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# End User Licence Agreement (Customer Guide)

January 2013

## Introduction

In return for being provided with access to the Service and Software Materials by Canada Post Corporation (Canada Post) (“**Canada Post**”) or one of its authorised resellers (the “**Authorised Reseller**”), you agree (and in doing so, you confirm in your capacity as an individual, that you are an authorised agent for the Licensee) to the following terms and conditions (the “**Agreement**”; however, the ‘Agreement’ also includes all Canada Post Quote Sheets) on behalf of the organisation named in the registration form which you completed or the organisation named in the Canada Post Quote Sheet (the organisation being referred to as the “**Licensee**”). If the Service or the Software Material is being installed and/or activated by the Authorised Reseller on the Licensee’s behalf, then the Authorised Reseller and the Licensee each confirms that the Licensee has appointed the Authorised Reseller as its agent to confirm acceptance of this Agreement on its behalf, and the Licensee hereby agrees to be bound by this Agreement. The Licensee acknowledges that the Agreement is a contract between the Licensee, Canada Post, governing the Licensee’s and its employees use of the Service and Software Materials; and that pursuant to this Agreement the Licensee will also be entering into separate licensing agreements with the respective third party licensors (where applicable), as referred to in this Agreement.

The Service and Software Materials are licensed to the Licensee. The Service and Software Materials are, and remain the property of Canada Post and its third party licensors (including Postcode Anywhere (Europe) Ltd (“**PCA**”).

By in any way installing, activating, copying or otherwise using the Service or Software Materials, or any part of them, the Licensee agrees to be bound by the terms of this Agreement. If the Licensee does not agree to the terms of this Agreement, the Licensee may not install, activate, copy or in any way use the Service or Software Materials, or any part of them.

# 1 Definitions & Interpretation

## Definitions

1.1 In this Agreement the following words and expressions shall have the following meanings:

“Account Code”	means a unique code which is used to identify and manage a Licensee’s account.
“Account Section”	means the Licensee’s account section made available to the Licensee, or the Authorised Reseller on behalf of the Licensee, by Canada Post on the Website.
“Credit”	means a prepayment, which for a maximum period of twelve months from the date of the making of the prepayment, or if sooner until the prepayment has been fully expended to purchase Online Services, provides the Licensee with the ability to purchase access to the respective Online Services by using part or the whole of the respective prepayment.
“Data Response”	means the response generated by a Web Service Query.
“Database”	means a third party database made available to the Licensee by Canada Post.
“Defaulting Party”	has the meaning attributed to it in Clause 9.8.
“Documentation”	means the user documentation available from the Website as updated from time to time by Canada Post.
“Effective Date”	means the date that this Agreement becomes effective between the Parties, namely the date that the contract formed by this Agreement comes into force.
“Evaluation Offerings”	has the meaning attributed to it in Clause 2.8.2.
“Licence Key”	means the licence key to authenticate an account for Web Service Queries.
“Licence Period”	means: (1) in respect of each separately purchased Credit, the period starting from when the respective Credit is purchased by the Licensee, up until the earlier of the following: (a) a maximum period of twelve months from the date of purchasing the respective Credit (irrespective of whether the Credit is expended fully or not during

such time period); or (b) when the Credit has been fully expended to purchase Online Services; for the avoidance of doubt, an auto-top-up or a top-up applied to an existing Credit, is deemed to be a new Credit reflecting the amount of the top-up or auto-top-up; or (2) where the Licensee has not expended any amount from a Credit in order to use the Services, but has instead paid Canada Post a separate licence fee in order to use any of the Services, then the 'Licence Period' in respect of that licence fee, means that period of time that was associated with the licence fee by Canada Post, as entitling the Licensee to use the respective Services.

"Licensee"	has the meaning attributed to it above.
"Licensor"	means a third party licensor of the Database or any of the Software Materials.
"New Charges Date"	has the meaning attributed to it in Clause 4.3.
"Online Service"	means a Service which can be purchased from the Canada Post Website (excluding any Services which are stated as not being capable of being purchased by use of prepayments, as indicated from time to time on the Canada Post Website).
"Parties"	means the Licensee and Canada Post
"Party"	means the Licensee, or Canada Post (as applicable).
"Password"	means the password selected by the Licensee to verify the Licensee's identity prior to being given access to the Website.
"Canada Post Offering"	means the software developed, or licensed by PCA to provide the 'Address Capture Service'; however, the 'PCA Software' definition excludes all third party data.
"Canada Post Privacy Policy"	means Canada Post's privacy policy, which is available from the Canada Post Website, as such policy is updated from time to time.
"Canada Post Quote Sheet"	means a document, issued by Canada Post to the Licensee, headed 'Quote', which is intended by Canada Post to be binding with regard to pricing or the types of services which are to be offered (however, for the avoidance of doubt, this excludes the details contained in any separate sales proposal documentation (whether attached or not to the document headed 'Quote')).

“Canada Post Website”	means the website consisting of the website with the url of: <a href="http://www.canadapost.ca/addresscomplete">www.canadapost.ca/addresscomplete</a> (or such other website URL as Canada Post notifies to the Licensee from time to time).
“Service”	means the respective chargeable service made available by Canada Post to the Licensee pursuant to this Agreement, which is referred to on the Website .
“Software”	means the software and data (including without limitation the relevant Databases) either made available from the Website, or made available through a hosted environment where permitted by Canada Post, which enable the Licensee to access or use the Service; including any updates to this which are made available to the Licensee from time to time by Canada Post; (but for the avoidance of doubt, ‘Software’ excludes any software, data or databases provided by the Authorised Reseller independently of Canada Post, as such software, data and databases provided by the Authorised Reseller are provided pursuant to a separate contract between the Licensee and the Authorised Reseller).
“Software Materials”	means the Software and the Documentation.
“Subject Matter”	has the meaning attributed to it in Clause 16.1.
“Supplier”	means Canada Post , or if the Licensee is seeking access to the Software Materials or Service through an Authorised Reseller, then it means the Authorised Reseller.
“Terminating Party”	has the meaning attributed to it in Clause 9.8.
“Third Party Contracts”	means the Third Party Licences and Third Party EULAs.
“Third Party Licences”	means the third party licences (which are made available from the Website) imposed by the Licensors on PCA or Canada Post in respect of the Software Materials and Service.
“Third Party EULAs”	means the third party end user licences (which are made available from the Website) which are stated as being applicable to the Licensee’s use of the Software Materials or Service (as applicable).
“Web Service Query”	means the Licensee’s successful request made to the Database or to a chargeable service offered by the Supplier from the Canada Post Website.

