

# Mandatory End User Terms

## 1 Interpretation

### 1.1 Definitions

**“Agreement”** means this agreement for the supply and license of the Solution to the End User, and includes the Schedules.

**“Australia Post”** means the Australian Postal Corporation, including, where permitted by context, all of the Australia Post’s officers, employees, agents and contractors.

**“Business Day”** means a day other than a Saturday, Sunday or gazetted public holiday in Victoria, Australia or an Australia Post authorised holiday.

**“Claim”** means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at Law, in equity, under statute or otherwise.

**“Corporate Group”** means a group of Single Legal Entities consisting of the Corporate Group Owner and up to nine nominated Subsidiaries (as defined in the Corporates Act) of the Corporate Group Owner.

**“Corporate Group Owner”** means a Single Legal Entity that is the Holding Company (as defined in the Corporations Act) of each of the other entities of the Corporate Group.

**“Corporations Act”** means the Corporations Act 2001 (Cth).

**“End User”** means a Single Legal Entity or Corporate Group Owner authorised to use the Solution granted by the Licensor in accordance with this Agreement.

**“Intellectual Property Rights”** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions, domain names and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**“Licensor”** means Informatica.

**“Loss”** means any damage, loss, cost and expense (including legal and other professional advisors’ costs and expenses) suffered by a party.

**“Material Term”** means clauses 3.1c), 3.1d) and 4 of this Agreement.

**“Permitted Purpose”** means the permitted purpose as defined in the relevant Schedule.

**“Personal Information”** has the meaning given in the *Privacy Act 1988* (Cth) (as amended).

**“Australia Post Data”** means each data set which is supplied and licensed to the Licensor by Australia Post, and licensed by the Licensor to the End User, as specified in each Schedule.

**“Privacy Law”** means all Commonwealth, State and Territory legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to the Personal Information including, but not limited to the *Privacy Act 1988* (as amended from time to time).

**“Prohibited Purpose”** means each of the prohibited purposes as defined in the relevant Schedule.

**“Related Body Corporate”** has the meaning in the *Corporations Act*.

**“Representative”** of a party includes an employee, agent, officer, director, adviser, contractor or sub-contractor of that party or of a Related Body Corporate of that party.

**“Single Legal Entity”** means an individual person, body corporate or other legal entity and for the purposes of the government means an individual Agency as defined under the *Financial Management and Accountability Act 1997* or an individual Commonwealth authority or company under the *Commonwealth Authorities and Companies Act 1997*.

**“Solution”** means the Licensor’s solution (including software, products and / or services) which incorporates, reproduces, embodies or utilises the Australia Post Data or its derivative works, and licensed to the End User under this End User Agreement.

**“Subsidiary”** has the meaning given in the *Corporations Act*.

## 2 Licence

- 2.1** Licensor grants to the End User a non-exclusive, non-transferable, revocable licence for the term of this Agreement to use the Solution solely for the Permitted Purposes in respect of each applicable Schedule in accordance with the terms and conditions set out in this Agreement and the applicable Schedule, subject to any conditions and restrictions specified in the Permitted Purpose.
- 2.2** If a Schedule includes other terms and conditions, then those terms and conditions will apply, but only in respect of that Schedule.
- 2.3** Any rights not specifically granted to the End User under this Agreement are reserved to the extent permitted by law. Without limiting the previous sentence, the End User must not use the Solution for any Prohibited Purpose. To the extent that a particular purpose falls within the definition of both a Permitted Purpose and a Prohibited Purpose in a Schedule, such purpose is considered a Prohibited Purpose for the purposes of that Schedule.
- 2.4** For the avoidance of doubt, the End User shall not:
- a) reproduce, copy, modify, amend, assign, distribute, transfer, sub-license, reverse assemble or reverse compile, merge or otherwise deal with, exploit or commercialise the whole or any part of the Australia Post Data (or directly or indirectly allow or cause a third party to do the same) including by using the Australia Post Data to derive other solutions (including software, products and/or services) unless expressly stated otherwise in this Agreement; and
  - b) create a Product (as defined below) or other derivative works from the Australia Post Data to commercialise as their own, unless that Product is solely for one of the End User’s Permitted Purpose. “Product” means anything produced by End User which consists of, incorporates or is created using any part of the Australia Post Data and which may be produced in any form, including any device, solution, software or database and which may be in written form or produced electronically.
- 2.5** This clause 2 (and the Prohibited Purposes) do not prevent the End User from disclosing Australia Post Data to the extent that it is required by law to disclose the Australia Post Data, provided that the End User use all reasonable and legal means to minimise the extent of disclosure, and require the recipient to keep the Australia Post Data confidential.

