

# Software License and Data Services Agreement

THIS SOFTWARE LICENSE AND DATA SERVICES AGREEMENT and all applicable Orders subject to the terms hereof (collectively the “Agreement”) is made as of the Effective Date by and between BCC Software, LLC, a Delaware Company with offices located at 75 Josons Drive, Rochester, NY 14623-3494 (“Licensor”) and you (“Licensee”).

Licensee has executed an Order for one or more licenses of Software licensed by Licensor and/or for Services from Licensor, and Licensor has agreed to license the Software and/or provide the Services on the terms of this Agreement.

**If you, as Licensee or as an authorized User, do not agree to the terms of this Agreement,**

- (1) **do not download**, install, copy, access, or use the Software; and
- (2) **promptly uninstall and delete all copies** of the Software from your systems.
- (3) **do not access or use** any of the Services.

NOW, THEREFORE, in consideration of the mutual benefits of the covenants and restrictions set forth herein, Licensor and Licensee hereby agree as follows:

## ARTICLE I: DEFINITIONS

Section 1.01 — Definitions: The following definitions shall apply:

1. **Access:** The term “access” and variants thereof shall mean to store data in, retrieve data from or otherwise approach or make use of (directly or indirectly) through electronic means or otherwise.
2. **Business Hours:** The term “Business Hours” shall mean the normal business operating hours of Licensor which are from 8:00AM until 5:00PM ET, Monday through Friday, except holidays.
3. **Cancellation Notice:** The term “Cancellation Notice” shall mean that written notice sent by one party to the other party seeking to cancel this Agreement because of breach by the other party.
4. **Delivery Date:** The term “Delivery Date” shall mean the date the Software is shipped to Licensee or the date on which the Software is made available for download by Licensee.

5. Documentation: The term "Documentation" shall mean the current copy of Licensor's User's Guide and Release Notes as made available to Licensee by Licensor.
6. Effective Date: The term "Effective Date" shall mean the date an Order is placed by Licensee.
7. Enhancement: The term "Enhancement" shall mean an enhancement in executable code for modifications to the Software which improve or expand the functionality or features of the Software made generally available to Licensees of the Software at an additional charge.
8. License Fee: The term "License Fee" shall mean the amount of money payable for the Software or Services contained in the Order.
9. License Term: Unless otherwise stated in this Agreement or an Order, the term "License Term" shall mean a period of one (1) year commencing upon the Delivery Date and any subsequent renewal thereof.
10. Licensed Site: The term "Licensed Site" shall mean the location where the Software is initially installed.
11. Order: The term "Order" shall mean the Software and/or Services Licensee has elected to purchase or license, whether in an order schedule or as submitted by Licensee in writing or via a phone call or email.
12. Services: The term "Services" shall mean those list processing services and subscriptions offered by Licensor and selected by Licensee, such as address updates and suppression.
13. Software: The term "Software" shall mean the program CDs, DVDs, and/or downloads, along with the computer programs contained therein, in machine-readable, object code form only for that certain Software described in the Order, including Updates thereto.
14. Software Maintenance: The term "Software Maintenance" shall mean updates provided on a periodic, as-needed basis by Licensor under the terms of this Agreement.
15. Termination Notice: The term "Termination Notice" shall mean that written notice sent by either party to the other party seeking to terminate this Agreement as such notice applies to an identified Order in accordance with Article VI hereof.
16. Unauthorized Access: The term "Unauthorized Access" shall mean any access to the Software or Documentation by Licensee or any third party for any use other than within the scope of the license granted by this Agreement, in connection with the operation of Licensee's business, evaluating the performance, utility and functions of the Software, and training employees or independent contractors of Licensee in the use of the Software.
17. Unauthorized User: The term "Unauthorized User" shall mean any individual other than an employee of Licensee authorized by Licensee who accesses the Software or Documentation, for any use outside of the scope of the license granted by this Agreement, evaluating the performance, utility and functions of the Software for a purpose other than training employees or independent contractors of Licensee in the use of the Software.

18. Update: The term “Update” shall mean a modification of the Software whenever developed or published by Licensor and made generally available to Licensees of the Software at no additional charge.
19. Users: The term “Users” shall mean employees authorized by Licensee to access the Software in connection with the operation of its business and independent contractors of Licensee who have executed a confidentiality agreement which accords the Software and Documentation confidential treatment and acknowledges the rights of Licensor.

## **ARTICLE II: LICENSE**

Section 2.01 — License Grant: Licensor hereby grants to Licensee, and Licensee accepts, a non-exclusive, non-transferable, revocable license to use the Software, and the accompanying Documentation, only as authorized in this Agreement. Except for Software purchased under a site license (see Section 2.07.02 herein), only a single User on a computer owned, leased, or otherwise controlled by Licensee at any point in time may use the Software. Neither concurrent use on two or more computers nor concurrent use by two or more Users in a local area network or other network is permitted without separate authorization and the payment of other license fees. Licensee agrees that Licensee shall not assign, sublicense, transfer, pledge, lease, rent, or share its rights under this Agreement unless previously authorized in writing by Licensor. Licensee agrees that Licensee shall not, and shall not enable other parties to, reverse engineer, reverse assemble, reverse compile, or otherwise translate the Software. This license does not authorize Licensee to use any component of the Software separately for any purpose.

