

# Data Licence Agreement

## New Zealand Change of Address File (NZCOA)



### 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 the Special Terms (all as defined below).

**Licensee's full legal 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

## Agreement

### 1. Definitions and Interpretation

**1.1 Definitions:** In this Agreement, unless the context otherwise requires:

**“Agreement”** means this agreement and incorporates these Common Terms and Conditions and the Special Terms;

**“Common Terms and Conditions”** means these Terms and Conditions including any Schedules;

**“Data”** means the New Zealand Change of Address File which lists the names and addresses (including previous addresses) of individuals who have used New Zealand Post’s Redirection service when changing address and have allowed the disclosure of their details and the names and previous addresses only of those individuals who have used New Zealand Post’s Redirection service when changing address but have not allowed the disclosure of their current addresses.

**“Fee”** means the fees specified in the Special Terms;

**“GST”** means goods and services tax chargeable, or to 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;

**“Insolvency Event”** means the appointment of a liquidator of the Licensee, the passing of a resolution for liquidation of the Licensee, the entrance by the Licensee into administration or any arrangement or composition with its creditors (other than for the purpose of amalgamation or reconstruction), the levy or issue of a distress or execution against any part of the property or assets of the Licensee, the appointment of a receiver or a statutory manager in respect of the Licensee’s assets or any part thereof, or the Licensee ceasing or threatening to cease to carry on its business;

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

**“Licensee’s Services”** means the Licensee’s use of the Data by comparing it against databases by matching the names and addresses in the Data with the database and updating the database to reflect the Data; and

**“Special Terms”** means additional Terms and Conditions executed by the parties relating to the supply and use of the Data.

**1.2 Interpretation:** In this Agreement, unless the context otherwise requires:

- (a) Any reference to a **“party”** to this Agreement shall include the successors and permitted assigns of such party or parties;
- (b) Clause headings are inserted for convenience only and shall be ignored in construing and interpreting this Agreement;

- (c) The plural includes the singular and vice versa;
- (d) An obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;
- (e) The word **“including”** and similar words to not imply any limitation;
- (f) A reference to **“\$”** or **“NZD”** is a reference to New Zealand currency ; and
- (g) References to a **“person”** includes references to an individual, company, corporation, partnership, firm, joint venture, association, trust, organisation, governmental or other regulatory body or authority or other entity in each case whether having separate legal personalities.

### 2. Term

**2.1 Term:** This Agreement commences 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 Fee and unless terminated earlier in accordance with clause 10.

### 3. Use

#### 3.1 Grant of Licence:

- (a) Subject to the terms of this Agreement, the Licensor grants to the Licensee a non-exclusive and non-transferable licence to use the Data in accordance with these Common Terms and Conditions and the Special Terms.
- (b) The Licensee shall not use the Data for any other purpose or in any other manner whatsoever.
- (c) Name and phone number information in the Data shall only be used as a ‘matching key’ against addresses in the Licensee’s own or a customer’s database. The Licensee shall not provide any name information to any customer or third party; and
- (d) The Licensee shall not include in its own or its customer’s database any address from the Data which is not in its own or the customer’s database, as applicable.

**3.2 Non-exclusive:** The licence granted to the Licensee pursuant to clause 3.1 is non-exclusive. The Licensor is, without limitation, free to continue to offer and provide the Data, including products and services that incorporate or use the Data, directly to third parties and to authorise other persons to licence or sublicense the Data (including products or services that incorporate the Data) to third parties.

**3.3 Ownership:** The Data and all Intellectual Property Rights and other rights in and to the Data, including all modifications, adaptations and developments of the Data made by the Licensor from time to time, and any data and Intellectual Property Rights created under clause 4.3, remain the property of the Licensor.

**3.4 Compliance with the 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 Data; and
- (b) Ensure that its use of the Data is consistent with the registration of the Licensor under the Postal Services Act 1998 (or any other legislation or regulations applicable to the Licensor).

**3.5 Amendment of the Data:** Individuals may notify the Licensor at any time to change the disclosure status of their records contained in the Data so that the Licensor may no longer be entitled to include information relating to that individual in the Data. In such circumstances, the Licensee must, upon written notification from the Licensor, immediately:

- (a) Remove all records relating to such individuals from the Data and any copies thereof in its possession; and
- (b) Ensure that each of its customers remove all records relating to such individuals, acquired through the provision of the Licensee's Services, from their own marketing database.

