

Third Party Agreement Terms

1 Interpretation

1.1 Definitions

In this Agreement, unless the contrary intention appears:

“Agreement” means this agreement for the supply and licence of the Australia Post Data and includes the documents listed in clause 2.1.

“Annexure” means any annexure(s) attached to this Agreement.

“Audit” has the meaning in clause 8.4.

“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.

“Business Hours” means the hours between 9am and 5pm during a Business Day.

“Calendar Year” means the period from 1 January to 31 December of any given year.

“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.

“Commencement Date” means the effective date of the Service under the Agreement.

“Corporate Group” means a group of Single Legal Entities consisting of the Corporate Group Owner and up to nine nominated Subsidiaries 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).

“Data Guide” means a document prepared and provided by Australia Post setting out guidelines for using the Australia Post Data. For the avoidance of doubt, the Data Guide may be updated from time to time by Australia Post.

“End User” means a Single Legal Entity or Corporate Group Owner authorised to use the Australia Post Data and/or Solution (if applicable) by the Third Party Provider in accordance with this Agreement.

“End User Agreement” means a fully executed written agreement between the Third Party Provider and an End User which must contain enforceable provisions that are no less onerous on the End User than those annexed to this document, under the heading “Mandatory End User Terms (for use by Third Party Providers)”.

“Expiry Date” means the expiration date of the Service under the Agreement.

“General Terms” means clauses 1 to 19 of this Agreement (inclusive).

“Head Agreement” means the Australia Post Data Supply and Licence Agreement between Australia Post and the Licensor dated February 2018 pursuant to which this Agreement is entered into.

“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.

“IPR Claim” means a claim or proceedings alleging that any item supplied to a party by or on behalf of a party under this Agreement or any other material or document otherwise supplied to a party by or on behalf of a party under this Agreement infringes the Intellectual Property Rights of any person.

“Law” means all present and future laws, regulations, codes ordinances, local laws, by-laws, orders, judgments, licences, rules, permits, agreements and requirements of all government agencies applicable in any jurisdiction in which activities contemplated by this Agreement.

“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 5.8, 6.4, 9.1c) and 10 of this Agreement.

“Parties” or “Party” means the Third Party Provider and/or the Licensor, as the context dictates.

“Permitted Purpose” means each of the permitted purpose as defined in the relevant Schedule and Annexure.

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

“Australia Post Data” means each data set (as described in the Data Guide) which is supplied and licensed under this Agreement (as incorporated in the Licensor’s Solution) to the Third Party Provider as specified in the relevant Schedule and Annexure executed under this Agreement.

“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.

“Quarter” means each 3 month period starting from 1 March, 1 June, 1 September and 1 December each Calendar Year.

“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.

“Schedule” means the schedule(s) executed by the Parties as part of this Agreement or any new schedule(s) executed by the parties.

“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 any solution (including software, products and / or services) which incorporates, reproduces, embodies or utilises the Australia Post Data or its derivative works (and for the avoidance of doubt includes such software supplied by the Licensor to the Third Party Provider and any software or solution produced by the Third Party Provider that incorporates the Licensor’s software).

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

Australia Post Data Supply and Licence Agreement

“Term” has the meaning in clause 3.1.

“Third Party Provider” includes, where permitted by context, all of the Third Party Provider’s officers, employees, agents and contractors (who are effectively acting as the Third Party Provider’s employees) and any and all Related Bodies Corporate of the Third Party Provider.

“Year” means each twelve month period of the Term, starting at the Commencement Date.

1.2 Interpretation'

Unless the contrary intention appears, a reference in the Agreement to:

- a) **(singular includes plural)** the singular includes the plural and vice versa;
- b) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- c) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- d) **(jointly and individually)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- e) **(reference to a Party)** a Party includes its successors and assigns and (except in the case of corporations) heirs, executors and administrators;
- f) **(reference to a person)** a word which denotes a person includes an individual or a body corporate. A person also includes the trustee, executor, administrator, and successor in title and permitted assignee of that person;
- g) **(legislation)** any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- h) **(currency)** any monetary amount refers to Australian currency;
- i) **(Agreement)** this Agreement includes any Schedule and/or Annexure to this Agreement and where amended means this Agreement as so amended.

1.3 Timing

- a) If an act under the Agreement is to be done by a Party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.
- b) If a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day.

1.4 Headings

- a) Headings are for convenience only and do not affect the interpretation of the Agreement.