## 3 Warranties and Acknowledgements

Australia Post Data Supply and Licence Agreement

- 3.1** The End User represents and warrants that:
- a) it has full capacity, power and authority to enter into this Agreement;
  - b) it will fully and completely comply with all of the terms and conditions of this Agreement);
  - c) it will only use the Solution for the Permitted Purposes and in accordance with the terms and conditions set out in this Agreement;
  - d) it will not use the Solution for any Prohibited Purpose;
  - e) it will not make any representation, statement or promise in respect of Australia Post, and has no authority to do so; and
  - f) it has not relied on any representation made by Australia Post in entering into the Agreement.
- 3.2** Without limiting clause 3.1, the End User acknowledges and agrees that, to the extent permitted by law:
- a) Australia Post does not make any representation or warranty as to the accuracy, content, completeness or operation of the Australia Post Data or to them being virus free;
  - b) the Australia Post Data is not complete and it may contain errors; and
  - c) the Australia Post Data may include data sourced from third parties. The End User agrees to comply with any third party terms and conditions which the End User is notified apply to the third party data referenced in this Agreement.

## **4 Confidentiality and Security**

- 4.1** The End User must ensure that while the Solution is in its possession or control:
- a) it provides proper and secure storage for the Solution; and
  - b) use the same level of security to protect the Solution that it uses to protect its own confidential information (but no less than the level of security a reasonable person would take to protect the confidential information);
  - c) it takes all reasonable steps to ensure that the Solution is protected at all times from unauthorised access, misuse, damage or destruction.
- 4.2** The provisions of clause 4 apply to all forms of media upon which the Solution is kept or transmitted.
- 4.3** The End User will ensure that all copies of the Solution are dealt with in accordance with the Licensor's or Australia Post's reasonable directions.
- 4.4** This clause 4 will survive termination or expiry of the Agreement.

## **5 Privacy**

- 5.1** The parties acknowledge that while the Solution may not, on its own, constitute Personal Information, its use may result in the identity of individuals being reasonably ascertainable.
- 5.2** The End User agrees:
- a) that it is responsible for ensuring that its exercise of rights under this Agreement and the use of the Solution do not infringe any Privacy Law;
  - b) to use or disclose Personal Information obtained during the course of this Agreement only for the purposes of this Agreement;
  - c) to take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification, or disclosure;
  - d) not to do any act or engage in any practice that would breach any Privacy Law;
  - e) to immediately notify the Licensor if the End User becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause whether by the End User, its Related Body Corporate or any of its Representatives;

- f) to cooperate with any reasonable demands or inquiries made by Australia Post on the basis of the exercise of the functions of the Office of the Australian Information Commissioner (OAIC) under Privacy Law or the Postal Industry Ombudsman under the Australian Postal Corporation Act 1989;
- g) to ensure that any person who has access to any Personal Information is made aware of, and undertakes in writing, to observe Privacy Law and other obligations referred to in this clause;
- h) to comply, as far as practicable, with any policy guidelines issued by the OAIC from time to time relating to the handling of Personal Information; and
- i) to comply with any direction given by Australia Post to observe any recommendation of the OAIC or the Postal Industry Ombudsman relating to acts or practices of the End User that the OAIC or the Postal Industry Ombudsman consider to be in breach of the obligations in this clause.

**5.3** This clause 5 will survive termination or expiry of the Agreement.

## **6 Intellectual Property Rights**

**6.1** The End User agrees that all Intellectual Property Rights in the Australia Post Data are and shall remain the sole property of Australia Post or its licensors.

**6.2** The End User must notify the Licensor as soon as practicable if it becomes aware of any actual, suspected or anticipated infringement of Intellectual Property Rights in the Solution or in the Australia Post Data.

**6.3** The End User must render all reasonable assistance to the Licensor and/or Australia Post in relation to any actual, suspected or anticipated infringement referred to in clause 6.2.

**6.4** If a third party makes a Claim against the End User alleging that the Solution infringes the Intellectual Property Rights of the third party, the End User must immediately allow the Licensor (or Australia Post, if Australia Post directs) the right to control the defence of the claim and any related settlement negotiations.

