

DATA LICENCE AGREEMENT

DATED

PARTIES

- (1) **NEW ZEALAND POST LIMITED** a company incorporated in New Zealand with its registered office at Wellington (the “Licensor”); and
- (2) The Licensee identified below.

BACKGROUND

The Licensor agrees to grant the Licensee a licence to use certain data on the terms and conditions set out in this Agreement. This Agreement incorporates the attached Common Terms and Conditions and any Special Terms, as defined in the Common Terms and Conditions.

Licensee’s full corporate name:	
Registered office:	
Address for notices:	
For the attention of:	
Fax/email address:	

SIGNED for and on behalf of
NEW ZEALAND POST LIMITED

Signature

Print name

Print title

SIGNED for and on behalf of
LICENSEE

Signature

Print name

Print title

COMMON TERMS AND CONDITIONS

TERMS OF THIS AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions: In this Agreement:

“**Agreement**” means the agreement between the parties incorporating these ‘Common Terms and Conditions’ and any Special Terms agreed to be incorporated into the agreement by the parties;

“**Commencement Date**” means the date of this Agreement;

“**Data**” means data licensed to the Licensee under this Agreement, as specified in any Special Terms;

“**Documentation**” means any user and technical documentation supplied by the Licensor with the Data to enable the Licensee and its personnel to use the Data, and any confidential information of the Licensor;

“**End User**” means any person to whom Data is permitted to be distributed, sold or made available by the Licensee in accordance with any Special Terms;

“**End User Agreement**” means an agreement between the Licensee and an End User which incorporates the terms required for such agreement contained in any Special Terms;

“**GST**” means goods and services tax chargeable, or for which a person may be liable, under the Goods and Services Tax Act 1985 and any penalties, additional tax or interest payable in respect of that tax;

“**Intellectual Property Rights**” includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks, registered or unregistered designs, circuit layouts, databases, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields anywhere in the world, together with all right, interest or licence in or to any of the foregoing;

“**Special Terms**” means additional terms and conditions relating to the supply and terms of use of specific Data; and

“**Support**” means support services to be provided by the Licensor under this Agreement, as specified in any Special Terms.

1.2 Interpretation: In this Agreement:

- (a) a “**person**” includes any individual, corporation, unincorporated association, government department or municipal authority;
- (b) a reference to a “**party**” includes that party's successors or permitted assigns;
- (c) a reference to “**\$**” or “**NZD**” is a reference to New Zealand currency; and
- (d) “**including**” and similar words do not imply any limitation.

2. PROVISION OF DATA AND SUPPORT

2.1 Supply of Data: The Licensor must supply the Licensee with Data and updates as specified in any Special Terms. The terms of this Agreement shall govern the use of such Data.

2.2 Deficiencies: The Licensee must notify the Licensor within 30 days after receiving the Data of any deficiencies in the Data or any damage to the media on which it was supplied.

2.3 Frequency of updates: The Licensor reserves the right to change the frequency of updates specified in any Special Terms at any time upon giving the Licensee reasonable prior notice of the change.

2.4 Changes to Data: The Licensor reserves the right to change Data (including the file structure of Data) at any time. The Licensor will give reasonable advance notice to the Licensee prior to making any such change which the Licensor considers will have a material impact on the Licensee's use of the Data.

2.5 Support: The Licensor must provide Support as specified in any Special Terms.

3. LICENCE

3.1 Licence: The Licensor grants to the Licensee a non-exclusive and non-transferable licence to use the Data subject to the restrictions and other terms contained in any Special Terms.

3.2 Ownership: The Data and the Documentation and all Intellectual Property Rights and other rights in the Data and the Documentation from time to time remain the property of the Licensor and its licensors (as the case may be).

3.3 Copyright notices: The Licensee must not remove or tamper with any disclaimer or copyright notice attached to or used in relation to Data.

3.4 No licence to use trade marks: Subject to any express terms to the contrary in any Special Terms, this Agreement does not grant to the Licensee any right to use any of the trade marks, business names or logos of the Licensor.

3.5 Licence restrictions: The Licensee must not at any time:

- (a) copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Data or relay or disseminate the same to any third party;
- (b) provide the Data to (or allow the provision of the Data to, or access to the Data of) any agents or sub-contractors of the Licensee without the prior written consent of the Licensor; or
- (c) sub-license all or any part of the Data to any person, nor purport or attempt to do so.

except as is expressly permitted by this Agreement.