If the Software was delivered on physical media, Licensee may retain said physical media for backup purposes. In addition, regardless of how the Software was delivered, Licensee may make one copy of the Software for the purpose of backup. Any such copies of the Software shall include Licensor's copyright and other proprietary notices. Except as authorized under this paragraph, no copies of the Software or any portions thereof may be made by Licensee or any person under its authority or control.

Certain libraries that are dynamically linked to the Software may be covered by “open source” or other third party software licenses (“Third Party Components”). The terms of such open source or third party software licenses apply to the Third Party Components in lieu of the terms of this Agreement. To the extent the terms of the open source or other third party software licenses prohibit certain restrictions on such Third Party Components, if any, contained in this Agreement, such restrictions will not apply to such Third Party Components.

Section 2.02 — Licensor's Rights: Licensee acknowledges and agrees that the Software and the Documentation are proprietary products of Licensor protected under U.S. copyright and other laws. Licensee further acknowledges and agrees that all right, title, and interest in and to the Software, including associated intellectual property rights, are and shall remain with Licensor and any third party from which Licensor obtains its rights. This Agreement does not convey to Licensee an interest in or to the Software,

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Section 2.03 — Withdrawal or Update of Software: Licensor reserves the right to withdraw from the Software any item or part of an item for which it no longer retains the right to license, or which it has reasonable grounds to believe infringes copyright or is unlawful. Licensor reserves the right to update the Software as required for its intended use. Licensor shall give written notice to Licensee of such actions in Software release notes that will be posted online with the Software download. If any such action renders the Software less useful to Licensee, Licensor shall, at its option and as Licensee’s sole and exclusive remedy, obtain for Licensee the right to use the removed material, replace the removed material with a suitable replacement, restore the material to its original configuration, or reimburse Licensee in an amount that is proportional to the total License Fee owed by Licensee under this License Agreement.

Section 2.04 — Risk of Loss: Licensee assumes risk of loss to the Software and Documentation as of the Delivery Date.

Section 2.05 — Authorized Use: Licensee shall prohibit Unauthorized Users from accessing the Software and Documentation. Licensee shall prohibit Unauthorized Access to the Software and Documentation.

Section 2.06 — Site Only: Licensee shall install the Software only at the Licensed Site unless prior written approval is received from Licensor to install the Software at another Licensee facility.

Section 2.07 -- Software-specific Terms: In addition to the general terms described in this Agreement, the Software may include program-specific terms. Licensee agrees to follow those terms as a pre-condition to use of the Software. It is Licensee’s sole responsibility to understand and follow program-specific terms before commencing use of the Software. These program-specific terms include, but are not limited to:

Section 2.07.01 -- BCC Ignite™: BCC Ignite™ includes third party software from RedPoint Global Inc. and may only be licensed in conjunction with BCC Architect™, BCC Presort™, and/or BCC Post-Presort™ or their substantially similar replacements. By using this Software, you expressly agree to be bound by the terms of the RedPoint End User License Agreement found at <https://bccsoftware.com/redpoint-eula/>, as may be revised from time to time, and only use the Software in compliance with the permitted uses set forth in Appendix A thereto.

Section 2.07.02 Software Purchased Under a Site License: BCC Architect™, BCC Presort™, and BCC Post-Presort™ are purchased under a site license and may be installed on multiple computers and used concurrently by multiple Users at the Licensed Site. Notwithstanding the foregoing, use of this site-licensed Software is subject to the terms of this Agreement.

Section 2.07.03 -- USPS CASS™ and/or PAVE certified products: If Licensee is using a USPS CASS™ or PAVE certified product, the Software processes name and address data of U.S. residents under CASS™\*, PAVE and Full-Service USPS certifications. The respective DPV® data may not be distributed outside of the U.S. Licensor is obliged to record and report mailing metadata (not personal data) created per USPS regulations.

The data may also be hosted in the Licensor cloud subject to a separate agreement.

\* The software used to process the CASS™ Stage II file contains technology that disables access to outdated U.S. Postal Services data in accordance with DMM 602.9. When used interactively, this product does not allow automated selection of an individual records from a list of multiple candidates. Users of this software are advised that any modification voids CASS™ certification.

Section 2.07.04 – BCC Architect™ Canada or BCC Bulk Mailer® Canada: If Licensee is using BCC Architect™ or Bulk Mailer® editions from Canada, the Software is licensed from Canada Post (SERP), Flagship Software Ltd. Canada (iAddress™).

For data licensed from Canada Post, Licensee agrees: (i) not to permit any party to use the Canada Post Data Files except as allowed under the express terms of this Agreement or an addendum to this Agreement, (ii) not to create or permit any encumbrances, liens or charges against the Canada Post Data Files, and (iii) to ensure that the Canada Post Data in any Authorized Product/Service used, distributed or provided by Company is the data from the most current Canada Post Data File of each type that is applicable for that product/service and to ensure that Canada Post Data is always distributed, or provided, along with a notice stating the date on which the currency of that data will expire and stating that use of the data, after the expiry date, for the purposes of addressing mail is expressly prohibited.

Licensee shall, with all copies of any Canada Post Data File and Derivative File and on all Authorized Products/Services that Licensee distributes to third parties, include a notice in hard copy stating that the file distributed contains data copied under license from Canada Post (SERP) and shall indicate the date of the Canada Post Data File from which the data was copied. The data file dates are included in the release documentation.