#### 4. Provision Of Data

**4.1 Supply of Data:** The Licensor shall supply the Licensee with Data and updates as specified in the Special Terms.

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

**4.3 The improvement of the Data:** The parties agree to work together in good faith to improve and develop the Data and to identify uses of the Data for the benefit of the Licensor and the industry as a whole. The Licensee agrees to cleanse the Data against New Zealand Post's Postal Address File in accordance with guidelines as advised by the Licensor from time to time, and to provide to the Licensor such information as the Licensor reasonably requests regarding:

- (a) The quality of the Data;
- (b) Uses for the Data;
- (c) The market for the Data; and
- (d) Opportunities for the development and improvement of the Data.

#### 5. Payments

**5.1 Payments to the Licensor:** The Licensee shall pay to the Licensor the Fee for the rights in the Data granted by this Agreement prior to the initial supply of the Data and annually on the anniversary of the Commencement Date for each year that this Agreement is renewed in accordance with clause 2, in the case of a fixed fee or in the case of a variable fee on a monthly basis as set out in the Special Terms.

**5.2 GST:** All amounts payable by the Licensee in terms of this Agreement are stated exclusive of GST. If any GST is payable in respect of any taxable supply made under this Agreement, GST shall be payable by the Licensee in addition to the Fee at the same time such fees are due under this Agreement (the "due date"). If any GST which is payable by the Licensee pursuant to this clause is not paid on the due date, the Licensee shall pay to the Licensor any additional tax, interest or penalties for late payment incurred by the Licensee as a result. It is not a defence to any claim by the Licensor under this clause that the Licensor failed to mitigate its loss by paying the GST when it fell due for payment under the Goods and Services Tax Act. The Licensor will deliver a tax invoice to the Licensee on or before the due date.

**5.3 Interest on overdue monies:** If the Licensee defaults in the payment of any monies payable under this Agreement by the due date for payment, then the Licensee shall pay to the Licensor interest at the rate of 4% above the then overdraft lending rate of the Licensor's bankers on the monies unpaid from the due date for payment until the actual date for payment.

#### 6. Marketing And Promotion

**6.1 Marketing:** Both parties are free to market and promote their own products and services incorporating or using the Data directly to third persons.

**6.2 Promotion by the Licensee:** The Licensee shall be responsible for promoting the fact that it is authorised, in accordance with this Agreement, to use the Data for the purpose described in clause 3.1. For as long as the Licensee complies with the terms of this 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 Change of Address File".

**6.3 Promotion by the Licensor:** The Licensor will, to the extent it considers reasonable, promote the fact that the Licensee is a Licensee of the Data and introduce the Licensee to its customers. The Licensor shall only use trade marks or brands of the Licensee after seeking the Licensee's prior written approval of the style and presentation of such trade marks or brands, such approval not to be unreasonably withheld.

**6.4 Trade Marks:** The Licensee is not entitled to use any Licensor trade marks or brands to promote and market the use of the Data.

**6.5 Restrictions:** When promoting or marketing any of the Licensee's Services incorporating or using the Data, the Licensee must:

- (a) Not make any misrepresentations or misstatement about the Data or the Licensor;
- (b) Not do anything that adversely reflects on, detracts from or otherwise prejudices the reputation or standing of the Licensor, the Data, or the Licensor's products and services;
- (c) Comply with all reasonable directions of the Licensor;
- (d) In relation to any of the Licensee's Services, acknowledge the Licensor on any such product and/or the packaging of any such product, in connection with such service, by including 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".

#### 7. Review of this Agreement

**7.1** The Licensee acknowledges that because of the nature, quality and value of the Data will develop and change, it may be necessary to review the Terms and Conditions of this Agreement from time to time. The parties may agree to change the Terms and Conditions of this Agreement at any time provided that any changes must be recorded as a variation to this Agreement in accordance with clause 11.9.

7.2 Notwithstanding clause 7.1 above, the Licensor may, at its sole discretion, at any time during the term of this Agreement, change the terms of this Agreement by giving the Licensee at least 100 days notice in writing of such changes. Such a notice shall be deemed to be a variation of this Agreement in accordance with clause 11.9.

## 8. Warranties

**8.1 Power and authority:** Each party warrants to the other that it has full power and authority to enter into and to perform its obligations under this Agreement which when executed will constitute valid and binding obligations in accordance with its terms.

**8.2 Intellectual Property:** The Licensor warrants that:

- (a) The Data has been collected in compliance with the Privacy Act 1993;
- (b) The use of the Data by the Licensee in accordance with this Agreement will not infringe the New Zealand Intellectual Property Rights of any other person; and
- (c) The Licensor owns all the Intellectual Property Rights in the Data.