2 Structure of Agreement

2.1 This Agreement consists of:

- a) The General Terms; and
- b) Each Schedule; and
- c) Each Annexure.

2.2 Each Schedule will form part of this Agreement and must be read in conjunction with the General Terms and each Annexure.

2.3 If there is any inconsistency between the documents comprising this Agreement, the document listed higher in this sub-clause shall prevail to the extent of the inconsistency:

- a) The relevant Schedule;
- b) The relevant Annexure;

c) The General Terms.

3 Term

3.1 This Agreement commences on the Commencement Date and remains in force until the Expiry Date, unless sooner terminated in accordance with this Agreement (“Term”).

4 Relationship with Australia Post

4.1 The Licensor enters into a contract with the Third Party Provider strictly for the purpose of ensuring Australia Post can protect its rights and interests in connection with the Australia Post Data.

4.2 The Third Party Provider 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.

4.3 In providing the Australia Post Data, the Third Party Provider does not have any authority to bind Australia Post in any respect nor to incur any liability or make any commitment on behalf of Australia Post without Australia Post’s prior written consent. Nothing in the Agreement will be construed as creating a partnership or trust between Australia Post and the Third Party Provider, or as imposing any fiduciary duties on Australia Post in relation to the Third Party Provider.

5 Licence and Supply

5.1 The Licensor grants to the Third Party Provider a non-exclusive, non-transferable, revocable licence for the Term to use Australia Post Data (as incorporated in the Licensor’s 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.

5.2 For the purposes of the Schedules, the Third Party Provider is an “External User” and is **not** a “Licensee” or an “End User”.

5.3 If the Permitted Purpose permits the Third Party Provider to sublicense or resupply the Australia Post Data, then the Third Party Provider may do so, but strictly in accordance with any specified conditions and restrictions specified in applicable Schedule.

5.4 A Schedule may include other terms and conditions. If a Schedule includes such terms and conditions, then those terms and conditions will apply and override any inconsistent provisions of this Agreement, but only in respect of that Schedule.

5.5 Any rights not specifically granted to the Third Party Provider under this Agreement are reserved to the extent permitted by law. Without limiting the previous sentence, the Third Party Provider must not use the Australia Post Data or the Licensor’s Solution for any Prohibited Purpose. To the extent that a particular purpose is within the meaning of both a Permitted Purpose and a Prohibited Purpose, then such purpose is considered a Prohibited Purpose for the purposes of that Schedule.

5.6 To avoid doubt, the Prohibited Purpose of one Schedule does not prohibit the Third Party Provider from using the Australia Post Data in accordance with the Permitted Purpose (and other terms and conditions) of another Schedule.

5.7 The Third Party Provider must not transfer the Australia Post Data to any person (including the Third Party Provider itself) who is outside of Australia without the prior written consent of Australia Post.

- 5.8** For the avoidance of doubt, the Third Party Provider 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 Third Party Provider's Permitted Purpose. "Product" means anything produced by Third Party Provider 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.
- 5.9** This clause 4 (and the Prohibited Purposes) do not prevent the Third Party Provider from disclosing Australia Post Data to the extent that it is required by law to disclose the Australia Post Data, provided that the Third Party Provider use all reasonable and legal means to minimise the extent of disclosure, and require the recipient to keep the Australia Post Data confidential.

