

DSA DATA WIZARD AGREEMENT TERMS & CONDITIONS

DATA SOLUTIONS AUSTRALIA PTY. LIMITED

A.B.N. 40 098 401 186

Level 5, 225 Miller Street, NORTH SYDNEY NSW 2060 TEL: 61 2 8908 7788 FAX: 61 2 8908 7799

Dated: The date of receipt of the Membership Application Form (hereinafter referred to as the **Effective Date**)

Between Data Solutions Australia Pty Limited A.C.N. 098 401 186 of Level 5, 225 Miller Street North Sydney (hereinafter referred to as **DSA**)

And The Membership Applicant (hereinafter referred to as the **Licensee**)

- A The Licensee has purchased from DSA the product known as DSA DataWizard which enables the Licensee to access, through license, data bases from DSA comprising names, addresses and telephone numbers and other data as requested by the Licensee (hereinafter referred to as **Lists**).
- B. DSA and the Licensee have agreed that the use of the DSA DataWizard and the Lists will be governed by the terms and conditions as set out in this DSA DataWizard Agreement.

Granting of License

1. DSA grants a non-transferable, non-exclusive licence, without the right to sublicense, to the Licensee to use the DSA DataWizard and the Lists in Australia on the terms and conditions set out in this Agreement.

Term

2. The Licence enables the Licensee to utilise the DSA DataWizard for one year from the date of activation of the DSA DataWizard.

Proprietary Information

3. The Licensee acknowledges that the data within the DSA DataWizard and the List(s) shall at all times remain the proprietary or copyrighted property of DSA and the data owners who provided data contained within the Lists to DSA, and that Licensee has no proprietary rights in the DSA DataWizard or the List(s). The DSA DataWizard and the List(s) or any part thereof shall not be copied, disseminated, sublet, resold, or republished in any manner whatsoever. Furthermore, the DSA DataWizard and the List(s) shall not be used in the development of any service or product provided to third parties, including without limitation any file, direct marketing

list, model, analysis, code, report or application which uses or is derived from the Lists.

4. In addition to the restrictions set forth herein, the Licensee shall not modify, adapt, translate, reverse engineer, de-compile, disassemble, or otherwise attempt to discover the technology or methodologies underlying the data in the DSA DataWizard and the Lists, nor shall the Licensee instruct or allow anyone else to undertake such prohibited actions.

ADMA Services & Do Not Call Register

5. DSA will use the Australian Direct Marketing Association's (ADMA) registries and services in accordance with industry guidelines and legislation.
6. DSA warrants that it has complied with the Do Not Call Register Act 2006
7. DSA does not guarantee that the ADMA registry or services are up to date or complete or that the consent has been obtained for the use and disclosure of the information from all individuals to whom the data in the Lists relate.

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8. The Licensee must not use, publish or permit the use or publication of any telephone number or address which is indicated or which it knows or ought reasonably to know is a silent address or telephone number.

Licensee's use of Lists

9. The Licensee shall examine the DSA DataWizard upon the delivery thereof and the Licensee shall notify DSA in writing within two (2) working days of delivery of any questions or problems.
10. The Licensee agrees that the data contained within the Lists will not be used by the Licensee after the date referred to as the Indemnity Date within the data supplied within the Lists.
11. The Licensee may use the downloaded lists provided on multiple occasions until 5:00pm on the date referred to as the Indemnity Date.
12. DSA discloses that the Lists are seeded to detect any unauthorised use or duplication thereof. In the event the Licensee uses the Lists in a manner not authorised by this Agreement, the Licensee shall pay to DSA as liquidated damages the sum of five (5) times the amount invoiced to the Licensee for the supply of the DSA DataWizard by DSA.
13. In addition to any liquidated damages payable to DSA by the Licensee, the Licensee will indemnify DSA against any claim by any other entity made as a result of any unauthorised use or duplication of the DSA DataWizard and/or the Lists by the Licensee.
14. The List(s) is for the Licensee's own internal marketing programs and for no other purpose. The Licensee shall not use the Lists or data therein in any application involving the internet or as part of a CD-ROM.
15. The Licensee is responsible for all materials intended for mailing to names/addresses on the List(s) provided by DSA, and further agrees to (i) keep copies of mail materials for a period of no less than six (6) months after any mail date and (ii) provide one (1) copy of such materials to DSA as and when requested. The Licensee shall indemnify DSA with respect to any claim made against DSA for the content of material supplied by the Licensee.