“Website”	means the Canada Post Website; references to details being on the ‘Website’ also includes the Canada Post Quote Sheet; to the extent of any conflict between a provision of the Canada Post Quote Sheet and any other provision of the Website, the respective provision of the Canada Post Quote Sheet shall prevail.
“Year”	means a period of 12 months commencing from: the Effective Date; or from an anniversary of the Effective Date.

### Interpretation

- 1.2 The headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation.
- 1.3 References to “person” includes an individual, company, firm, partnership, government body, public body, charity, association, or other legal entity.
- 1.4 Words indicating the singular shall include the plural and vice versa. Words indicating a gender shall include each gender.
- 1.5 The words and phrases “including” and “in particular” shall be without limitation to the generality of any preceding words and any preceding words shall not be construed as being limited to a particular class where a wider interpretation of those words and phrases is possible. Furthermore (except where already stated) such words shall be deemed to be immediately followed by the words “without limitation”.
- 1.6 References to any statute or statutory provision shall include (i) any subordinate legislation made under it, and (ii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification).
- 1.7 All sums payable hereunder are expressed exclusive of sales tax and any other applicable tax and duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point.
- 1.8 To the extent of any conflict or ambiguity between the provisions of the Agreement and the Third Party Contracts, the provisions of the Third Party Contracts shall prevail.

## 2 Licensing

### Grant of Licence

- 2.1 Canada Post hereby grants to the Licensee the non-exclusive, non-transferable, revocable right for the Licence Period to use the Software Materials and Service, subject to the terms and conditions referred to in this Agreement.
- 2.2 This Agreement grants the Licensee, a licence to use the Software Materials and Services for its internal business purposes in accordance with the Agreement and Documentation.

### Prohibitions

- 2.3 The Licensee may not distribute copies of the Software Materials to third parties. Furthermore, the Licensee agrees that it may not use the Software Materials or Service by multiple users using any single licence key on multiple PCs unless agreed in writing with Canada Post. If the licence key is a server licence key, it must be installed on one server; for the avoidance of doubt, a PC licence key may only be installed on one PC and not on a server.
- 2.4 The Licensee agrees that it may not undertake any of the following acts (except to the extent expressly permitted by law):
  - 2.4.1 copy the Software Materials or any part of it (although the Licensee may make a copy of the Software (and any Documentation provided electronically) for back-up purposes only);
  - 2.4.2 translate, adapt, vary, modify the Software Materials or Services;
  - 2.4.3 disassemble, decompile or reverse engineer the Software;
  - 2.4.4 rent, lease, loan, resell, distribute, network or create derivative works based upon the Software Materials, Service, or any part of them;
  - 2.4.5 use the Software or Service to provide any software or a service which competes with the Software or Service;
  - 2.4.6 exceed any fair use policy that Canada Post communicates (such communication can also take the form (without limitation) of a general notice on the Canada Post Website or in any newsletter correspondence from Canada Post) from time to time (with Canada Post acting reasonably), with the current fair use policy being (unless agreed otherwise in writing between the Parties): limiting the number of Web Service Queries by the Licensee to 1,000 per day for a single user and 100,000 Web Service Queries per day collectively for multi-user licences and website licences;

- 2.4.7 undertake any data cleansing activities other than to the extent expressly permitted by the respective Third Party Contracts;
- 2.4.8 make use of the Software Materials or Service (whether through an application or an integration or otherwise) which would adversely affect the reputation of: Canada Post; the Licensors; or Canada Post's or the Licensors' services or offerings; or
- 2.4.9 any act or omission which has the objective of circumventing the intention of any of the restrictions within the Agreement.

#### Retention of title and ownership of the Software Materials

- 2.5 Canada Post and its third party licensors retain title and ownership of the Software Materials. No intellectual property rights (including without limitation copyright) are transferred pursuant to this Agreement other than the licence to use the Software Materials and Service as expressly granted by this Agreement. All rights in the Software Materials and Service not specifically granted in this Agreement are reserved by Canada Post and its licensors.

#### Updates to the Software Materials

- 2.6 The Licensee agrees to promptly apply any updates to the Software Materials and Service which are made available from time to time by Canada Post.

#### Third Party EULAs

- 2.7 The Licensee agrees that by requesting access to any third party software (other than the Canada Post Offering) or data which is subject to a Third Party EULA (although the Licensee accepts that the Canada Post Offering is licensed pursuant to this Agreement rather than pursuant to a Third Party EULA), the Licensee is entering into such Third Party EULA (where this is the intention of the Third Party EULA), and the Licensor will therefore have rights and remedies against the Licensee pursuant to this Agreement and the Third Party EULA. Furthermore, the Licensee agrees that where it is entering into a Third Party EULA, it will bring any claims in respect of the third party software and data which is governed by that agreement, against the Licensor pursuant to the Third Party EULA and not against Canada Post.

