**ROYAL MAIL GROUP – ADDRESS MANAGEMENT UNIT**

**NOT YET BUILT DATA SUPPLY AGREEMENT**

**Introduction**

This Agreement provides for Royal Mail's supply of Not Yet Built to its licensees. It permits only the receipt and storage of Not Yet Built. Further uses of Not Yet Built are permitted under Royal Mail's standard licence terms which are available at the PAF® Licensing Centre.

1. **SUPPLY AND USE OF NOT YET BUILT**

1.1 Royal Mail grants you a non-transferable non-exclusive limited revocable right for the Term to receive and store Not Yet Built in accordance with this Agreement, subject always to payment of the appropriate Data Supply Fees, acceptance by Royal Mail of your completed Data Supply Order and in accordance with any additional terms which may apply.

1.2 Provided that you are party to a valid Standard Not Yet Built Licence, Royal Mail will supply you with Not Yet Built and updates to Not Yet Built in accordance with your Data Supply Order.

1.3 You may not use Not Yet Built under this Agreement unless you also have a valid Standard Not Yet Built Licence, unless Royal Mail expressly agrees otherwise.

1.4 You may only sub-licence the receipt and storage of Not Yet Built in the exercise of your rights set out in clause 13.2.

1.5 Your rights to receive and store Not Yet Built under this Agreement do not permit any act which is licensed by Royal Mail under its Standard Not Yet Built Licences.

1.6 Your rights to use Not Yet Built are only those set out in this clause 1.

2. **TERM**

This Agreement shall commence on the Effective Date and continue in force until terminated in accordance with clause 10.

3. **CONDITIONS OF USE OF NOT YET BUILT**

3.1 You must not make copies of Not Yet Built except as permitted by this clause 3 or reasonably necessary for back-up, security, business continuity and system testing purposes.

3.2 You must not permit access to, display or communicate to the public any Not Yet Built data.

3.3 Except as set out in this clause 3, you must not:

3.3.1 publish, sell, let or otherwise part with possession of Not Yet Built or relay or disseminate Not Yet Built; or

3.3.2 copy, reproduce, extract, reutilise or publish Not Yet Built or any of it other than for the purposes of this Agreement or as authorised by a Standard Not Yet Built Licence.

3.4 Your rights under this Agreement are personal, limited and non-transferable.

3.5 You must use Not Yet Built under this Agreement in accordance with applicable law.

3.6 You must not remove any notice relating to Royal Mail's intellectual property rights in Not Yet Built.

4. **FEES AND REPORTING**

You will pay Royal Mail Data Supply Fees calculated in accordance with, and perform your obligations set out in, the Schedule.

5. **ROYAL MAIL RIGHTS**

5.1 You acknowledge that Royal Mail is the owner of the intellectual property rights in Not Yet Built and the "Not Yet Built" brand and you do not acquire and are not granted any rights to use those intellectual property rights other than as this Agreement expressly sets out.

5.2 Royal Mail shall retain ownership of any Data Supply Medium and supporting documentation. Royal Mail may require you to securely store or destroy any such medium or documentation.

6. **CHANGES TO THE AGREEMENT**

6.1 Except as set out in this clause 6, the terms of this Agreement may only be changed if Royal Mail and you agree in writing.

6.2 Royal Mail may by giving not less than 6 months' notice published on the PAF® Licensing Centre change the frequency of Not Yet Built updates you receive. You will pay the applicable Data Supply Fee for that frequency from the time stated in that notice.

6.3 Royal Mail may by giving not less than 3 months' notice published on the PAF® Licensing Centre change the Data Supply Fees or the arrangements for their charging and payment set out in the Schedule, provided that such changes apply to all persons contracting with Royal Mail on standard terms for the supply of Not Yet Built.



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6.4 Royal Mail may change the terms of this Agreement by giving not less than 3 months' notice published on the PAF® Licensing Centre:

6.4.1 where such change has previously been notified to and discussed with the PAF Advisory Board and OFCOM (or their respective successor bodies); or

6.4.2 if the change is necessary to comply with the law.

7. **NOT YET BUILT QUALITY**

7.1 Royal Mail does not warrant the accuracy or completeness of Not Yet Built or that it will meet any of your requirements.

7.2 The terms of this Agreement exclude all warranties and conditions and any other term implied by any law, to the maximum extent permitted by law.

