

The Software Bureau Ltd - LICENCE AGREEMENT

1 Interpretation

- 1.1 In these Conditions and the Contract (which expression includes any attachments thereto) the following words and phrases shall, unless the context otherwise requires, have the following meanings:
- 1.1.1 "Conditions" means the standard terms and conditions for the grant of a licence as set out in this document (unless the context otherwise requires) and includes any special instructions which, if described as such and agreed in writing between the Licensor and the Licensee, shall, in the event of and to the extent of any inconsistency between such special instructions and these Conditions, take precedence over these Conditions;
- 1.1.2 "Contract" means the contract for the licence to the Licensee of the Software on these Conditions which is formed either on signature of the Licensor's licence agreement by the Licensee, or on any written quotation of the Licensor which is accepted by the Licensee, or by the Licensee clicking an "I Accept" or similar button, or by the Licensee's use of the Software;
- 1.1.3 "Intellectual Property Rights" means all patents, copyrights, design rights, trademarks, service marks, trade secrets, know-how, database rights, actual property rights (whether registered or unregistered) and all applications for the same, anywhere in the world;
- 1.1.4 "Modification" means:
- 1.1.4.1 any change or amendment to, or upgrade or new version of, the Software; or
- 1.1.4.2 any new release of the Software which (in either case) from time to time is publicly marketed and offered for purchase by the Licensor in the course of its normal business;
- 1.1.5 "Specification" means the document detailing the specification of the Software published by the Licensor;
- 1.1.6 "Software" means:
- 1.1.6.1 the computer programs listed in the Contract or downloaded or used by the Licensee); and
- 1.1.6.2 any Modification which is acquired by the Licensee during the subsistence of the Contract;
- 1.1.7 "User" means any employee or officer of the Licensee;
- 1.2 The headings in these Conditions do not affect its interpretation. Save where the context otherwise requires, references to sub-clauses and clauses are to sub-clauses and clauses of these Conditions.
- 1.3 Unless the context otherwise so requires:
- 1.3.1 references to the Licensor and the Licensee include their permitted successors and assigns;
- 1.3.2 references to statutory provisions include those statutory provisions as amended or re-enacted; and
- 1.3.3 references to any gender include all genders.
- 1.4 Any Contract shall have effect subject to these Conditions, which shall govern the Contract to the exclusion of any other terms and conditions subject to which the Contract is accepted or purported to be accepted.
- 1.5 No variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of the Licensor and the Licensee.
- 1.6 The Licensor's employees or agents are not authorised to make any representations concerning the Software unless confirmed by the Licensor in writing. In entering into the Contract the Licensee acknowledges that it does not rely on any such representations which are not so confirmed.
- 1.7 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Licensor shall be subject to correction without any liability on the part of the Licensor beyond that set out in these Conditions.

