rate, whichever is less. Notwithstanding anything to the contrary contained in this Agreement, failure to make timely payments shall constitute a default hereunder and shall entitle USADATA to suspend its provision of the Products immediately and require payment in advance until Customer's account is paid in full. Customer agrees to pay all fees owed to USADATA regardless of whether Customer has received any payments owed to Customer by the Customer or any third party. Unless otherwise specified, all charges are exclusive of taxes. Customer will pay all taxes (including, but not limited to, sales, use, excise, value added, and gross receipts taxes) levied in connection with the Agreement (whether included on an invoice or identified during an audit), except taxes based upon USADATA's net income, corporate franchise, business license, payroll withholding or property taxes on USADATA-owned assets. USADATA will collect taxes from Customer only in jurisdictions that USADATA has a nexus. Customer will provide USADATA with any state tax exemptions in a timely manner. If USADATA does not collect taxes for any reason, Customer remains responsible for remitting taxes when appropriate to the applicable taxing authority as the consumer or reseller of the Products. The parties will cooperate with each other in connection with any audit, inquiry, trial, or appeal regarding taxes in connection with the Agreement, including any tax determination or exemption documentation. Customer is not responsible for penalties or interest arising from USADATA's failure to properly collect or remit taxes to the applicable tax authorities.

**Term.** The terms and conditions set forth in this Agreement shall continue

in full force and effect for as long as Customer uses the lists and data elements and related data processing services provided pursuant to this Agreement (collectively the "Product").

**Title.** Customer acknowledges that the Data shall at all times remain the intellectual property of USADATA or the third party data owners ("Data Owners") who provided the Data to USADATA, and that Customer has no proprietary rights whatsoever in the Data. USADATA acknowledges that any Customer data submitted to USADATA for processing shall at all times remain the intellectual property of Customer and that USADATA has no proprietary rights whatsoever in such Customer data.

**Sales Restrictions.** If you are ordering Products on behalf of your Client, the following restrictions shall apply:

- **USADATA Competitors.** Customer may not place orders for, sublicense or otherwise make the Products available to the following USADATA competitors: Acxiom, Experian, Equifax, Corelogic, Infogroup, Epsilon, KnowledgeBase Marketing ("KBM"); Central Address Systems ("CAS"), Merkle and Allant Group. USADATA may update the foregoing list at any time.
- **PersonicX Syndicated Data Reports.** Customer is prohibited from marketing and/or providing PersonicX analytic reports that are based upon or that utilize syndicated data to any Client that falls within the following industries: 1) media/advertising industry; 2) organizations that are advertising, promotion, media buying or direct mail agencies; or 3) organizations that are magazines, newspapers, cable, TV and radio networks, yellow page distributors, outdoor advertising, companies or ad-supported internet service and content providers in the absence of USADATA's prior written approval, which may be withheld at USADATA's sole and reasonable discretion.

- Nielsen/Claritas Data. Customer is prohibited from marketing and/or providing such Claritas products to the following restricted entities: Applied Geographic Solutions (AGS), ASTECH InterMedia, Inc., Asterop, The Buxton Company, ChoicePoint, Comscore Networks, The Dun & Bradstreet Corporation, Environmental Systems Research Institute, Inc. (ESRI), Equifax, EuroRSCG, Experian, geoVue, Information Exchange, Inc. (IXI), including Cohorts, Information Resources, Inc. (IRI), infoUSA, including Donnelly Marketing, MapInfo Corp., Merkle, Pitney Bowes, including PB MapInfo, Thompson Associates, and MarketTech Systems, R.L. Polk, ScanUS, SitesUSA, SRC, Synergos Technologies Inc., including STI PopStats, Tactician Corporation, TARGUSinfo, including Amacai, The Gadberry Group, Tetrad, TNS Telecoms Inc., TransUnion, and Urban Science (USAI).