3.6 Permitted copies: The Licensee may make a reasonable number of back-up copies of the Data for security purposes. The Licensee may only use such back-up copies for archive retention and retrieval purposes and must not use or retain such copies beyond the term of the licence for the Data set out in any Special Terms.

3.7 Termination of third party licences: If any licence under which a third party grants to the Licensor the right to incorporate the third party's material in the Data is terminated, this Agreement shall immediately terminate in respect of that material and the Licensee must, at the Licensor's request:

- (a) remove the material from all of its products or services within 90 days; and
- (b) ensure that each End User removes the same material from any copies of any Data held by that End User within 90 days.

4. TERM

4.1 This Agreement shall commence on the Commencement Date and shall continue for a period of one year and shall thereafter be automatically renewed from year to year, subject to the payment of the Fees and unless terminated in accordance with clause 10.

5. LICENSEE'S OBLIGATIONS

- 5.1 No statements of endorsement:** The Licensee must not make any representation, statement or claim relating to the Data (or any software containing the Data) being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim (whether under Special Terms or otherwise).
- 5.2 Audit right:** The Licensee must, subject to reasonable prior notice being given by the Licensor and subject to any reasonable confidentiality requirements of the Licensee, grant to the Licensor and its authorised agents reasonable access, during working hours, to its premises, systems, accounts and records solely for the purpose of verifying the Licensee's compliance with this Agreement (including clause 10.5). If such audit reveals material non-compliance with this Agreement by the Licensee, the Licensor may require the Licensee to reimburse the Licensor for the reasonable costs of such audit.
- 5.3 Compliance with law:** The Licensee must:
- (a) comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its possession or use of the Data; and
 - (b) ensure that its use of the Data is not inconsistent with the registration of the Licensor under the Postal Services Act 1998 (or any other legislation or regulations applicable to the Licensor).
- 5.4 Feedback:** The Licensee agrees to provide to the Licensor from time to time such information as the Licensor reasonably requests regarding:
- (a) the quality of the Data, the Documentation and any Support;
 - (b) uses for the Data;
 - (c) the market for the Data; and
 - (d) opportunities for the development and improvement of the Data.
- 5.5 Personnel and sub-contractors:** The Licensee must ensure that its personnel, agents and sub-contractors comply with the terms of clause 3 and this clause 5 as if they were the Licensee.
- 5.6 Breach by personnel:** Any act or omission of any personnel, agent or sub-contractor of the Licensee which would constitute a breach of this Agreement if it had been committed by the Licensee shall be deemed to be a breach of this Agreement by the Licensee.

6. FEES

- 6.1 Payment of Fees:** The Licensee must pay the Fees to the Licensor in accordance with the relevant Special Terms and this Agreement.
- 6.2 Amending Fees:** The Licensor is entitled to vary any Fee annually during the term of this Agreement upon at least 90 days' written notice. Any such variation will take effect on the next anniversary of the Commencement Date following the expiry of the notice period.
- 6.3 Default interest:** The Licensor reserves the right to charge interest at the rate of 4% above the then overdraft lending rate of the Licensor's bankers on late payment of any Fee by the Licensee.
- 6.4 GST:** All amounts payable by the Licensee under this Agreement are exclusive of GST and other duties or taxes. Any GST, other duties or taxes payable in respect of such amounts shall be payable in addition to such amounts.

7. WARRANTIES

7.1 Licensor's warranty: The Licensor warrants that:

- (a) it owns or has a licence to use the Data; and
- (b) the licensing of the Data by the Licensor and the use of the Data by the Licensee and any End User in accordance with this Agreement and any End User Agreement (as applicable) will not breach:
 - (i) the Intellectual Property Rights of any third party; or
 - (ii) the provisions of the Privacy Act 1993 or any other applicable law relating to the protection of personal data.

7.2 No implied warranties from Licensor: The Licensor's warranties in relation to the Data are limited to those set out in this Agreement and all implied warranties or conditions are excluded. Without limitation, the Licensor does not warrant that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the Licensee's purpose or for use in any specific technical environment, or that the Licensor will provide any training or Documentation with any Data. To avoid doubt, the Licensee agrees and represents that it is acquiring the Data and Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.

7.3 Licensee's warranty: The Licensee warrants that:

- (a) it has full capacity, and authority to enter into and perform its obligations under this Agreement, which when this Agreement has been executed will constitute valid and binding obligations on it in accordance with this Agreement; and
- (b) any End User Agreements will meet the requirements contained in any relevant Special Terms.