2 Licence

- 2.1 In consideration of the payments due by the Licensee to the Licensor pursuant to the terms of these Conditions, the Licensor hereby grants to the Licensee for the term of the Contract pursuant to Condition 8 a non-exclusive, non-transferable and non-sublicensable licence to allow its Users to use the Software on the terms and conditions of the Contract.
- 2.2 For the purpose of sub-clause 2.1 above, "use" of the Software shall be restricted (subject to any express provision in the Contract to the contrary) to use of the Software in object code form for the term of the Contract specified on the signature/commercial terms section of the Contract and any renewal term in accordance with Condition 8, for the sole purpose of processing data on behalf of the clients to whom the Licensee is providing data services.
- 2.3 The Licensee may:
- 2.3.1 install and use the Software for its normal business purposes only in connection with providing data services on behalf of its clients, subject always to the remaining provisions in this Condition:
- 2.3.1.1 on one CPU if the licence is a single-user licence or the Software is for single use; or
- 2.3.1.2 if the licence is a multi-user or network licence, for the number of concurrent users agreed between the Licensee and the Licensor;
- 2.3.2 provided the Licensee complies with the provisions in Condition 2.4.1 and 2.4.5, make 1 copy of the Software for backup purposes.
- 2.4 Except as expressly set out in the Contract, or as permitted by any local law, the Licensee undertakes:
- 2.4.1 not to copy the Software or its associated content and data, except where such copying is incidental to the normal use of the Software or where it is necessary for the purpose of back-up or operational security;
- 2.4.2 not to rent, lease, sub-licence, resell, loan, translate, merge, adapt, vary or modify the Software or deal with the licence granted under the Contract;
- 2.4.3 not to make alterations to, or modifications of, the whole or any part of the Software nor permit the Software or any part of it to be combined with, or become incorporated into, any other programs;
- 2.4.4 not to disassemble, decompile, reverse engineer or create derivative works based on the whole or any part of the Software nor attempt to do any such things except to the extent that (by virtue of section 296A of the Copyright, Designs and Patents Act 1988) such actions cannot be prohibited because they are essential for the purpose of achieving inter-operability of the Software with another software program, and provided that the information obtained by the Licensee during such activities is (i) only used for the purpose of achieving interoperability of the Software with another software program; (ii) is not disclosed or communicated without the Licensor's prior written consent to any third party; and (iii) is not used to create any software which is substantially similar to the Software;
- 2.4.5 to keep all copies of the Software secure and to maintain accurate and up to date records of the number and locations of all copies of the Software;
- 2.4.6 to include the Licensor's copyright notice on all entire and partial copies of the Software in any form;
- 2.4.7 not to provide or otherwise make available the Software or its associated content and data in any form in whole or in part;
- 2.4.8 not to permit or enable use of the Software via any communications network or by means of remote access except by its Users in accordance with the terms of the Contract.
- 2.5 The Licensee shall comply with the terms and conditions of all third party software, data and content licences concerning code, content or data contained in the Software or otherwise made available by the Licensor. A copy of these third party licences is available on request or attached to these terms and conditions.
- 2.6 Licensee shall ensure compliance by the Users of the terms of the Contract and shall be responsible for all acts and omissions of the Users in respect of the Software and Contract.
- 2.7 The Licensor shall be entitled at any time on reasonable notice to the Licensee to audit the Licensee's compliance with the terms of the Contract.

3 Evaluation licence

- 3.1 Where the Licensee opts for an evaluation licence, in return for the mutual rights and obligations set out in the Contract, the Licensor grants the Licensee the right to use the Software for a period of 7 days from when it is installed or downloaded by or on behalf of the Licensee ("Evaluation Period"). During the Evaluation Period the Licensee can decide whether or not the Software meets its requirements. If the Licensee has an evaluation licence, it may not make any copies of the Software and shall not be entitled to receive any support, maintenance or other services concerning the Software.
- 3.2 Before or upon expiry of the Evaluation Period:
- 3.2.1 If, in the Licensee's sole opinion, the Software has met its requirements, and the Licensee wishes to continue to use the Software, or if during the Evaluation Period the Licensee shall use the Software for commercial purposes, including the provision of data services to its clients, the Licensee shall pay to the Licensor the licence fee(s) specified by the Licensor and this Contract shall then remain in full force and effect.
- 3.2.2 If the Licensee decides that the Software does not meet its requirements, or otherwise does not wish to enter into a paid up licence, it shall destroy or delete the Software and all copies, in any form including partial copies or modifications of the Software received from the Licensor or made in connection with this Contract. Any rights of the Licensee to use the Software shall cease and the Contract shall automatically terminate.
- 3.3 During the Evaluation Period, the Licensee hereby agrees that the Software is provided "AS IS" with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 3.4 The license restrictions set out in Condition 2 shall apply.