**Confidentiality.** The Product, Customer Data, this Agreement, and any proprietary or confidential information, including but not limited to user IDs and passwords made available to Customer by USADATA in order to allow Customer access to USADATA's FTP servers (when applicable) to retrieve Product(s), (collectively, "Confidential Information") provided hereunder by one party ("Disclosing Party") to the other ("Receiving Party") shall be held in confidence by the Receiving Party and shall not be disclosed or used for any purpose other than as expressly provided in this Agreement without the prior written consent of the Disclosing Party. The Receiving Party shall: (a) protect the Confidential Information of the Disclosing Party with at least the same degree of care with which it protects its own confidential or proprietary information, but not less than a reasonable degree of care, and (b) instruct its employees and all other parties who are authorized to have access to the Disclosing Party's Confidential Information of the restrictions contained in this Agreement. Each Receiving Party shall limit access to the Disclosing Party's Confidential Information to its own employees, agents, contractors, Service Providers (as defined herein), and consultants strictly with a "need to know"; provided, however, that such parties have executed an agreement with the Receiving Party with confidentiality provisions at least as restrictive as

those contained herein. The parties hereby undertake to ensure the individual compliance of such employees, agents, contractors, Service Providers and consultants with the terms hereof and shall be responsible for any actions of such employees, agents, contractors, Service Providers and consultants. Receiving Party shall, as soon as reasonably practical after discovery, report to the Disclosing Party any unauthorized use of, disclosure of or access to the Disclosing Party's Confidential Information, subject to any reasonable restrictions placed on the timing of such notice by a law enforcement or regulatory agency investigating the incident; and take all reasonable measures to prevent any further unauthorized disclosure or access.

**Consumer Inquiries.** Customer shall be responsible for accepting and responding to any communication initiated by a consumer ("Consumer Inquiries") arising out of Customer's use of the Product. Customer agrees that it will provide "in house" suppression to consumers, upon request by a consumer, from future marketing initiatives by Customer, and agrees to honor any such request by suppressing such consumer information from Customer's marketing solicitations. Customer may reference USADATA as the source of the data within the Products in a written or oral communication to a consumer; provided that Customer has notified USADATA prior to such communication and has provided USADATA with a transcript or copy of the proposed communication. Customer shall be responsible for all damages resulting from Customer's non-compliance with this Section including, without limitation, any applicable special, incidental, indirect, or consequential damages (including punitive damages and damages for loss of goodwill). Additionally, USADATA may, in its sole discretion and in addition to any available remedy herein or at law or in equity, terminate this Agreement without further notice.

**California Consumer Privacy Act.** Client agrees that, in connection with engaging USADATA to provide mailing list, mail campaign, or data enhancement services, it is Client's obligation to:

- 1 Provide to USADATA the names of all individuals who have opted-out of the sale of their personal information pursuant to the California Consumer Privacy Act ("CCPA"),
- 2 Refrain from providing to USADATA any personal information that an individual, validly exercising his rights under the CCPA, has requested be deleted, and
- 3 Provide to USADATA the names of all individuals who have registered with the Direct Marketing Association ("DMA") Do-Not-Mail database.

Client shall indemnify, defend and hold harmless USADATA, its affiliates, members, directors, officers and employees ("USADATA Indemnified Person") from and against any and all costs, expenses, claims, suits, causes of action, penalties, or judgments (including reasonable attorneys' fees) which may be imposed on or incurred by or instituted against any such USADATA Indemnified Person relating to or arising out of the failure by Client to timely notify USADATA that an individual has (i) opted-out of the sale, or requested the deletion, of personal information in accordance with the CCPA, and/or (ii) registered with the DMA Do-Not-Mail database.

**Delivery Of The Data.** USADATA shall provide the Product via email and via the Customer's SL360 account. You acknowledge that certain mechanical or software failures may render SL360 unavailable for periods of time and that USADATA may not be able to provide advance warning to you of such impending downtime. USADATA shall use reasonable efforts to provide you with advance notice of downtime.