8. CONFIDENTIALITY

8.1 General obligation: Both parties agree that, unless they have the prior written consent of the other, they will not use or disclose to any third party (other than for the purpose of performing this Agreement or as required by law) the terms and conditions of this Agreement or any information obtained from the other party under or in connection with this Agreement which is not within the public domain.

8.2 Extension: Each party undertakes to use its best endeavours to ensure that its employees, agents, and any sub-contractor are aware of, and comply with, clause 8.1.

8.3 Minimum standard: In fulfilling the obligations in clauses 8.1 and 8.2, each party will as a minimum standard use the same degree of care to avoid disclosure as it uses to protect its own confidential information.

8.4 Publicity: Unless expressly agreed otherwise by the Licensor in writing, the Licensee may not make any press announcement or release relating to this Agreement or the Data without the approval of the Licensor as to the form and manner of the announcement or release.

9. LIMITATION OF LIABILITY

9.1 No consequential loss, etc: Save in respect of the indemnities contained in clauses 9.5 and 9.6 and any breach of clause 8, in no circumstances shall either party be liable to the other under or in connection with this Agreement, or in connection with any Data, in any circumstance whatsoever, whether in contract, tort (including for negligence) or otherwise for any loss of profit, loss of revenue, loss of business or other form of economic loss, or any form of indirect, consequential or special loss or damage.

- 9.2 Maximum liability of the Licensor:** Save in respect of liability under the indemnity contained in clause 9.6, the Licensor's total aggregate liability to the Licensee under or in connection with this Agreement for the Licensee's use of the Data, whether arising in contract, tort (including for negligence) or otherwise, shall not exceed the aggregate Fees paid by the Licensee to the Licensor during the period of one year ending on the date on which such liability arose. In respect of the indemnity contained in clause 9.6, the Licensor's maximum aggregate liability shall be \$500,000.
- 9.3 Maximum liability of the Licensee:** Save in respect of the indemnities contained in clauses 9.5(b) and (c), the Licensee total aggregate liability to the Licensor under or in connection with this Agreement for the Licensee's use of the Data, whether arising in contract, tort (including for negligence) or otherwise, shall not exceed \$500,000. In respect of the indemnities contained in clauses 9.5(b) and (c), the Licensee's total aggregate liability in relation to any one End User shall not exceed \$250,000.
- 9.4 No reliance:** The Licensee warrants that it has not relied on any representation made by the Licensor which has not been stated expressly in this Agreement.
- 9.5 Licensee's Indemnity:** The Licensee indemnifies and keeps indemnified the Licensor against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and own client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with:
- (a) any wilful or unlawful act or omission of the Licensee;
 - (b) any breach by an End User or prospective End User of any term of an End User Agreement that was required to be included in such agreement pursuant to any Special Terms; and
 - (c) the use of the Data by an End User or any other person who has obtained the Data from an End User.
- 9.6 Licensor's indemnity:** Subject to clause 9.7, the Licensor indemnifies the Licensee against and will, at its cost, defend or settle any claim, suit, action or proceeding (collectively, an action) brought against the Licensee attributable to any breach of the warranty contained in clause 7.1(b)(ii) or a claim that the authorised use of the Data by the Licensee in accordance with this Agreement constitutes a breach of the Intellectual Property Rights of a third party, provided that:
- (a) the Licensee notifies the Licensor promptly in writing of any action and gives the Licensor complete authority and information required for the conduct of the action and its defence, settlement or compromise;
 - (b) the Licensee co-operates with the Licensor in defending or settling the action and makes its employees, agents and distributors available to give such statements, advice and evidence as the Licensor may reasonably request;
 - (c) the Licensee does not do, or omit to do, any act, including making any admissions, that would compromise the Licensor's position in relation to defending or settling the action; and
 - (d) the Licensee at the Licensor's instructions:
 - (i) amends its products and services to remove any material which is the subject of a claim that the Intellectual Property Rights of a third party, or any provisions of the Privacy Act 1993 or any other applicable law relating to the protection of personal data, have been breached; and
 - (ii) ensures that each End User also removes any such material from the Licensee's products held by that End User.
- 9.7 Limitation of liability for breach of the intellectual property indemnity:** If:
- (a) the Licensor is required under clause 9.6 to indemnify the Licensee; and
 - (b) the alleged breach or claim giving rise to the obligation to indemnify the Licensee relates to material provided to the Licensor under a licence from a third party,
- the Licensor's liability to the Licensee shall be limited to the amount the Licensor is able to recover from that third party.