8. **CONFIDENTIALITY**

8.1 The Parties shall in relation to any Confidential Information disclosed to one of them by or on behalf of the other:

8.1.1 keep it confidential and not disclose it to any other person other than to its professional advisers, employees, agents and contractors on a need to know basis,

8.1.2 apply to the Confidential Information no lesser degree of care than that which a reasonable person would take in protecting its own confidential information, and

8.1.3 use the Confidential Information only for the purposes of this Agreement.

8.2 The obligations contained in this clause 8 shall not apply to any Confidential Information:

8.2.1 which is lawfully available to the public otherwise than through breach of this Agreement,

8.2.2 which was disclosed to a Party by a third party legally in possession of the Confidential Information and who was not restricted from disclosing it, or

8.2.3 independently created or already in the possession of a Party.

9. **LIABILITY**

9.1 There is no limit on your liability for:

9.1.1 Data Supply Fees; or

9.1.2 losses Royal Mail incurs arising out of a breach of clauses 1, 3 and 5 or an infringement of Royal Mail's intellectual property rights.

9.2 Except as set out in clause 9.1 neither Party is liable to the other for any:

9.2.1 loss of profit, revenue, use of an asset, productivity, reputation, or data (whether any of those are direct or indirect losses); or

9.2.2 indirect or consequential losses.

9.3 Subject to clauses 9.1, 9.2 and 9.4 the total liability of either Party for all claims arising in relation to this Agreement in an Agreement Year shall not exceed an amount which is the total of Data Supply Fees payable under this Agreement in that Agreement Year.

9.4 Royal Mail's liability to you for loss or damage of any kind (whether suffered by you or a third party) caused by the Data Supply Medium is limited to re-supply of Not Yet Built to you.

9.5 In the event of termination of this Agreement Royal Mail is not liable:

9.5.1 for the provision of any Not Yet Built data, any product or service relating to it or any equivalent or replacement data, product or service to you; or

9.5.2 any consequences of your inability to comply with the terms of any other agreement, resulting from such termination.

9.6 Nothing in this Agreement limits either Party's liability for personal injury or death caused by negligence or for fraud, or for breach of clause 8.

10. **ENDING THE AGREEMENT**

10.1 Either Party may terminate this Agreement by giving not less than 12 months' written notice to the other.

10.2 Royal Mail may terminate this Agreement immediately upon giving you notice if:

10.2.1 you breach any of the terms of this Agreement and, if that breach is capable of remedy, have failed to remedy it within 30 days of a notice from Royal Mail notifying you of the breach;



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10.2.2 you fail to enter into or cease to be a party to a valid Standard Not Yet Built Licence; or

10.2.3 you become Insolvent.

10.3 You may terminate this Agreement:

10.3.1 if Royal Mail fails to provide Not Yet Built to you in accordance with the terms of this Agreement and:

(a) such failure is not due to any act or omission of you, your employees, agents or subcontractors; and

(b) Royal Mail has not given you notice under clause 12 in respect of such failure; and

(c) Royal Mail fails to rectify such failure within 20 Working Days of your notice to Royal Mail specifying such failure.

10.3.2 by giving not less than 1 months' written notice if Royal Mail increases by notice given under clause 6.4 (a "**fee increase notice**") the Data Supply Fees payable by you by an amount which is greater (as a percentage) than the percentage increase in RPI since the later of the Effective Date and the date of any previous fee increase notice. Your notice of termination further to this clause 10 must be given within 1 month of the date of the fee increase notice.

## 11. AFTER THE END OF THE AGREEMENT

11.1 Termination of this Agreement does not affect any payment obligations or rights to enforce this Agreement which have already arisen.

11.2 The provisions of clauses 4, 8, 9, 11, 13 and 14 remain in force between you and Royal Mail after termination of this Agreement.

11.3 With effect from the End Date:

11.3.1 the licence granted under clause 1 ceases and you have no right to use Not Yet Built except as this clause 11 permits;

11.3.2 within 12 months of the End Date you must destroy all copies of Not Yet Built that you hold and certify to Royal Mail that this has been done; and

11.3.3 you may retain one copy of Not Yet Built for archive purposes to be used only for reviewing your compliance with this Agreement, satisfying legal or regulatory requirements, or in connection with legal proceedings.