6 End Users

- 6.1** As permitted under and strictly in accordance with clause 5.1, the Third Party Provider may supply the Australia Post Data to an End User.
- 6.2** The Third Party Provider must ensure the End User is a Single Legal Entity or a Corporate Group Owner unless agreed otherwise by Australia Post in writing.
- 6.3** If the End User is a Corporate Group Owner, then:
- a) the Third Party Provider must ascertain and identify the entities constituting the Corporate Group;
 - b) if the Corporate Group Owner has more than nine Subsidiaries, then the Third Party Provider must require the Corporate Group Owner select up to nine Subsidiaries for the purposes of the Corporate Group; and
 - c) the Third Party Provider must ensure that the End User Agreement specifies the entities constituting the Corporate Group, and must not agree to vary this list without the written consent of Australia Post.
- 6.4** Prior to supplying the Australia Post Data to an End User, the Third Party Provider and the End User must enter into an End User Agreement. If, prior to the date of this Agreement, the Third Party Provider and the End User entered into a valid "End User Agreement" as required under a previous version of this Agreement between Australia Post and the Third Party Provider, and this "End User Agreement" has not expired or terminated, then:
- a) the Third Party Provider and the End User are only required to enter into a new End User Agreement when that current "End User Agreement" terminates or expires; and
 - b) the Third Party Provider must promptly execute a new End User Agreement (in the form specified in this Agreement) if requested by the End User, and the Third Party Provider must use its reasonable endeavours to communicate this offer (to execute this new form of End User Agreement) to the End User.
- 6.5** The Third Party Provider must, within 14 days after request from Australia Post, provide Australia Post with executed copies of the End User Agreements (as specified by Australia Post in the request) and any other agreement under which Australia Post Data is provided to an End User. The Third Party Provider may redact from the End User Agreements terms that do not relate to the subject matters covered by the mandatory terms annexed to this document, under the heading "Mandatory End User Terms (for use by Third Party Providers)" (such as those in respect of fees and payments).
- 6.6** Nothing in this clause 6 or the definition of End User Agreement restricts the Third Party Provider from agreeing to such terms that are more onerous on the End User, or any other terms relating to subject matters not covered by the mandatory terms annexed to this document, under the heading "Mandatory End User Terms (for use by Third Party Providers)" (including in respect of fees and payments).
- 6.7** The Third Party Provider must take all reasonable steps to ensure that the End User has a bona fide and lawful business interest for its possession and use of Australia Post Data.

- 6.8** The Third Party Provider must ensure that all End Users comply with the terms of their End User Agreements with the Third Party Provider. The Third Party Provider shall be responsible for enforcing and shall enforce the terms of all End User Agreements to which it is a party. The foregoing shall not affect any entitlement the Licensor or Australia Post may have to enforce any rights it may have in relation to such agreements or its rights to carry out any audit.
- 6.9** For the purposes of clause 6.8, the parties acknowledge and agree that:
- a) compliance with each End User Agreement is of fundamental importance to operation of this Agreement and the ongoing supply of the Australia Post Data; and
 - b) the Third Party Provider shall comply with all directions from the Licensor or Australia Post regarding the enforcement of any of the Third Party Provider's rights or the End User's obligations under the End User Agreement that are reasonably necessary for the purpose of protecting Australia Post's legitimate interests.
- 6.10** The Third Party Provider holds the benefit of all of the provisions of the End User Agreement that refer to Australia Post on trust for the benefit of itself and Australia Post, and upon request from Australia Post, the Third Party Provider must enforce those provisions on behalf of Australia Post in accordance with the directions of Australia Post.
- 6.11** The Third Party Provider acknowledges that the entering into of any End User Agreement does not relieve the Third Party Provider from its obligations to fully comply with all matters and things imposed upon or assumed by the Third Party Provider under this Agreement.
- 6.12** If the Third Party Provider becomes aware of, or reasonably suspects, any breach of an End User Agreement, the Third Party Provider must immediately notify the Licensor and must take such action as the Licensor considers necessary or desirable to cause the infringement to cease.
- 6.13** If requested by the Licensor, the Third Party Provider must render all reasonable assistance to Australia Post in relation to any such litigation by Australia Post or the Licensor against an End User in relation to a breach or alleged breach of an End User Agreement.
- 6.14** If the Third Party Provider is in breach of this clause 6 then, in addition to any right of termination by the Licensor, the Licensor may notify the Third Party Provider in writing that the Third Party Provider is in breach of the Agreement and, upon the giving of such notice, the Third Party Provider irrevocably appoints the Licensor (or, if Australia Post so directs, Australia Post) its agent for the purpose of enforcing its rights against the End User arising out of the breach and pursuing any remedies against the End User whether under an End User Agreement, at law or in equity.

7 Australia Post

- 7.1** 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.
- 7.2** The Third Party Provider acknowledges that, under the Head Agreement, the Licensor may in certain circumstances appoint Australia Post as its agent for the purposes of enforcing its rights against Third Party Provider arising out of any breach of this Agreement and pursuing any remedies against the Third Party Provider.

8 Reporting and Audit

- 8.1** Third Party Provider must provide a written report to the Licensor within ten (10) Business Days after the end of each Quarter which must contain the necessary information relating to this Agreement or the use, licensing or resupply of Australia Post Data for the purpose of:
- a) calculating the correct licence fees due and payable by the Licensor to Australia Post under the Head Agreement;
 - b) verifying and validating the terms of this Agreement;

- c) conducting Audits;
- d) managing the termination clause;
- e) allowing Australia Post to create aggregated industry reports on use of Australia Post data in the market; and
- f) providing Australia Post with input to product development process for future Australia Post data products.

