

# PAF 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.

A. Licensee: \_\_\_\_\_ Name: \_\_\_\_\_  
 \_\_\_\_\_ Address for notice: \_\_\_\_\_

B. Supply Date: \_\_\_\_\_

C. Initial Period: \_\_\_\_\_

D. Renewal Periods: \_\_\_\_\_ Period: \_\_\_\_\_  
 \_\_\_\_\_ Number of Renewals: \_\_\_\_\_

**SIGNED** for and on behalf of \_\_\_\_\_ Signature \_\_\_\_\_  
**NEW ZEALAND POST LIMITED** \_\_\_\_\_ Print name \_\_\_\_\_  
 \_\_\_\_\_ Print title \_\_\_\_\_

**DATE:**

**SIGNED** for and on behalf of \_\_\_\_\_ Signature \_\_\_\_\_  
**LICENSEE** \_\_\_\_\_ Print name \_\_\_\_\_  
 \_\_\_\_\_ Print title \_\_\_\_\_

License Type	Annual Fee
Base	\$
Commercial	\$

I have read and understand the Terms and conditions for this license.

# COMMON TERMS AND CONDITIONS

## TERMS OF THIS AGREEMENT

### 1 DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions: In this Agreement:

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

**“Beta Update”** means an Update which is not complete and/or fully tested and stable;

**“Business Day”** means any day other than a Saturday, Sunday or statutory public holiday in Wellington;

**“CC Terms”** has the meaning given in clause 3.3;

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

**“Data”** means data licensed or provided 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 this Agreement;

**“End User Agreement”** means an agreement between the Licensee and an End User which incorporates the terms specified for inclusion in such agreement under this Agreement;

**“Fees”** means the amounts payable by the Licensee to the Licensor in accordance with this Agreement, as specified in the 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;

**“Initial Period”** means the initial period of this Agreement as specified in the Background to this Agreement;

**“Intellectual Property”** 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;

**“LINZ Data”** has the meaning given in clause 3.3;

**“Permitted Use”** means the purposes for which the Licensee is granted a licence to use the Data, as specified in any Special Terms;

**“Renewal Period”** means the term of any renewal of this Agreement pursuant to clause 4.1, as specified in the Background to this Agreement;

**“Restricted Data”** has the meaning given in clause 3.1;

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

**“Supply Date”** means the date on which the Data is to be supplied to the Licensee in accordance with clause 2.1, as specified in the Background to this Agreement;

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

**“Update”** means a new version or release of the Data made by the Licensor (if any); and

**“Update Frequency”** means the frequency at which Updates (if any) will be provided by the Licensor to the Licensee, 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 the Data on the Supply Date and Updates in accordance with the Update Frequency, and the terms of this Agreement shall govern the use of such Data.

**2.2 Updates:** On receipt of an Update, the Licensee must, as soon as practicable, cease use of any previous version of the Data, and commence use of the Update. The Licensee’s right to use each Update shall terminate on the earlier of:

- (a) six months after the date on which a subsequent Update becomes available; or
- (b) the termination or expiration of this Agreement.

**2.3 Frequency of updates:** The Licensor reserves the right to change the Update Frequency at any time upon giving the Licensee reasonable prior notice of the change.

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

**2.5 Changes to Data:** The Licensor reserves the right to change the 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.

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

## 3. LICENCE

**3.1** The data identified below are “**Restricted Data**”:

- (a) Any data which has an address type of Bag, Box, CMB Rural, CMB Urban or Counter Delivery; and
- (b) For any data which has a “Rural” address type, the data in the ‘RD Number’ and ‘Maitown’ fields.

**3.2 Licence:** Save in respect of the LINZ Data (which is subject to clause 3.3 below), the Licensor grants to the Licensee a non-exclusive, personal, and non-transferable licence to use the Data subject to the restrictions and other terms contained in this Agreement.

**3.3 Third Party Data:** The Data includes data which has been compiled by Land Information New Zealand (the “**LINZ Data**”). The LINZ Data is subject to Creative Commons licence terms available at <http://creativecommons.org/licenses/by/3.0/nz/> (the “**CC Terms**”) and may be used by the Licensee in accordance with the CC Terms.