## 12. MATTERS OUTSIDE THE PARTIES' CONTROL

Except for payment of Data Supply Fees, neither Party will be liable for any failure to perform its obligations under this Agreement if that failure is caused by a matter outside its reasonable control, but only if that Party:

(a) gives the other Party notice of that matter as soon as it can;

(b) continues to perform its obligations as much as possible apart from that matter;

(c) does what it can to minimise the effect of that matter; and

(d) restarts performance of all its obligations as soon as the effect of the matter has ended.

## 13. TRANSFER, RIGHTS AND OBLIGATIONS OF THIRD PARTIES

13.1 You may not assign your rights under this Agreement to any person.

13.2 You may provide Not Yet Built to your subcontractors who may use only it to the extent necessary for:

13.2.1 the provision of information technology services to you; or

13.2.2 acting upon your behalf,

in each case for your own business purposes and not those of the sub-contractor and provided that each such sub-contractor agrees to observe the restrictions on use of Not Yet Built contained in this Agreement and that you are responsible for any breaches of those terms by such sub-contractor.

13.3 If you permit access to Not Yet Built to sub-contractors further to clause 13.2 you are liable for any breaches of the terms of this Agreement by any sub-contractor.

## 14. GENERAL MATTERS

14.1 This Agreement is governed by the laws of England and Wales. The Courts of England and Wales will determine any disputes arising over the terms of this Agreement or your use of Not Yet Built.

14.2 Royal Mail may notify you of communications required to be given further to this Agreement using the PAF® Licensing Centre, provided that it emails you (at the email address you have notified to Royal Mail) of the posting of such communications at the PAF® Licensing Centre.



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14.3 Except as set out in clause 14.2, communications required to be given further to this Agreement must be given in writing (and not by email) to a Party at its address (in the case of Royal Mail) on the PAF® Licensing Centre and (in your case) on the Data Supply Order (or as otherwise notified in writing). A notice served by hand is served when delivered, a notice sent by first class post is served 48 hours after posting and a notice served by fax is served when the fax is sent. If the communication is sent by a postal delivery service providing a written record of sending and delivery, the communication will be deemed to have been delivered on the date indicated in the record.

14.4 This Agreement sets out the only terms on which we will supply Not Yet Built to you for the purposes set out in this Agreement and replaces any other terms or agreements between the Parties in relation to the supply of Not Yet Built for such purposes. You acknowledge that when you entered this Agreement you did not rely on any statements or promises in relation to Not Yet Built which are not contained or specifically referred to in this Agreement.

14.5 This Agreement does not confer any benefits on any persons other than Royal Mail and you.

14.6 Royal Mail may in any particular case give you additional time to comply with your obligations under this Agreement or decide not to exercise its rights, but this does not affect Royal Mail's right to enforce the terms of this Agreement generally.

## 15. DEFINITIONS AND INTERPRETATION

15.1 In this Agreement the following terms have the following meanings:

| | |
|---|---|
| **Agreement Year** | each consecutive 12 month period during the Term (the first such period beginning on the Effective Date), and the period between the last day of such 12 month period and the End Date |
| **Confidential Information** | information of a confidential nature in whatever form and whether or not marked as confidential, relating to the business of a Party |
| **Data Supply Fees** | the fees described in the Schedule |
| **Data Supply Medium** | means the available format on or method by which Not Yet Built is supplied or made available to you |
| **Data Supply Order** | your order for Not Yet Built setting out such details as are described on the PAF® Licensing Centre in relation to Not Yet Built supply including your preferred Data Supply Medium and the frequency of data updates |
| **Effective Date** | the date on which Royal Mail receives your acceptance of the terms of this Agreement |
| **End Date** | the date of expiry or termination of this Agreement further to its terms |
| **Insolvent** | in respect of a person, means that they are unable to pay their debts as they fall due, have a receiver or administrative receiver appointed over any of their assets, are the subject of an administrator's appointment or any steps taken or documents filed for such an appointment, make any arrangement with their creditors, enter into liquidation, cease to do business, or suffer an equivalent event in any territory in which they do business |
| **month** | refers to a calendar month |
| **Not Yet Built** | Royal Mail's database known as 'Not Yet Built', which contains address and postcode information for properties under development in the United Kingdom to which items of mail cannot be dispatched and / or delivered (as may be amended from time to time), and such other data related to Not Yet Built as Royal Mail may make available on the terms of this Agreement from time to time |
| **PAF® Licensing Centre** | Royal Mail's website at www.poweredbypaf.com or such other website as Royal Mail may notify further to this Agreement |
| **Party** | either Royal Mail or you (and "**Parties**" shall be read accordingly) |
| **Royal Mail** | Royal Mail Group Limited, acting by its Address Management Unit |
| **RPI** | the retail prices index (all items) (or a replacement index most closely resembling it) published by the Office for National Statistics (or any successor to that Office) |
| **Schedule** | means the Schedule to this Agreement |
| **Standard Not Yet Built Licence** | a licence (other than a licence on the terms of this Agreement) for the use of Not Yet Built on standard terms for specified uses made generally available by Royal Mail on the PAF® Licensing Centre or otherwise |
| **Term** | the period during which this Agreement is in force according to its terms |
| **Working Day** | Monday to Friday excluding bank and public holidays in England, and |
| **you** | the licensee entity specified in the Data Supply Order (and **your** shall be read accordingly) |