8.2 For the purposes of clause 8.1, the List of information required in the written report includes, but is not limited to, the following:

- a) End User's identification number – Third Party Provider's internal reference number for the End User;
- b) End User's name;
- c) End User's Australian Business Number (or overseas equivalent if available);
- d) End User industry classification description (as per industry classifications descriptions provided by Australia Post);
- e) End User licence start date;
- f) End User licence end date; and
- g) any other information reasonably requested by the Licensor or Australia Post from time to time that relate to the use, licensing or resupply of the Australia Post Data or Solution or the rights and obligation of either party under this Agreement.

8.3 Third Party Provider shall maintain a complete and accurate record of all financial and non-financial transactions relating to this Agreement.

8.4 Without limiting any other agreements between Australia Post and the Third Party Provider, the Third Party Provider shall provide Australia Post and/or its agents reasonable accompanied access upon reasonable prior notice (of no less than ten (10) Business Days, unless Australia Post reasonably considers that a shorter notice period is warranted in exceptional circumstances), during Business Hours, to its premises, accounts and records relevant to the Agreement, for the purpose of verifying and monitoring the Third Party Provider's obligations under the Agreement (the "Audit") and shall provide all reasonable cooperation and assistance in relation to the Audit. The Third Party Provider may, as a pre-condition to granting access, require Australia Post or an agent enter into a confidentiality undertaking with the Third Party Provider to protect the confidential information that Australia Post or the agent may receive or access during the Audit. The Third Party Provider is not required to disclose information concerning the Third Party Provider's cost base, profits, margins or pricing models as part of an Audit, except to the extent that such information is required to verify the calculation of the licence fee payable by the Licensor to Australia Post under the Head Agreement.

8.5 Without limiting any other agreements between Australia Post and the Third Party Provider, Australia Post shall not carry out an Audit more than once in any twelve (12) month period except where it reasonably suspects that the Third Party Provider has failed to comply with any of its obligations under this Agreement.

8.6 Where it is identified (through the Audit or otherwise) that the Third Party Provider has not complied with an obligation under this Agreement, without limiting any other rights the Licensor may have under this Agreement, upon the request of the Licensor or Australia Post, the Third Party Provider will promptly take all necessary steps to rectify and / or remedy such non-compliance.

8.7 Where as a result of clause 8.4 or upon reasonable suspicion, it is identified that the End User has not complied with the End User Agreement, then the Third Party Provider shall ensure that the Licensor and Australia Post and/or any of their agents may upon reasonable prior written notice be entitled to reasonable accompanied access during Business Hours to the premises, systems, accounts and records of transactions for each End User for the purpose of verifying and monitoring each such End User's compliance with and performance of its obligations under its End User Agreement.

8.8 The cost of any Audit carried out under this Agreement shall be borne by the Licensor or Australia Post (as applicable) unless the Audit reveals a material breach by the Third Party Provider of its obligation under this Agreement, in which case the Licensor or Australia Post (as applicable) shall be entitled to be reimbursed by the Third Party Provider for all reasonable costs of the Audit (including any agent's fees) and the Third Party

Provider shall so reimburse the Licensor or Australia Post (as applicable) within twenty (20) Business Days of such request.

- 8.9** For the avoidance of doubt, a “material breach” for the purposes of this clause 8 includes, without limitation, any breach of Australia Post’s Intellectual Property Rights.
- 8.10** Where a Third Party Provider does not grant access to the Licensor, Australia Post and/or any of their agents for the purposes of an Audit on the date notified by the Licensor or Australia Post under this Agreement (other than where access is denied as a result of the Licensor’s failure to comply with this clause 8) then the Third Party Provider shall be liable for reasonable costs incurred by the Licensor or Australia Post (as applicable) in connection with such attempted Audit and shall pay such costs to the Licensor or Australia Post (as applicable) within twenty (20) Business Days of the date of the Licensor’s or Australia Post’s invoice in respect of the same and the Licensor may (or at Australia Post’s direction, will) by written notice immediately suspend the supply and the Third Party Provider’s use of the Australia Post Data.
- 8.11** The Third Party Provider shall permit Australia Post (and/or its agents) to access and use, for evaluation and audit purposes, each Solution of the Third Party Provider and the Third Party Provider agrees that no charges shall be payable by Australia Post (or its agents) for any such access or use.