16. All marketing communications used in connection with any marketing list created by or for the Licensee derived solely from the List(s) shall:

- (i) prominently display a notice that the recipient may elect not to receive further direct marketing communications from the Licensee
- (ii) set out the Licensee's business address and telephone number or a number or address at which the Licensee can be contacted electronically if such opt-out communication is made by electronic means; and
- (iii) be in good taste in accordance with generally recognized standards of high integrity.

17. The Licensee will suppress an individual's information on request by that individual so that it is removed from future marketing initiatives by the Licensee. The Licensee will notify DSA of the request and any other consumer inquiry that involves the accuracy of the Lists or any part thereof within seven (7) days of the date of consumer inquiry.

Limit of Liability

18. DSA shall not be responsible for, or incur any liability, as the result of delays or failures in the delivery of any List(s), in schedules or in performing any of the services described herein in the event of strikes, riots, civil commotion, act or failure to act of any governmental authority, acts of terrorism, delays in or failure to deliver any products or materials by the Australia Post or other public or private transport, equipment breakdown or failure, fires, floods, windstorm or any other act or occurrence beyond DSA reasonable control.
19. DSA and the data owners make no warranties, express or implied, hereunder with respect to the List(s) or the media on which the List(s) is provided, including but not limited to warranties of accuracy, completeness, currentness, merchantability or fitness for a particular purpose. In no event shall any party or any 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. Any cause of action arising under this Agreement shall be asserted

within one (1) year of the date upon which such cause of action accrued, or the date upon which the complaining party should have reasonably discovered the existence of such cause of action, whichever is later.

20. To the extent permitted by law, DSA sole obligation and the Licensee's exclusive remedy for any claim of a defective List or any claim of defective services provided by DSA or any of its related bodies corporate shall be to replace the defective List or reperform the services in question without charge or, at the Licensee's option, to refund the price paid by the Licensee for such defective List or service. DSA aggregate liability to the Licensee whether for negligence, breach of warranty, or any other cause of action shall be limited to the price paid for the List(s) or the services to which the incident relates.
21. The Licensee hereby releases and agrees to indemnify and hold harmless DSA, its officers, agents and employees from any and all liabilities, damages, losses, expenses, demands, claims, suits or judgments, including all attorneys' fees, costs and expenses arising from any and all unauthorized use by the Licensee or by any third party processor, including any service bureau acting on the Licensee's behalf.
22. To the extent permitted by law, DSA shall not be responsible for any direct or indirect damages that may result from such unauthorized use of the DSA DataWizard and/or the List(s).

Termination

23. DSA may terminate this Agreement
 - (i) immediately if the Licensee breaches this agreement and fails to remedy the breach within 7 days of notice from DSA;
 - (ii) immediately on notice if a third party claims the data infringes its intellectual property rights; and
 - (iii) immediately on notice if it receives legal advice that any part of this agreement contravenes privacy or data protection legislation.
24. Upon termination of this Agreement and if requested by DSA, the Licensee agrees to return all copies of the List(s) to DSA or dispose of the DSA DataWizard and the List(s)

in a manner acceptable to DSA, and certify such action in writing.

25. During the Term of this Agreement and for a period of one (1) year thereafter, the Licensee Renter shall maintain current, accurate and complete books and records relating to its use of the DSA DataWizard and the List(s) and shall allow DSA or its representative to examine, inspect, audit, review and copy or make extracts from all such books and records and any source documents used in preparation thereof, to ensure compliance with the Agreement upon reasonable prior written notice.

General

26. To the extent permitted by law (including the *Trade Practices Act 1974 (Cth)*), the specific conditions and warranties contained in this agreement are the only conditions or warranties in relation to this Agreement and replace all conditions and warranties that might otherwise be implied.
27. With respect to the subject matter hereof, the Agreement shall be the complete and exclusive statement of the agreement between DSA and the Licensee. DSA must accept any changes in this Agreement in writing before those changes become effective.
28. This Agreement shall be governed by and construed in accordance with the laws of New South Wales, notwithstanding any conflict of law provisions.