4 Postcode Address File "PAF" Licence

- 4.1 Where a PAF licence is included within the software the End User terms for the relevant PAF "PAF Terms" product will be forwarded with or attached to this licence or can be found at http://www.thesoftwarebureau.com/wp-content/uploads/2018/08/Royal_Mail_PAF_-_End_User_Minimum_Terms.pdf.
- 4.2 The PAF licence contains the minimum terms of use dictated by Royal Mail for the use of the PAF file and must be adhered to when using the file within the software.
- 4.3 Upon acceptance of these terms and conditions you are deemed to have accepted the PAF Terms.
- 5 Suppression and Home Mover
- 5.1 Where either an "Embedded Suppression" licence is included within Cygnus, or the Licensee uses either SwiftCore (Cloud hosted processing platform) or SwiftCleanse, separate Minimum Terms will be attached to this licence or available online at <https://www.thesoftwarebureau.com/legal/#9454813041acc1739>. These are the standard industry terms for the use of suppression and home mover data and are applicable to all suppression and home mover files available within either Cygnus, SwiftCore or SwiftCleanse, with the exception of Royal Mail National Change of Address "NCOA". Where an NCOA licence is included within the software then separate Minimum Terms documents for NCOA Suppress and NCOA Update from Royal Mail will be forwarded or available to download online - <https://www.thesoftwarebureau.com/legal/#c17ed85204b4e7711> and will be deemed to be accepted by the Licensee. The Licensee is also obliged to inform their customers (the End User) of the NCOA Suppress and NCOA Update minimum terms documents and share said documents with them.
- 5.2 Users of the Embedded Suppression module in Cygnus must send their royalty submission log file to the Licensor at the end of each month regardless of whether any royalties have been recorded. The Licensor will prepare and forward a royalty declaration report from this file for verification prior to invoicing. Where no queries have been raised within seven days of the month end an invoice will be raised for the suppression files used. Provided that the Licensor shall have the right at any time on reasonable notice to audit the Licensee's use of such data and, where such audit reveals an error in the Licensee's report, the Licensor shall be entitled to invoice any additional data usage.
- 5.3 Users of SwiftCore or SwiftCleanse will be sent a royalty declaration report by the Licensor at the end of each month for verification prior to invoicing. Where no queries have been raised within seven days of the month end an invoice will be raised for the appropriate data consumption from each data set. Provided that the Licensor shall have the right at any time on reasonable notice to audit the Licensee's use of such data and, where such audit reveals an error in the Licensee's report, the Licensor shall be entitled to invoice any additional data usage.

6 Conjure Licence

- 6.1.1 Where a Conjure licence is included within Cygnus it must be used in conjunction with a PAF (Postcode Address File) licence, the End User terms for the relevant PAF "PAF Terms" product can be located via this [link](#), downloaded online from <https://www.thesoftwarebureau.com/legal/#06a59e2e3a5c6b217> or attached to this licence document.
- 6.1.2 The PAF licence contains the minimum terms of use dictated by Royal Mail for the use of the PAF file and must be adhered to when using the file within Cygnus and Conjure.
- 6.1.3 Upon acceptance these terms and conditions you are deemed to have accepted the PAF Terms.
- 6.1.4 Use of PAF data generated by the Conjure module is on a one-time-use basis only.
- 6.1.5 Conjure usage fees - Where a "Conjure" licence is included within Cygnus, a separate usage fee will be payable and is managed by the Royalty Management licence within Cygnus.
- 6.1.6 Users of the Conjure File must send their royalty submission log file to the Licensor at the end of each month regardless of whether any royalties have been recorded. The Licensor will prepare and forward a royalty confirmation report from this file for verification prior to invoicing. Where no queries have been raised within seven days of the month end an invoice will be raised for the royalties due. Provided that the Licensor shall have the right at any time on reasonable notice to audit the Licensee's use of such data and, where such audit reveals an error in the Licensee's report, the Licensor shall be entitled to invoice any additional data usage.

7 Payment

- 7.1 The Licensee shall pay to the Licensor:
- 7.1.1 the annual licence fee specified in the Contract (as amended pursuant to Condition 7.3) within 30 days of the date of the Licensor's invoice; and
- 7.1.2 the applicable royalty fees within 14 days of the date of the Licensor's invoice. The Licensee shall report all usage of licensed data to the Licensor within 7 days of the end of the month and the Licensor shall issue an invoice based on such report.
- 7.2 The annual licence fee shall be automatically due and payable unless the Contract is terminated pursuant to Conditions 8 or 9.