#### Evaluations

- 2.8 The Licensee may be permitted to use certain software, data sets or services on an evaluation basis by Canada Post. If any such evaluation is expressly permitted by Canada Post, then the evaluation will be subject to the following additional conditions:
  - 2.8.1 any provisions on the Website which stipulate obligations or terms relating to the evaluation;



- 2.8.2 the Licensee will not use any software, data sets or services provided for evaluation purposes (collectively known as the “**Evaluation Offerings**”) for any commercial purpose whatsoever, nor within any form of live environment whereby the Licensee or a third party could suffer any form of loss from any issues with the Evaluation Offerings;
- 2.8.3 Canada Post will not be liable for any performance issues with such Evaluation Offerings;
- 2.8.4 any applicable provisions relating to the use of the Evaluation Offerings that are contained in the Third Party Contracts;
- 2.8.5 Canada Post may be obliged to provide details in respect of the Licensee’s evaluation use to the Licensor of the Evaluation Offerings, and the Licensee agrees to such disclosure being made by Canada Post to the respective Licensor;
- 2.8.6 the Licensee will permit the respective Licensors of the Evaluation Offerings to contact the Licensee for the purpose of monitoring the Licensee’s use of the Licensors’ intellectual property rights, as well as for checking compliance by the Licensee with the Third Party Contracts and for enforcing the licensors’ rights in respect of the Evaluation Offerings;
- 2.8.7 the Licensee will not use the Evaluation Offerings in any manner whatsoever after the expiration of any evaluation period granted by Canada Post.

### 3 Assurances

#### Provision of Software Materials

- 3.1 Canada Post agrees that:
  - 3.1.1 it has agreements in place with its third party licensors, which confirm that it has the right to provide access to the respective Software Materials and Services to the Licensee;
  - 3.1.2 it will use reasonable endeavours to:
    - 3.1.2.1 ensure that the Software Materials and Website is free of viruses;
    - 3.1.2.2 allow access to the Website and Software Materials during the term of this Agreement, subject to any maintenance or matters outside Canada Post’s or its subcontractors’ reasonable control, as the Licensee acknowledges that from time to time events may occur which affect the availability of the Service and Software Materials due to the nature of the internet, IT equipment and media;
    - 3.1.2.3 make available updates to the Database, where such updates are provided by its Licensors.

### Errors in Software and Data

- 3.2 The Licensee agrees to the following:
- 3.2.1 that software and data in general are not error-free and agrees that the existence of such errors in the Software Materials or Data Responses shall not constitute a breach of this Agreement;
- 3.2.2 where the software integration code (which for the avoidance of doubt, is not the Canada Post Offering) which is made available by Canada Post on the Canada Post Website, is provided on a free of charge basis, the Licensee agrees that such software integration code is provided on an 'as is' basis, without any assurance (including without limitation any warranty) whatsoever, and therefore no assurance whatsoever is provided (without limitation) in respect of its suitability, performance, functionality, quality or otherwise. The Licensee agrees that its sole and exclusive remedy in respect of such software integration code is to simply cease using such software integration code;
- 3.2.3 where the software integration code which is made available by Canada Post on the Canada Post Website, is provided on a chargeable basis by Canada Post to the Licensee, then the Licensee agrees that such software integration code is provided solely on the basis that it will materially comply with its stated description on the Canada Post Website. If there is any issue with such software integration code where it fails to materially comply with its stated description on the Canada Post Website, then the Licensee agrees that it will inform Canada Post of this fact (with reasonable details) in writing within 7 days of paying the licence fee in respect of such software integration code, and if Canada Post is unable to remedy the issue to achieve the afore-mentioned material compliance with the description on the Canada Post Website within 30 days of receiving the notification from the Licensee, then the Licensee's sole and exclusive remedy in respect of such software integration code, is a refund of the charges which the Licensee paid to Canada Post in respect of such software integration code (with the Licensee accepting that its licence to use such software integration code will terminate from the date of such refund);
- 3.2.4 if any third party makes any updates to its software or platform (other than updates to the Canada Post Offering), such that this causes an issue in respect of the Software or Service, then the Licensee accepts that this is not an issue with the Software or Service itself, nor a breach by Canada Post of any of its obligations under this Agreement. However, Canada Post may at its sole discretion, choose to provide any updates to the Canada Post Offering to address any compatibility issues caused by any third party changes.

### Canada Post Offering

- 3.3 Canada Post warrants from the date that the respective Software and Service is made available to the Licensee, that the Canada Post Offering will materially function in accordance

with its Documentation. In the event that the Canada Post Offering does not function in material accordance with the Documentation, and the Licensee notifies Canada Post of the non-compliance, the Supplier shall use reasonable endeavours to correct and provide within a reasonable period of time by patch or new release (at its option) that part of the Canada Post Offering which does not so comply, provided that such non compliance has not been caused by:

- 3.3.1 any modification, variation, configuration or addition to the Software or Service not performed by, or on behalf of, Canada Post (for the avoidance of doubt, any issues resulting from the acts or omissions of the Authorised Reseller are to be addressed by the Licensee directly with the Authorised Reseller as Canada Post will not be liable for such issues);
- 3.3.2 its incorrect use, abuse or corruption of the Software or Service; or
- 3.3.3 use of the Software or Service with other software, data or on equipment with which it is incompatible.

#### Exclusion of Assurances not Contained in this Agreement

- 3.4 To the extent permitted by law, and except as expressly set out in this Agreement, Canada Post excludes all other implied assurances (including without limitation, warranties and conditions) with respect to the Software Materials and Service, including without limitation any implied assurances relating to satisfactory quality, merchantable quality, quality or fitness for any particular purpose; whether (1) implied or arising by statute, common law, custom, a course of dealing, usage of trade or otherwise, or (2) otherwise sought to be expressly incorporated (including without limitation where sought to be incorporated by any express provision of this Agreement). In addition, the United Nations Convention on the International Sale of Goods is hereby expressly excluded from application to this Agreement.