10. TERMINATION

10.1 Termination by the Licensor: The Licensor may terminate this Agreement immediately by prior written notice if the Licensee:

- (a) breaches any term of this Agreement and (where such breach is capable of being remedied) fails to remedy such breach within 28 days of the date of written notification of the breach;
- (b) does anything in relation to the Data which in the Licensor's reasonable opinion brings or is likely to bring the Licensor into disrepute; or
- (c) breaches clause 8.

10.2 Termination by the Licensee: Provided that the Licensee has complied with clause 2.2, the Licensee may terminate this Agreement if the Licensor fails to provide Data in accordance with this Agreement (and such failure is not due to any act or omission of the Licensee, its affiliates, employees, agents or sub-contractors) within 28 days of receipt of written notice from the Licensee describing the failure and requiring it to be remedied.

10.3 Insolvency: Either party may terminate this Agreement immediately by written notice to the other if the other party passes a resolution to be wound up or goes or is put into receivership, liquidation, statutory management or circumstances arise which entitle a Court or a creditor to appoint a receiver or manager or which would entitle a Court to make a winding up order, or suffers any other form of insolvency administration or any analogous event in any jurisdiction.

10.4 Termination without cause: The Licensor may terminate this Agreement on an anniversary of the Commencement Date on giving to the Licensee not less than 90 days' prior written notice. The Licensee may terminate this Agreement for convenience at any time, provided that any Fees paid or payable to the Licensor at the time of termination shall not be repayable to the Licensee.

10.5 Recovery of Data: Subject to clause 10.6(b), on termination of this Agreement, the Licensee must immediately:

- (a) deliver up to the Licensor; or
- (b) at the Licensor's option, delete or destroy,

all copies and reproductions of the Data and Documentation within its possession or control. The Licensee must confirm in writing to the Licensor that this has been done. Without prejudice to the foregoing, the Licensor may enter into any premises of the Licensee to retrieve such copies and reproductions of the Data and Documentation or witness their destruction.

10.6 Effect of termination on this Agreement: Upon termination of this Agreement, all rights and obligations of the parties immediately cease to have effect except that:

- (a) the termination of this Agreement is without prejudice to the rights and obligations of the parties accrued up to and including the date of termination, including the right of the Licensor to recover from the Licensee any Fees outstanding at the date of termination;
- (b) unless this Agreement is terminated by the Licensor pursuant to clause 10.1, the licence to use the Data shall continue until the end of the relevant term set out in the relevant Special Terms; and
- (c) the clauses which, by their nature, are intended to survive termination of this Agreement, survive termination.

11. GENERAL

11.1 Notices: Each notice or other communication under this Agreement must be in writing and be made by email, facsimile, personal delivery or by post to the addressee at the facsimile number or address, and be marked to the attention of the personal office holder (if any) from time to time designated for the purposes of this Agreement by the addressee to the other party. The initial facsimile number, address and relevant person or office holder for each party is specified in the relevant Special Terms. No communication shall be effective until received. The communication is deemed to be received by the addressee:

- (a) in the case of an email or facsimile, on receipt of transmission on the business day on which it is dispatched or, if it is dispatched after 5:00PM (in the place of receipt) on a business day or on a non-business day, on the next business day after the date of dispatch;
- (b) in the case of personal delivery, when delivered; and
- (c) in the case of a letter, on the third business day after posting by “fast post”.

11.2 Force Majeure:

- (a) Neither party is liable for any act, omission, or failure to fulfil its obligations under this Agreement arising from any cause reasonably beyond its control including riots, acts of war, epidemics, governmental action superimposed after the date of this Agreement, fire, communication line failures, power failures, earthquakes or other disasters (“**Force Majeure**”);
- (b) The party unable to fulfil its obligations due to a Force Majeure must:
 - (i) immediately notify the other in writing and provide full information concerning the Force Majeure;
 - (ii) use its best endeavours to overcome the Force Majeure and minimise the loss to the other party; and
 - (iii) continue to perform its obligations as far as practicable.
- (c) If the party cannot perform its obligations within 20 business days after the commencement of the Force Majeure, the other party may terminate this Agreement by written notice.

11.3 Waiver: Neither party is deemed to have waived any right under this Agreement unless the waiver is in writing. A failure to exercise or delay in exercising any right under this Agreement will not operate as a waiver of that right. Any such waiver will not constitute a waiver of any subsequent or continuing right or of any other provision in this Agreement.