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15.2 In this Agreement (unless the context otherwise requires) words following words such as "includes", "including" and "in particular" are read without limitation, and references to a person are to any natural or legal person whether incorporated or not.



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**SCHEDULE**

**DATA SUPPLY FEES AND REPORTING**

**1. Information provision**

(a) You must notify us of any material changes to the information about you given on the Data Supply Order as soon as reasonably practicable.

(b) You must within 20 Working Days provide the names and addresses of subcontractors and such other details as Royal Mail may reasonably request.

(c) On our request from time to time you must provide us with the details of your use (and use by any subcontractors) of Not Yet Built as required by our reporting rules published from time to time on the PAF® Licensing Centre. We will not make such requests more than once in any Agreement Year, unless such requests arise out of breaches of this Agreement or inconsistencies in the information you provide to us.

**2. Data Supply Fees**

(a) Data Supply Fees are payable in advance for the 12 month period commencing on the first day of the month in which your use of Not Yet Built commences, as follows:

| | | Data Supply Medium option | |
|---|---|---|---|
| | | Online FTP | CD |
| **The Annual Package** | | | |
| 1 | 1 x Complete Edition | £440.00 | £610.00 |
| **The Updates Package** | | | |
| 2 | 2 x Half-Yearly Complete Editions | £880.00 | £1,220.00 |
| 3 | 4 x Quarterly Complete Editions | £1,110.00 | £1,525.00 |
| 4 | 12 x Monthly Complete Editions | £1,335.00 | £1,830.00 |

**Payment and invoicing**

(b) We will either ask you for payment at the time you order the Not Yet Built or invoice you for Data Supply Fees. Our invoices are payable by you within 30 days of their date.

(c) All sums due to us under this Agreement are exclusive of VAT which if applicable shall be charged at the appropriate rate and paid by you. We will provide you with valid VAT invoices.

(d) You must pay our invoices without deduction or withholding except as required by law and you may not assert any credit, set-off or counterclaim against us in relation to sums payable under this Agreement.

(e) If you do not pay our invoices in accordance with this Agreement we may (without affecting any other rights we may have) charge you interest (at an annual rate of 4% above the Bank of England's base rate from time to time) on all overdue amounts until payment is received in full.

**3. Audit**

(a) You must keep an accurate record of all Not Yet Built use, reporting and payments under this Agreement and retain it for a minimum of 6 years after the relevant use or transaction.

(b) You will permit us to audit records kept further to paragraph 3(a) and provide all reasonable co-operation and assistance to us and our authorised agents in relation to audits. This includes, on reasonable prior notice, granting access to relevant premises during working hours to inspect relevant accounts and records for verifying compliance with the terms of this Agreement, and a right to copy any such records for that purpose.

(c) We will not carry out audits more than once in any Agreement Year unless we reasonably suspect that you have failed to comply with the Agreement.

(d) Where through an audit or otherwise it is identified that:

(i) you have failed to comply with any obligation under the Agreement, you will promptly take the necessary steps to comply with the obligation;

(ii) you have failed to pay any applicable Data Supply Fees, you will pay the amount of them to us within 20 Working Days; and

(iii) you have paid us amounts in excess of the Data Supply Fees due, we will pay you that amount within 20 Working Days.



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(e) We will bear the costs of audits unless:

(i) an audit shows that you did not or had not complied with the terms of the Agreement; or

(ii) we notify you of an audit but are not provided with access to your premises further to paragraph 3(b),

in which case you will reimburse us our reasonable costs of audit, including any agents' fees, within 10 Working Days of our request.



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