#### Licensee Obligations

- 3.5 The Licensee agrees:
  - 3.5.1 where certain Software Materials are made available to the Licensee by Canada Post other than via the Canada Post Website, to maintain accurate and up-to-date records of the number and location of all copies of the Software Materials, and make such records available upon request to Canada Post, the Authorised Reseller or the Licensors;
  - 3.5.2 to have in place daily back-up and disaster recovery measures in respect of the systems and data with which the Software Materials or Service is used, and effective virus prevention measures (with the Licensee being responsible for virus scanning the Software Materials before, during and after installation and use; and the Licensee being responsible for its own virus protection measures to safeguard it against possible virus infection from use of the

Service);

- 3.5.3 to supervise and ensure use of the Software Materials and Service in accordance with the terms of this Agreement;
- 3.5.4 to ensure that no third party who is not authorised by this Agreement to access the Software Materials or Service, is provided with such access by the Licensee (whether such access is provided deliberately or negligently);
- 3.5.5 to ensure that any of the Licensee's systems that rely upon the use of the Software or Service for data entry or data lookup, also have a reasonable alternative manual means to continue to operate in the event that the Software Materials and Service are unavailable;**
- 3.5.6 to ensure that the Licensee's technical implementation avoids binding to a single datacentre and instead uses the standard Canada Post load balanced service (details of how to do this are available upon request from Canada Post);**
- 3.5.7 that Canada Post may block any search enquiries or Web Service Queries, which violate Canada Post's fair use policy;
- 3.5.8 to ensure that its employees, agents and other parties who are authorised by this Agreement to use the Software Materials and Service, are notified of and agree to the relevant provisions of this Agreement prior to such employee, agent or party using the Software Materials and Service;
- 3.5.9 to reproduce and include the copyright notice of such third parties as may be specified in or on the Software Materials or Service on all and any permitted copies;
- 3.5.10 not to undertake any act or omission, or use or otherwise make available the Software Materials or Service in a way which would cause Canada Post or its third parties to be in breach of the Third Party Licences;
- 3.5.11 not to undertake any act or omission, or use or otherwise make available the Software Materials or Service in a way which would cause the Licensee to be in breach of the Third Party EULAs;
- 3.5.12 where certain Software Materials are made available to the Licensee by Canada Post other than via the Canada Post Website, within 7 days after the date of termination of this Agreement, or termination of Canada Post's obligation to make available any part of the Software Materials or Service, for whatever reason, Licensee agrees to destroy or return the Software Materials (including all copies) in respect of which this Agreement has been terminated (in whole or in part), in the reasonable manner directed by Canada Post, and certify this in writing to Canada Post as having been completed.

### Mutual Reasonable Skill and Care

3.6 Each Party agrees to use reasonable skill and care in undertaking its obligations.

### Database

3.7 The Licensee acknowledges that the Database is provided on an 'as is' basis, and no assurance in respect of it is provided (including without limitation any assurance with regard to its correctness, accuracy, completeness, quality and fitness for any purpose, or otherwise). This exclusion of assurances applies only to the extent permitted by law. All implied: terms, conditions and warranties, (including without limitation those relating to satisfactory quality, merchantable quality, quality and fitness for a particular purpose); whether (1) implied or arising by statute, common law, custom, a course of dealing, usage of trade or otherwise, or (2) otherwise sought to be expressly incorporated (including without limitation where sought to be incorporated by any express provision of this Agreement) are hereby excluded to the maximum extent permitted by law for exclusion of implied terms.

### Authorised Reseller as Licensee's Agent

3.8 The Licensee agrees that any of the obligations of the Licensee can be exercised by the Authorised Reseller on the Licensee's behalf, with the Authorised Reseller acting as the Licensee's agent in this respect.

## 4 Price and Payment

### Charges

4.1 The charges (and the basis for calculation) for the Software Materials and Service is set out on the Website (as updated from time to time), or if different in a Canada Post Quote Sheet.

### Making Payments

4.2 All payments are due in accordance with the provisions contained on the Website, or if different in a Canada Post Quote Sheet. The Licensee confirms that it expressly authorises Canada Post (or the Authorised Reseller at Canada Post's discretion), to undertake the following if either: (1) the auto-top up payment option has been set up for the Licensee, either by the Licensee, or on the Licensee's behalf by the Supplier (the amount of a top up or an auto-top up is deemed to be a new Credit); or (2) the Licensee fails to make payment by the due date; payments can be automatically debited to the respective credit card (where such payment methods are provided as part of the registration process (as such details are updated in the Account Section thereafter by the Licensee from time to time)) at the respective intervals or dates, in order to meet the payment requirements of the Service. For the avoidance of doubt, if the Licensee's payment method can not be debited or is declined, then

the Licensee will still be liable for the respective charges which are due. Subject to the other provisions of this Agreement, top ups and auto-top ups to any Credit cannot be refunded.

#### Variation of Charges

- 4.3 The Licensee acknowledges that Canada Post may vary the charges applicable pursuant to this Agreement, from time to time (including without limitation, due to the ability of certain of its Licensors to vary the charges to Canada Post, its customers, or its resellers, pursuant to the Third Party Licences). The Licensee agrees that once it is informed of any such increase in charges, it will be deemed to accept such changes in the charges (acknowledging that this means that the Licensee may need to make further payments to Canada Post to increase its Credit (or purchase new Credit) in order to use the respective Online Service in view of any higher pricing applying in respect of that Online Service) if it does not reject such changes by terminating the Agreement (termination being for convenience rather than for cause or breach) in writing prior to the future date that the charges become effective from (the “**New Charges Date**”) (with it being the Licensee’s obligation to ensure that receipt of such written termination has been received by Canada Post from the Licensee prior to the New Charges Date, in order for such termination to be valid). However, the Licensee may only reject the increase in charges and terminate the Agreement pursuant to this Clause 4.3 if all of the following criteria are fulfilled: (1) the Licensee has been using the particular Online Service affected by the price increase on a regular monthly basis before the notification of the price increase; (2) the price increase is more than a 10% increase over the previously prevailing price for that particular Online Service; and (3) there are no other Online Services which are relevant to the Licensee (an Online Service will be relevant to the Licensee if the Licensee has previously applied any of its Credit to access such Online Service) which are unaffected by the price increase. Termination pursuant to this Clause 4.3 will result in the refund provisions pursuant to Clause 9.15 applying.