## **ARTICLE III: SERVICES**

Section 3.01 -- During the term of this Agreement, Licensee may request Services from Licensor. The Services purchased will be reflected in an Order executed pursuant to the terms and conditions of this Agreement.

Section 3.02 -- Licensor will provide the Services via its own or its vendors' computer facilities or on Licensor's behalf through one of its licensors at Licensor's then current prices and charges. Licensor is providing Licensee with a capability to transmit data to Licensor for processing and return to Licensee. Licensee agrees that once processing

has begun, an Order is deemed to have been accepted by Licensor and payment shall be due to Licensor according to the applicable terms.

Section 3.03 -- Licensor grants Licensee a restricted, non-exclusive, non-transferable, revocable license to use the Services, subject to the following restrictions and limitations below and elsewhere in this Agreement:

(a) US Postal Service Related Services (e.g. CASS™, NCOALink®, DSF2®).

(i) Licensor is a non-exclusive licensee of the USPS®'s NCOALink® database ("NCOA Database"). The information contained in the NCOA Database is regulated by the Privacy Act of 1974 and may be used only to provide a mailing list correction service for lists that will be used for preparation of mailings. If Licensee receives all or a portion of the NCOA Database through the Services, Licensee hereby certifies to Licensor that Licensee will not use such information for any other purpose. Prior to obtaining or using information from the NCOA Database, Licensee agrees to complete, execute and submit to Licensor the NCOA Processing Acknowledgement Form.

(ii) Further, if Licensee is headquartered, has locations, or otherwise operates or resides outside the United States, Licensee represents and warrants to Licensor that Licensee has obtained the proper certifications from the USPS® for NCOALink® processing. Licensor is under no obligation to provide the Services to Licensee unless Licensee has obtained the proper certifications from the USPS®.

(iii) As to DPV®, Licensor will fulfill the following false positive requirements for DPV®:

(1) The "DPV® Product Licensee Performance Requirements" document which is currently located at [https://postalpro.usps.com/DPV\\_LPR](https://postalpro.usps.com/DPV_LPR), describes the requirements for handling false positive records. The document further describes a layout of file records that are to be used for logging false positives. The documents and sections referred to may be updated or changed by the USPS® at its discretion.

(2) The current version of the CASS™ Technical Guide describes the file layout to be used for logging and reporting false positives.

(3) For each false positive result of a DPV® query, the Service will continue processing. Licensor will log the required information from the address that resulted in the false positive, in the format specified in the DPV® Licensee Performance Requirements, and submit it to USPS®.

(4) Any mail piece containing an address which caused a false positive shall not be mailed until clearance from the USPS® is obtained.

(5) USPS® reserves the right to suspend Service processing when multiple incidents of artificial address detection occur.

(b) DMA Suppression. Services for DMA Suppression is understood to mean flagging consumer names from marketing lists for the purpose of suppressing them with such information used for no other purpose. Licensee understands that the DMAchoice® Services are intended exclusively for Licensee's own use and Licensee

shall not disseminate, sublet, resell, reproduce, transfer or republish the DMAchoice® list in any medium in any manner whatsoever.

(c) Deceased Suppression. Services for deceased individual suppression is understood to mean matching the records from Licensee's or Licensee's customers' provided files to identify those individuals within such files who are deceased, with such information to be used for the sole purpose of deleting such deceased individuals from any list used for solicitation or any other external purpose. Licensee shall, and shall require its customers to, not use the information provided from such Service for any other purpose including, but not limited to, promotions to surviving household members, or any other type of marketing or promotion.

**LICENSEE AND ITS CUSTOMERS SHOULD NOT TAKE ANY ADVERSE ACTION AGAINST ANY INDIVIDUAL WITHOUT FURTHER INVESTIGATION TO VERIFY THE DEATH LISTED.**

(d) Prison Suppression. Services for prison individual suppression is understood to mean matching the records from Licensee's or Licensee's customers' provided files to identify those individuals within such files, who are incarcerated in the U.S., Canada and U.S. Territories, with such information to be used for the sole purpose of deleting such incarcerated individuals from any list used for solicitation or any other external purpose. Licensee shall not, and shall require its customers to not, use the information provided from such Service for any other purpose.

(e) Other.

- (i) Services shall be used solely for Licensee's or Licensee's customers' own internal business purposes;
- (ii) Services shall be only used for legitimate business purposes, including those specified in any processing acknowledgment forms required for certain Services, and will not be used for any illegal, obscene, offensive or immoral purposes;
- (iii) Licensee shall not resell, reproduce, retransmit, publish or otherwise transfer the Services to a third party;
- (iv) Licensee shall not knowingly grant access to the Services to any individuals incarcerated in prisons or to any business that employs such individuals;
- (v) Services shall not be used to artificially compile a list of delivery points or addresses not already in Licensee's possession;
- (vi) Licensee shall not make any invention, improvement or enhancement on or relating to the Services or use the Services to compete with Licensor or its data providers;

- (vii) Licensee shall not, in any direct mail solicitation, telephone solicitation, or survey, make any reference to any selection criteria or any presumed knowledge about the recipient derived from the Services or the source of the recipient's name and address;
- (viii) Licensee will use mailing lists only within the United States, its territories and possessions and represents that the purpose of processing the mailing list is to improve business delivery addresses for letters, flats, postcards, packages, leaflets, magazines, advertisements, books, other printed material and any other item to be delivered by the USPS®;
- (ix) Licensee shall not market or otherwise use the Services outside the scope of the license granted by this Agreement;
- (x) Licensee agrees not to allow or enable the reverse engineering, decompiling, or disassembling of the Services or products provided or associated with the Services, including without limitation deriving any data, algorithms, or source code; and
- (xi) Licensee shall use the Services in full compliance with the access restrictions set forth in Section 8.03 of this Agreement.

