



Address Complete Reseller Agreement



Introduction

In return for being provided with access to the Service and Software Materials by Canada Post Corporation (“CPC”), the Reseller agrees to the following terms and conditions (the “Agreement”; such term also includes the 3rd Party Contracts as forming part of the Agreement). The Reseller acknowledges: that the Agreement is a contract between the “Reseller” (where the Reseller is the legal entity on the account acting as a Reseller) and CPC, governing the Reseller’s and its employees use of the Service and Software Materials; and that pursuant to this Agreement it will also be entering into a separate agreement with the respective third party licensors (where applicable), as referred to in this Agreement.

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

Background

- (A) CPC provides by various means software and data services which allow end users and authorised resellers to include data information into certain of their applications.
- (B) The Reseller wishes to distribute and market certain software and data services in return for payments from CPC in accordance with the provisions of this Agreement.
- (C) The Reseller integrates the Software into other software which requires Business End Users (or the Reseller on the Business End User’s behalf) to go to the CPC Website to register to activate the Software and Service and the Business End User pays CPC direct (unless CPC agrees otherwise in writing).

Definitions & Interpretation

Definitions

“3rd Party Contracts”	The 3rd Party Licence Agreement; the 3rd Party Reseller Agreement; and PCA Third Party Agreement.
“3rd Party Licence Agreement”	the terms upon which third parties allow Business End Users to use their data, software and services, details of which are available from the CPC Website.
“3rd Party Reseller Agreement”	the terms upon which third parties allow PCA’s and CPC’s authorised resellers to use certain of their data, software and services, details of which are available from the CPC Website.
“3rd Party Software”	the Software excluding the PCA Software.
“Affected Party”	has the meaning attributed to it in Clause 32.
“Agreement”	has the meaning attributed to it above.
“BEU Third Parties”	has the meaning attributed to it in Clause 6.
“Business End User” or “BEU”	A third party who is either a business entity, charity, association, public body or other legal entity (each being referred to as an “Entity”) to whom the Reseller provides access to the Software or Service pursuant to this Agreement (but for the avoidance of doubt, excludes the customers and third parties of the respective Entity).
“Cessation Date”	has the meaning attributed to it in Clause 10.
“Commission”	the payment payable (or paid, as the case may be) by CPC to the Reseller pursuant to the Agreement, calculated in accordance with the provisions contained on the CPC Website.
“Credit”	means a prepayment by a Business End User, 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 Business End User with the ability to purchase access to the respective Online Services by using part or the whole of the respective prepayment.

“Data Protection Legislation”	means all applicable data protection and privacy legislation in Canada and elsewhere as applicable.
“Defaulting Party”	has the meaning attributed to it in Clause 28.
“End User”	An employee of the Business End User who is authorised to use the Software Materials or Service by the Business End User.
“End User Accounts”	has the meaning attributed to it in Clause 6.
“End User Licence Agreement” or “EULA”	the agreement that CPC requires Business End Users to agree to as part of the Software or Service activation, including without limitation the 3rd Party Licence Agreement.
“Entity”	has the meaning attributed to it in the definition for ‘Business End User’.
“Force Majeure”	has the meaning attributed to it in Clause 32.
“Handbook”	the guidance documentation that CPC supplies from time to time to Resellers with regard to provision of the Software Materials or Service.
“Liability Cap”	has the meaning attributed to it in Clause 18.
“Licensor”	A third party licensor of that data or software which is made available to the Reseller or the Business End Users pursuant to this Agreement.
“New Commission Date”	has the meaning attributed to it in Clause 8(j).
“Online Service”	means a Service which can be purchased from the CPC 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 CPC Website).
“Parties”	Means CPC and the Reseller.
“Party”	Means CPC or the Reseller (as applicable).
“CPC”	has the meaning attributed to it above.

“PCA Software”	means the software developed, or licensed by PCA to provide the ‘Address Complete Service’; however, the ‘PCA Software’ definition excludes all third party data ;
“PCA Third Party Agreement”	the terms upon which a third party allows CPC to use its data, software, database and services, details of which are provided on the respective CPC Website which relates to the respective data, software, database or services.
“CPC Website”	means any websites operated by CPC, which offer Software or Services, with such websites including without limitation those with the url of: www.canadapost.ca/addresscomplete (as applicable);
“Reseller”	has the meaning attributed to it above.
“Service”	The service made available by CPC, which allows the Business End User to make use of the Software.
“Service Package”	Means the Software Materials and the Service.
“Software”	The PCA Software and third party software and data, together with any services made available by CPC pursuant to this Agreement (including without limitation any Upgrades) which the Reseller is permitted to market pursuant to this Agreement.
“Software Materials”	The Software and associated documentation.
“Subject Matter”	has the meaning attributed to it in Clause 42.
“Unaffected Party”	has the meaning attributed to it in Clause 32.
“Upgrades”	has the meaning attributed to it in Clause 7.

