

DataGardener Solutions Limited – License User Agreement

Service Terms & Conditions

Last Updated: 01/01/2021

1. Agreement

1.1. This is an Agreement between the Customer and DataGardener Solutions Limited

DataGardener Solutions Limited ("DataGardener Solutions") a company incorporated in England and Wales under registered number 12559329 at the registered address Wessex House, Upper Market Street, Eastleigh, SO509FD. The DataGardener Solutions Service ("Service") purchased by the Customer, will consist of products detailed in the Order Confirmation and may include the following:

1.1.1. Company Reports (which provides information on and assessment of the Company and Directors of third parties via the internet) and/or

1.1.2. Provision of marketing and prospecting data via the internet and/or

1.1.3. Services provided in conjunction with third parties (including provision of consumer credit reports, trace and ID solutions) which may be subject to additional terms.

1.2. This Agreement consists of the Order Confirmation, Terms and Conditions and constitutes the Entire Agreement between the Customer and DataGardener Solutions in relation to the Service.

1.3. This Agreement shall be deemed accepted by the Customer upon the earlier of (a) the Customer's accessing or using the Service, or (b) signature or approval of the Order Confirmation. Unless otherwise stated in the Terms and Conditions.

2. Agreement

2.1. This Agreement shall be in force from the date inserted on the Order Confirmation and continue for the minimum period ("Minimum Period"). Following the end of the Minimum Period, the Agreement shall terminate automatically.

2.2. The Customer may be contacted during this Agreement period regarding new developments and products.

2.3. From time to time, DataGardener Solutions may at its absolute discretion, make and/or apply updates, alterations, modifications and adaptations to the Service or any element of the Service ("**Alterations**"). DataGardener Solutions will take reasonable steps to inform the Customer of these alterations with as much advance warning as possible.

2.4. DataGardener Solutions does not warrant that the Customer's use of the Service will be uninterrupted or error-free and is not responsible for any, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet. The Customer acknowledges that the Service may be subject to limitations, delays and other problems inherent in the use of such communications facilities. DataGardener Solutions shall have no liability (on any account) to the Customer as a result of or related to such events.

2.5. This Agreement entitles the Customer to access and retain the Service for the purposes detailed in this Agreement and for the duration of the Agreement only. The rights to access and use

the Service shall automatically lapse on termination or expiry of this Agreement. No subscriptions, rights or credits may be extended or carried over on any renewal, unless agreed in writing by DataGardener Solutions. No refund shall be payable by DataGardener Solutions in respect of any unused rights or credits.

3. Charges and Payment

3.1. In consideration of DataGardener Solutions providing the Service, the Customer agrees to pay the sum specified in the Order Confirmation and or the invoice issued therewith ("the Invoice") on the times and dates specified therein. For the avoidance of doubt, all payments must be made within 21 days of the invoice date unless otherwise stated in the Order Confirmation or where the parties have agreed that payment shall be made by direct debit.

3.2. Subject to clause 3.7, if you fail to pay the amount specified on the Order Confirmation and or invoice on the times and dates agreed the full amount will become due with immediate effect.

3.3. In the event that the Service is suspended in accordance with clause 7, then DataGardener Solutions shall be under no obligation to:

3.3.1. Re-instate the Service and/or:

3.3.2. Recompense the Customer in respect of any period of suspension from the time of payment default to receipt of payment.

3.4. If the Customer fails to pay DataGardener Solutions any sum due pursuant to the Agreement, the Customer shall be liable to pay interest to DataGardener Solutions on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of HSBC Plc, accruing on a daily basis until payment is made, whether before or after any judgment.

3.5. DataGardener Solutions reserves the right to claim interest and compensation under the Late Payment of Commercial Debts (Interest) Act 1998.

3.6. The Customer agrees to fully indemnify DataGardener Solutions against all third-party costs incurred in the pursuit of payment.

3.7. Without prejudice to the generality of the foregoing provisions of this clause 3, where the Customer and DataGardener Solutions agree that the Customer shall pay the amount specified in the Order Confirmation by direct debit then:

3.7.1. DataGardener Solutions will use reasonable endeavours to contact the Customer by telephone to complete the direct debit mandate (which shall for the avoidance of doubt include the Customer providing its bank details and authorisation to any direct debit payments).