11.4 Severance: The illegality, invalidity or unenforceability of any provision of this Agreement will not affect the legality, validity or enforceability of the remaining provisions of this Agreement.

11.5 Assignment: The Licensee may not transfer, assign or sub-contract any of its rights or obligations under this Agreement without the prior written consent of the Licensor. The Licensee remains liable for the performance of its obligations under this Agreement despite any approved sub-contracting, assignment, or transfer.

11.6 No partnership: Nothing in this Agreement is deemed to constitute the parties as partners, or that of co-venturers or principal and agent. Neither party has the power or authority to act for or on behalf of the other party other than as expressly authorised in writing by that other party from time to time.

11.7 Dispute resolution: The parties must work together in good faith to resolve any dispute or difference arising between them in connection with this Agreement. Pending resolution of a dispute, each party, to the extent it is able, must continue to perform its obligations under this Agreement.

11.8 Law and jurisdiction: This Agreement is governed by New Zealand law and the courts of New Zealand shall have non-exclusive jurisdiction in any proceeding relating to this Agreement.

11.9 Amendments: Any modification to or variation of this Agreement must be in writing and signed by the parties.

11.10 Entire Agreement: This Agreement supersedes and extinguishes all prior agreements and understandings, and constitutes the entire agreement and understanding between the parties, relating to the Data.

SPECIAL TERMS FOR BASE PAF

These Special Terms form part of a Data Licence Agreement between New Zealand Post Limited (the “Licensor”) and the Licensee identified below (the “Agreement”) and are subject to its terms. Unless expressly stated otherwise, terms defined in the Agreement shall have the same meaning in these Special Terms.

1. Licensee:	
2. Licensed Data:	The Postal Address File, as more particularly described at www.nzpost.co.nz/sendright , as such description is amended from time to time, (in these Special Terms, the “Data”)
3. Format:	CD. Each file will be in a compressed format.
4. Fees:	Annual fee of \$1,000. Fees exclude encumbrances, taxes, liens.
5. Versions to be supplied by the Licensor:	Any version of the Data elected by the Licensee and the next 3 updates immediately following such version (such version and such updates each being an “Update”). Updates are currently released quarterly according to the following schedule: on or around 31 March; on or around 30 June; on or around 30 September; on or around 15 December.
6. Term of Licence:	The Licensee’s right to use each Update shall terminate on the later of: a. six months after the date on which the Update was released by the Licensor; or b. at the time the subsequent release becomes available.
7. Permitted use of the Data:	The Licensee may use the Data for its internal business purposes only.
8. Restrictions on use of the Data:	a. On receipt of an Update the Licensee must as soon as practicable cease use of any previous version of the Data (and in any event must cease such use by the end of the term of the licence) and commence use of the Update. b. The Data may not be distributed or sold to third parties. c. The Licensee must, for the benefit of the person named in the relevant disclaimer or copyright notice, include in any copy of the Data any disclaimer or copyright notice which is included in the Data as provided to the Licensee (or on the media on which the Data is provided to the Licensee).
9. End User Terms	Not applicable.

<p>10. Additional terms:</p>	<p>The Licensee acknowledges and agrees that Land Information New Zealand (“LINZ”) and the Crown hold absolutely and exclusively certain material which has been licensed to the Licensor and incorporated into the Data, and that LINZ and the Crown do not assign any copyright or other intellectual property rights in such material either to the Licensor or the Licensee. The Licensee further acknowledges and agrees that LINZ and the Crown shall not, in any circumstances, be liable for any loss or damage (even if LINZ or the Crown has been advised of the possibility of such loss or damage, and including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data) suffered by the Licensee or any other person in connection with this Agreement. In the event that any exclusion of the liability of LINZ or the Crown set out in this clause is inapplicable, or is held unenforceable, the liability of each of LINZ and the Crown under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data (by the Licensee or any other person), whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the fees paid by the Licensor for the material incorporated in the Data which gave rise to the loss or damage, exclusive of GST. For the purposes of the Contracts (Privity) Act 1982, this clause and clause 8(c) above confer a benefit on, and are enforceable by, LINZ and the Crown.</p>
<p>11. Support:</p>	<p>The Licensee may submit free of charge an unlimited number of PAF address updates (modifications, additions, deletions). The Licensor makes no commitment to apply the update within any particular timeframe, or at all, or to follow-up the result of the submission with the Licensee.</p> <p>Technical documentation is available at www.nzpost/sendright</p> <p>The Licensor’s contact details for the purposes of this section 11 are as set out below.</p>
<p>12. Licensor’s notice details:</p>	<p>Manager, Address Accuracy Programme</p> <p>New Zealand Post Private Bag 39990 Wellington Mail Centre Wellington 5045</p> <p>Fax: +64 4 568 1627 Email: sendright@nzpost.co.nz</p>

