



# Sabal Strategy License Agreement

## 1. Ownership

LICENSEE acknowledges that the Licensed Data is owned by Sabal Strategy or the data owners who provided the Licensed Data to Sabal Strategy (collectively, Sabal Strategy and the other direct and indirect suppliers of the Licensed Data are referred to herein as the “**Data Suppliers**”), and that LICENSEE has no proprietary rights in the Licensed Data. LICENSEE acknowledges and agrees that the Data Suppliers are an intended third-party beneficiary of the provisions of this Agreement and as such are entitled to directly enforce in their own name the rights and obligations undertaken by LICENSEE and to seek all legal and equitable remedies as are afforded to Sabal Strategy.

## 2. Representation and Warranties

- A) Sabal Strategy warrants that it has full power and authority to supply the Licensed Data to LICENSEE for the uses contemplated under this Agreement and the Licensed Data does not infringe upon any copyright, trade secret, privacy or other proprietary right of any third party.
- B) Each party represents and warrants as to itself that it has full power and authority to enter into this Agreement, and that its execution, delivery and performance of this Agreement shall not violate any law, statute or other governmental regulation, and shall not conflict with or result in any breach of any terms, conditions or provisions of, or constitute a default under any agreement to which it is a party.
- C) If the Licensed Data includes email addresses, LICENSEE shall obtain the representations and warranties that no consumer included in such Data file has requested not to receive solicitations from such Client.

## 3. Term

The initial term of this Agreement will be one (1) year from the Purchase Date for Multiple Usage Base Data or will expire upon first use for Single Usage Base Data (the “Term”).

## 4. Pricing and Payment

LICENSEE shall pay to Sabal Strategy the fee as set forth in the Statement of Work (SOW) and outlined in this Invoice by the due date for payment. Amounts unpaid within thirty (30) days of the due date on the Invoice shall bear interest at the rate of 1.5 percent per month (or the highest rate permitted by law, if less) until paid in full. In the event of any failure by LICENSEE to make payment, LICENSEE will be responsible for all reasonable expenses (including attorneys' fees)



incurred by Sabal Strategy in collecting such amounts. Without limiting any other remedy available to Sabal Strategy in law or equity, in the event that LICENSEE is delinquent in payments required to be made hereunder, LICENSEE shall upon notice by Sabal Strategy cease and desist from any further use of the Licensed Data and the license hereunder shall terminate immediately. All payments due hereunder are in U.S. dollars and are exclusive of any applicable taxes. LICENSEE shall be responsible for all applicable taxes.

## **5. Restrictions and Conditions on Use of the Data**

**A)** LICENSEE is granted a terminable, revocable, non-exclusive, non-transferrable, strictly limited license to use Data.

**B)** LICENSEE agrees and will cause its End Users to ensure marketing materials and solicitations do not make reference to any selection criteria or presumed knowledge regarding the intended recipient of such solicitation and must comply with all federal and state regulations. All such marketing materials and solicitations are subject to the prior approval of Sabal Strategy, in its sole unfettered discretion.

**C)** Single Usage Base Data may not be copied, duplicated, transferred, disclosed or retained after the permitted one-time rental use, unless otherwise specified in any written order confirmation at the time of purchase. Data is seeded to detect any unauthorized use or duplication thereof, LICENSEE agrees not to remove seeds from purchased Data and to pay for the full multiple use charge for LICENSEE's or its end-user's unauthorized use or duplication of the purchased Data.

**D)** In addition to Data Protection Law, LICENSEE agrees to comply with applicable law, regulation, or industry guidelines, including without limitation, the Association of National Advertisers (ANA) Guidelines for Ethical Business Practice pertaining to Sensitive Marketing Data ("SMD"). SMD is defined as anything pertaining to children, health care or treatment, exact age, ethnicity, or the financial accounts of individuals. LICENSEE agrees that if a list containing SMD is purchased you will be responsible for ensuring that the mail piece or phone scripts using this information comply with all FCC and local laws. LICENSEE understands that Sabal Strategy may require complete sample mail pieces and telemarketing scripts for approval prior to receipt of order.

**E)** LICENSEE agrees that it will not use or permit the use of the Data in violation of any federal, state, local, or international law, rule, or regulation or for any unlawful purpose, and will comply with the Association of National Advertisers (ANA) Guidelines for Ethical Business Practice. LICENSEE, agrees to comply with, and, if LICENSEE is an authorized Reseller, cause its End Users to comply with any and all Data Protection Laws, current and future federal, state, local and international laws concerning use of the Data, telephone solicitations and marketing, and the transmission of facsimiles and email, including but not limited to, the Telephone Consumer



Protection Act of 1991, the CAN-SPAM Act of 2003, Canada's Anti-Spam Legislation of 2014 ("CASL"), Fair Credit Reporting Act ("FCRA"), the Federal Trade Commission ("FTC") Telemarketing Sales Rule, the California Consumer Privacy Act ("CCPA"), and any other existing or future FTC rules and any enforcing regulations related to the foregoing. LICENSEE agrees to comply with obligations under these Data Protection Laws; and in relation to any communication of "personal information" (as defined by the CCPA) from one party to the other party pursuant to this Agreement, the parties agree that no monetary or other valuable consideration is being provided specifically for such personal information and therefore neither party is "selling" (as defined by the CCPA) personal information to the other party.