**3.4 Ownership:** The Restricted Data and the Documentation and all Intellectual Property and other rights in the Restricted Data and the Documentation from time to time remain the property of the Licensor.

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

**3.6 No licence to use trade marks:** This Agreement does not grant to the Licensee any right to use any of the trade marks, business names or logos of the Licensor, unless otherwise specifically provided for by this Agreement.

**3.7 Permitted use:** The Licensee may only use the Restricted Data for the Permitted Use and will limit access to the Restricted Data to those employees for whom such access is necessary for the Permitted Use.

**3.8 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 Restricted Data or relay or disseminate the same to any third party;
- (b) provide the Restricted Data to (or allow the provision of the Restricted Data to, or access to the Restricted Data by) any agents or subcontractors of the Licensee without the prior written consent of the Licensor; or

- (c) sub-license all or any part of the Restricted Data to any person, nor purport or attempt to do so, except as is expressly permitted by the Permitted Use or otherwise under this Agreement.

#### **4. TERM**

- 4.1** This Agreement shall commence on the Commencement Date and shall continue for the Initial Period and shall automatically renew for the Renewal Periods (if any), subject to the payment of the Fees and unless terminated in accordance with clause 11 or 12.2(c).

#### **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.
- 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 11.5). If such audit reveals material non-compliance with this Agreement by the Licensee, the Licensor may (without limiting any other rights and remedies of the Licensor) 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 Restricted 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 prior to the Supply Date and, in the case of any Renewal Periods, prior to the commencement of the relevant Renewal Period, in accordance with this Agreement.
- 6.2 Amending Fees:** The Licensor is entitled to vary any Fee annually during the term of this Agreement upon at least 30 days' written notice. Any such variation will take effect on the date at which the next payment of Fees is due, 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. INTELLECTUAL PROPERTY

- 7.1** Except for those limited licences or rights to use that may be granted under this Agreement, neither party grants any title or licence or right to use its existing Intellectual Property. Such Intellectual Property shall remain the exclusive property of the party that owned it at the commencement of this Agreement, including any alterations, additions or amendments to such Intellectual Property. Each party shall maintain adequate internal procedures, including appropriate agreements with its employees and End Users, to protect the Intellectual Property of the other party in the same manner as it protects its own Intellectual Property.
- 7.2** This section 7 shall survive the termination of this Agreement.

## 8. WARRANTIES

**8.1 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.

**8.2 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 (if any) for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.

**8.3 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 this Agreement.

## 9. CONFIDENTIALITY

- 9.1 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.
- 9.2 Extension:** Each party undertakes to use its best endeavours to ensure that its employees, agents and any sub-contractors are aware of, and comply with, clause 9.1.
- 9.3 Minimum standard:** In fulfilling the obligations in clauses 9.1 and 9.2, 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.
- 9.4 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.
- 9.5 Public domain:** For the purposes of clause 9.1, the fact that parts of the Data provided by the Licensor to the Licensee may be in the public domain, does not in and of itself deem the Data, as a compilation, to be in the public domain.

## 10. LIMITATION OF LIABILITY

- 10.1 No consequential loss, etc:** Save in respect of the indemnities contained in clauses 10.5 and 10.6 and in any Special Terms, and any breach of clause 9, 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.
- 10.2 Maximum liability of the Licensor:** Save in respect of liability under the indemnity contained in clause 10.6, 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 10.6, the Licensor's maximum aggregate liability shall be \$500,000.
- 10.3 Maximum liability of the Licensee:** Save in respect of the indemnities contained in clauses 10.5(c) and 10.5(d) and in any Special Terms, the Licensee's 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 10.5(c) and 10.5(d), the Licensee's total aggregate liability to the Licensor in relation to each End User shall not exceed \$250,000.
- 10.4 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.
- 10.5 Licensee's Indemnity:** Subject to clause 10.3, 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 breach of the Licensee's obligations under this Agreement
  - (b) any wilful or unlawful act or omission of the Licensee in relation to the Data or this Agreement;
  - (c) any breach by any End User or prospective End User of any term of any End User Agreement that was required to be included in such agreement pursuant to this Agreement; and
  - (d) the use of the Data by an End User or any other person who has obtained the Data from an End User.
- 10.6 Licensor's indemnity:** Subject to clauses 10.2 and 10.7, 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 8.1 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 distributors and End Users 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.