EXECUTION OF SPECIAL TERMS FOR BASE PAF

SIGNED for and on behalf of
NEW ZEALAND POST LIMITED

Signature

Print name

Print title

SIGNED for and on behalf of
LICENSEE

Signature

Print name

Print title

SPECIAL TERMS FOR COMMERCIAL PAF

These Special Terms form part of a Data Licence Agreement between New Zealand Post Limited (the “Licensor”) and the Licensee identified below (the “Agreement”) and is subject to its terms. Unless expressly stated otherwise, terms defined in the Agreement shall have the same meaning in these Special Terms.

1. Licensee:	
2. Licensed Data:	The Postal Address File, as more particularly described at www.nzpost.co.nz/sendright , as such description is amended from time to time, (in these Special Terms, the “Data”)
3. Format:	CD. Each file will be in a compressed format.
4. Fees:	Annual fee of \$3,000. Fees exclude encumbrances, taxes, liens.
5. Versions to be supplied by the Licensor:	<p>a. Any version of the Data elected by the Licensee and the next 3 updates immediately following such version (such version and such updates each being an “Update”). Updates are currently released quarterly according to the following schedule:</p> <p>on or around 31 March; on or around 30 June; on or around 30 September; on or around 15 December.</p> <p>b. In addition, the Licensor at its sole discretion may from time to time make “beta” files of the Data available to the Licensee. Such “beta” files may be used for the Licensee’s internal business purposes only.</p>
6. Term of Licence:	<p>The Licensee’s right to use each Update shall terminate on the later of:</p> <p>a. six months after the date on which the Update was released by the Licensor; or</p> <p>b. at the time the subsequent release becomes available.</p>

<p>7. Permitted use of the Data:</p>	<p>Subject to section 8 and the other provisions of these Special Terms, the Licensee may use the Data:</p> <ul style="list-style-type: none"> a. for its internal business purposes; b. for the purpose of producing, utilising, marketing and exploiting software that provides address data services, provided always that any such software must not permit any user of the software to amend or modify the Data or access the Data other than (a) through the software and (b) for the commercial purposes for which the software was provided (“Licensee Software”); c. to process End Users’ databases against the Licensee Software on behalf of those End Users; and d. to provide the Licensee Software to the Licensee’s authorised dealers and resellers for distribution to End Users under an End User Agreement containing the terms set out in section 9(a). <p>The parties agree that this section 7 expressly permits exceptions to clause 3.5 of this Agreement. To the extent that this section 7 is inconsistent with clause 3.5 of this Agreement, this section shall prevail.</p>
<p>8. Restrictions on use of the Data:</p>	<ul style="list-style-type: none"> a. On receipt of an Update, the Licensee must as soon as practicable cease use of any previous version of the Data (and must in any event cease such use by the end of the term of the licence) and commence use of the Update. b. The Data may not be distributed (whether for evaluation or demonstration purposes or otherwise) or sold to End Users (whether directly or through the Licensee’s authorised dealers and resellers) other than: <ul style="list-style-type: none"> i. as part of Licensee Software; and ii. to End Users who have entered into an End User Agreement containing the terms set out in section 9(a). c. Any Data distributed or made available to End Users pursuant to section 8(b) must be within the licence term set out in section 6. d. The Licensee must, for the benefit of the person named in the relevant disclaimer or copyright notice, include in any copy of the Data or the Licensee Software any disclaimer or copyright notice which is included in the Data as provided to the Licensee (or on the media on which the Data is provided to the Licensee). e. To avoid doubt, the Data may not be distributed or sold to any third party as a data product.