**Remedies.** USADATA's sole obligation and Customer's exclusive remedy for any claim of defective data or data processing services that is made known to USADATA by written notice from Customer describing any errors in sufficient detail with any necessary backup information or documents shall be to correct the data or re-perform the services in question without charge. Customer acknowledges that some corrections of errors in the data shall be

dependent on the availability of same from the source of the applicable data.

**Warranty Disclaimer/Limitation of Liability.** The Products may be subject to transcription and transmission errors, accordingly, the Products are provided on an "as is," "as available" basis. Any use or reliance upon the Product by Customer shall be at its own risk. EXCEPT AS SET FORTH IN THIS SECTION, NEITHER USADATA NOR THE DATA OWNER MAKES ANY WARRANTIES, EXPRESS OR IMPLIED, HEREUNDER WITH RESPECT TO THE SERVICES, DATA, OR THE MEDIA ON WHICH THE DATA IS PROVIDED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF ACCURACY, COMPLETENESS, CURRENTNESS, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACXIOM'S AND THE DATA OWNER'S AGGREGATE LIABILITY TO CUSTOMER OR ANY THIRD PARTY, WHETHER FOR NEGLIGENCE, BREACH OF WARRANTY, OR ANY OTHER CAUSE OF ACTION, SHALL BE LIMITED TO THE PRICE PAID FOR THE PRODUCT OR SERVICES TO WHICH THE INCIDENT RELATES. IN NO EVENT SHALL CUSTOMER OR DATA OWNER BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER OR NOT FORESEEABLE AND HOWEVER ARISING, INCLUDING BUT NOT LIMITED TO LOST INCOME OR LOST REVENUE, WHETHER BASED IN CONTRACT, TORT OR ANY OTHER THEORY.

**Indemnification.** Customer shall defend, indemnify and hold harmless USADATA from and against any and all claims, demands, judgments, liability, damages, losses, costs, and expenses, including reasonable attorneys' fees, arising out of or resulting from Customer's or its Client's misuse or unauthorized use of the Product.

**Audit/Non-Compliance.** USADATA reserves the right to audit any and each of your computer systems and applicable business records to ensure your compliance with the terms and conditions of this Agreement. Similarly, USADATA may monitor your use of the Product. USADATA reserves the right, in its sole discretion, to immediately suspend your use of the Data in the event of any suspected or actual violation of the terms of this Agreement.

In the event an audit reveals that you are not in compliance with the terms and conditions of this Agreement, you shall be responsible for the costs of the audit, as well as any and all damages resulting from such non-compliance including, without limitation, any special, incidental, indirect, or consequential damages whatsoever (including punitive damages and damages for loss of goodwill).

**Governing Law/Jurisdiction.** This Agreement shall be governed by the laws of the State of New York, U.S.A., without regard to conflicts of law principles. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

**Force Majeure.** Neither party shall be liable for any losses arising out of the delay or interruption of its performance of obligations under the Agreement due to any act of God, act of governmental authority, act of public enemy, war, riot, flood, civil commotion, insurrection, severe weather conditions, or any other cause beyond the reasonable control of the party delayed.

**Electronic Communication.** The parties may communicate with each other by electronic means. The parties agree to the following for all electronic communications: an identification code ("USERID") contained in or with an electronic document is legally sufficient to verify the sender's identity and the document's authenticity; an electronic document that is sent with or contains a USERID is a signed writing; and an electronic document, or any computer printout of it, is an original when maintained in the normal course of business.

**General Provisions.** If any part of this Agreement is found void and unenforceable, the balance of the Agreement shall remain valid and



enforceable according to its terms. This Agreement shall automatically terminate upon failure by you to comply with its terms. This Agreement may only be modified in writing, signed by an authorized representative of USADATA. This Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.

**Survival of Terms.** Any provision of this Agreement that contemplates performance or observance subsequent to any termination or expiration of this Agreement, including, without limitation, all provisions with respect to confidentiality, limitation on liabilities, and indemnification, shall survive any termination or expiration of this Agreement and continue in full force and effect. V2016-09/FRM