7.3 The Licensor shall have the right to change the annual licence fee with effect from the end of the then current licence term subject to giving the Licensee not less than 3 months' notice. If the Licensee does not agree with the change in licence fee, it shall discuss this with the Licensor as soon as reasonably practicable. If no agreement can be reached, the Licensee shall have the right to terminate the Contract on giving to the Licensor not less than 30 days' written notice, to expire at the end of the then current licence term.

7.4 The Licensor shall have the right to change the Suppression and Home Mover Royalty Fees at any time subject to giving the Licensee not less than 3 months' notice. If the Licensee does not agree with the change in the Royalty Fees, it shall discuss this with the Licensor as soon as reasonably practicable. If no agreement can be reached, the Licensee shall have the right to terminate the Contract on giving to the Licensor not less than 30 days' written notice, to expire at the end of the then current licence term.

7.5 All amounts payable under the Contract shall be exclusive of VAT, which shall be charged in addition at the then prevailing rate.

7.6 If the Licensee fails to pay any amount by the due date, the Licensor shall be entitled to:

7.6.1 charge interest on the overdue amount at a rate of 4% per annum above the rate then in force of Barclays Bank plc or at the rate prescribed by the Late Payment of Commercial Debts (Interest) Act 1998, as amended; and/or

7.6.2 suspend the licence and the Client's access to the Software and associated content and data; and/or

7.6.3 terminate the Contract.

8 **Term**

8.1 The Contract shall continue for the initial term agreed between the parties and shall automatically continue for 12 month periods on the expiry of such initial term or any anniversary of such expiry, unless

8.1.1 terminated by either party by giving to the other not less than 3 months' written notice to expire at the end of the said initial term or the next 12 month renewal term; or

8.1.2 terminated pursuant to Condition 9.

9 **Termination**

9.1 The Licensee shall have the right, without prejudice to its other rights or remedies, to terminate the Contract pursuant to Condition 8.1.1

9.2 Either party shall have the right, without prejudice to its other rights or remedies, to terminate the Contract immediately by written notice to the other if:

9.2.1 the other fails to pay any amount due pursuant to the provisions of the Contract; or

9.2.2 is in material or persistent breach of any of the provisions of the Contract; or

9.2.3 is in breach of any of the provisions of the Contract and the other shall have failed to remedy that breach within 30 days after receiving written notice requiring it to remedy that breach; or

9.2.4 is unable to pay its debts (within the meaning of section 123 of the Insolvency Act 1986); or becomes insolvent; or is subject to an order or a resolution for its liquidation, administration, winding-up or dissolution (otherwise than for the purposes of a solvent amalgamation or reconstruction); or has an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of its assets; or enters into or proposes any composition or arrangement with its creditors generally; or is subject to any analogous event or proceeding in any applicable jurisdiction.

9.3 The Licensor may terminate the Contract if the Licensee fails to acquire and install (or make arrangements for the installation of) a Modification within six months of the Licensor's notifying the Licensee that such Modification is a requirement for the Contract to continue.

10 **Consequences of Termination**

10.1 Any termination of this Contract (howsoever occasioned) shall not affect any accrued rights or liabilities of either party nor shall it affect the coming into force or the continuance in force of any provision of this Contract which is expressly or by implication intended to come into force or continue in force on or after that termination.

10.2 Upon termination for any reason:

10.2.1 all rights granted to the Licensee shall cease;

10.2.2 the Licensee must cease all activities authorised by the Contract;

10.2.3 the Licensee must immediately delete or remove the Software from all computer equipment in its possession and immediately destroy or return to the Licensor (at the Licensor's option) all copies of the Software then in the Licensee's possession, custody or control and, in the case of destruction, certify to the Licensor that it has done so.