3.7.2. Where the Customer and DataGardener Solutions are unable to complete the direct debit payment mandate within two working days of the date of the Invoice ("the Invoice Date"), then payment of the full amount of the sum specified in the Order Confirmation will become due within 21 days of the Invoice Date. In the event that the Customer fails to pay the sum due within the aforementioned 21 days, the full amount will become due with immediate effect and clauses 3.3 to 3.6 of this Agreement shall apply in full force and effect.

3.7.3. Where DataGardener Solutions attempts to take a payment by direct debit and the payment fails for whatever reason, payment for the full amount of the sum specified in the Order Confirmation will become due immediately and clauses 3.3 to 3.6 of this Agreement shall apply. The Customer accepts that it shall be liable for any bank charges incurred by DataGardener Solutions as a result of a failure of a direct debit attempt.

3.7.4. For the avoidance of doubt the provisions of this clause 3.7 shall only apply to Customers paying by direct debit.

3.8. The Customer acknowledges and agrees that:

3.8.1. DataGardener Solutions may collect payment information relating to the Customer and its payment of DataGardener Solutions' invoices, which will be used by DataGardener Solutions as part of its products/Services; and

3.8.2. Any failure by the Customer to pay DataGardener Solutions' invoices on time may have an adverse impact on the Customer's credit rating.

4. DataGardener Solutions' Proprietary Rights

In this clause 4 the term "Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

4.1. Except as expressly provided herein access to the Service does not grant the Customer any database rights or rights in the copyright, trademarks or any other Intellectual Property Rights of DataGardener Solutions or any third party.

4.2 The Customer is not permitted and will not allow any third party to adapt, alter, modify, reverse engineer, de-compile or otherwise interfere with any element of the Service without DataGardener Solutions' written permission. DataGardener Solutions may take steps to assist identification of its Service.

4.3 Data protection

4.3.1 For the purpose of this Agreement "data controller", "personal data", and "processing" have the definitions contained in the Data Protection Legislation and "Data Protection Legislation" means (i) the Data Protection Act 2018; (ii) the General Data Protection Regulation ((EU) 2016/679) ("GDPR") and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time in the UK; and (iii) any successor legislation to the Data Protection Act 2018 and GDPR together with any judicial or administrative interpretation of any of the above, any guidance, guidelines, codes of practice, approved codes of conduct or approved certification mechanisms issued by the Information Commissioner's Office or such other supervisory authority as may be responsible for enforcing compliance with the Data Protection Legislation from time to time.

4.3.2 This clause sets out the framework for the sharing of personal data between the parties as independent data controllers.

4.3.3 The Customer is responsible for establishing the lawful basis for processing personal data obtained pursuant to use of the Services and maintaining compliance with the Data Protection Legislation in connection with such data.

4.3.4 The Customer acknowledges that accessing personal data through the use of the Services is only permitted where the Customer has a lawful basis for doing so and the Customer warrants that it shall only request personal data where the Customer has a lawful basis for doing so.

4.3.5 The Customer agrees that it shall only access and use the Services for the purpose of credit checking, prospecting, direct marketing, know your Customer checks, compliance, data verification and enhancement, debtor trace and other lawful business due diligence purposes.

4.3.6 The Customer acknowledges that it is its duty to record and demonstrate the existence of its lawful basis for processing.

4.3.7 Where the Customer uses the monitoring Service, DataGardener Solutions will inform the Customer by email whenever there is a relevant change in the data monitored. The Customer shall stop the monitoring Service for monitored data when the Customer ceases to have a lawful basis for processing that data.

4.3.8 Where the Customer provides DataGardener Solutions with data or information which includes personal data to enable DataGardener Solutions to provide the data cleanse and append service, the Customer warrants that it has a lawful basis for doing so and that it has complied with all relevant and applicable GDPR regulations.

4.3.9 The parties agree that if DataGardener Solutions considers that the provisions of this Clause 4.3 do not comply with Data Protection Legislation Then DataGardener Solutions may adapt, update or amend the terms of this Clause 4.3 to ensure compliance with Data Protection Legislation.

4.3.10 Further, DataGardener Solutions and the Customer both acknowledge that as a result of the United Kingdom leaving the European Union, the law relating to privacy and data protection as it applies to this Agreement may change. Should such a situation arise DataGardener Solutions may make any alterations, amendments or updates to this Clause 4.3 that may be required as a result of such changes.