9 Warranties and Acknowledgements

- 9.1** The Third Party Provider 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 Licence Agreement (including, without limitation, the terms and conditions set out in the relevant Schedule or Annexure);
 - c) it will not make any representation, statement or promise to Australia Post that is incorrect or misleading or to others in respect of Australia Post or the Australia Post Data;
 - d) it will not advertise any Third Party Provider Solutions as Australia Post approved or anything similar or imply such is the case (except as expressly provided for under this Agreement);
 - e) it has not relied on any representation made by Australia Post which has not been stated expressly in this Agreement, or upon any descriptions, illustrations or specifications contained in any document including catalogues or publicity material produced by Australia Post; and
 - f) the representations made to under the reporting requirements under clause 9 are true and complete.
- 9.2** Without limiting this clause, the Third Party Provider acknowledges that, to the extent permitted by law, Australia Post has not made and 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.
- 9.3** The Third Party Provider acknowledges and accepts that the Australia Post Data is not complete and it may contain errors.
- 9.4** The Third Party Provider acknowledges that the Australia Post Data may include data sourced from third parties. The Third Party Provider agrees to comply with third party terms and conditions which apply to the third party data as set out in the relevant Schedule or Annexure.

10 Confidentiality and Security

- 10.1** The Third Party Provider must ensure that while the Australia Post Data or a Solution is in its possession or control:
- a) it provides proper and secure storage for the Australia Post Data and Solution; and
 - b) use the same level of security to protect the Australia Post Data and 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 Australia Post Data and Solution are protected at all times from unauthorised access, misuse, damage or destruction.

- 10.2** The provisions of clause 10 apply to all forms of media upon which the Australia Post Data or Solution is kept or transmitted.
- 10.3** The Third Party Provider will ensure that all copies of the Australia Post Data and Solution are dealt with in accordance with the Licensor's or Australia Post's reasonable directions.
- 10.4** This clause 10 will survive termination or expiry of the Agreement.

11 Privacy

- 11.1** The parties acknowledge that while the Australia Post Data may not, on its own, constitute Personal Information, its use may result in the identity of individuals being reasonably ascertainable.
- 11.2** The Third Party Provider agrees:
- a) that it is responsible for ensuring that its exercise of rights under this Agreement does not infringe any Privacy Law and will not attempt to modify or use the Australia Post Data to identify individuals;
 - 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 Australia Post and the Licensor if the Third Party Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause whether by the Third Party Provider, Related Body Corporate or any Representative;
 - 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 obtained in connection with this Agreement 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 obtained in connection with this Agreement; 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 Third Party Provider that the OAIC or the Postal Industry Ombudsman consider to be in breach of the obligations in this clause.
- 11.3** This clause 11 will survive termination or expiry of the Agreement.

12 Intellectual Property Rights

- 12.1** The Third Party Provider agrees that the Australia Post Data, all Intellectual Property Rights in the Australia Post Data and any reproductions, adaptations, modifications and alterations (including but not limited to by way of reduction or manipulation of the Australia Post Data) and any and all other Intellectual Property which Australia Post owns or has title to (whether registered or unregistered) are and shall remain the sole property of Australia Post. In the case of third party data acquired by Australia Post as part of the Australia Post Data, the third party holds or will hold any and all Intellectual Property Rights in that data.
- 12.2** The Third Party Provider must notify Licensor and Australia Post as soon as practicable if it becomes aware of any actual, suspected or anticipated infringement of Intellectual Property Rights in the Australia Post Data.
- 12.3** The Licensor or Australia Post will decide what action, if any, to take against the party responsible for the alleged infringement of Australia Post Data and is responsible for the payment of all legal and associated costs incurred to support the action and is entitled to keep any award of damages or account of profits which relates to the infringement of Australia Post Data.