Section 3.04 -- Licensor reserves the right to modify or discontinue any Service with or without notice to Licensee. Licensor shall not be liable to Licensee should Licensor exercise its right to modify or discontinue any Service. Further, Licensor may, from time to time, impose restrictions on the use of the Services as a result of changes in the law or limitations placed on Licensor from third parties or its licensors that limit Licensee's access to some or all of the data provided through the Services.

Section 3.05 -- To the extent Licensee is providing the Services for its customers, before providing the Services to such customer or customers, Licensee shall have entered into an agreement with the customers which shall address each of the limitations and restrictions set forth in this Agreement in a manner no less restrictive than as described herein.

Section 3.06 -- Licensee's use of the Services is subject to, and Licensee shall, and shall require its customers to, comply with all applicable laws, rules, regulations and industry self-regulatory guidelines. It shall be Licensee's responsibility to determine the applicability of any such laws, rules, regulations and guidelines. Licensee agrees: (1) to comply with U.S. law regarding the transmission of technical data exported from the United States; (2) not to interfere or disrupt networks connected to Licensor's online service; and (3) to comply with all regulations, policies and procedures of networks connected to Licensor's online service.

Section 3.07-- Licensor and its licensors shall retain all right, title and interest under applicable contractual, copyright, patent, trademark, trade secret and related laws in the



databases and materials contained therein used to provide the Services, and Licensee shall use such materials consistent with such right, title and interest and notify Licensor of any threatened or actual misappropriation or infringement. This Agreement does not convey to Licensee an interest in the databases and materials contained therein used to provide the Services or to the Services itself, but only a limited right of use revocable in accordance with the terms of this Agreement. Licensor or its licensors shall own all right, title and interest in and to all information collected from orders submitted for the Services.

Section 3.08 -- Licensee understands and acknowledges that the USPS® reserves the right to require Licensor to suspend Licensee's ability to perform mailing list processing. Licensor will not be liable or responsible for any decision the USPS® makes in canceling Licensee's mailing list processing, including, but not limited to, arbitrating the cancellation decision on Licensee's behalf. In the event the USPS® suspends processing, (i) Licensee shall not be entitled to any refund or credit from Licensor; and, (ii) Licensor will discontinue providing the Services to Licensee.

USPS® reserves the right to make any changes, modifications, or enhancements to any or all products.

Section 3.09 -- Licensee shall not use or permit others to use the Services for credit granting, credit monitoring, account review, collection, insurance underwriting, employment or any other purpose covered by the Fair Credit Reporting Act ("FCRA"), Federal Trade Commission interpretations of the FCRA, and similar state laws.

Section 3.10 – The Services may contain information analyzed in conjunction with the national Do Not Call Registry ("DNC") and various state Do Not Call files. The Services may have either suppressed such records or identified such records as listed on the DNC or other Do Not Call files. Licensee shall, and shall require its customers to, use such DNC identified information in compliance with all applicable Do Not Call laws, rules, regulations and guidelines of the NDC and any Do Not Call file of applicable States, local or industry association laws, rules, regulations and guidelines. Licensee represents and warrants that it will, and shall require its customers to, utilize DNC records solely in compliance with exemptions, rules and regulations set in applicable local, state, federal and industry association laws, rules, regulations and guidelines. Licensee shall provide Licensor with a certified subscription account number for Licensee or its customers who will be provided Services that include as a component the use of the National Do Not Call Registry List.

Section 3.11 -- With respect to Services that append data to Licensee or its customers' provided files, use of such appended data shall be limited to no more than one (1) year after delivery of the Services, except in the case of telephone numbers, which may be for an indefinite period, or for any deceased flagged person to be marked for do not contact.

Section 3.12 -- In order to use Services through the Software, Licensee must have installed the most current version of the applicable Software.

Section 3.13 -- If Licensee requests support in the processing of a specific data file, that file may be stored in a secure cloud environment to facilitate resolution of the issue. Licensee shall inform Licensor at the time of the support request if the data file should not, for whatever reason, be stored in a cloud environment. Failure to give such an instruction shall constitute absolute consent to the storage of the data file in a cloud environment for so long as Licensor deems necessary.

Section 3.14 -- Licensee acknowledges and agrees that Licensor does not accept any data for processing that falls within the scope of the EU General Data Privacy Regulation (GDPR), and Licensee will not submit any such data. Further, Licensee shall not use the Services to process any data for its customers that falls within the scope of the GDPR.

Section 3.15 -- Licensee acknowledges and agrees that Licensor does not create, receive, maintain, process or maintain protected health information (PHI), as that term is defined by the Health Insurance Portability and Accountability Act (HIPAA). Licensee will not submit any data for processing that falls within the HIPAA definition of PHI. Further, Licensee shall not use the Services to process any data for its customers that falls within the HIPAA definition of PHI.

