

QAS Pty Ltd End User Agreement

New Zealand Post

This Agreement contains the terms and conditions specified by New Zealand Post in respect of your use of New Zealand Post's Postal Address File as part of the software supplied to you by QAS.

Definitions

In this Agreement:

Data means the Postal Address File, as more particularly described at www.nzpost.co.nz/sendright, as such description is amended from time to time.

Documentation means any user and technical documentation supplied by the Licensor with the Data to enable the Licensee, End Users or any of their personnel to use the Data, and any confidential information of the Licensor.

End User means any person to whom Data is permitted to be distributed, sold or made available by the Licensee.

Intellectual Property Rights includes copyright and all rights conferred under statute, common law or equity in relation to inventions (including patents), registered or unregistered trade marks, registered or unregistered designs, circuit layouts, databases, confidential information, know-how, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields anywhere in the world, together with all right, interest or licence in or to any of the foregoing.

Licensee means QAS Pty Ltd, at 111 Pacific Highway, North Sydney, NSW, Australia 2060.

Licensee Software means the software providing the address data services supplied to the End User by the Licensee which incorporates the Data.

Licensor means New Zealand Post Limited, at Wellington NZ.

- i. The End User (and any of its agents and sub-contractors) may only use Data in accordance with this Agreement, for the End User's internal purposes, and only as part of or in combination with the Licensee Software and/or any related services provided to it by the Licensee. The End User must procure that any agents or sub-contractors to whom the Data is provided comply with the terms of this Agreement.
- ii. The End User agrees that the Data and the Documentation and all Intellectual Property Rights and other rights in the Data and the Documentation from time to time remain the property of the Licensor and its licensors (as the case may be).
- iii. The End User must not remove or tamper with any disclaimer or copyright notice attached to or used in relation to Data.
- iv. The End User has no right to use any of the trade marks, business names or logos of the Licensor unless expressly stated otherwise in any sub-licence granted to the End User by the Licensee within the terms of any licence granted by the Licensor to the Licensee.

- v. The End User must not at any time (a) copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Data or relay or disseminate the same to any other party; (b) other than as permitted under (i) above, provide the Data to (or allow the provision of the Data to, or access to the Data of) any agents or sub-contractors of the End User without the prior written consent of the Licensor; or (c) sub-license all or any part of the Data to any person, or purport or attempt to do so, in each case, unless expressly permitted otherwise by the Licensor in writing.
- vi. The End User may make a reasonable number of back-up copies of the Data for security purposes. The End User may only use such back-up copies for archive retention and retrieval purposes, and only during the term of the licence.
- vii. If any licence under which a third party grants to the Licensor the right to incorporate the third party's material in the Data is terminated, the licence to the End User in respect of that material terminates and the End User must, at the Licensor's request, remove the same material from any copies of any Data held by the End User within 90 days.
- viii. The End User must not make any statement or claim relating to the Data being approved, recommended or endorsed by the Licensor or do anything similar or imply that such is the case, unless the Licensor has expressly given its prior written consent to the form and content of such claim.
- ix. The End User must comply with the requirements of the Privacy Act 1993 and any other applicable law or regulations relevant to its possession or use of Data.
- x. The End User must ensure that its personnel, agents and sub-contractors comply with the above terms as if they were the Licensee.
- xi. The End User acknowledges that the Licensor has made no warranty that the Data will be free from errors, omissions, inaccuracies, viruses or other destructive code, or that the Data will be fit for the End User's purpose or for use in any specific technical environment.
- xii. On receipt of an update to any Data (including as part of any update of the Licensee Software) (such updates each being an "**Update**"), the End User must as soon as practicable cease use of any previous version of the Data (and must in any event cease such use by the end of the term of the licence) and commence use of the Update.
- xiii. The End User's right to use each Update shall terminate six months after the date on which such Update was released by the Licensor. Early termination of the Licensee's licence from the Licensor shall not affect the End User's right to use any Data provided that such early termination was not caused by or connected with any act or omission of the End User.
- xiv. The End User must keep the confidential information of the Licensor, including the Data, confidential.

- xv. The End User acknowledges and agrees that Land Information New Zealand (“**LINZ**”) and the Crown hold absolutely and exclusively certain material which has been licensed to the Licensor and incorporated into the Data, and that LINZ and the Crown do not assign any copyright or other intellectual property rights in such material either to the Licensor, Licensee or the End User. The End User further acknowledges and agrees that LINZ and the Crown shall not, in any circumstances, be liable for any loss or damage (even if LINZ or the Crown has been advised of the possibility of such loss or damage, and including, without limitation, any direct loss, indirect loss, consequential loss, loss of profits, business interruption loss or loss of data) suffered by the End User or any other person in connection with this Agreement. In the event that any exclusion of the liability of LINZ or the Crown set out in this clause is inapplicable, or is held unenforceable, the liability of each of LINZ and the Crown under or in connection with this Agreement, or arising out of any use, reproduction, modification, or creation of compilations or derivative works of or from the Data (by the End User or any other person), whether that liability arises in tort (including negligence), equity or any other basis, shall be limited to the fees paid by the Licensor for the material incorporated in the Data which gave rise to the loss or damage, exclusive of GST. For the purposes of the Contracts (Privity) Act 1982, this clause confers a benefit on, and is enforceable by, LINZ and the Crown.
- xvi. The End User agrees and represents that it is acquiring the Data and any Documentation for the purposes of a business and that the Consumer Guarantees Act 1993 (New Zealand) does not apply.
- xvii. The End User must indemnify the Licensor and keep the Licensor indemnified against any claim, proceeding, damage, liability, loss, cost or expense (including legal costs on a solicitor and own client basis), whether arising in contract, tort (including for negligence) or otherwise, arising out of or in connection with any breach by the End User of any of the above terms or the use of the Data by the End User or any other person who has obtained the Data from an End User. The End User’s total aggregate liability to the Licensor under this clause xvii shall not exceed \$250,000.
- xviii. The Licensor must have rights to enforce the above terms for the purposes of the Contracts (Privity) Act 1982, and is entitled to terminate the End User’s right to use any Data if the End User breaches any of those terms.