If a party reasonably believes that any changes are required to this Agreement to ensure a party's compliance with Data Protection Law or to address the legal interpretation of Data Protection Law, including in relation to the respective roles of the parties with regard to any Personal Data Processed under this Agreement, that party may notify the other and the parties shall negotiate in good faith appropriate amendments or addenda to this Agreement to the extent required to ensure both parties' compliance with Data Protection Law from time to time. Without prejudice to the generality of the foregoing, if a party reasonably believes that the parties may be joint controllers in respect of certain processing of personal data in connection with this Agreement, the parties shall negotiate in good faith whether to amend or enter into an addendum to this Agreement in order to reflect such joint controller relationship and to allocate the parties' respective responsibilities as joint controllers in respect of such processing. LICENSEE understands that any person violating such Data Protection Laws, rules or regulations may be subject to substantial civil and criminal penalties, for each transmission of any unsolicited facsimile or other information. LICENSEE acknowledges that the U.S. Federal government, certain states and self-regulatory bodies may each have restrictions on telemarketing activities, including, without limitation, permitting a telephone subscriber to give public notice that such subscriber does not wish to receive sales solicitation telephone calls. Due to the varying publication dates of such notices, Sabal Strategy disclaims any warranty, express or implied, that the names and telephone numbers of all such subscribers have been identified on or deleted from any Data or other list ordered by LICENSEE.

Further, LICENSEE agrees that it will fully indemnify Sabal Strategy for any claims, actions, damages, fees or costs related to any breach or violation by LICENSEE or End User, of any of the acts, regulations or guidelines set forth in this agreement.

**F) Restrictions:** In addition to the restrictions set forth above in this Section 4, in no event may LICENSEE use or permit the use of any Data to advertise, sell, or exchange any products or services that involve sexual paraphernalia; drug paraphernalia; pornographic materials; weapons; credit repair services or other illegal or illicit activities. LICENSEE agrees, for any prospecting use of the Data not involving LICENSEE's house files, which include a designation that an individual



consumer has opted out of receiving marketing solicitations, to honor such election, and shall cause all End Users to honor the same; in the event that LICENSEE or any End User does not honor such election, Sabal Strategy may terminate this Agreement and any licenses hereunder immediately. LICENSEE agrees to defend, indemnify, and hold harmless Sabal Strategy for any claims arising out of any failure to honor such election.

**G) Move Update Standards:** LICENSEE hereby represents, warrants and agrees that it and any End User will comply with all current and future USPS rules, regulations and standards and that all mailings entered on November 23, 2008 or thereafter must be updated with an approved or alternate method of address correction.

## **6. Accuracy of Data and Limitation of Liability**

**A)** Sabal Strategy provides Data to LICENSEE from recognized industry compilers and various other sources “AS IS AND WITH ALL FAULTS.” Sabal Strategy makes no representation or warranty, express or implied, regarding the accuracy or completeness of the Data to be delivered, results to be obtained with the Data, or that any lists in the Data comply with Data Protection Law or DNC Registries.

**B)** LICENSEE acknowledges the risk that the Data provided by Sabal Strategy and its third-party vendors may contain a degree of error. LICENSEE ACKNOWLEDGES THAT THE ALLOCATION OF RISK IN THIS AGREEMENT IS CONSISTENT WITH THE INDUSTRY STANDARD AND CUSTOM AND IS AN INTEGRAL PART OF THE CONSIDERATION FOR THIS AGREEMENT, WITHOUT WHICH SABAL STRATEGY WOULD BE UNABLE TO PERFORM THE SERVICES FOR LICENSEE FOR THE AMOUNTS SPECIFIED. For these reasons, LICENSEE agrees that it is responsible for determining that the Data is sufficiently accurate for LICENSEE or the End User’s purposes. Sabal Strategy shall use commercially reasonable efforts to stay within an undeliverable rate of 10% and an Email bounce rate of 20%; actual rates will vary and are not guaranteed. These rates are based on the full quantity of the prospect list(s) provided are merely guidelines. Sabal Strategy shall not refund or relieve payment for inaccurate or undeliverable Data, or where error rate exceeds the rates stated above.

**C)** The Data, including but not limited to, postal, e-postal, and email records, names and addresses are not guaranteed as deliverable, but Sabal Strategy makes commercially reasonable efforts to meet industry standards for postal deliverability. Sabal Strategy makes no representation or guarantee as to the conversion results of the Mailing, Digital, Social or Email campaigns.

**D)** LICENSEE ACKNOWLEDGES THAT THE DATA IS NOT THE PRODUCT OF AN INDEPENDENT COMPILATION OR INVESTIGATION PROMPTED BY OR ON BEHALF OF LICENSEE BUT IS UPDATED AND REVISED INDEPENDENTLY ON A PERIODIC BASIS.