Section 3.16 – By using the Services, Licensee acknowledges and agrees that it may have additional obligations under the California Consumer Privacy Act, Cal. Civ. Code 1798.100 et seq., including any amendments and any implementing regulations thereto (CCPA) and other state, federal, and international privacy and consumer protection laws. Licensee will notify Licensor of any requirements that its use of the Services may impose on Licensor under these laws. Licensee further represents and warrants that any data it submits for processing was collected, stored, processed, transmitted, and handled in full compliance with these laws and that consumers whose personal information is included in the data have been given all required notifications and opt-out opportunities. Only when the CCPA applies to the data Licensee is submitting for processing as part of the Services, the BCC Service Provider Data Processing Addendum (SPDPA), available at <https://bccsoftware.com/ccpa>, as amended from time to time, is incorporated into this Agreement.

## **ARTICLE IV: SOFTWARE SUPPORT**

During the License Term and any renewal of the License Term, Licensee can access Software support to which it is entitled via telephone or email.

## **ARTICLE V: PAYMENT**

Section 5.01 – License Fees: Licensee shall pay the License Fee to Licensor in accordance with Licensor's then-current fee schedule and pricing terms. Licensor reserves the right to increase the License Fee and fee charged for Software Maintenance for any renewal term.

Section 5.02 – Services: Payment for the Services is to be made by Licensee by credit card or by establishing a commercial credit relationship with Licensor. Licensee represents and warrants that it is an authorized user of the credit card or that it has submitted accurate credit information to Licensor for approval. All orders for Services are subject to credit approval. To the extent a commercial credit relationship is approved by Licensor, invoices are due upon receipt; otherwise all payments are due by credit card at time of order. All amounts not paid within thirty (30) days of the due date shall be subject to interest charge of one and one-half percent (1.5%) per month or the highest rate under applicable law effective from the invoice date. Where allowed by law, Licensor reserves the right to charge a surcharge or convenience fee on purchases using a credit card. Licensor reserves the right to increase the fee charged for the Services at any time, including for renewal terms.

Section 5.03 — Taxes: Licensee shall pay any and all applicable taxes (excluding income taxes measured by Licensor’s income and assessed against Licensor).

## **ARTICLE VI: TERMINATION, CANCELLATION, AND RENEWAL**

Section 6.01 — Termination Limitations: This Agreement shall only be terminated or cancelled as provided under this Article VI.

Section 6.02 — Term: This Agreement shall be valid for the License Term.

Section 6.03 – Renewal: This Agreement, including the License Term, shall automatically renew for successive one (1) year terms unless either party provides a Termination Notice to the other party that it is not renewing the Agreement, with such notice to be provided at least thirty (30) days prior to the end of the then-current term.

License Fees and other fees for the renewal term will reflect the current pricing at the time of renewal. This pricing may be higher than the pricing for the original License Term. Licensee understands and agrees that if Licensee has a credit card on file with Licensor, that credit card may be billed at the time of renewal without notice to Licensee (unless otherwise required by applicable law).

Section 6.04 — Cancellation for Cause: If either party materially breaches its obligations under this Agreement, the non-breaching party may cancel this Agreement by sending a Cancellation Notice describing the breach to the breaching party. Upon receipt of such Cancellation Notice, the breaching party shall have thirty (30) days from the date of such notice to cure any such breach (“Cure Period”). If such breach is not cured within the Cure Period, the non-breaching party shall have the right to cancel this Agreement as of the expiration of the Cure Period. Notwithstanding the foregoing, Licensor may immediately cancel the Agreement at any time if Licensee has not paid the License Fee in accordance with the terms of Article V of this Agreement or has supplied false information to Licensor with respect to NCOALink® processing and completion of the required Processing Acknowledgement Form.

Section 6.05 — Destruction of and Cease of Use of Software: Upon termination, expiration or cancellation of this Agreement, Licensee shall destroy all Software and Documentation provided to Licensee by Licensor and cease use of the Software and Documentation. An officer of Licensee shall certify Licensee's destruction and cease of use of the Software and Documentation.

Section 6.06 -- Destruction and Cease of Use of Services: Upon termination, expiration, or cancellation of this Agreement, Licensee's right to access and use the Services shall immediately cease and Licensee shall return or destroy any information received from the Services.

Section 6.07 – Continuing Payment Obligation: Termination, cancellation, or expiration of this Agreement shall not relieve Licensee of its obligation to pay for any Services or Software performed or provided by Licensor.

## **ARTICLE VII: WARRANTY AND LIMITATION OF LIABILITY**

Section 7.01 — Software:

(a) Licensor warrants to Licensee for a period of thirty (30) days from the date of the initial delivery of the Software (referred to as the “Warranty Period”) that the Software shall operate substantially in accordance with the functional specifications in the Documentation. If during the Warranty Period a defect in the Software appears, Licensee may return the Software to Licensor for either replacement or, if so elected by Licensor, refund of amounts paid by Licensee under this Agreement. Licensee agrees that the foregoing constitutes Licensee’s sole and exclusive remedy for breach by Licensor of any Software warranties made under this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, Licensor warrants, where applicable, that the distributed version of the Software meets documented certifications, such as CASS™, PAVE™, etc., provided that it is used only with distributed shared libraries. Any changes or modifications to the shared libraries or changes or modifications (including attempts to reverse engineer the Software in order to make changes or modifications) to the Software will invalidate these certifications. Licensor is not responsible for any problem or failure of the Software to operate resulting therefrom.