**8.3 No implied warranties:** The Licensor's warranties are limited to those set out in this Agreement and any implied condition or warranty (including any warranty under the Sale of Goods Act 1908) are hereby excluded. Without limitation, the Licensor does not warrant the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, nor does it warrant the Data will meet the requirements of the Licensee, be fit for any purpose whatsoever (including, for the avoidance of doubt, the purpose set out in clause 3.1), or for use in any specific technical environment, or that the use of the Data by the Licensor and/ or its customers in accordance with this Agreement will comply with the Privacy Act 1993.

**8.4 Consumer Guarantees Act:** The Licensee agrees and represents that it is acquiring the Data for the purposes of a business and that the Consumer Guarantees Act 1993 shall not apply to the supply of the Data or this Agreement.

## 9. Indemnities and Liability

**9.1 Licensee indemnity:** The Licensee indemnifies and keeps indemnified the Licensor and its employees and agents from and against any and all claims, proceedings, damages, liabilities, expense, costs (including client and solicitor costs and the costs of complying with any order by a court or other regulatory body) and losses (including losses arising from complying with any order by a court or other regulatory body) arising out of or in relation to:

- (a) Any breach of this Agreement by the Licensee or its employees, agents or distributors; or
- (b) The use of the Data or any of the Licensees Services incorporating or using the Data by any person who has obtained the Data or a Licensee's Service which incorporates or uses the Data directly or indirectly from the Licensee; or
- (c) Any claim that the Licensee's Services of software infringes the Intellectual Property Rights of any third party.

**9.2 Exclusion of consequential loss:** Neither Licensor nor Licensee shall be liable under or in connection with this Agreement to the other, in any circumstance whatsoever, for any claim for any loss of profit, loss of revenue, loss of business or other form of economic loss, or for any form of indirect, incidental, consequential or special loss or damage. This limitation of liability applies however liability arises, whether in contract, tort (including for negligence), breach of statutory duty or otherwise but does not apply to:

- (a) The indemnity contained in clause 9.1; or
- (b) Either party's breach of the obligations contained in clauses 3, 8, 11.5 or 11.6.

**9.3 Limitation of liability:** To the fullest extent permitted by law:

- (a) If the Licensor is held liable under or in connection with this Agreement or the Data, the aggregate liability of the Licensor shall not, in any event, exceed \$500,000; and
- (b) If the Licensee is held liable under or in connection with this Agreement or the Data, the aggregate liability of the Licensee shall not, in any event, exceed \$500,000.

**9.4 Intellectual property indemnity:** Subject to clause 9.3, 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 a claim that the authorised use of the Data by the Licensee in accordance with this Agreement constitutes a breach of the New Zealand 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 software and/or services to remove any material which is the subject of a claim that the Intellectual Property Rights of a third party have been breached;
  - (ii) Ensures that each of its customers also removes any such material from their own databases; and
  - (iii) Takes such other actions as the Licensor may reasonably require to remedy or mitigate any alleged breach of Intellectual Property Rights.

## 10. Termination

**10.1 Without Fault Termination:** Either party may terminate this Agreement upon giving at least 90 days written notice to the other party.

**10.2 Termination by either party for Default:** A party may terminate this Agreement immediately on giving written notice if:

- (a) The other party commits a material breach of its obligations under this Agreement and, if that breach is able to be rectified, fails to rectify such breach to the other party's reasonable satisfaction within 14 days of being given notice to do so; or
- (b) An Insolvency Event occurs.

**10.3 Consequences of Termination:** Upon termination of this Agreement (for any reason):

- (a) Any accrued right or liability of either party shall be unaffected;
- (b) The coming into force or the continuation in force of any provision of this Agreement which is expressly or by implication intended to come into force or continue in force on or after such termination shall be unaffected;
- (c) The Licensee must immediately return, destroy or erase (at the Licensor's option) all copies of the Data in its possession. The Licensor (or its nominee) may enter into any premises of the Licensee to:
  - (i) Retrieve the Data; or
  - (ii) Witness the destruction of copies of the Data and the erasure of all electronic copies from any computer or electronic storage system of the licensee; and
- (d) Within the three month period following termination, the Licensor may employ an independent auditor to carry out an audit to assess whether or not the Licensee has returned, destroyed or erased all copies. The Licensee shall fully cooperate with any such audit. If the independent auditor concludes that the licensee has not complied with this clause 10.3, the Licensor may direct the Licensee to destroy, return or erase any copy of the Data. The Licensor (or its nominee) may, at its option, attend the destruction or erasure of any copies which the licensor directs the Licensee to destroy or erase. If the Licensee fails to comply with any of the terms of this clause 10.3, without prejudice to the Licensor's other remedies, the Licensee must pay the costs associated with the independent audit.