9. End User terms:

- a. Any agreement under which an End User is entitled to use Data must include the terms listed below. This section 9(a) does not limit the other terms the Licensee may include in any End User Agreement provided that such other terms (i) do not contradict or detract from the terms listed below, (ii) are consistent with the terms of these Special Terms and the Agreement, and (iii) give the Licensor the same protection as is afforded by these Special Terms and the Agreement.
 - i. The End User (and any of its agents and sub-contractors) may only use Data in accordance with the End User Agreement, for the End User's internal purposes, and only as part of or in combination with the Licensee Software and/or any related services provided to it by the Licensee. The End User must procure that any agents or sub-contractors to whom the Data is provided comply with the End User terms in this section 9(a).
 - ii. The End User agrees that the Data and the Documentation and all Intellectual Property Rights and other rights in the Data and the Documentation from time to time remain the property of the Licensor and its licensors (as the case may be).
 - iii. The End User must not remove or tamper with any disclaimer or copyright notice attached to or used in relation to Data.
 - iv. The End User has no right to use any of the trade marks, business names or logos of the Licensor unless expressly stated otherwise in any sub-licence granted to the End User by the Licensee within the terms of any licence granted by the Licensor to the Licensee.
 - v. The End User must not at any time (a) copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Data or relay or disseminate the same to any other party; (b) other than as permitted under (i) above, provide the Data to (or allow the provision of the Data to, or access to the Data of) any agents or sub-contractors of the End User without the prior written consent of the Licensor; or (c) sub-license all or any part of the Data to any person, or purport or attempt to do so, in each case, unless expressly permitted otherwise by the Licensor in writing.
 - vi. The End User may make a reasonable number of back-up copies of the Data for security purposes. The End User may only use such back-up copies for archive retention and retrieval purposes, and only during the term of the licence.

- vii. If any licence under which a third party grants to the Licensor the right to incorporate the third party's material in the Data is terminated, the licence to the End User in respect of that material terminates and the End User must, at the Licensor's request, remove the same material from any copies of any Data held by the End User within 90 days.
- viii. The End User must not make any statement or claim relating to the Data being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim.
- ix. The End User must comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its possession or use of the Data.
- x. The End User must ensure that its personnel, agents and sub-contractors comply with the above terms as if they were the Licensee.
- xi. The End User acknowledges that the Licensor has made no warranty that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the End User's purpose or for use in any specific technical environment.
- xii. On receipt of an update to any Data (including as part of any update of the Licensee Software), the End User must as soon as practicable cease use of any previous version of the Data (and must in any event cease such use by the end of the term of the licence) and commence use of the update.
- xiii. The End User's right to use each Update shall terminate six months after the date on which such Update was released by the Licensor. Early termination of the Licensee's licence from the Licensor shall not affect the End User's right to use any Data provided that such early termination was not caused by or connected with any act or omission of the End User.
- xiv. The End User must keep the confidential information of the Licensor, including the Data, confidential.
- xv. The End User agrees to the provisions of section 10(d) below.
- xvi. The End User agrees and represents that it is acquiring the Data and any Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.

	<p>xvii. The End User must indemnify the Licensor and keep the Licensor indemnified against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and own client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with any breach by the End User of any of the above terms or the use of the Data by the End User or any other person who has obtained the Data from an End User. The End User's total aggregate liability to the Licensor under this clause xvii shall not exceed \$250,000.</p> <p>xviii. The Licensor must have rights to enforce the above terms for the purposes of the Contracts (Privity) Act 1982, and is entitled to terminate the End User's right to use any Data if the End User breaches any of those terms.</p> <p>b. The Licensee must:</p> <ul style="list-style-type: none"> i. ensure that each End User complies with the End User terms contained in (a) above; and ii. notify the Licensor immediately upon becoming aware of any breach of those terms by an End User and use all available means to prevent the continuance of the breach.
<p>10. Additional terms:</p>	<ul style="list-style-type: none"> a. For as long as the Licensee complies with the terms of these Special Terms and the Agreement, the Licensee may make the following statement in respect of the Data: "Address data in this product is wholly or partly derived from the New Zealand Post Postal Address File". b. When promoting or marketing any product or service of the Licensee which requires the use of any Data, the Licensee must: <ul style="list-style-type: none"> i. not make any misrepresentations or misstatements about the Data or the Licensor; ii. not do anything that adversely reflects on, detracts from or otherwise prejudices the reputation or standing of the Licensor, the Data, or any products or services of the Licensor; iii. comply with the reasonable directions of the Licensor; iv. in relation to any documentation (including each End User Agreement) provided to an End User in conjunction with any such product or service, include the following notice: "The address data within the PAF is sourced from New Zealand Post, Land Information New Zealand and the Crown. New Zealand Post and Crown copyright reserved"; and