Interpretation

- In this Agreement, unless the context otherwise requires, the following interpretation will apply:
- the headings contained in this Agreement are for convenience of reference only and shall not affect its interpretation;
- words indicating the singular shall include the plural and vice versa;
- 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”;
- references to “person” includes an individual, company, firm, partnership, government body, public body, charity, association, or other legal entity;
- 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);
- all sums payable hereunder are expressed exclusive of any applicable tax and duty payable upon such sums which shall be added if appropriate at the rate prevailing at the relevant tax point;
- to the extent of any conflict or ambiguity between the provisions of the Agreement and the 3rd Party Contracts, the provisions of the 3rd Party Contracts shall prevail.

Grant of Licence

Licence grant

- 1 CPC grants to the Reseller by this Agreement a non-exclusive, non-transferable, revocable licence to: market and distribute the Software and make available the Service Package in its various forms as may be provided from time to time by CPC and for now consisting of the options selected by the Reseller and accepted by CPC on the CPC Website; and a right to use (to the extent reasonably necessary for the Reseller to undertake its obligations) CPC’s trade marks, logos and other such copyright material as provided by CPC. However, for the avoidance of doubt, the third party software and data made available by the Licensors may only be distributed pursuant to this Agreement as part of the software or service made available by CPC, and the third party software and data may not be distributed or made available in its own right by the Reseller. Furthermore, the Reseller expressly acknowledges that it may not use the Service Package as an end user, nor provide the data or functionality contained within the Service Package to any third party other than in accordance with the requirements of the Agreement and the 3rd Party Contracts.

3rd Party Licensors

- 2 The Reseller hereby enters into, and agrees to comply with the 3rd Party Reseller Agreement. The Reseller also agrees to comply with the relevant aspects of the PCA Third Party Agreement. Furthermore, the Reseller agrees that it will not undertake any act or omission which would result in CPC becoming in breach of its obligations to the respective third party under the PCA Third Party Agreement to the respective third party. Furthermore, the Reseller agrees to incorporate all copyright notices, disclaimers, wording, trademarks, logos and other marks which are required by CPC or the Licensors to be included in respect of the Service Package.
- 3 The Reseller agrees that by requesting access to any third party data which is subject to a 3rd Party Reseller Agreement, the Reseller is entering into such 3rd Party Reseller Agreement (where this is the intention of the 3rd Party Reseller Agreement), and the Licensor will therefore have rights and remedies against the Reseller pursuant to this Agreement and the 3rd Party Reseller Agreement. Furthermore, the Reseller agrees that where it is entering into a 3rd Party Reseller Agreement, it will bring any claims in respect of the third party data, software and services which are governed by that agreement, against the Licensor pursuant to that 3rd Party Reseller Agreement and not against CPC:
- 4 The Reseller further expressly acknowledges that it has read and accepts the provisions contained within the 3rd Party Contracts to the extent that they have any effect on the manner in which the Service Package may be used or distributed or made available by the Reseller and used by the Business End Users.

Acknowledgment

- 4 The Reseller further expressly acknowledges that it has read and accepts the provisions contained within the 3rd Party Contracts to the extent that they have any effect on the manner in which the Service Package may be used or distributed or made available by the Reseller and used by the Business End Users.

Length of agreement

- 5 This Agreement will continue in force until either Party gives 30 days advance notice in writing to terminate the Agreement.