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**EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF SUITABILITY, MERCHANTABILITY, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.**

Section 7.02 – Services:

(a) Licensee is obligated to examine the deliverables generated from the Services and to notify Licensor in writing of any non-conformity in the deliverables within ten (10) days of receipt. If Licensee so notifies Licensor, then, unless Licensor reasonably disputes Licensee's claim, Licensor shall, at Licensor's sole option and as Licensee's sole remedy, either re-perform the Services for the nonconforming job or issue Licensee a credit for the amount paid for the nonconforming job.

(b) LICENSEE ACKNOWLEDGES THAT THE SERVICES MAY BE LESS THAN 100% ERROR FREE. LICENSOR DOES NOT GUARANTEE OR WARRANT THE CORRECTNESS, AVAILABILITY, COMPLETENESS, CURRENTNESS, FUNCTIONALITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE SERVICES. LICENSOR IS PROVIDING THE SERVICES ON AN "AS IS", "AS AVAILABLE" BASIS AND MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SERVICES. LICENSOR DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

Section 7.03 — Limitation of Damages:

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Section 7.04 -- Indemnification: Licensee agrees to indemnify and hold Licensor, its parents, owners, subsidiaries, affiliates, officers, employees, data providers and suppliers, harmless from any claim or demand, including reasonable attorneys' fees, made by any third party due to or arising out of (i) Licensee's or its customers' use of the Services or Software, (ii) violation or breach of this Agreement by Licensee or its customers, (iii) unauthorized access to or use of the Services or Software, including data derived from the Services or Software, by Licensee or any of its employees, agents, representatives, or customers or any third party gaining access through Licensee; (iv) injury or damage received or sustained by any person, persons or property growing out of, occurring, or attributable to mailing lists processed using the Services or Software, resulting from the negligence or intentional misconduct, including any unauthorized disclosure or misuse of the Services or Software, including data derived from DPV®, DSF<sup>2</sup>® and NCOALink®, by Licensee or Licensee's employees, agents, representatives, or customers (v) violation by Licensee of any applicable law; or (vi) the infringement by Licensee of any intellectual property rights of any person or entity.

Section 7.05 — Force Majeure: Licensor shall not be liable to Licensee for failing to perform its obligations under this Agreement because of circumstances beyond the control of Licensor. Such circumstances shall include, but not be limited to, any acts or omissions of any government or governmental authority, natural disaster, act of a public enemy, riot, sabotage, dispute or differences with workmen, power failure, delays in transportation or deliveries of supplies or materials, acts of God, terrorism, national or regional emergencies, government action, government order, disease, epidemic, pandemic, quarantine, communication outages, Internet outages, fires, floods, computer network failures, outages caused by hackers, sabotage, viruses, worms, or other third-party wrongful actions, or any other events reasonably beyond the control of Licensor.

## **ARTICLE VIII: INTELLECTUAL PROPERTY**

Section 8.01 — Ownership and Title: Title to the Software, Services, and Documentation including ownership rights to patents, copyrights, trademarks and trade secrets therein shall be the exclusive property of Licensor.

Section 8.02 — Modifications: Licensee shall not modify the Software or Services and shall not allow the Software or Services to be modified by any third party without the prior written consent of Licensor. Licensee shall not use the Software or Services or any materials incident thereto to develop any derivative products without the prior written consent of Licensor. If the Software or Services are modified, such modifications shall be the sole and exclusive property of Licensor, and Licensee shall assign to Licensor all of its rights, title and interests to such modifications and any resulting derivative products, including (but not limited to) any and all copyrights, patents and trade secrets related thereto.

Section 8.03 – Access: Licensee may not (and is not licensed to) offer or facilitate access to or use of the Software or Services to third parties. Regardless of whether Licensee is accessing the Software or Services directly or through an integrated product, only Licensee’s employees and authorized contractors may access or use the Software or Services. Rights to access the Software or Services on a particular device do not give Licensee any right to implement Licensor patents or other Licensor intellectual property in the device itself or in any other software or devices.

Section 8.04 — U.S. Government Restricted Rights: This Section 8.04 shall not apply unless Licensee is the U.S. Government or an agency or department thereof (collectively “Government”). The Software and Documentation are provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (b)(1) and (2) of the Commercial Computer Software License clause at 48 C.F.R. 52.227-19.

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## **ARTICLE IX: SECURITY**

At all times, Licensee shall maintain (a) appropriate security controls to restrict access to the hardware, software (including the server and workstations), and data used in connection with the Software and Services and to ensure a secure environment for maintaining that hardware, software, and data, (b) personnel and management policies sufficient to provide reasonable assurance of the trustworthiness and competence of its employees and the satisfactory performance of their duties and in accordance with all applicable laws, rules and regulations, and (c) appropriate computer and network

security controls, including the use of reasonable security procedures which are sufficient to ensure that documents, notices and other information specified in this Agreement that are electronically created, communicated, processed, stored, retained, transmitted, or retrieved are authentic, accurate, reliable, complete, and confidential, and that business records and data are protected from improper access.