#### Refunds by Canada Post

- 4.4 Details of refunds are included in Clauses 3.3.3 and 9.15.
- 4.5 Except as expressly stated in this Agreement, no refunds are available in respect of any Credit (including without limitation, where any Credit expires at the end of the respective Licence Period without the full prepayment being used, as the purchase of the Credit provides the Licensee with the ability to purchase use of the Online Services (by expending the respective amount of the Credit equating to the price indicated on the Website for the respective Online Service) for up to the period of the Licence Period only).

#### Effect of Customer Purchase Orders

- 4.6 Where the Licensee issues a purchase order to Canada Post relating to the Software Materials,

Service or this Agreement, the Licensee agrees that unless otherwise agreed in writing by Canada Post on Canada Post's letterheaded paper signed by a company director of Canada Post, with express reference being made in writing to this Clause 4.6, the terms of such purchase order shall not apply and such purchase order shall be accepted by Canada Post for the sole purpose of referencing a purchase order reference in any invoices in order to facilitate payment by the Licensee.

#### Credit – Non-transferrable

- 4.7 Subject to clause 12, the Licensee acknowledges that Credit is not transferrable to third parties, nor may it be used for the benefit of third parties by the Licensee.

## 5 The Service

#### Account Code

- 5.1 With regard to the Service which is made available pursuant to the Canada Post Website, once the Licensee's registration is accepted by Canada Post, the Licensee will be given a unique Account Code and shall be granted a non-exclusive, non-transferable, licence to download and use the respective Software for the purpose of accessing and using the Service which it has paid for.

#### Further Service Details

- 5.2 Further details in relation to the use of the Service and the procedure for doing so varies according to the type of Service chosen by the Licensee. The relevant details are shown on the Website.

#### Licensee's Confirmation of Accuracy of Registration Details

- 5.3 The Licensee confirms that all information which it provides to register for the Service and any additional information which it provides pursuant to this Agreement, will at the time it is provided (and will continue to) be accurate and complete. If the information becomes inaccurate, incomplete or misleading any time thereafter, then (without prejudice to Canada Post's additional rights and remedies), the Licensee will promptly update its details in the Account Section, to ensure that its details remain accurate and complete. The Licensee also agrees that it will promptly notify Canada Post in writing if it ceases to use, or changes, its Authorised Reseller.

#### Licensee's Own Use Only & Audits

- 5.4 The Service is provided solely for the Licensee's own use pursuant to this Agreement. The Licensee is explicitly prohibited from reselling or attempting to resell Data Responses, or marketing or otherwise distributing the Software Materials or Service without the explicit written permission of Canada Post.
- 5.5 Canada Post reserves the right to check the URL of the Licensee's website which is using the Service to assist it in determining that the Service is being used in accordance with this Agreement.
- 5.6 The Licensee agrees to provide: reasonable access to the premises, facilities and personnel of the Licensee; and reasonable information; to allow Canada Post or the Licensors to verify that the Licensee is using the Software Materials and Service in accordance with the provisions of this Agreement and the requirements of the Licensors. Furthermore, the Licensee acknowledges that Canada Post may need to provide information in relation to the identity of the Licensee and the Licensee's use of the respective Software Materials and Service to the Licensors, as a requirement to allow the Licensee to use the Licensor's data, software and materials. The Licensee hereby expressly consents to such disclosure by Canada Post to the Licensors pursuant to this Clause 5.6, and for the respective Licensors to contact the Licensee in relation to the Licensee's use of the Licensor's licensed data, software and other materials.

#### Account & Technical Changes by Canada Post

- 5.7 Canada Post (acting reasonably) reserves the right to vary the technical specifications of the Software and Service at any time, or change Account Codes, Licence Keys or Passwords, giving the Licensee as much notice as is reasonably possible.

#### Support Arrangements

- 5.8 The Licensee acknowledges that Canada Post is under no obligation to provide any support in respect of the Software Materials or the Service, although Canada Post may choose to provide limited free support from time to time. If Canada Post provides any such support, it will be provided on a discretionary basis by Canada Post (and will give rise to no obligation for Canada Post to provide such further support on any future occasion). Canada Post reserves the right to charge for any support requests (at Canada Post's standard rate as in force at such time) or refuse any support requests in its sole discretion. The Licensee also acknowledges that Canada Post will not be liable for any support issues, unless Canada Post enters into a separate written support contract with the Licensee on Canada Post's standard support agreement which is applicable at that time, and in such circumstances, Canada Post's liability will be as agreed between the Parties in that separate support agreement. However, to the extent that Canada Post is held liable by a Court or similar competent body, for any support issues where a separate standard support agreement has not been entered into between



Canada Post and the Licensee, then Canada Post's liability will be subject to the limitations and exclusions of liability under Clause 8 (Liability) of this Agreement.

## 6 Records

### Visibility of Records by the Licensee

- 6.1 Canada Post shall keep records of the Licensee's usage of Credit, which information can be viewed by the Licensee within the Account Section. Canada Post's determination of such usage shall be definitive and final (provided that Canada Post has acted reasonably).

### Visibility of Records by Third Parties

- 6.2 The Licensee also acknowledges that Canada Post and PCA will (and the relevant Authorised Reseller may) be able to view certain of the details in the Account Section, together with other information related to the Licensee's use of the Service (including without limitation, the Licensee's Account Code and Licence Key).
- 6.3 The Licensee also hereby consents to the Licensee's data (including without limitation any personal data) being processed byon behalf of PCA, Canada Post, in England and Canada, for the purposes of this Agreement.

## 7 Password Security

### Confidentiality

- 7.1 The Licensee shall maintain the confidentiality and security of its Passwords and any Account Code and Licence Keys disclosed to it. The Licensee shall notify Canada Post immediately if it believes that the Account Code, Licence Key or Password has been, or is reasonably likely to be, used in any unauthorised way.

### Changing the Details

- 7.2 If there has been unauthorised use of the Licensee's account which is brought to Canada Post's attention, or if the Licensee has forgotten the Password, then Canada Post may issue a new Account Code, Licence Key, or Password to enable continued use of the Service (or alternatively Canada Post may disable the Licensee's access to the Account Section and Service if Canada Post reasonably believes that the unauthorised use of the Licensee's account is due to the wrongful or negligent acts or omissions of the Licensee). This is without prejudice to Canada Post's additional rights and remedies against the Licensee.