Duties of the Reseller

6 The Reseller

Handbook

- a) will comply at all times with the Handbook as CPC will publish from time to time and agrees that the Handbook (and any amendments) is incorporated into this Agreement, and applies subject to the other provisions of this Agreement;

Accuracy of details

- b) confirms that all information which it provides in its registration 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 CPC's additional rights and remedies) the Reseller will promptly inform CPC of this in writing, together with reasonable details in respect of this. The Reseller will also promptly update the respective details on the CPC Website, to ensure that its details remain accurate and complete. Furthermore, the Reseller will promptly notify CPC if it is no longer the reseller for a particular Business End User, or if it has been newly appointed as a reseller for a particular Business End User (acknowledging that CPC only permits one reseller to be appointed to any one Business End User);

Assistance to Business End Users

- c) will provide all reasonable assistance to the Business End User to allow the Business End User to access the respective Service Package, ensuring that the Business End User first accepts, the requirement to comply with the End User Licence Agreement in order to have access to the Software Materials or Service;

3rd Party Reseller Agreement

- d) will provide all reasonable assistance to the Business End User to allow the Business End User to access the respective Service Package, ensuring that the Business End User first accepts, the requirement to comply with the End User Licence Agreement in order to have access to the Software Materials or Service;

Availability of Upgrades

- e) will ensure that it promptly makes available any Upgrades to such of the Business End Users as CPC shall direct;

Additional terms on CPC Website

- f) agrees to comply with any pricing terms on the CPC Website;

Reasonable co-operation taking into account CPC's obligations

- g) agrees to promptly provide, such reasonable information as CPC may request from time to time, in order that CPC can comply with its obligations pursuant to the PCA Third Party Agreements;

Relaying notices to Business End Users

- h) agrees to provide prompt notice to those Business End Users which CPC indicates, regarding any termination notice served by any Licensor pursuant to the PCA Third Party Agreements, and the consequences of this for the Business End User (which will include, without limitation, the termination of the respective Business End User's ability to access and use any services which made use of any data or services provided by the respective Licensor);

Restrictions on data cleansing

- i) agrees that it will not permit the Business End Users to engage in any data cleansing activities other than to the extent expressly permitted by the respective 3rd Party Contracts;

No further reselling or subcontractors

- j) agrees that it may not provide the Software or access to the Service to any party who then directly or indirectly acts as a reseller of any part of the Software or Service;
- k) agrees that it may not appoint any third party agents or subcontractors in respect of its obligations pursuant to the Agreement;

Fair Use

- l) agrees that it will inform the Business End User that CPC may block any look ups which exceed any fair use policy that CPC communicates (such communication can also take the form (without limitation) of a general notice on the CPC Website or in any newsletter correspondence from CPC) from time to time (with CPC acting reasonably), with the current fair use policy being (unless agreed otherwise in writing between the Parties): limiting the number of look ups by a Business End User to 1,000 per day for a single user and 100,000 look ups per day collectively for multi-user licences and website licences;

Business End Users to have contingency measures

- m) **agrees that it will inform the Business End User that the Business End User must ensure that its End Users have the ability to alternatively manually enter any data into any application which is reliant upon the Software or Service, in case of the unavailability of the Software and Service at any time in the future;**
- n) **agrees that it will inform the Business End User that the Business End User must avoid binding to a single datacentre and instead use the standard CPC load balanced service (details of how to do this are available upon request from CPC);**

Reseller's own contract for its services

- o) agrees that it must have in place its own contractual arrangements with its Business End Users for the services, software and data which it provides to them (for the avoidance of doubt, this is referring to services, software and data other than those made available by CPC by way of the Service Package), ensuring that such contractual arrangements do not contradict nor conflict with the requirements of the Agreement or the EULA. Furthermore, the Reseller will ensure that its contract with the Business End Users does not impose any obligations nor liability on CPC or PCA or PCA's Licensors. The Reseller also agrees that it will not provide any misrepresentations in relation to the Service Package, the EULA, CPC, PCA nor the Licensors;

Visibility & access of Business End User account information

- p) agrees that it must ensure that the Business End Users are aware that CPC and PCA is able to access and view the Business End User and End User account details (collectively the "End User Accounts"), to the extent reasonably necessary to ensure that CPC and PCA can undertake its obligations to such users;
- q) agrees that it must ensure that its staff do not access any of the End User Accounts except to the extent necessary for the Reseller to comply with its obligations pursuant to the Agreement;

Reseller's account section on the CPC Website

- r) agrees that it is the Reseller's duty to ensure that the payment details on the Reseller's account section on the CPC Website are always up to date and that it changes its password in the event of employees leaving, to safeguard access to the Reseller's account against unauthorised use. Furthermore, the Reseller confirms that the bank account details which it has registered with CPC for Commission payment purposes, consist of the business account belonging to the Reseller's organisation and not an account in an individual's name;
- s) any change in the Reseller's banking details for payments from CPC, need to be promptly confirmed in writing to CPC;