- 12.4** The Third Party Provider must render all reasonable assistance to the Licensor and Australia Post in relation to any actual, suspected or anticipated infringement referred to in clause 12.2 including, if requested by the Licensor or Australia Post, making all reasonable efforts to procure an End User to provide all necessary information and assistance to the Licensor or Australia Post in support of any actual, suspected or anticipated infringement.
- 12.5** The Third Party Provider must notify the Licensor and Australia Post as soon as practicable if it becomes aware of any third party claim of infringement of the third party's Intellectual Property Rights against the Third Party Provider or an End User from the Third Party Provider's or End User's use of the Australia Post Data.
- 12.6** If a third party makes a claim under clause 12.5 the Third Party Provider must immediately allow Australia Post the right to control the defence of the claim and any related settlement negotiations.
- 12.7** This clause 12 will survive termination or expiry of the Agreement.

13 Trade Marks & Labelling

- 13.1** The Third Party Provider agrees that it will not apply for registration of any trade mark, business name, company name or domain name that incorporates signs, logos or words the same as, substantially identical or deceptively similar to any trade mark of Australia Post whether registered or unregistered.
- 13.2** Subject to clause 13.3, the Third Party Provider must ensure that any copies of the Australia Post Data made pursuant to this Agreement:
- a) display the copyright notification and disclaimer statement present on the Australia Post Data at the time it was provided to the Third Party Provider; and
 - b) retain and not modify the copyright notice present on the Australia Post Data at the time it was provided to the Third Party Provider.
- 13.3** The Third Party Provider must comply with any reasonable direction of Australia Post regarding the form and content of any copyright notice and/or disclaimer that is to appear on the Australia Post Data or a Solution.

14 Liability and Indemnity

Australia Post not liable

- 14.1** To the extent permitted by Law and subject to clause 13.2, Australia Post is not liable to the Third Party Provider for any Claim or Loss whatsoever suffered, or that may be suffered as a result of or in connection with this Agreement, and the Third Party Provider releases Australia Post irrevocably releases and discharges Australia Post from all such Claims and Losses.
- 14.2** Clause 14.1 shall not apply to any Claim or Loss arising as a direct result of any fraud or wilful misconduct of Australia Post or its Representatives.

Indirect loss excluded

- 14.3** Except for liability arising under or out of the indemnities contained within clause 14.4, neither party will be liable to the other party, and Australia Post is not liable to the Third Party Provider, for any loss of profit, revenue or business, indirect, consequential, special or incidental Loss suffered or incurred by the other party 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

- 14.4** The Third Party Provider must defend and indemnify the Licensor, Australia Post and their 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 Third Party Provider, its Representatives or an End User;

- b) an IPR Claim;
- c) any Claim against those indemnified by an End User in connection with an End User Agreement;
- d) any unlawful act by the Third Party Provider, its Representatives or an End User in connection with this Agreement;
- e) 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 Third Party Provider, its Representatives or an End User; or
- f) 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 Third Party Provider, its Representatives or an End User,

except to the extent that the Loss is directly caused by the fraud, wilful misconduct, negligence or wrongful act or omission of those indemnified.

14.5 This clause 14 will survive termination or expiry of the Agreement.

15 Suspension and Termination

15.1 The Licensor may limit or suspend the Third Party Provider's rights under this Agreement and / or a Schedule at any time upon notice when, and for the duration of the period during which:

- a) Australia Post directs the Licensor to suspend the Third Party Provider's rights; or
- b) the licensed right granted by Australia Post to the Licensor under the Head Agreement has been limited or suspended.

15.2 The Licensor may terminate the Agreement or a Schedule if:

- a) Australia Post directs the Licensor to terminate the Third Party Provider's rights; or
- b) the licensed right granted by Australia Post to the Licensor under the Head Agreement has been suspended or terminated.

15.3 The expiry or termination of the Agreement will automatically terminate all Schedules as at the date of expiry or termination of the Agreement.

15.4 Where a Party exercises its termination right in respect of a particular Schedule that Schedule will be terminated but the Agreement and all other Schedules will continue to apply.

15.5 The termination, surrender or expiry of this Agreement or a Schedule 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) the provisions of clauses 8, 10, 11, 12, 14, 15 and 16; or
- c) any other provisions of this Agreement which are expressly stated to, or which by their nature, survive termination, surrender or expiry of this Agreement.