### Responsibility for Unauthorised Use

- 7.3 The Licensee agrees that it is liable and responsible for all transactions undertaken using the Account Code, Licence Key or Password. With regard to any unauthorised transactions, these must be promptly reported to Canada Post, and except to the extent that such transactions have occurred due to the wrongful acts of the Supplier, the Licensee accepts full responsibility and liability for such transactions.

## 8 Liability

### Caveat to Limitations and Exclusions of Liability

- 8.1 Nothing in this Agreement shall limit or exclude Canada Post's liability for: death; personal injury; fraud; fraudulent misrepresentation; and any liability which may not be lawfully limited or excluded.

### Exclusions

- 8.2 Subject to Clause 8.1, Canada Post shall not be liable in any circumstances to the Licensee for consequential, special, incidental or indirect losses or the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits; loss of revenue; loss of turnover; loss of sales; economic loss; loss of business or contracts; loss of anticipated savings or goodwill; loss of software or data; (or any losses arising from a claim by a third party for any of the afore-mentioned losses); whether such losses arise under contract, statute, tort (including without limitation, negligence), or otherwise and even if Canada Post had been advised of the possibility of such damages. However, Clauses 8.2 and 8.3, do not operate to negate any express refund obligations explicitly stated to be accepted by Canada Post in the Agreement.

### Liability Limits

- 8.3 Subject to Clauses 8.1 and 8.2, the aggregate liability of Canada Post for all claims arising under or in connection with this Agreement (whether arising under contract (including without limitation in relation to any deliberate repudiatory and fundamental breaches), statute, tort (including without limitation, negligence), or otherwise) shall be limited as follows in respect of the issues for which Canada Post is found liable:
- 8.3.1 in respect of the totality of all issues with the Software Materials, Services, Data Responses and Web Service Queries, where the causes giving rise to the liability on the part of Canada Post occur within a particular Year, to a total aggregate amount of that respective Year's charges paid by the Licensee to Canada Post (the "**Liability Cap**") (with such amount including any amounts paid to Canada Post by way of Credits in the respective Year (but for the avoidance of doubt, any amount subsequently spent from a Credit whether in the same or a different Year,

will not constitute an additional payment of charges for the purposes of this clause)), with such Liability Cap limiting Canada Post's collective liability for the totality of all such issues within that Year (and for the avoidance of doubt, if there are two issues within a Year, then the aggregate liability of Canada Post arising in respect of such 2 issues collectively, would equate to 100% of the charges paid in that respective Year and not 200% of the charges paid in that respective Year); or

- 8.3.2 in respect of the totality of all liability for collectively all other issues arising under or in connection with this Agreement, which are not limited by Clause 8.3.1 (subject to Clause 8.1), to the aggregate amount of \$1,000 (the "**Additional Liability Cap**").

#### Licensee's Acknowledgment

- 8.4 The Licensee acknowledges that the charges for the Service have been calculated on the basis that Canada Post will exclude and limit its liability as set out in this Agreement, and that the limitations and exclusions of liability in this Agreement are therefore reasonable.
- 8.5 Notwithstanding any provision to the contrary (but subject to Clause 8.1): the exclusions of liability in Clause 8 prevail; and Canada Post's liability under or in connection with this Agreement will not exceed the limits referred to in Clause 8.

#### Limitation Time Period

- 8.6 The Parties agree that Canada Post shall not be held liable for any liability in respect of events occurring during the term of this Agreement, where the respective claim is not brought through legal proceedings against Canada Post within 12 months following the earlier of: (1) when the event giving rise to the cause of action arose; and (2) termination of the Agreement.

#### Consequences for Exhaustion of Liability Limits

- 8.7 The Parties agree that either Party may terminate the Agreement if the Liability Cap or Additional Liability Cap becomes exhausted by the Licensee successfully bringing claims against Canada Post (which are determined by a Court, or agreed between the Parties, as owing) for at least the total amount of the Liability Cap or the Additional Liability Cap.

#### Licensee's Indemnity

- 8.8 The Licensee agrees that it will indemnify and keep indemnified Canada Post and the Licensors against all damages, losses, costs and expenses (including without limitation legal fees on an indemnity basis); whether any claim made against, or loss incurred or suffered by, Canada Post and/or the Licensors is wholly or in part attributable directly or indirectly to the Licensee breaching the provisions of this Agreement or the Third Party Contracts.

Furthermore, the Licensee agrees that if Canada Post or its Licensors are required to pay any sums to any third party as a result of the Licensee breaching the Agreement or the Third Party Contracts, then the Licensee will, immediately upon notice, reimburse Canada Post and its Licensors in full with the amount which Canada Post and its Licensors have had to pay to such third party as a result.

## 9 Term, Termination and Suspension

### Duration

- 9.1 The Agreement will continue in force until it is terminated in accordance with the provisions of the Agreement.
- 9.2 Any licences granted pursuant to the Agreement (either for use of the Service or any Software Materials) will be valid for the shorter of the following respective periods:
  - 9.2.1 where the use is granted subject to Credit, until such Credit expires through time or use as appropriate; or
  - 9.2.2 the specified period in the Account Section (or as otherwise agreed between the Parties in writing); or
  - 9.2.3 the termination of the Agreement in whole (or in part, and in such circumstances where it relates to the respective licence).

### Temporary Suspension of Service

- 9.3 Canada Post may temporarily suspend the Service and/or making available any of the Software Materials for emergency or urgent operational reasons but where reasonably practicable it will give the Licensee advance warning of such suspension. Where any suspension pursuant to this Clause 9.3 continues for more than 5 consecutive days or for more than 10 days in any twelve month Licence Period, then Canada Post will extend the respective Licence Period by the period of the suspension (provided that there are unused prepayments on the respective Credit which would expire if the Licence Period is not extended pursuant to this clause).