Agent for Business End Users

- t) agrees that it has the authority from its Business End Users and the BEU Third Parties: that when it undertakes any activities on the CPC Website on behalf of the Business End Users or the BEU Third Parties; or that when it receives any communications which have an effect on the Business End Users or the BEU Third Parties; that it is acting as an authorised agent for the Business End Users and the BEU Third Parties in such respect (and consequently agrees to forward in a timely manner, any notifications intended for the Business End Users or the BEU Third Parties, to them);
- u) agrees that if a Business End User is permitted by the 3rd Party Contracts to allow group companies or third party entities (other than the Business End User's customers) to make use of the Service Package (with all such Business End User's group companies and third

party entities being referred to as the “**BEU Third Parties**”), then the Reseller will ensure that: the Business End User is entering into the EULA and the respective 3rd Party Contracts as principal for the Business End User and as agent for the respective BEU Third Parties, and in so doing, such Business End User is confirming the acceptance of all of the provisions and restrictions which are contained within the EULA and the 3rd Party Contracts on behalf of itself (as principal) and accepting the same obligations and restrictions in respect of its respective BEU Third Parties (as agent for such BEU Third Parties).

[Hyperlink from Reseller Website to the CPC Website](#)

- v) agrees to include a reasonably prominent hyperlink in a reasonable form, on the Reseller’s main websites, with such hyperlink linking to the respective page on the CPC Website, which provides further details about the respective Service Package that the Reseller is authorised to market on behalf of CPC pursuant to this Agreement. The Reseller also agrees to include in a reasonably prominent manner and in a reasonable form, details on its main websites to confirm that it is an authorised reseller of CPC for the respective Service Package that it is authorised to market on CPC’s behalf; and

[Correct usage of Service Package by Business End Users](#)

- w) agrees that if the Reseller has provided, suggested or recommended a Service Package to a Business End User, then it will have first satisfied itself that such Service Package is the correct Service Package for how the Business End User is planning on using the Service Package. If the Service Package is not the appropriate one for the Business End User (with the Reseller having ensured that it had first obtained details of the intended use of the Service Package by the Business End User before providing, suggesting or recommending the respective Service Package), or it is not used by the Business End User in accordance with the licensing requirements which are applicable to the use of the respective Service Package, then the Reseller will indemnify CPC and the Licensors in full, against all claims, losses and expenses, suffered by both such indemnified parties.

[No circumvention](#)

- x) agrees that it will not undertake any act or omission which has the objective of circumventing the intention of any of the restrictions within the Agreement or the 3rd Party Contracts.

[Reselling Price & Marketing](#)

- y) agrees that it will not undertake any marketing or set any pricing in respect of the Service Package (whether in part or in whole) which is reasonably likely to adversely affect: (1) the marketability or reputation of the Service Package; (2) CPC; or (3) CPC’s other resellers.

Duties of CPC

7. During the term of this Agreement, CPC shall:
 - a) Not knowingly directly solicit customers of the Reseller who become known to CPC as a result of their use of the Software or Service, away from the Reseller;
 - b) use its reasonable endeavours to ensure that the PCA Software is maintained to a reasonable standard such as is comparable to that generally found in the software industry, but with the Parties acknowledging that CPC will be entering into a direct licence agreement with the Business End Users, and it will be addressing its liability to such customers pursuant to such agreement, and therefore CPC will not be accepting any liability for the Service Package to the Reseller in respect of any functionality, performance or availability issues with the Service Package from the Business End Users' perspective;
 - c) make such updates, upgrades and improvements to the Service Package (such updates, upgrades and improvements collectively being known as the "Upgrades") available as it may in its sole discretion determine;
 - d) use its reasonable endeavours to ensure that the relevant Service Package is available for use by the Business End Users, but it does not provide any assurance whatsoever that the Service Package will be available on an ongoing and uninterrupted basis.

Fees

8. The Parties agree as follows:

Entitlement to fees

- a) When a Business End User accepts the respective agreements for the Service Package on the CPC Website, and CPC receives payment for access to the respective Software or Service (subject to the provisions of Clauses 8(c) and 8(d) below), CPC will become liable to pay the fees set out on the respective part of the CPC Website to the Reseller. For the avoidance of doubt, the Reseller will only be entitled to Commission in respect of the period that the Reseller is the appointed reseller for the respective Business End User;

Fee statements

- b) Within 14 days of the end of each calendar month, CPC will make available a statement to the Reseller (which will be available through the reseller area on the CPC Website) of purchases of any rights to use the Service Package by each Business End User to determine the Reseller's entitlement to fees;