**10.7 Limitation of liability for breach of the Intellectual Property indemnity:** If:

- (a) the Licensor is required under clause 10.6 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.

**11. TERMINATION**

**11.1 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 seven 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 9.

**11.2 Termination by the Licensee:** Provided that the Licensee has complied with clause 2.4, 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.

**11.3 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.

**11.4 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 written notice. The Licensee may terminate this Agreement at any time on 30 days written notice, provided that any Fees paid or payable to the Licensor at the time of termination shall remain payable and/or shall not be refunded to the Licensee.

**11.5 Recovery of Data:** 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 Restricted Data and Documentation within its possession or control, other than one back up copy of the Restricted Data as permitted by clause 11.6. 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 Restricted Data and Documentation or witness their destruction.

**11.6 Permitted copy:** Following termination of this Agreement the Licensee may retain one back-up copy of the Restricted Data for security purposes, provided however that such back up copy may at all times only be used by the Licensee for archive retention, system failure retrieval and disaster recovery purposes. The Licensee must, for the benefit of the person named in the relevant disclaimer or copyright notice, include in such copy of the Restricted Data any disclaimer or copyright notice which is included in the Restricted Data as provided to the Licensee (or on the media on which the Restricted Data is provided to the Licensee).

**11.7 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; and
- (b) the clauses which, by their nature, are intended to survive termination of this Agreement, survive termination.

## 12. GENERAL

**12.1 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 this Agreement. No communication shall be effective until received. The communication is deemed to be received by the addressee:

- (a) in the case of an email on the date on which it is dispatched or, if it is dispatched after 5.00PM on a Business Day or on a non-business day, on the next Business Day after the date of dispatch, provided that if receipt is disputed that the party giving notice by email produces a printed copy of the email which evidences that the email was sent to the email address of the party to whom notice is being given; and
- (b) in the case of a 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;
- (c) in the case of personal delivery, when delivered; and
- (d) in the case of a letter, on the third Business Day after posting by “fast post”.

### 12.2 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.

**12.3 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.

**12.4 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.

**12.5 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.

**12.6 No partnership:** Nothing in this Agreement is deemed to constitute the parties as partners, or that of coventurers 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.

**12.7 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.

**12.8 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.

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

**12.10 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 the Data Licence Agreement between the Licensor and the Licensee and are subject to its terms. Unless expressly stated otherwise, terms defined in the Common Terms and Conditions shall have the same meaning in these Special Terms.

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1. Data	The Postal Address File, as more particularly described at <a href="http://www.nzpost.co.nz/sendright">www.nzpost.co.nz/sendright</a> , as such description is amended from time to time.
2. Format and transmission of Data	Electronic transfer. Each file will be in compressed format.
3. Update Frequency:	Quarterly updates on or around 31 March, 30 June, 30 September and 15 December.
4. Fees:	Annual fee of \$1000 excluding gst.
5. Permitted Use (for Restricted Data)	The Licensee may use the Restricted Data for its internal business purposes only.
6. Restrictions on use of the Data:	The Restricted Data may not be distributed or on sold to third parties.
7. End User terms:	Not applicable.

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9. Support:	The Licensee may submit free of charge a reasonable number of address updates (modifications, additions and deletions). The Licensor makes no commitment to apply any such updates within any particular timeframe, or at all, or to follow up the result of any such update submissions with the Licensee.
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10. Licensor's contact details:	Manager, Address Accuracy Programme  New Zealand Post Private Bag 39990 Wellington Mail Centre Wellington 5045  Fax: +64 4 568 1627 Email: <a href="mailto:sendright@nzpost.co.nz">sendright@nzpost.co.nz</a>
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## Special Terms For Commercial PAF

These Special Terms form part of the Data Licence Agreement between the Licensor and the Licensee and are subject to its terms. Unless expressly stated otherwise, terms defined in the Common Terms and Conditions shall have the same meaning in these Special Terms.