### Suspension for Abnormal Use

- 9.4 If Canada Post reasonably believes that the Licensee's abnormal use of the Service or Software Materials is impairing the Service's performance, then Canada Post may suspend the Licensee's access until the cause of the impairment has been resolved (such suspension will not affect the Licensee's requirement to continue paying the relevant charges for the

suspended Service or Software Materials, nor will it extend the respective Licence Period in respect of any Credit).

#### Termination or Suspension by Canada Post

- 9.5 Canada Post will have the right to suspend or terminate this Agreement immediately upon notice (however, suspension will occur automatically without notice if any payment or invoice is not paid by the due date by the Licensee) if the Licensee fails to comply with any provision of this Agreement (such suspension will not affect the Licensee's requirement to continue paying the relevant charges for the suspended Service, nor will it extend the respective Licence Period in respect of any Credit; termination of the Agreement in such circumstances will also not entitle the Licensee to any refund). Upon any termination, the Licensee must return or destroy the Software Materials in its possession, together with all copies, in the reasonable manner stipulated by Canada Post.
- 9.6 Canada Post may terminate the Agreement (in whole or in part) immediately upon notice to the Licensee at any time, if:
- 9.6.1 Canada Post is no longer able to make available the Service or Software Materials (in whole or in part) due to the acts or omissions of the Licensors;
- 9.6.2 any of the Third Party Contracts terminate for any reason;
- 9.6.3 the Licensors vary their terms and conditions, requirements, or pricing in a manner which adversely affects Canada Post or the Licensee; or
- 9.6.4 a Licensors claims that the use of the Database or the Software Materials in the manner in which they are being used by Canada Post or the Licensee is not permitted.
- 9.7 Canada Post may terminate the Agreement for convenience on 30 days notice to the Licensee at any time, and in such event, Canada Post will provide a pro-rata refund in accordance with Clause 9.15.
- 9.8 Either Party (the "**Terminating Party**") may terminate the Agreement immediately by notice to the other Party (the "**Defaulting Party**") if:
- 9.8.1 the Defaulting Party is unable to pay its debts as they fall due or otherwise becomes insolvent, or if a receiver or an administrative receiver is appointed over any or all of the assets of the Defaulting Party, or if any arrangement, compromise or composition of the Defaulting Party's debts is proposed or made by the Defaulting Party, or if the Defaulting Party enters or is entered into any proceedings for administration or liquidation or otherwise becomes subject to dissolution proceedings, or if any analogous event occurs in any other jurisdiction in which the Licensee carries out its business;

- 9.8.2 the Defaulting Party brings the Terminating Party into disrepute (or where the Licensee brings any of the Licensors into disrepute, then Canada Post may also terminate the Agreement pursuant to this Clause as well); or
- 9.8.3 the Defaulting Party discloses (other than as is reasonably necessary for the respective Party to perform its obligations pursuant to this Agreement (in which case such disclosure needs to be subject to a reasonable duty of confidentiality being accepted by the recipient of such confidential information)) to any third party any confidential information relating to the Terminating Party (Canada Post may also terminate the Agreement pursuant to this Clause 9.8.3 where the Licensee discloses the confidential information of any of the Licensors, without the prior written consent of Canada Post).
- 9.9 The respective Third Party EULA will automatically terminate with immediate effect if the corresponding Third Party Licence is terminated, and consequently the respective part of this Agreement will also automatically terminate immediately. Canada Post will provide prompt notice of such event to the Licensee, and the Licensee acknowledges that in such circumstances Canada Post will no longer be able to make available to the Licensee the Service or the Software Materials which were subject to the Third Party Licence and Third Party EULA.
- 9.10 Canada Post may terminate the Agreement in whole or in part for convenience at any time upon written notice (with such termination being effective on the date specified in the respective notice), where such termination is necessary for Canada Post to comply with the Third Party Licences.
- 9.11 Canada Post may terminate one or more Online Services at any time. If:
- 9.11.1 such termination results in there being no Online Services available on the Canada Post Website against which any Credit can be used; or
- 9.11.2 the Licensee informed Canada Post in writing at the date of purchasing the respective Credit that it was only purchasing the Credit for a particular service featured within the Online Services and this express note was included on the invoice and it is such noted service which has been terminated; then the provisions of Clause 9.15 will apply (in the case of Clause 9.11.2, the refund referred to in clause 9.15 will only apply in respect of the Credit referred to in Clause 9.11.2). In all other circumstances, termination of the respective Online Services by Canada Post pursuant to this Clause 9.11 will not result in any refunds nor extensions of the Licence Period.

#### Termination by the Licensee

- 9.12 The Licensee may terminate the Agreement with immediate effect, if Canada Post is in material breach of this Agreement (however, where such breach is capable of remedy, the

Licensee must provide Canada Post with at least 30 days written notice (with express written reference to its right to terminate the Agreement pursuant to this Clause) allowing Canada Post to remedy the breach, and only if Canada Post does not remedy the breach within this time period, may the Licensee terminate the Agreement).

### [Consequences of Termination](#)

- 9.13 Termination of the Agreement is without prejudice to both Parties' rights and remedies.
- 9.14 The provisions of this Agreement which are expressed to, or intended to, survive termination, shall continue in full force and effect.

### [Refunds on Termination](#)

- 9.15 Where (1) the Agreement is terminated by Canada Post (other than directly or indirectly as a result of the wrongful acts or omissions of the Licensee), or (2) the Agreement is terminated by the Licensee pursuant to Clauses 4.3, 9.8 or 9.12, or (3) the respective Online Service is terminated by Canada Post pursuant to Clause 9.11, then the Licensee will be entitled to a pro-rata refund of the amount of any unused prepayments with regard to any unexpired Credit at the date of termination of the Agreement (or in the case of clause 9.11, at the date of termination of the respective Online Service) which it is no longer able to use for the unexpired Licence Period, with such payment being calculated and determined by Canada Post in its sole discretion (with Canada Post acting reasonably, but with Canada Post being able to discount the refund to reflect the period of the Licence Period which was remaining immediately before the termination of the Agreement (or in the case of clause 9.11, the period of the Licence Period which was remaining immediately before the termination of the respective Online Service)). The Licensee agrees that this is the sole and exclusive financial remedy of the Licensee in such circumstances.