**6.5** This clause 6 will survive termination or expiry of the Agreement.

## **7 Audit**

**7.1** End User shall provide Australia Post and/or its agents reasonable accompanied access upon reasonable prior notice, during 9am and 5pm on a Business Day, to its premises, accounts and records relevant to the Agreement, for the purpose of verifying and monitoring the End User's obligations under the Agreement (the "Audit") and shall provide all reasonable cooperation and assistance in relation to the Audit.

**7.2** If it is identified (through the Audit or otherwise) that the End User has not complied with an obligation under this Agreement, then without limiting any other rights or remedies, upon the request of Licensor, the End User will promptly take all necessary steps to rectify and / or remedy such non-compliance.

**7.3** The cost of any Audit carried out under clause 7.1 shall be borne by Australia Post unless the Audit reveals a material breach by the End User of its obligation under this Agreement, in which case Australia Post shall be entitled to be reimbursed by the End User for all reasonable costs of the Audit (including any agent's fees) and the End User shall so reimburse Australia Post within twenty (20) Business Days of such request.

**7.4** For the avoidance of doubt, a "material breach" for the purposes of this clause 7 includes, without limitation, any breach of clause 6 in respect of Australia Post's Intellectual Property Rights, or any breach of this Agreement.

**7.5** Where the End User does not grant access to Australia Post and/or any of its agents for the purposes of an Audit in accordance with this clause 7 then the End User must pay Australia Post all reasonable costs incurred by Australia Post in connection with such attempted Audit within twenty (20) Business Days of the date of Australia Post's invoice in respect of the same, and Australia Post may by written notice immediately suspend the supply and the End User's use of the Solution.

## **8 Liability**

**Australia Post not liable**

- 8.1** To the extent permitted by law, Australia Post is not liable to the End User for any Claim or Loss whatsoever suffered, or that may be suffered as a result of or in connection with this Agreement, and the End User releases Australia Post irrevocably releases and discharges Australia Post from all such Claims and Losses.
- 8.2** Clause 8.1 will not apply to any Claim or Loss suffered by the End User arising out of any fraud or wilful misconduct of Australia Post.
- 8.3** Without limiting clause 8.1, to the extent permitted by law, Australia Post will not be liable to the End User for any loss of profit, revenue or business, indirect, consequential, special or incidental Loss suffered or incurred by the End User arising out of or in connection with this Agreement, whether in contract, tort, equity or otherwise. This exclusion applies even if those Losses may reasonably be supposed to have been in contemplation of both parties as a probable result of any breach at the time they entered into this Agreement.

#### **Indemnity**

- 8.4** The End User must defend and indemnify each of the Licensor and Australia Post and its Representatives (**those indemnified**) from and against all Losses suffered or incurred by and of those indemnified to the extent that those Losses are suffered as a result of, whether directly or indirectly, of:
- a) any breach of a Material Term by the End User or its Representatives;
  - b) any unlawful act by the End User or its Representative in connection with this Agreement;
  - c) any illness, injury or death to any person arising out of or in connection with the performance of this Agreement to the extent caused or contributed to by the negligent or wrongful act or omission of the End User or its Representative; or
  - d) any loss or damage to any property of any person, arising out of or in connection with the performance of this Agreement to the extent caused or contributed to by the negligent or wrongful act or omission of the End User or its Representative,
- except to the extent that the Loss is directly caused by the negligence, fraud or wilful misconduct or wrongful act or omission of those indemnified.
- 8.5** This clause 8 will survive termination or expiry of the Agreement.

## **9 Suspension and Termination**

- 9.1** The Licensor may limit, suspend or terminate the End User's rights under this Agreement at any time upon notice when, and for the duration of the period during which:
- a) the End User contravenes (or is believed on reasonable grounds to be in possible contravention of) any law of the Commonwealth or of a State or Territory;
  - b) the End User breaches the terms of the Agreement and the breach is not remedied within 14 days after receipt of notice from the Licensor specifying the breach and its intention to terminate the Agreement by reason of such breach; or
  - c) the End User commits a material breach of the Agreement which is not capable of remedy; or
  - d) in the reasonable opinion of the Licensor, the End User is acting in a manner or providing a Solution which has the effect or potential to damage the reputation of Australia Post which is not remedied within 14 days after receipt of notice from Australia Post or the Licensor specifying the issues; or
  - e) the licensed right granted by Australia Post to the Licensor for the licensing of the Australia Post Data has been suspended or terminated.
- 9.2** The End User acknowledges that the Licensor may exercise its rights under clause 9.1 in accordance with the directions of Australia Post.
- 9.3** The termination, surrender or expiry of this Agreement for any reason will not extinguish or otherwise affect:
- a) any rights of either party against the other which accrued before the termination, surrender or expiry and which remain unsatisfied; or

- b) any other provisions of this Agreement which are expressly stated to, or which by their nature, survive termination, surrender or expiry of this Agreement.