11 **Modifications**

11.1 The Licensor will inform the Licensee of any Modifications and will either provide a Modification without additional charge or will notify the Licensee of the cost of a Modification.

12 **Warranty**

12.1 The Licensor warrants that the Software will conform in all material respects to the Specification for a period of three months from the date of the Contract (the "Warranty Period"). If, within the Warranty Period, the Licensee notifies the Licensor of any defect or fault in the Software in consequence of which it fails to conform in all material respects with the Specification, and such defect or fault does not result from the Software having been amended or used for a purpose or in a context other than the purpose or context for which it was designed (as set out in the Specification), the Licensor shall, at the Licensor's option, do one of the following:

12.1.1 repair the Software; or

12.1.2 replace the Software; or

12.1.3 refund the licence fee.

12.2 The warranties in Condition 12.1 will apply to any Modification which is acquired by the Licensee during the course of the Contract as though the references to the date of the Contract were references to the date on which such Modification was acquired.

12.3 The Licensor's obligations set out in Condition 12 shall be its sole obligation and the Licensee's sole remedy in respect of a break of the warranty at Condition 12.

13 **Limitation of liability**

13.1 The Licensee hereby agrees to afford the Licensor not less than thirty days (following notification thereof by the Licensee) in which to remedy any default hereunder.

13.2 The Licensor shall have no liability to the Licensee in respect of any default unless the Licensee shall have served notice of the same upon the Licensor within three months of the date it became aware of the circumstances giving rise to the default or the date when it ought reasonably to have become so aware.

13.3 Any notice of default served on the Licensor pursuant to Condition 13.2 above shall be deemed to have been withdrawn unless proceedings in respect thereof have been commenced (being both issued and served) within three months of the date of giving such written particulars.

13.4 Nothing in this Condition shall confer any right or remedy upon the Licensee to which it would not otherwise be legally entitled.

13.5 The price for the Contract is determined on the basis of the exclusions from, and limitations of, liability contained in these Conditions. The Licensee expressly agrees that these exclusions and liabilities are reasonable because of (amongst other matters) the likelihood that the amount of damages awardable to the Licensee for a breach by the Licensor of these Conditions may otherwise be disproportionately greater than the price for the Contract.

13.6 The Licensee acknowledges that the Software has not been developed to meet the Licensee's individual requirements, and that it is therefore the Licensee's responsibility to ensure that the facilities and functions of the Software meet the Licensee's requirements.

13.7 The Licensor only supplies the Software for normal business use for the Licensee's business (as defined in Condition 2.3.1), and the Licensee agrees not to use the Software for any re-sale purposes.

13.8 The Licensor shall not under any circumstances whatever be liable to the Licensee, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with the Contract for loss of profits, sales, business or revenue; business interruption; loss of anticipated savings; loss or corruption of data or information, loss of business opportunity, goodwill or reputation; or any direct or consequential loss or damage.

13.9 Other than the losses set out in Condition 13.8 (for which the Licensor is not liable), the Licensor's maximum aggregate liability under or in connection with the Contract whether in contract, tort (including negligence) or otherwise, shall in all circumstances be limited to a sum equal to the licence fee. This maximum cap does not apply to Condition 13.10.

13.10 Nothing in the Contract shall limit or exclude the Licensor's liability for:

13.10.1 death or personal injury resulting from the Licensor's negligence

13.10.2 fraud or fraudulent misrepresentation;

13.10.3 any other liability that cannot be excluded or limited by English law.

13.11 The Licensee acknowledges that the data and content supplied with the Software is not the Licensor's proprietary data and content and further acknowledges that it is its responsibility to check that such data and content has been properly processed before it deletes the data and content.

13.12 This Contract sets out the full extent of the Licensor's obligations and liabilities in respect of the supply of the Software and associated data and content. Except as expressly stated in this Contract, there are no conditions, warranties, representations or other terms, express or implied, that are binding on the Licensor. Any condition, warranty, representation or other term concerning the supply of the Software and associated data and events which might otherwise be implied, or incorporated in, this Contract whether by statute, common law or otherwise, is excluded to the fullest extent permitted by law.