Exceptions to payment entitlement

- c) the Reseller agrees that no payment entitlement will arise to it in respect of any purchases of a Software licence or Service by the Reseller for its own usage;

- d) the Reseller agrees that CPC will have no obligation to make any payment to the Reseller pursuant to this Agreement, until the payment entitlement of the Reseller equals or exceeds the sum of \$200.00;

Net value of sale

- e) subject to the provisions of this Agreement, the payment referred to in Clause 8(a) above, reflects a percentage of the net value of any sale which the Reseller makes (this net value is calculated as follows: gross sale value less: any applicable tax; third party data and software licence fees; and bank charges); and is determined by CPC (with CPC acting reasonably);

Invoicing

- f) the Reseller will invoice CPC in accordance with the respective statement made available by CPC (provided that the amount due is at least \$200.00), who will pay the Reseller within 30 days of receipt of invoice (or if later, by the end of the following month to that in which the respective statement was provided by CPC to the Reseller);
- g) the Reseller acknowledges that all references to pricing details in this Agreement are expressed exclusive of any applicable taxes unless otherwise expressly stated;

Commission repayments

- h) without prejudice to CPC's additional rights and remedies, the Reseller will immediately repay to CPC (by whatever method CPC indicates) any Commission received in respect of a sale: for which CPC makes any credit or other payment to the Business End User or a Licensor, due to the wrongful acts or omissions of the Reseller or the Business End User; or due to any changes in the 3rd Party Licence Agreements or 3rd Party Reseller Agreements; or where CPC overpaid a Commission payment; or where the Reseller was not the appointed reseller of the Business End User at the time the payment entitlement was calculated (to the extent that there is any dispute as to who was the appointed reseller of a particular Business End User at the respective time, the Business End User may determine this, with the Reseller acknowledging that the Business End User may only have one authorised reseller in relation to the Business End User's use of the Service Package at any time); or if any form of refund is required to be made by CPC to the Business End User.

EULA related refunds

- i) the Reseller agrees to provide a prompt refund to the respective Business End Users for the full amount of the charges which have been paid by such Business End Users to the Reseller in relation to the Service Package, where such Business End Users have: had confirmation from CPC that a refund or payment will be made to them pursuant to the EULA. Any elements in relation to such refund in respect of a particular Business End User which have been paid by the Reseller to CPC will be promptly refunded by CPC to the Reseller. The Parties also agree that in respect of such Business End Users, no Commission payments will be due from CPC

to the Reseller, and to the extent that any payments in this regard have been paid, then such payments will be promptly refunded by the Reseller to CPC; and

Commission variations

- j) the Reseller acknowledges that CPC may vary the Commission from time to time (including without limitation due to the ability of certain of its Licensors to vary the charges (and any rebates) to CPC, its customers, or its resellers, pursuant to the PCA Third Party Agreements). The Reseller agrees that once it is informed of any such change in Commission, it will be deemed to accept such changes in the Commission 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 changes become effective from (the “**New Commission Date**”) (with it being the Reseller’s obligation to ensure that receipt of such written termination has been received by CPC from the Reseller prior to the New Commission Date, in order for such termination to be valid).

Confidentiality, Data Protection, Non-Solicit

- 9 At all times during this Agreement both Parties agree that they will keep confidential to themselves (save as provided by law and as required for them to take professional advice, or as required by them to perform their obligations pursuant to this Agreement (including without limitation, taking into account that CPC has engaged PCA as its subcontractor in relation to this Agreement) all confidential information with regard to this Agreement and the other Party’s customers and suppliers, unless that information has already become known to them or become known to them other than as a result of this Agreement, without a duty of confidentiality (in which case the burden of proof is upon the Party so claiming).
10. Following termination of this Agreement:
- a) Each Party agrees to continue to keep the confidentiality set out in Clause 9, until the relevant information is no longer confidential (other than due to a breach by either Party of its obligations pursuant to this Agreement);