LICENSEE ACKNOWLEDGES THAT EVERY BUSINESS DECISION TO SOME DEGREE REPRESENTS AN ASSUMPTION OF RISK AND THAT SABAL STRATEGY AND ITS THIRD-PARTY SUPPLIERS OF DATA, DO NOT AND WILL NOT ASSUME THAT RISK, IN ANY MANNER OR PROPORTION WHATSOEVER. LICENSEE THEREFORE AGREES NOT TO HOLD SABAL STRATEGY OR ITS THIRD-PARTY SUPPLIERS LIABLE FOR ANY LOSS OR INJURY ARISING OUT OF OR CAUSED, IN WHOLE OR IN PART, BY SABAL STRATEGY'S OR ITS THIRD-PARTY SUPPLIERS' NEGLIGENT OR OTHER ACTS OR OMISSIONS IN PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, OR DELIVERING THE DATA. FURTHER, LICENSEE AGREES THAT IN NO EVENT WILL SABAL STRATEGY OR ITS THIRD-PARTY SUPPLIERS BE LIABLE FOR ANY LOSS OR DAMAGE OF ANY KIND OR CHARACTER (INCLUDING, BUT NOT LIMITED TO, SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES) THAT LICENSEE, ANY END USER OR OTHER CLIENT OF LICENSEE, OR OTHER PARTY, SUFFERS OR INCURS ARISING OUT OF ANY ACTS OR OMISSIONS OF SABAL STRATEGY OR ITS THIRD-PARTY SUPPLIERS IN CONNECTION WITH ANYTHING TO BE DONE OR FURNISHED HEREUNDER, REGARDLESS OF THE CAUSE OF THE LOSS, DAMAGE OR INJURY AND REGARDLESS OF THE NATURE OF THE LEGAL RIGHT CLAIMED TO HAVE BEEN VIOLATED, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF THIS AGREEMENT OR THE DELIVERY OR USE, OF THE DATA, REGARDLESS OF THE FORM OF ACTION.

**E)** FOR ANY DAMAGES CAUSED WHOLLY OR IN PART BY SABAL STRATEGY'S INABILITY TO FULFILL ITS RESPONSIBILITIES HEREUNDER, SABAL STRATEGY'S SOLE LIABILITY WILL BE TO RETURN TO LICENSEE THE AMOUNT PAID FOR THE DATA. IN NO EVENT WILL SABAL STRATEGY'S LIABILITY EXCEED THE TOTAL AMOUNT PAID TO SABAL STRATEGY BY LICENSEE HEREUNDER.

**F)** SABAL STRATEGY PROVIDES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## **7. Indemnity**

In addition to any of the remedies provided in this Agreement, LICENSEE agrees to defend, indemnify and hold Sabal Strategy its affiliates, data partners, directors, officers, employees and agents harmless from and against any and all claims, damages, losses, judgments, costs and expenses (including, without limitation, reasonable attorney's fees) sustained, suffered, paid or incurred by Sabal Strategy, its agents, officers, directors, employees or affiliates as a result of the breach of any warranty, undertaking, representation or agreement made by Sabal Strategy in this Agreement, or



arising out of any violation of law by LICENSEE, any End User, or out of third-party claims stemming from any act or omission by LICENSEE or End User in connection with this Agreement. Sabal Strategy will give LICENSEE prompt notice of any claim or action alleging facts which, if true, would constitute a breach of any of LICENSEE's obligations under this Agreement. The obligations of indemnity contained in this Agreement shall survive its termination or expiration.

## **8. End User Requirements and Restrictions**

- A) LICENSEE is responsible for all assistance required by its End Users with respect to the Data.
- B) LICENSEE will be solely responsible for the billing and collecting of all license fees from its End Users.
- C) LICENSEE may not transfer the Data to another End User upon termination of the previous End User's use of the Data.

## **9. Severability**

If any provision of this Agreement will be held invalid or unenforceable after hearing or proceedings before an independent tribunal, such provision will be deemed deleted from this Agreement and the remaining provisions of this Agreement will continue in full force and effect so long as the deleted provision does not eliminate or otherwise substantially change the economic benefits of this Agreement to either party or significantly impair the rights or increase the obligations of either party. The parties will make good faith efforts to replace each such deleted provision by a valid and enforceable provision mutually agreeable to the parties.

## **10. Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina (without giving effect to choice of law principles). In the event of a dispute arising out of this Agreement, whether in contract or tort, the parties agree to submit to the jurisdiction of the courts of the State of North Carolina.

## **11. Entire Agreement**

This Agreement represents the entire understanding between the parties to this Agreement and supersedes all prior agreements and arrangements, oral or written, between the parties with respect to the subject matter of this Agreement. This Agreement may not be changed in any way unless such changes are in writing signed by the parties to this Agreement.



LICENSEE has read the foregoing Agreement and by accepting the services provided by Sabal Strategy, LICENSEE and its authorized representatives acknowledges that Licensee fully understands and agrees to be bound by this Agreement.