Schedule N – New Zealand Address Validation Terms

1.   General

(a)   The terms of this Schedule N apply to New Zealand address validation Services and Software provided by DataTools to the Customer pursuant to an order. The parties acknowledge that the data provided as part of the New Zealand address validation Services and Software is provided to DataTools by New Zealand Post and is subject to Customer's compliance with the terms of the Agreement, including the End User Terms set out below.

(b)   The terms of the relevant order prepared by DataTools, this Schedule N (and any other schedules that apply to the same order), the applicable DataTools End User Licence Agreement ("EULA") for: (i) Software as a Service ("SaaS") Services, or (ii) Software (as set out at https://datatools.com.au/terms-conditions/), and the invoice together form the "Agreement" between the Customer and DataTools, and the Customer warrants and agrees that it shall comply with the Agreement and any reasonable directions from DataTools as required to comply with New Zealand Post's requirements from time to time. To the extent there is any conflict, the documents that appear earlier in the list herein shall prevail.

2.   Definitions

"**Data**" means data licensed or provided to DataTools by the Licensor, and used to validate the addresses as part of the Software or Services.

"**End User Terms**" means the terms set out in clause 3 of this Schedule N.

"**Licensor**" for the purposes of this schedule means New Zealand Post Limited ("New Zealand Post") who is the licensor of the Data.

"**Restricted Data**" means

Any Data which has an address type of Bag, Box, CMB Rural, CMB Urban or Counter Delivery; and

For any Data which has a "Rural" address type, the data in the 'RD Number' and 'Mailtown' fields.

"**Services**" has the same meaning as set out in the EULA for SaaS.

"**Software**" has the same meaning as set out in the EULA for Software.

3.   End User Terms

(a)   These End User Terms apply to the Customer.

   (i)   The Customer agrees that the Data (other than the LINZ Data) and the Documentation and all Intellectual Property Rights and other rights in the Data (other than the LINZ Data) and the Documentation specific to the Data from time to time remain the property of the Licensor. Other inputs to, and the output of, the Customer's use of the Data are the property of the Customer, except to the extent Restricted Data is represented in the output.

   (ii)   The Customer has no right to use any of the trade marks, business names or logos of the Licensor.

   (iii) The Customer 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.

   (iv)   The Customer (and any of its agents and sub-contractors) may only use Restricted Data in accordance with the End User Terms, for the Customer's internal purposes, which may include providing an online address checking service to the Customer's customers. Without limiting the foregoing, the Customer (and any of its agents and subcontractors) must not:
      A. sub-license all or any part of the Restricted Data to any person, or purport or attempt to do so, in each case, unless expressly permitted otherwise by the Licensor in writing, or
      B. other than as expressly permitted above, copy, reproduce, publish, sell, let, modify, extract or otherwise part with possession of the whole or any part of the Restricted Data or relay or disseminate the same to any other party.

   (v)   The Customer must comply with the requirements of the privacy laws or regulations as applicable to them and relevant to its possession or use of the Data.

(vi) The Customer must ensure that its personnel, agents and sub- contractors comply with terms set out in this Schedule.

(vii) The Customer acknowledges that neither the Licensor nor DataTools have made any 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 Customer's purpose or for use in any specific technical environment.

(viii) The Customer 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.

(ix) The Customer shall be responsible for any breach by the Customer of any of the above terms or the use of the Data by the Customer or any other person who has obtained the Data from a Customer.

(x) The Licensor must have rights to enforce the above terms for the purposes of the contractual privity provisions of the Contracts & Commercial Law Act 2017.

(xi) The Customer's right to use each Update shall terminate on the earlier of six months after the date on which a subsequent release was made available, or as otherwise advised by DataTools in writing, or the termination or expiry of the Agreement.

(b) The Customer must:

(i) comply with the End User Terms contained herein; and

(ii) notify DataTools immediately upon becoming aware of any breach of those terms by a Customer and use all available means to prevent the continuance of the breach.

4. Additional Terms

4.1 Data storage

(c) DataTools warrants that it shall not store any customer data submitted, uploaded or otherwise made available by the Customer, except for Customer contact details for the purposes of providing the Services or Software to Customer.

4.2 Liability

(a) Any limitation of liability provisions set out in the Agreement or applicable Third Party Contracts are subject to this clause 4.2 which shall prevail in the event of any inconsistency.

(d) Liability for either party shall be uncapped In respect of a Party's liability for any indemnity provided by that Party under this Agreement.

4.3 Fees

(a) The Customer acknowledges that any fees payable for the data component of the Services or Software shall be set out in the relevant order (or attachment to that order), shall be subject to the payment terms in the Agreement (including the clauses relating to GST), and are payable to DataTools; and

(b) If no increase is specified in the EULA, the Customer agrees that DataTools may increase the fees payable each year to the greater of 3% or the annual percentage increase in the Consumer Price Index (all groups, weighted average of eight capital cities) most recently published by the Australian Bureau of Statistics.

4.4 Suspension and Termination

a) The Customer agrees that in addition to the termination provisions of the EULA, DataTools may also direct customer to cease access to the Software or Services, or suspend or terminate the Customer's rights under the Agreement at any time upon notice when, and for the duration of the period during which:

(i) The Licensor suspends or terminates DataTools' access to the data; or

(ii) the Customer contravenes (or is believed, based on reasonable grounds, to be in possible contravention of) any Laws; or

(iii) the Customer commits a breach of this Agreement or is unable to perform its obligations pursuant to this Agreement.

b) DataTools shall provide the Customer with at least 7 Business Days prior written notice to remedy the breach before exercising its rights under this clause, except where the breach is a material breach incapable of remedy or where the contravention or breach by the Customer relates to misuse of the Data in which case DataTools may immediately suspend or terminate the Customer's rights and the Agreement without providing the Customer with an opportunity to remedy the contravention or breach.

c) Refunds shall only be applicable as set out in the EULA.

4.5 Audit

a) DataTools' standard audit terms as set out in the EULA applicable to the Software or Service shall apply to Customer.

5.   Additional Terms - Resupply

5.1   Resale

b)   Customers are not permitted to resell or otherwise distribute the Software or Services or the output of the Software or Services unless they have entered into an Agreement with DataTools expressly allowing such resale and are identified as a "Reseller" of DataTools Software or Services and whose end user customers have agreed in writing to DataTools' terms including this Schedule A. In addition to the above terms set out in this Schedule A which apply to a Reseller (whereby references to Customer apply to the Reseller), the following clauses set out in this clause 7 shall apply to a Reseller.

5.2   Reporting and Financial Records

c)   Upon request and within no longer than 10 business days, the Reseller must provide DataTools with a written report that includes the following information:

(i)   the names, Australian Business Numbers (or overseas equivalent) and industry classifications of end user customers to whom the Software or Services have been provided; and

(ii)   any other information reasonably requested by DataTools from time to time that relates to the Software or Services, the calculation of Fees or the rights and obligations of either Party under this Agreement.

d)   Any further resupply beyond the Reseller must be approved by DataTools in writing.

e)   The Reseller must keep and maintain separate records and accounts in respect of any transactions conducted by it in connection with this Schedule A and the reseller agreement, for at least a period of seven years following the expiration or termination of this Agreement (or longer if required by Law). The records and accounts must:

(i)   be sufficient to enable DataTools to verify the fees that are payable; and

(ii)   contain all information as may be reasonably expected to be required or subsequently requested by DataTools from time to time in order to verify the Reseller's compliance with this Agreement.