	<p>v. acknowledge the Licensor on any such product and/or the packaging of any such product, or in connection with any such service, by including the notice contained in section 10(b)(iv) and the statement that “The Data is confidential to New Zealand Post Limited and New Zealand Post Limited owns, or has a licence to use, all intellectual property rights in the data incorporated in this product or service”.</p> <p>c. The Licensee must indemnify the Licensor and keep the Licensor indemnified against any damage, liability, loss, cost or expense (including legal costs on a solicitor and own client basis) arising from or in connection with any claim that the Licensee Software infringes the Intellectual Property Rights of any third party.</p> <p>d. The Licensee acknowledges and agrees that Land Information New Zealand (“LINZ”) and the Crown hold absolutely and exclusively certain material which has been licensed to the Licensor and incorporated into the Data, and that LINZ and the Crown do not assign any copyright or other intellectual property rights in such material either to the Licensor or the Licensee. The Licensee further acknowledges and agrees that LINZ and the Crown shall not, in any circumstances, be liable for any loss or damage (even if LINZ or the Crown has been advised of the possibility of such loss or damage, and including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data) suffered by the Licensee, any End User or any other person in connection with this Agreement. In the event that any exclusion of the liability of LINZ or the Crown set out in this clause is inapplicable, or is held unenforceable, the liability of each of LINZ and the Crown under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data (by the Licensee, an End User or any other person), whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the fees paid by the Licensor for the material incorporated in the Data which gave rise to the loss or damage, exclusive of GST. For the purposes of the Contracts (Privity) Act 1982, this clause and clause 8(d) above confer a benefit on, and are enforceable by, LINZ and the Crown.</p>
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11. Support:

The following support will be provided by the Licensor to licensees under the Special Terms for Commercial PAF but not to licensees under the Special Terms for Base PAF.

The Licensor will action 15 support requests from the Licensee per quarter via telephone or email. The Licensor may at its discretion not count any support call against the quarterly allocation. If support is requested beyond this level the Licensor may at its discretion charge \$120 per hour for the time spent responding to support requests.

Support will be provided by telephone or online by email during the core hours of Monday through Friday from 9:00AM. to 5:00PM., New Zealand time (excluding statutory holidays). The Licensor will endeavour to respond to all requests from the Licensee before the close of the next working day. The Licensor will endeavour to determine and notify to the Licensee a solution for each request or reported problem within ten working days of the question or problem being reported to the Licensor.

The Licensor reserves the right to provide email-only support to the Licensee outside New Zealand. All support will be provided in English.

Support will address issues including but not limited to:

- **Data queries**
Support will be offered to explain changes to the PAF (updates to the data, what has changed, modified, been deleted, what is coming up in terms of new inclusions, etc.)
- **PAF design**
Support will be offered to explain the rationale behind particular addressing rules and the data structures in the PAF, the tables and fields, and the various output files.
- **Proposals for PAF modification**
The Licensor may, at its sole discretion and on a case-by-case basis, choose to examine any request from the Licensee to be able to modify, extract or add to the Data. The Licensee may submit such a request through the normal support channels.
- **Beta PAF support**
The Licensor will provide technical support for Beta PAFs issued when there are upcoming changes to the PAF tables or data structures.

There will be no severity ratings. Requests will be responded to in the order they are received.

The Licensor at its discretion may make on-site service calls to the Licensee's premises.

	<p>General provisions</p> <p>The above support is provided on a “reasonable endeavours” basis and resolution of any issue raised is not guaranteed. The Licensor’s obligation to provide the above support in respect of any Data expires with the expiry or termination of the Licensee’s licence to use that Data.</p> <p>The Licensor does not commit to provide training.</p> <p>Technical documentation is available at www.nzpost.co.nz/sendright</p> <p>When requesting technical support, the Licensee must identify its New Zealand Post account number and the type of PAF licence it holds.</p> <p>The support contact details are:</p> <p>New Zealand Post Customer Support Centre: 0800 501 501</p> <p>and as set out below.</p>
<p>12. Licensor’s notice details:</p>	<p>Manager, Address Accuracy Programme</p> <p>New Zealand Post Private Bag 39990 Wellington Mail Centre Wellington 5045</p> <p>Fax: +64 4 568 1627 Email: sendright@nzpost.co.nz</p>

EXECUTION OF SPECIAL TERMS FOR COMMERCIAL PAF

SIGNED for and on behalf of
NEW ZEALAND POST LIMITED

Signature

Print name

Print title

SIGNED for and on behalf of
LICENSEE

Signature

Print name

Print title