**10.4 The Licensee acknowledges that:**

- (a) In the event of actual or threatened breach of any of the Terms and Conditions of this Agreement, the Licensor may seek an order for equitable relief, including an interim injunction or an order for specific performance; and
- (b) Any failure by the licensee to comply with the Terms and Conditions of this Agreement may cause irreparable harm to the Licensor and that damages may be an inadequate remedy in respect of such harm.

## 11. Miscellaneous

**11.1 Force Majeure:** A party shall not be liable to the other for any delay or non-performance of its obligations under this Agreement arising from any cause beyond that party's reasonable control including acts of God or public enemy, national emergencies, insurrection, riot, hostile or warlike action in peace or war, sabotage, government action, acts or omissions of third parties, or industrial disputes provided that if such delay or non-performance continues for a continuous period exceeding 30 days either party may by written notice terminate this Agreement.

**11.2 Waivers:** A waiver (whether express or implied) by either party of any provision of this Agreement or of any breach of or default by the other in performing any provision shall not be effective unless in writing and shall not constitute a continuing waiver and shall not prevent the waiving party from subsequently enforcing any provision of this Agreement not waived nor from acting on any subsequent breach of or default of the other party under the provisions of this Agreement.

**11.3 Notices:**

- (a) Notice: Each notice or other communication under this Agreement must be in writing and be made by 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 the Licensee is specified on the cover of this Agreement and for the Licensor, in the Special Terms.
- (b) Communication effective: No communication shall be effective until received. The communication is deemed to be received by the addressee:
  - (i) In the case of a facsimile, on the business day on which it is dispatched or, if it is dispatched after 5pm (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;
  - (ii) In the case of personal delivery, when delivered; and
  - (iii) In the case of a letter, on the third business day after posting by "FastPost".

**11.4 Further acts:** The Licensee shall sign and deliver any document and undertake any act, matter and thing which is reasonably required or requested by the Licensor to carry out and give effect to the intent and purpose of this Agreement.

**11.5 Confidentiality:** The Terms and Conditions of this Agreement and any information made available to a party pursuant to this Agreement (including the Data and documents and information relating to the Data) shall be kept strictly confidential by the recipient party provided that this obligation shall not apply to any information which:

- (a) Is in the public domain other than by default of the recipient party, other than the Data itself;
- (b) Is obtained by the recipient party from a bona fide third party having the right to disseminate such information;
- (c) Is or had already been independently generated by the recipient party; or
- (d) Is required to be disclosed by law or by any Stock Exchange.

**11.6 Protection of the Data;** Notwithstanding clause 11.5, the Licensee must at all times ensure that the Data is used only in accordance with the terms of this Agreement and for this purpose, without limitation, must at all times keep the Data secure and confidential.

**11.7 Publicity:** A party may not make press or other announcements or releases relating to this Agreement, the Data, and the transactions the subject of this Agreement without the approval of the other party as to the form and manner of the announcement or release unless that announcement or release is:

- (a) Required to be made by law or by a Stock Exchange; or
- (b) Of a general nature that does not involve the disclosure of any of the Data or any commercial terms of this Agreement.

If a party is required by law or a Stock Exchange to make an announcement relating to this Agreement that party must take all reasonable steps to consult with the other parties on the terms of the required announcement.

**11.8 Assignment:** The Licensee may not assign this Agreement or any right, obligation or entitlement under it without the prior written consent of the Licensor.

**11.9 Variation:** This Agreement shall not be varied unless such variation is expressly agreed in writing by both parties.

**11.10 Governing Law:** This Agreement is to be governed by and construed in accordance with New Zealand law and the parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

**11.11 Entire Agreement:** This Agreement supersedes all previous conditions, understandings, commitments, agreements and representations whatsoever whether oral or written, and constitutes the entire agreement between the parties, relating to the subject matter of this Agreement.

**11.12 No Partnership/Agency:** Nothing contained in this Agreement is deemed to constitute the parties partners nor, constitute any party the agent or legal representative of another party. No party has authority to act or to assume any obligation or liability on behalf of any other party except as expressly provided in this Agreement.

**11.13 Invalidity/Severability:** If any one or more provision of this Agreement become invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired by it.

**11.14 Binding Effect:** The terms of this Agreement shall not bind any party until it has been executed by both parties.

**11.15 Survival:** The provisions of this Agreement, which by their nature are intended to survive termination of this Agreement, including clauses 9 and 11.5, shall remain in full force and effect following the termination of this Agreement.