Non-solicit

- b) On the grounds that the Reseller shall by working with CPC, have gained confidential information, and the fact that it will have received payment from CPC for the introduction of customers to the Software or Service, the Reseller agrees for 1 year following the end of this Agreement not to offer any competing software, data or services to any of the customers which it had introduced to the Software or Service, nor to any customers of CPC of which it becomes aware during the term of the Agreement that use any of the Software or Service; **where the intent with regard to any such customers would be to solicit such customers away from CPC’s Software or Service offering** (so for the avoidance of doubt, where the intent was not to solicit such existing customers of CPC from CPC’s Software or Service offering, the restriction in this Clause 10(b) would not apply to prevent the Reseller

offering any competing software, data or services). Without prejudice to CPC's rights and remedies, if the Reseller breaches this Clause 10(b), then the Reseller will immediately pay to CPC 12 months worth of revenue equating to that which CPC obtained or would have reasonably likely to have obtained, from the respective customers; CPC will calculate such amount in respect of each customer as being the greater of: (1) the amount CPC obtained from the respective customer in respect of the entire Service Package in the 12 month period immediately before the customer stopped using any part of the Service Package due to a breach by the Reseller of this Clause (such date of cessation of use by the customer being known as the "Cessation Date"); or (2) the amount forecast by CPC that it would have obtained from the customer over the 12 month period from the Cessation Date in respect of the entire Service Package. The Parties agree that the liquidated damages referred to in this Clause are a genuine pre-estimate of the loss which CPC would suffer, and therefore the Reseller will raise no objection to such recovery by CPC from the Reseller.

Data Protection compliance

- 11) Each Party acknowledges that pursuant to the Data Protection Legislation, each party may be held to be the holder of the data in respect of personal information which comes into its possession. Each Party therefore agrees to process all personal data relating to a Party's obligations pursuant to this Agreement, in accordance with the provisions of the Data Protection Legislation, and not to undertake any act or omission which would result in the data controller becoming in breach of the Data Protection Legislation. Furthermore, the Reseller acknowledges that CPC may need to provide information in relation to the identity of the Reseller and the Reseller's use of the respective Service Package to the Licensors and PCA, as a requirement to allow the Reseller to distribute and use the Licensor's or PCA's data, software or materials in accordance with the provisions of this Agreement. The Reseller hereby expressly consents to such disclosure by CPC to the Licensors and PCA pursuant to this Clause 11, and for the respective Licensors to contact the Reseller in relation to the Reseller's use and distribution of the Licensor's licensed data, software and other materials.

Warranties

CPC warranties

12. CPC warrants as follows:

Reseller appointment

- a) That it has the right to appoint the Reseller as a reseller of the Software and Service in accordance with the provisions of this Agreement.

PCA Software compliance

- b) That the PCA Software will materially comply with the description of the software as provided by CPC in writing (with the Reseller acknowledging that it has had the ability to access or request such information prior to entering into this Agreement). However, the Reseller

acknowledges that the 3rd Party Software is provided “as is” as it has been provided by a third party.

- c) In the event that the PCA Software does not comply with Clause 12(b), and the Reseller notifies CPC of the non-compliance, CPC 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 PCA Software which does not so comply, provided that such non compliance has not been caused by:
 - i) any modification, variation, configuration or addition to the PCA Software not performed by CPC;
 - ii) its incorrect use, abuse or corruption of the PCA Software; or
 - iii) use of the PCA Software with other software or on equipment with which it is incompatible.
- d) CPC warrants that any software or documentation which it provides pursuant to this Agreement which it has developed itself, will not infringe any third party’s intellectual property rights.

Service unavailability issues

- e) CPC warrants that it will use reasonable endeavours to remedy any non-availability of any service offered by CPC to the Reseller pursuant to this Agreement, to the extent that this is within CPC’s reasonable control.

Exclusion of other assurances

- f) To the extent permitted by law, CPC excludes all other assurances with respect to the Service Package, including but not limited to any implied assurances relating to satisfactory quality or fitness for any particular purpose.

Reseller warranties

13. The Reseller agrees:

Record keeping

- a) to maintain accurate and up-to-date records of the number and location of all copies of the Software, and make such records available upon request to CPC, PCA or the Licensors. Furthermore, the Reseller agrees during the term of this Agreement to keep a copy of all complaints and claims regarding the Reseller generally or in relation to the Reseller’s conduct involving any part of the Service Package, and promptly communicate such details to CPC;

Prudent internal safeguards

- b) 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 Reseller being responsible for virus scanning the Software Materials before, during and after installation and use; and the Reseller being responsible for its own virus protection measures to safeguard it against possible virus infection from use of the Service Package). The Reseller agrees to ensure that it informs the Business End Users of their obligation to undertake similar backups, disaster recovery measures and scanning as the Reseller is obliged to undertake pursuant to this Clause;