4.3.11 In the event that any personal data is transferred from the European Economic Area ("EEA") to a country outside the EEA pursuant to this Agreement, the parties acknowledge and agree that the European Commission's Standard Contractual Clauses for the transfer of personal data to controllers established in third countries available ("SCC") shall apply to any such transfers. The parties shall comply with the SCC, as well as the terms of this Clause 4.3, in relation to any such transfers. For the purpose of the SCC, the data exporter shall be the party located in the EEA and the data importer shall be the party located outside the EEA.

4.3.12 In the case of a conflict or ambiguity between any of the provisions of this Agreement and the SCC, the provisions of the SCC will prevail.

4.3.13 In the event that the European Commission approves new standard contractual clauses, DataGardener Solutions reserves the right to replace the SCC with any such new standard contractual clauses.

5. Customer Obligations and Conduct

5.1 The Customer shall:

5.1.1. provide DataGardener Solutions with any information or assistance which the parties have agreed the Customer shall provide in order for DataGardener Solutions to perform its obligations under this Agreement, and shall use all reasonable endeavours to ensure that any such information provided to DataGardener Solutions is complete, accurate and in the agreed format

5.1.2. not to do anything to harm DataGardener Solutions reputation

5.1.3. abide by all laws & regulations applicable to its use of the Service and the data contained therein, including full compliance with all aspects of Data Protection Legislation

5.1.4. not attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the \Services in any form or media or by any means. The Customer will not attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Services. The Customer will not access all or any part of the Services in order to build a product or Service which competes with the Services, nor will you use the Services to provide Services to third parties. Use of any automated system or software to extract data from the Site, the Application or the Services ("screen scraping") is expressly prohibited.

5.2. The Service made available to the Customer is a non-transferable license and is provided solely for the Customer's own internal use within the United Kingdom and the Republic of Ireland. The Customer may not sell, transfer sublicense, distribute, commercially exploit or otherwise make available to, or use for the benefit of, any of the Service. The Customer may not include the Service in any product or Service which the Customer sells.

5.3. During this Agreement the Customer agrees not to attempt to gain unauthorised access to the Service or modify the same.

5.4. The Customer shall only take such copies of the Service as are reasonably required for the use of the Service in accordance with this Agreement.

5.5. The Customer agrees to be responsible for maintaining the confidentiality of its password and account details.

5.6. Unless otherwise detailed within your Order Confirmation, the use of the Service provided under the terms of this Agreement is limited to one designated user any may not be used by any other person other than the designated user. The use of the Service by more than one individual, either simultaneously or otherwise will require the provision of additional licenses.

5.7. If the Customer receives prospecting or marketing information (**Prospecting Data**), the Customer is licensed to utilise the Prospecting Data for internal marketing purposes only. The Customer is responsible for determining on which lawful basis it shall utilise the Prospecting Data pursuant to the Data Protection Legislation and for compliance with all legal and regulatory requirements in relation to such Prospecting Data, including the Telephone Preference Service, Commercial Telephone Preference Service, and DMA guidelines.

6. Warranties and Limitation of Liability

6.1. The DataGardener Solutions Service is not intended to be used as the sole basis for any decision making and is based upon data which is provided by third parties, the accuracy of which it would not be possible for DataGardener Solutions to guarantee. Whilst DataGardener Solutions aims always to maintain a quality, fully operative Service, the Service and third-party Services are nonetheless provided on an "as is", as available basis without warranties of any kind, whether express or implied.

6.2. Specifically, DataGardener Solutions gives the Customer no warranty or assurance about the contents of the Service. Whilst DataGardener Solutions does endeavour to maintain the accuracy and the quality of the Service, information contained may be incorrect or out of date. Therefore, any use of the Service is at the Customer's own risk.

6.3. Subject to clause 6.5 DataGardener Solutions shall not be liable for any indirect or consequential loss. DataGardener Solutions shall not be liable for the following types of financial loss (whether direct or indirect); loss of profits, loss of earnings, loss of business or goodwill in addition to the following types of anticipated or incidental losses; loss of anticipated savings, increase in bad debt and failure to reduce bad debt.

6.4. Where any matter gives rise to a valid claim against DataGardener Solutions, its liability shall be limited to a sum equal to the sum paid for the Service supplied under this Agreement in the year the claim arises.

6.5. Nothing in this clause 6 or any other provision of this Agreement shall seek to exclude or limit liability for infringement, death, or personal injury or for breach of its obligation under s12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982 or fraudulent misrepresentation.

6.6. Each party to this Agreement warrants that it has obtained and will continue to hold all necessary licenses, consents, permits and Agreements required for it to comply with its obligations under this Agreement and for the grant of rights to the other party under this Agreement.