14 **Intellectual Property**

14.1 No Intellectual Property Rights in the Software or any Modification belong or shall belong to the Licensee but shall vest in and remain with the Licensor at all times.

14.2 The Licensor undertakes to defend the Licensee from and against any claim or action that the possession, use, development, modification or maintenance of the Software (or any part thereof) in accordance with the terms of the Contract infringes the Intellectual Property Rights of a third party (an "Infringement Claim") and shall fully indemnify and hold harmless the Licensee from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the Licensee as a result of or in connection with any such Infringement Claim. For the avoidance of doubt, the above indemnity shall not apply where the Infringement Claim in question is attributable to possession, use, development, modification or maintenance of the Software (or any part thereof) by the Licensee other than in accordance with the terms of the Contract.

14.3 For the avoidance of doubt, references to Software in this Condition 14 exclude all data and content associated with the Software and the Licensee shall have no right against the Licensor in respect of such data or content.

14.4 The Licensee agrees that:

14.4.1 the Licensee shall as soon as reasonably practicable notify Licensor in writing of any Infringement Claim of which it has notice;

14.4.2 the Licensee shall not make any admission as to liability or compromise or agree to any settlement of any Infringement Claim without the prior written consent of the Licensor which consent shall not be unreasonably withheld or delayed; and

14.4.3 the Licensor shall, on its written request and at its own expense be entitled to have the conduct of or settle all negotiations and litigation arising from any Infringement Claim and the Licensee shall, at the Licensor's request and expense, give the Licensor all reasonable assistance in connection with those negotiations and such litigation.

14.5 If any Infringement Claim is made, or in the Licensor's reasonable opinion is likely to be made, against the Licensee, the Licensor may at its sole option and expense:

14.5.1 procure for the Licensee the right to continue using the Software (or any part thereof) in accordance with the terms of the Contract; or

14.5.2 modify the Software so that it ceases to be infringing; or

14.5.3 replace the Software with non-infringing software;

14.6 Provided that if the Licensor modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Condition 12.1 the Licensee shall have the same rights in respect thereof as it would have had under those Clauses had the references to the date of the Contract been references to the date on which such modification or replacement was made.

15 **Assignment and sub-licensing**

15.1 The Licensee shall have no right to grant sub-licences.

15.2 The Licensee shall have no right to assign the benefit or burden of the Contract in whole or in part or to allow the Software or Contract to become the subject of any charge, lien or encumbrance.

16 **General**

16.1 No party shall be liable to the other for any delay or non-performance of its obligations under the Contract arising from any cause or causes beyond its reasonable control including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion.

16.2 Each party agrees and undertakes that during the term of the Contract and thereafter it will keep confidential all, and will not use for its own purposes nor without the prior written consent of the other disclose to any third party any, information of a confidential nature (including trade secrets and information of commercial value) which may become known to such party from the other party and which relates to the other party unless such information is public knowledge or already known to such party at the time of disclosure or subsequently becomes public knowledge other than by breach of the Contract or subsequently comes lawfully into the possession of such party from a third party. The provisions of this Condition 15.2 shall remain in full force and effect notwithstanding any termination of the Contract.

16.3 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party, and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.

16.4 If any provision of the Contract is judged to be illegal or unenforceable, the continuation in full force and effect of the remainder of the provisions will not be prejudiced.

16.5 Any amendment, waiver or variation of the Contract shall not be binding on the parties unless set out in writing, expressed to amend the Contract and signed by or on behalf of each of the parties.

16.6 Notices shall be in writing and shall be sent to the other party marked for the attention of the person at the address set out for such party in the Contract. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by sending by first-class mail a confirmation copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

16.7 The Conditions, the Contract and the documents annexed thereto or otherwise referred to therein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter

16.8 This Contract shall be governed by and construed in accordance with English Law and each party hereby submits to the non-exclusive jurisdiction of the English Courts.