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1. Data	The Postal Address File, as more particularly described at <a href="http://www.nzpost.co.nz/sendright">www.nzpost.co.nz/sendright</a> , as such description is amended from time to time.
2. Format and transmission of Data	Electronic transfer. Each file will be in compressed format.
3. Update Frequency:	Quarterly updates on or around 31 March, 30 June, 30 September and 15 December.
4. Beta Updates	The Licensor at its sole discretion may from time to time make Beta Updates available to the Licensee. Such Beta Updates may be used for the Licensee's internal business purposes only.
5. Fees:	Annual fee of \$3000 excluding gst.
6. Permitted Use (for Restricted Data)	<p>Subject to section 7 and the other provisions of these Special Terms, the Licensee may use the Restricted Data:</p> <ol style="list-style-type: none"><li>for its internal business purposes;</li><li>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 Restricted Data or access the Restricted Data other than (a) through the software and (b) for the commercial purposes for which the software was provided ("Licensee Software");</li><li>to process End Users' databases against the Licensee Software on behalf of those End Users; and</li><li>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 8(a).</li></ol> <p>The parties agree that this section 6 expressly permits exceptions to clause 3.8 of the Common Terms and Conditions. To the extent that this section 6 is inconsistent with clause 3.8 of the Common Terms and Conditions, this section shall prevail.</p>

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**7. Restrictions on use of the Restricted Data:**

- a. The Restricted 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:
  - 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 8(a).
- b. Any Restricted Data distributed or made available to End Users pursuant to section 7(a) must be within the licence term set out in clause 2.2 of the Common Terms and Conditions.
- 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 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).
- d. To avoid doubt, the Restricted Data may not be distributed or sold to any third party as a data product.

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**8. End User terms:**

- a. Any agreement under which an End User is entitled to use Restricted Data must include the terms listed below. This section 8(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 Common Terms and Conditions, and (iii) give the Licensor the same protection as is afforded by these Special Terms and the Common Terms and Conditions.
  - i. The End User agrees that the Data (other than the LINZ Data) and the Documentation and all Intellectual Property Rights and other rights in the Data (other than the LINZ Data) and the Documentation from time to time remain the property of the Licensor.
  - ii. 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.
  - iii. 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.
  - iv. The End User (and any of its agents and sub-contractors) may only use Restricted Data in accordance with the End User Agreement, for the End User's internal purposes, which may include providing an online address checking service to the End User's customers. Without limiting the foregoing, the End User (and any of its agents and subcontractors) must not:

- a. sub-license all or any part of the Restricted Data to any person, or purport or attempt to do so, in each case, unless expressly permitted otherwise by the Licensor in writing, or
  - b. other than as expressly permitted above, copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Restricted Data or relay or disseminate the same to any other party.
  - v. 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.
  - vi. The End User must ensure that its personnel, agents and sub- contractors comply with the above terms as if they were the Licensee.
  - vii. 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.
  - viii. 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.
  - ix. 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 ix shall not exceed \$250,000.
  - x. The Licensor must have rights to enforce the above terms (and the term in 8(b) below as applicable) 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.
  - b. The Licensee must:
    - i. ensure that each End User complies with the End User terms contained in 8(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.
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**9. Additional terms:**

- 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: "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:
  - 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 data within the NZ Address Dataset is sourced from New Zealand Post and Land Information New Zealand (LINZ). New Zealand Post copyright reserved. Data sourced from LINZ is subject to Creative Commons licence terms available at <http://creativecommons.org/licenses/by/3.0/nz/> (the "**CC Terms**") and may be used in accordance with the CC Terms"; and
  - 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 9(b)(iv) and the statement that New Zealand Post Limited owns, or has a licence to use, all intellectual property rights in the data incorporated in this product or service".
- 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.

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**10. 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 \$200 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 PAF s 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.

## **GENERAL PROVISIONS**

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.

The Licensor does not commit to provide training.

Technical documentation is available at [www.nzpost.co.nz/sendright](http://www.nzpost.co.nz/sendright)

When requesting technical support, the Licensee must identify its New Zealand

Post account number and the type of PAF licence it holds. The support contact details are:

New Zealand Post Customer Support Centre: 0800 501 501  
and as set out below.

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11. Licensor's contact details: Manager, Address Accuracy Programme

New Zealand Post  
Private Bag 39990  
Wellington Mail Centre  
Wellington 5045

Fax: +64 4 568 1627

Email: [sendright@nzpost.co.nz](mailto:sendright@nzpost.co.nz)

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