7. Termination

7.1. DataGardener Solutions shall be entitled to terminate this Agreement with immediate effect by giving written notice to the Customer if:

7.1.1. the Customer fails to pay any undisputed amount due under this Agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment: or

7.1.2. the Customer commits a material breach of its other obligations under this Agreement and (if remediable) fails to remedy that breach within 14 days of receipt of notice requiring it to do so;

7.1.3. the Customer is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986), or becomes insolvent, or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction), or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets, or enters into or proposes any composition or arrangement with its creditors generally, or is subject to any analogous event or proceeding in any applicable jurisdiction.

7.2. Notwithstanding its right to terminate the Agreement, where DataGardener Solutions reasonably believes the Customer has breached any provision of this Agreement DataGardener Solutions may, with immediate effect and without notice, suspend access to the Service.

7.3. Upon termination or expiration of this Agreement:

7.3.1. all rights and licences granted under this Agreement, including the right to access and use the Service, shall immediately terminate;

7.3.2. the Customer must delete all and any part of the Service (including any data or reports obtained via the Service) held by the Customer in any format and the Customer may not make any further use of the Service (or the data obtained from use of the Service);

7.3.3. the Customer shall immediately pay to DataGardener Solutions all amounts owing to DataGardener Solutions including, but not limited to, all unpaid amounts due under the Agreement and all outstanding and unpaid invoices;

7.3.4. the accrued rights, remedies, obligations and liabilities of the parties as at expiry or termination shall be unaffected, including the right to claim damages in respect of any breach of this Agreement which existed at or before the date of termination or expiry; and

7.3.5. clauses 3, 4, 5, 6, 7, 8, and 11 shall continue with full force and effect.

8. Indemnity

8.1. The Customer agrees to indemnify, defend and hold DataGardener Solutions, its parents, subsidiaries, affiliates, officers and employees harmless from any loss, cost, damage, claim or demand, including reasonable legal fees, made by any third party or incurred or suffered by DataGardener Solutions or its parents, subsidiaries, affiliates, officers or employees in connection with the Customer's in breach of this Agreement.

9. Assignment

9.1. DataGardener Solutions may assign the benefit of this Agreement.

10. Force Majeure

10.1. DataGardener Solutions will not be liable for failure to perform any obligation under this Agreement if such failure is caused by the occurrence of any unforeseen contingency or circumstances beyond the reasonable control of DataGardener Solutions, including without limitation Internet outages, communications outages, fire, flood war or act of God.

11. Confidentiality

In this clause 4 the term “**Confidential Information**” means information, in any form, of a confidential or proprietary nature disclosed by one party to the other which is marked as confidential; or is identified as confidential at the time of disclosure; or would be regarded by a reasonable business person as being confidential, including but not limited to information regarding the disclosing party’s business, Customers, employees, suppliers, software, products, know-how, processes and business intentions;

11.1. Each party undertakes that it shall not at any time disclose to any person any Confidential Information except as permitted by clause 11.2.

11.2. Each party may disclose the other party's confidential information:

11.2.1. To its employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11;

11.2.2. And as may be required by law, court order or any governmental or regulatory authority.

11.3. No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Agreement.

12. International Credit Reports

12.1. Company Credit Reports providing details of companies based outside the United Kingdom are provided on a subject to availability basis, and the countries from which reports are available may vary throughout the course of the term of this Agreement.

12.2. Company Credit Reports providing details of companies outside the United Kingdom are provided within the specific timeframes detailed at the DataGardener Solutions website.

13. Miscellaneous

13.1. If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be struck out and the remaining provisions shall remain enforceable.

13.2. The parties confirm their intent not to confer any rights on any third parties by virtue of this Agreement and accordingly the Contracts (Rights of Third parties) Act 1999 shall not apply to this Agreement

13.3. The terms of this Agreement and the provision of the Service and the relationship between the Customer and DataGardener Solutions shall be governed by the laws of England and Wales. The Customer agrees irrevocably to submit to the exclusive jurisdiction of the courts of England and Wales.

13.4. The failure of DataGardener Solutions to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such a right. The Service is subject to availability.

13.5. Should any third-party data become unavailable to DataGardener Solutions, DataGardener Solutions shall be entitled to obtain a similar Service from another third-party supplier.

13.6. DataGardener Solutions may unilaterally vary any term of this Agreement in order to comply with any legislation applicable to the provision of the Services.