16 Consequences of Surrender, Termination or Expiry for End Users

16.1 If this Agreement is surrendered, terminated or expires, for any reason whatsoever, then the following provisions of this clause will apply notwithstanding such surrender, termination or expiry:

- a) the Third Party Provider shall be permitted, for a reasonable time after termination, surrender or expiry (such reasonable time to be determined by arrangement and agreement between the Third Party Provider and Australia Post, but in the absence of agreement between the Third Party Provider and Australia Post within a reasonable time after surrender, termination or expiry, to be determined solely by Australia Post acting reasonably, and having regard to the ongoing needs of End Users), to continue providing support and assistance to End Users (for which the Third Party Provider is entitled to charge End Users) in relation to End Users' use of the Australia Post Data;

- b) Australia Post will permit End Users to transfer their right to use the Australia Post Data to another licensee of Australia Post, or (to the extent that Australia Post elects to do so at its discretion) to Australia Post directly, and Australia Post agrees to give effect to this clause through all reasonable means so as to ensure that End Users have a continuing right to use the Australia Post Data in accordance with the terms of this Agreement;
- c) the Third Party Provider must comply at its own expense and in a timely and complete fashion with all reasonable directions and requests made by Australia Post to facilitate all matters and things relevant to or concerning the termination of this Licence, including such matters as the arrangements (consistent with this clause) for the orderly transfer of the End Users, the recall or other treatment of any item of property bearing the Australia Post trade marks, and the return to Australia Post or other treatment of all confidential information; and
- d) the Third Party Provider must cease using the Australia Post Data (except as permitted under this clause) and undertakes that it will destroy all copies, reproductions or adaptations of the Australia Post Data and all other confidential information of Australia Post, or any part thereof made, held or controlled by it and, promptly upon written request from Australia Post, deliver a statutory declaration sworn by an authorised representative of the Third Party Provider confirming that all such copies, reproductions or adaptations, or any part thereof, have been destroyed.

17 Variation

- 17.1** Pursuant to the Head Agreement, Australia Post reserves the right to vary the terms of the Head 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 Third Party Provider reasonable prior notice of such variation (having regard to the period of notice received by the Licensor). The Third Party Provider 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 17.1. The Third Party Provider is responsible for ensuring that its agreements with End Users include appropriate provisions that allow the Third Party Provider to comply with this clause.

18 Changes in Legislation

- 18.1** Notwithstanding any other provision of this Agreement, the Third Party Provider acknowledges and agrees that the Licensor, Australia Post and/or the Third Party Provider must comply with any future legislation and/or Government policy which imposes binding restrictions or limitations on the Licensor's, Australia Post's or the Third Party Provider'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 Third Party Provider's agreements with third parties, will be varied accordingly.

19 General

- 19.1** The Third Party Provider shall not, without the Licensor's prior written consent, assign or sub-contract any of its rights and obligations under this Agreement.

19.2 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.

Mandatory End User Terms (for use by Third Party Providers)

GUIDANCE NOTES:

MANDATORY PROVISIONS TO BE INCLUDED IN EACH END USER AGREEMENT BETWEEN A THIRD PARTY PROVIDER AND AN END USER

THESE MANDATORY PROVISIONS ARE TO BE USED IN CONJUNCTION WITH THE APPLICABLE SCHEDULES, WHICH DEFINE THE PERMITTED PURPOSES AND PROHIBITED PURPOSES FOR THE END USER, DEPENDING ON THE SCOPE OF THE END USER'S LICENCE.

(THE THIRD PARTY PROVIDER IN THE THIRD PARTY TERMS IS REFERRED TO AS THE **LICENSOR** IN THESE 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.

“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, 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** The Licensor acknowledges that [#Insert identity of the Reseller] is the source of the Solution.
- 2.3** If a Schedule includes other terms and conditions, then those terms and conditions will apply, but only in respect of that Schedule.
- 2.4** 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.
- 2.5** 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.

- 2.6** 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

- 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 this clause, and to the extent permitted by Law, the End User acknowledges and agrees that:

- 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 third party terms and conditions which it is notified by Australia Post 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

8.1 Australia Post not liable

(a) To the extent permitted by law and subject to clause 8.1(b), 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 irrevocably releases and discharges Australia Post from all such Claims and Losses;

(b) clause 8.1(a) shall not apply to any Claim or Loss to the extent that it arises as a direct result of the fraud or wilful misconduct of Australia Post or its Representatives.

8.2 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

8.3 The End User must defend and indemnify each of the Licensee 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 fraud, wilful misconduct, negligence, or wrongful act or omission of those indemnified.

8.4 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 the 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 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

[Guidance Note: Delete this clause if the End User is not a 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 [#Parties to insert the entities (up to 10 in total, including the Corporate Group Owner) forming the Corporate Group.].
- 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 Third Party Provider 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 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.