## 10 Force Majeure

- 10.1 If either Party is prevented from complying with its obligations due to any event beyond its reasonable control (such event being referred to as a "**Force Majeure Event**") (including without limitation, any issues arising from the data, supplied by the Licensors), it shall not be in breach of this Agreement or otherwise liable to the other Party by reason of any delay in performance or non-performance of any of its obligations due to such events. However, this Clause does not excuse the Licensee from complying with its payment obligations, nor from compliance with the Third Party Contracts, by itself claiming the benefit of a Force Majeure Event.

- 10.2 If a Force Majeure Event continues for a period of more than 14 consecutive days, then either Party may terminate the Agreement for convenience during the continuance of such Force Majeure Event. In such circumstances, both Parties acknowledge that there will be no compensation due from either Party to the other for termination in such circumstances.
- 10.3 If a Force Majeure Event continues for a period of more than 14 consecutive days, where the Force Majeure Event prevents Canada Post from making available any Online Services, then the respective Licence Period will be extended for the same period as the suspension of the Online Services (provided that there are unused prepayments on the respective Credit which would expire if the Licence Period is not extended pursuant to this clause).

## 11 Assignment and Sub-contracting

- 11.1 The Licensee may not assign this Agreement (whether in whole or in part) without the prior written consent of Canada Post.
- 11.2 Canada Post may subcontract and assign any or all of its obligations and rights pursuant to this Agreement, without requiring the prior consent of the Licensee.

## 12 Third Party Group Company & Related Organisation Use

- 12.1 Where the Licensee is permitted by the Agreement to allow use of the Software Materials or Services by its group companies or other related organisations, then the Licensee confirms that it will remain responsible for all payment obligations, and the Licensee accepts responsibility for ensuring compliance by such third parties with the Agreement (with the Licensee ensuring that such third parties comply with the same obligations and restrictions as those that the Licensee is subject to, in relation to the Agreement). The Licensee agrees to be liable to Canada Post and the Licensors in respect of the acts and omissions of such third parties in respect of this Agreement. The Licensee also agrees that any claim by such third parties of the Licensee, may only be brought by the Licensee on behalf of such third parties, and then only subject to the provisions of the Agreement (including without limit, the limitations and exclusions of liability).
- 12.2 The Licensee agrees that it is authorised to accept as agent, on behalf of its group companies and its related third party organisations, any changes made to the Agreement by Canada Post and the Licensors.

## 13 Variations

- 13.1 No variation of this Agreement shall be effective unless it is in writing and is signed by an authorised representative of each Party, although any pricing arrangements tailored to the Licensee may be expressly agreed by Canada Post by email.



- 13.2 Any discretion exercised by Canada Post from time to time, to afford the Licensee any additional rights or benefits which are not afforded by the Agreement (in circumstances where this was the clear and deliberate intention of Canada Post), will only operate on that occasion and not operate as a variation of the Agreement with regard to any other occasions, unless otherwise expressly stated with the provisions of Clause 13.1 having been complied with.

## 14 Severability

- 14.1 If at any time any part of this Agreement becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this Agreement and the remaining provisions of this Agreement shall continue unaffected. In such circumstances, the Parties will use reasonable endeavours to substitute the omitted provision with a valid replacement which achieves to the closest extent reasonably and lawfully possible, the intention of the omitted provision.

## 15 Waiver

- 15.1 No provision of the Agreement shall be waived unless agreed to be waived by both Parties in writing (however, where a right must be exercised within a specified time period, then that right will be waived if it is not exercised within such time period). If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both Parties in writing.

## 16 Entire Agreement

- 16.1 This Agreement contains the entire agreement between the Parties with respect to the subject matter of this Agreement (the “**Subject Matter**”) and supersedes and replaces all other written and oral communications between the Parties relating to the Subject Matter. Except for the express provisions in this Agreement (and any express provisions contained in any documentation which is expressly incorporated), all other warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise are hereby excluded to the maximum extent permitted by law. The Parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this Agreement, whether as an inducement to enter into this Agreement or otherwise. This Clause 15.1 operates subject to Clauses 15.2 and 15.3.
- 16.2 Notwithstanding any provision to the contrary in this Agreement, all implied: terms, conditions and warranties, (including without limitation those relating to satisfactory quality, merchantable quality, quality and fitness for purpose); whether (1) implied by

statute, common law, custom, usage or otherwise, or (2) otherwise sought to be expressly incorporated (including without limitation where sought to be incorporated by any express provision of this Agreement) are hereby excluded to the maximum extent permitted by law. This Clause 15.2 operates subject to Clause 15.3.

- 16.3 Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party's liability for fraudulent misrepresentations.

## 17 Law and Jurisdiction

- 17.1 This Agreement and any dispute or claim arising in connection with it shall be governed by the laws of Ontario and the laws of Canada applicable therein.

## 18 Notices & Privacy Policy

### Notices

- 18.1 Any notices to Canada Post in relation to this Agreement, must be sent in writing to The Legal Department, Canada Post 2701 Riverside Drive Suite N1110, Ottawa, Ontario K1A 0B1 or by e-mail to [legal.services@canadapost.ca](mailto:legal.services@canadapost.ca) . Notices will only be validly served pursuant to this Agreement by the Licensee, where the notice has been sent by tracked delivery (which can reasonably demonstrate that the notice was received by Canada Post) or where receipt of the notice is acknowledged in writing by Canada Post.
- 18.2 Canada Post may provide notices under this Agreement by email or post to the Licensee, using the contact details provided by the Licensee upon acceptance of this Agreement.
- 18.3 The Licensee agrees that Canada Post and the Licensors may use the information gained pursuant to this Agreement in accordance with the Canada Post Privacy Policy (<https://www.canadapost.ca/cpo/mc/personal/help/privacy.jsf>).