**9.4** If this Agreement is surrendered, terminated or expires, for any reason whatsoever, then the following provision of this clause will apply notwithstanding such surrender, termination or expiry the End User must cease using the Solution and the Australia Post Data and undertakes that it will destroy all copies, reproductions or adaptations of the Solution and Australia Post Data, or any part thereof made, held or controlled by it and, promptly upon written request from the Licensor, deliver a statutory declaration sworn by an authorised representative of the End User confirming that all copies, reproductions or adaptations of the Solution and Australia Post Data, and any part thereof, have been destroyed.

## **10 Variation**

**10.1** Pursuant to the agreement between the Licensor and Australia Post under which the Licensor is granted a licence to the Australia Post Data, Australia Post reserves the right to vary the terms of that agreement from time to time in certain circumstances. To the extent that those variations require a corresponding variation to the terms of this Agreement, the Licensor may do so, provided that the Licensor gives the End User reasonable prior written notice of such variation (having regard to the period of notice received by the Licensor). The End User undertakes to do all things (including executing and entering into such amendment or restatement deed) as reasonably required by the Licensor to formalise and give effect to any and all variations made by the Licensor under this clause 10.1.

## **11 Changes in Legislation**

**11.1** Notwithstanding any other provision of this Agreement, the End User acknowledges and agrees that Australia Post and / or the Licensor must comply with any future legislation and / or Government policy which imposes binding restrictions or limitations on Australia Post's or the Licensor's use of the Australia Post Data, including any restrictions or limitations relating to the supply of Australia Post Data or elements thereof to any person, and the terms of this Agreement, and the End User's agreements with any other parties, will be varied accordingly.

## **12 Corporate Group Owner**

**12.1** This clause 12 applies if the End User is a Corporate Group Owner.

**12.2** The Corporate Group for the purposes of this Agreement consists of the following entities: End User

**12.3** The End User must ensure, and warrants that:

- a) each entity of the Corporate Group is a Subsidiary of the End User at all times during the term of this Agreement; and
- b) each entity of the Corporate Group is a Single Legal Entity.

**12.4** The End User may permit any or all members of the Corporate Group to enjoy the benefit of the licence granted to the End User under clause 2, subject to the following conditions:

- a) the End User must ensure that all of the Corporate Group members comply with this Agreement, and do not do or omit to do anything that, if done by the End User, would be a breach of this Agreement;
- b) the End User is responsible for all acts and omissions of the Corporate Group members as if they were acts and omissions of the End User; and
- c) all uses of the Solution and Australia Post Data by the Corporate Group members are deemed to be uses by the End User.

## **13 Relationship with Australia Post**

**13.1** The Licensor enters into a contract with the End User strictly for the purpose of ensuring Australia Post can protect its rights and interests in connection with the Australia Post Data.

**13.2** The End User acknowledges that:

- a) the Licensor has contractual and other legal obligations to Australia Post, and by entering into this Agreement the End User enters in to a contract on those terms and conditions set out in this Agreement that are necessary for the Licensor to enforce the terms of the Agreement and protect the Licensor's (and Australia Post's) interests, including, without limitation, all those clauses that refer to Australia Post; and
- b) the Licensor holds the benefit of all of the provisions of this Agreement that refer to Australia Post on trust for the benefit of itself and Australia Post, and the Licensor may enforce those provisions on behalf of Australia Post.

## **14 General**

**14.1** The End User shall not, without the Licensor's prior written consent which may be provided or withheld in its absolute discretion, assign or sub-contract any of its rights and obligations under this Agreement.

**14.2** The Licensor holds the benefit of all of the provisions of this Agreement that refer to Australia Post on trust for the benefit of itself and Australia Post, and the Licensor may enforce those provisions on behalf of Australia Post.

**14.3** The Agreement is governed by the law in Victoria, Australia and each party submits to the non-exclusive jurisdiction of the courts of Victoria, Australia and courts of appeal from them.