- c) to supervise and control use of the Service Package in accordance with the terms of this Agreement;
- d) to ensure that no third party who is not authorised to access the Service Package, is provided with such access by the Reseller (whether such access is provided deliberately or negligently);
- e) to ensure that its employees and other parties to whom it provides access to any part of the Service Package, are notified of and agree to the relevant provisions of this Agreement prior to such employee or party using any part of the Service Package;

Copyright notices

- f) to reproduce and include the copyright notice of CPC or such other party as may be specified in or on the Software Materials or Service on all and any copies;

Reasonable skill and care obligations

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

3rd Party Software

- 15. The Reseller acknowledges that all of the 3rd Party Software is provided by CPC on an 'as is' basis, and no assurance in respect of it is provided by CPC (including without limitation any assurance with regard to its correctness, accuracy, completeness, fitness for any purpose, or otherwise). This exclusion of assurances applies only to the extent permitted by law.

Limitations and exclusions of liability

Unlimited and non-excluded liability

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

Exclusions of liability

- 17. Subject to Clause 16 and 19, CPC shall not be liable in any circumstances to the Reseller 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 arising under contract, statute, tort (including without limitation, negligence), or otherwise.

Liability Cap

18. Subject to Clause 16, the aggregate liability of CPC for the totality of all claims arising under or in connection with the Agreement (whether arising under contract, statute, tort (including without limitation negligence) or otherwise) shall be limited to payment of the greater of; (1) \$1000.00; or (2) the Commission which is due pursuant to the provisions contained within this Agreement (“**Liability Cap**”).
19. Clause 17 will not operate to exclude or restrict CPC’s obligation to pay the Commission in accordance with the other Clauses of the Agreement.
20. The Reseller acknowledges that the Commission has been calculated on the basis that CPC will exclude and limit its liability as set out in the Agreement.
21. The Parties agree that the limitations and exclusions of liability in the Agreement are reasonable in view of the negotiated position which has been reached on the Agreement.
22. All limitations and exclusions of liability in the Agreement operate in respect of all claims arising under or in connection with the Agreement, whether arising under contract , statute, tort (including without limitation negligence), or otherwise.

Limitation Period

23. Subject to Clause 16, the Parties agree that CPC shall not be held liable to the Reseller for any loss and/or damage suffered or incurred as a result of: any claims under or in connection with the Agreement, which are not brought through legal proceedings against CPC within 12 months following the earlier of: (1) when the cause of action arose; and (2) termination of the Agreement.
24. Each Party agrees that in respect of any claim or potential claim against the other Party, it will:
 - a) notify the other Party promptly of such claim or potential claim, together with reasonable details;
 - b) give the other Party reasonable assistance in connection with the investigation of any such claim; and
 - c) use reasonable endeavours to mitigate its losses arising in relation to such claim.

Reseller’s Indemnity

25. The Reseller agrees that if CPC or PCA is required to pay any sums to any third party as a result of the Reseller breaching the Agreement or the 3rd Party Contracts, then the Reseller will, immediately upon notice, reimburse CPC and PCA in full with the amount which CPC and PCA has had to pay to such third party as a result.

Termination

Material breach

26. Either Party may terminate this Agreement immediately upon notice in writing to the other Party in the event that the other Party commits a breach of its obligations under this Agreement and:
- a) such breach is a material breach of the Agreement and cannot be remedied; or
 - b) such breach is a material breach of the Agreement and possible to remedy or is a persistent breach and in either case that other Party fails to remedy such breach within 30 days of having been required in writing to remedy such breach.

Insolvency types of events

27. Either Party may terminate this Agreement immediately upon notice in writing to the other Party (the “**Defaulting Party**”) in the event that:
- a) 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 Defaulting Party carries out its business; or
 - b) the Defaulting Party suffers or undergoes any procedure similar in effect to any of those specified in Clause 28(a).

CPC’s termination rights

28. CPC may terminate the Agreement (or at its discretion, any obligation to provide any part of the Software Materials or Service), immediately upon written notice (or upon such amount of notice as CPC decides in its sole discretion):
- a) if CPC reasonably believes that the Reseller’s acts or omissions may adversely affect the brand or reputation of CPC or PCA or the Software Materials or Service or Licensors;
 - b) if any third party agreement pursuant to which CPC is permitted to make available the Software Materials or Service to the Reseller or Business End Users: (1) changes so that it adversely affects CPC, PCA, the Reseller or the Business End Users; or (2) terminates;
 - c) if the Licensors require this Agreement to be terminated in whole or in part;
 - d) if any of the Licensors claim that the Reseller has breached this Agreement or any of the 3rd Party Contracts;