Licensor shall at all times retain sole and exclusive ownership of the Software and Services and, as between the parties, the Software is Confidential Information. Licensee shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Software or Services, and notify Licensor promptly of any such unauthorized use. Licensee shall not: (a) allow access to the Software or Services by unauthorized parties, (b) modify, copy, sell, rent, transfer, reproduce or distribute the Software, except as specifically provided in the Agreement, (c) use the Software or Services to provide processing services to or otherwise for the benefit of third parties whose primary business is in the field of data processing or data marketing, or (d) create Internet "links" to or from the Software or Services, or "frame" or "mirror" any of Licensor's content which forms part of the Software or Services. Licensee shall at all times comply with terms and conditions applicable to third-party software provided with the Software. Licensor reserves all rights in the Software not expressly granted herein.

Licensee consents to the transfer of certain data, including, but not limited to, the activation code and data regarding the hardware configuration, during the Software activation process.

Licensor reserves the right to monitor network traffic to facilitate Software activation and identify unauthorized attempts to access the Services, upload or change information, or otherwise cause damage.

Anyone who is provided a login ID and password by Licensee could, inadvertently or otherwise, disrupt the transmission of data or otherwise adversely affect the Services. Licensee personnel and Users with login access to Licensee's subscription data will have access to Licensee's data and account administration features. The sharing of login IDs with Licensee's customers could compromise the security of Licensee's other customers' data. Any sharing of login IDs is prohibited, and Licensor will not be responsible for any actions resulting from the sharing of login IDs. Users are to be issued a unique login ID and password.

In the event that Licensee is authorized to allow its customers to access the Services, such access must be carried out in accordance with Licensor's procedures, as revised from time to time. A list of such customers shall be provided to Licensor, and Licensor shall maintain the list of customers that have access to the Services. Licensee shall also maintain a current list of customers with access to the Services. This list must include each customer login ID. Licensee is responsible for promptly providing written or email notification to Licensor of any changes in Licensee's personnel with access to the



Services, including but not limited to notification of any termination of employment of personnel with access to the Services, and deactivating such personnel's login ID. Licensee shall also promptly inform Licensor of any changes to its customers' login ID which occur for any reason.

Licensee should encourage its personnel and Users to terminate Services and Software sessions each time they leave their workstations and to abide by other reasonable security measures.

If Licensee learns of any breach of security, misuse of passwords, unauthorized access, or violation of security procedures by any of its personnel or Users, Licensee shall promptly provide written or email notification to Licensor.

Licensee is responsible for any of its personnel or Users who have access to the Services or Software, and for any unauthorized attempts to upload or change information, or otherwise cause damage to Licensor or third parties.

## **ARTICLE X: CONFIDENTIALITY**

Licensee agrees not to disclose to any third party any information related to Licensor's business, products, processes or services ("Confidential Information") and to protect its confidentiality using at least the same degree of care that Licensee uses to protect its own confidential information, which shall under no circumstances be less than reasonable. If Licensee receives an order from a court or other governmental body that requires disclosure of Licensor's Confidential Information, then Licensee shall notify Licensor of the order and shall assist Licensor in seeking an appropriate protective order in advance of making any such disclosure. Licensee agrees not to allow or enable the reverse engineering, decompiling or disassembling of any of the Software, Services or products provided or associated with the Software or Services, including without limitation deriving any data, algorithms, or source code. Licensee acknowledges that Licensor maintains records of access to the Services in order to comply with laws and with requirements of third parties, that in certain circumstances Licensor may be required to disclose Licensee's use of the Services in order to meet these requirements, and that nothing in this Agreement shall prevent Licensor from making such disclosure.

Licensee agrees that aspects of the licensed materials, including the specific design and structure of individual programs, constitute trade secrets and/or copyrighted material of Licensor and are Confidential Information. If Licensee provides Licensor with any suggestions, ideas, feedback, error identifications or other information related to the Software or Services or Licensee's use and evaluation of the Software or Services (together, "Feedback") or makes any modifications to the Software or Services (whether or not authorized hereunder), Licensee hereby assigns to Licensor all right, title and interest in and to all Feedback and modifications, including all intellectual property rights

therein, and agrees to assist Licensor in perfecting such rights. In addition, all such Feedback and modifications will be the Confidential Information of Licensor.

Licensee acknowledges that there are inherent risks in the electronic transmission of data. Licensor is not liable for any unauthorized access, disclosure, or dissemination of Licensee's information.

Licensee understands that DPV®, DSF<sup>2</sup>® and NCOALink® and subsequent revisions thereof are confidential and proprietary property of the USPS® and shall remain the property of USPS®. Nothing contained in this Agreement shall give Licensee any right, title, or interest in or to DPV®, DSF<sup>2</sup>® and NCOALink® except as a customer of the Services for mailing list processing.

DPV®, DSF<sup>2</sup>® and NCOALink® require Licensee to have access to address information (i.e. addresses and return addresses) that appears on mail pieces. To ensure the confidentiality of this address information, except as permitted, no supplier or subcontractor, and no employee or former employee of any supplier or subcontractor may disclose to any third party any address information obtained using the Services.

## **ARTICLE XI: EXPORT**

Export laws and regulations of the United States (including those destinations where export or use would be prohibited by the U.S. Office of Foreign Assets Control (OFAC) sanction program lists) and any other relevant local export laws and regulations apply to the Software and Services. Licensee agrees that such export control laws govern Licensee's use of the Software (including technical data) and any Services deliverables provided under this Agreement, and Licensee agrees to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). Licensee agrees that no data, information, program, and/or materials resulting from the Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

## **ARTICLE XII: MISCELLANEOUS**

Section 12.01 — Assignments: Licensee may not assign this Agreement, or any part thereof, without the prior written consent of Licensor. If Licensor is acquired by or merges with a third party entity during the License Term, it may assign or transfer this Agreement to the acquiring or successor entity without the consent of Licensee.

Section 12.02 — Entire Agreement: This Agreement contains the entire understanding of the parties and supersedes previous verbal, written and click-through agreements between the parties concerning licensing of the Software or providing of the Services.

Section 12.03 — Amendments and Modifications: Waiver, alteration, modification, or amendment of a provision of this Agreement shall not be binding against Licensor

unless such waiver, alteration, modification or amendment is in writing and signed by Licensor. Licensor reserves the right to modify this Agreement at any time under the terms set forth in Section 12.06.

Section 12.04 — Severability: If a provision of this Agreement is rendered invalid, the remaining provisions shall remain in full force and effect. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, and if any provision of this Agreement is held illegal, invalid or void, such provision may be changed to the extent reasonably necessary to make the provision, as so changed, legal, valid and binding. In any event, the remaining provisions of this Agreement shall not be affected or impaired and, to that end, the provisions of this Agreement shall be severable.

Section 12.05 — Captions: The headings and captions of this Agreement and any amendment, modification, or addendum thereto are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision.

Section 12.06 – Changes: Licensor reserves the right to revise, update, modify, add to, delete from, or supplement this Agreement, in its sole discretion, at any time, and such changes will be effective when posted through the Software or Services, on Licensor's website for the Software or Services, or at <https://bccsoftware.com/master-software-license-agreement/> or when Licensor notifies Licensee by other means. Licensee's continued use of the Software or Services after the Agreement has been so changed indicates its agreement to the changes.

Section 12.07 — Governing Law and Jurisdiction: This Agreement shall be governed by and subject to the internal laws (exclusive of the Conflicts of Law provisions) and decisions of the courts of the State of New York. Each party hereby submits to the exclusive jurisdiction of the state and federal courts in the State of New York and to venue in the state and federal courts located in Monroe County, New York.

Section 12.08 — Notice: All communications shall be in writing. Notices shall be deemed delivered when delivered by Certified Mail or overnight courier. Notice shall be deemed given on the date of receipt – as evidenced in the case of Certified by Return Receipt. Licensor's address for notice is 75 Josons Dr., Rochester, NY 14623. Licensee's address for notice is the address given in the Order.

Section 12.09 — Pronouns/Gender: Pronouns and nouns shall refer to the masculine, feminine, neutral, singular or plural as the context shall require.

Section 12.10 — Waiver: Waiver of breach of this Agreement shall not constitute waiver of another breach. Failing to enforce a provision of this Agreement shall not constitute a waiver or create an estoppel from enforcing such provision.

Section 12.11 — Relationship of the Parties: It is agreed that the relationship of the parties is primarily that of Licensee and Licensor. Nothing herein shall be construed as creating a partnership, an employment relationship, or an agency relationship between the parties, or as authorizing either party to act as agent for the other. Each party maintains its separate identity.

Section 12.12 — No Contest: Licensee shall not contest or aid in contesting the ownership or validity of the trademarks, service marks, trade secrets, patents, or copyrights of Licensor.

Section 12.13 — Assurances: Each party hereby represents and warrants that, to the best of its knowledge, all representations, warranties, recitals, statements and information provided to the other party under this Agreement are true, correct and accurate as of the date of this Agreement.

Section 12.14 — Litigation Expense: In the event of litigation arising out of this Agreement, the reasonable costs of such litigation, including, but not limited to, reasonable attorney fees, travel expenses, deposition costs, expert witness expenses and fees, court costs, and other costs incurred in connection with bringing or defending such action whether or not incurred in trial or appeal shall be recovered by the prevailing party from the non-prevailing party.

Section 12.15 -- Injunction: Licensee agrees that any breach of the provisions of this Agreement will cause irreparable injury to Licensor so that Licensor shall be entitled to injunctive relief in addition to any other remedies that may be available.

Section 12.16 -- Books and Records; Audit: Licensee agrees that it shall maintain current, accurate, and complete books and records relating to its usage of the Software and Services.

Licensee agrees that Licensor, or any designee of Licensor, shall have the right to inspect, review, and audit all such books, records, any source documents used in the preparation of said books and records, and, if necessary, the systems on which the Software has been installed and/or the Services have been used during normal business hours upon written notice to Licensee at least fourteen (14) days prior to commencement of any such inspection, review, or audit. Such audit shall be strictly limited to those books, records, and systems related to Licensee's use of the Software or Services and compliance with this Agreement. The right to audit shall not exceed two (2) audits per calendar year.

Section 12.17 -- Third Party Beneficiary: This Agreement inures to the benefit of Licensor's data providers.

Section 12.18 – Survival: All rights and obligations of the parties pertaining to (i) the protection or use of proprietary and confidential data and information, (ii) improper or unlawful use of the Services, and (iii) Articles V, VII, VIII, X, XI, and XII of this Agreement shall survive the termination or expiration of this Agreement.