- e) if the Reseller refuses to accept any mandatory requirement imposed from time to time by any of the Licensors;
- f) where such termination is necessary for CPC to comply with the PCA Third Party Agreements;
- g) the Reseller refuses to accept any revised Commission arrangements prior to the New Commission Date, pursuant to the requirements of Clause 8(j);
- h) the Reseller discloses any confidential information of the Licensors or CPC or PCA in breach of this Agreement;
- i) if any of the Business End Users breach the EULA;
- j) if any of the Licensors or CPC claim that the Business End Users are not using the Software Materials in accordance with the requirements of, or the intention of, the EULA; or
- k) if any of the Business End Users complain regarding the performance or conduct of the Reseller, or the quality of the service provided by the Reseller.

3rd Party Reseller Agreement termination

29. The respective 3rd Party Reseller Agreement will automatically terminate with immediate effect if the corresponding PCA Third Party Agreement is terminated, and consequently this Agreement will automatically terminate with immediate effect in respect of the terminated part of the Service Package (being that part of the Service Package which related to the terminated 3rd Party Reseller Agreement and/or CPC Third-Party Agreement). CPC will provide prompt notice of any such termination.

Consequences of Termination

30. The Parties agree as follows:
- a) The termination of this Agreement shall be without prejudice to the rights and remedies of either Party which have accrued up to the date of termination.
 - b) The provisions of this Agreement which are expressed to or intended to survive termination, shall survive termination and continue in effect.
 - c) Within 7 days after the date of termination of this Agreement for whatever reason, the Reseller agrees to destroy or return the Software Materials in its possession or control, in the reasonable manner directed by CPC, and certify this in writing to CPC as having been completed.

General Provisions

Force Majeure

31. If either Party (the **"Affected Party"**) is prevented from complying with its obligations due to an event beyond its reasonable control (an event beyond a Party's reasonable control being known as **"Force Majeure"**), it shall not be in breach of this Agreement or otherwise liable

to the other Party (the “**Unaffected Party**”) by reason of any delay in performance or non-performance of any of its obligations due to such events.

32. If such Force Majeure persists for a continued period of 30 days, then the Unaffected Party shall be entitled whilst the Force Majeure persists, to terminate this Agreement for convenience, immediately upon notice to the Affected Party.

Assignment and Sub-contracting

33. The Reseller agrees that it may not: assign, delegate, sub-contract, transfer or otherwise dispose of any of its rights or responsibilities under this Agreement without the prior written consent of CPC.
34. CPC may assign, delegate or sub-contract its rights or responsibilities under this Agreement to any third party.

Third Party Rights

35. The Licensors and PCA shall have the right to enforce the provisions of the Agreement which are for their benefit. No other third party shall have the right to enforce any term of this Agreement.

Relationship

36. Nothing in this Agreement shall create, or be deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the Parties to this Agreement. The Reseller agrees that it is acting only as a marketing representative of CPC in respect of the Service Package, and agrees that it will not bind or give rise to any liability for CPC or PCA to any third party, other than as expressly permitted by this Agreement.

Variations

37. No variation of this Agreement (other than as provided for in this Agreement) shall be effective unless it is in writing and is signed by an authorised representative of each Party, or unless the variation is agreed by the Parties by email with express reference being made to the fact that it is varying this Agreement.

Severability

38. 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 shall promptly replace the deleted provision with a substituted provision which achieves as close as lawfully and reasonably possible, the intention of the deleted provision.

No Waiver

39. No provision of the Agreement shall be waived unless agreed to be waived by both Parties in writing (except where there is a prescribed time limit in which to exercise a right or remedy,

in which case the elapsing of the time limit will constitute a waiver of the respective right or remedy). 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.

Entire Agreement

40. 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 42 operates subject to Clauses 43 and 44
41. Notwithstanding any provision to the contrary in this Agreement, all implied: terms, conditions and warranties, (including without limitation those relating to satisfactory 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 43 operates subject to Clause 44
42. Notwithstanding any provision to the contrary, nothing in this Agreement limits or excludes either Party’s liability for fraudulent misrepresentations.

Law and Jurisdiction

43. If the Reseller’s principle place of business is not located in a Canadian Province or Territory, this agreement shall be governed by, and interpreted under, the laws in force in the Province of Ontario, Canada. The forum for any legal proceeding shall be the Province of Ontario, Canada.