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# Parties

**Australian Competition and Consumer Commission** of Canberra, ACT (**Licensor**)

**The Licensee (the person meeting the definition in clause 1)**

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# Background

- A The Licensor is the owner of the CDR Trade Marks.
- B The Licensor agrees to grant a licence to the Licensee to use the CDR Trade Marks for particular processes that the Licensee is required to undertake in accordance with the Consumer Data Rules, subject to the terms of this Licence.
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# Agreed terms

## 1 Definitions

### 1.1 Definitions

In this Licence these terms have the following meanings:

<b>Business Day</b>	A day which is not a Saturday, Sunday or bank or public holiday in Melbourne.
<b>CDR Trade Marks</b>	The Consumer Data Right trade marks with registration numbers 2042059, 2042060 and 2042063 detailed in the <b>Schedule</b> .
<b>Consumer Data Rules</b>	The rules made by the Licensor by legislative instrument under section 56BA of the <i>Competition and Consumer Act 2010</i> (Cth).
<b>Force Majeure</b>	The meaning given to it in <b>clause 9</b> .
<b>Infringement Claim</b>	The meaning given to it in <b>clause 6.5</b> .
<b>Licence Grant</b>	The meaning given to it in <b>clause 2.1</b> .
<b>Licensed Field</b>	The field of use as: <ul style="list-style-type: none"><li>(a) an accredited person when asking a CDR consumer to give consent to collect and use CDR data; and/or</li><li>(b) a data holder when asking a CDR consumer to give authorisation to disclose CDR data,</li></ul>

where the terms 'accredited person', 'CDR consumer', 'CDR data' and 'data holder' are defined in the *Competition and Consumer Act 2010* (Cth).

<b>Licensee</b>	The person registered on the Register.
<b>Register</b>	The register of Licensees entitled to use the CDR Trade Marks maintained by the Licensor.
<b>Trade Marks</b>	Trade names, trade marks, service marks, trade dress, logos or other identifying indicia.

## 2 Licence

### 2.1 Licence Grant

The Licensor grants to the Licensee a non-exclusive, non-transferable licence to use the CDR Trade Marks and the copyright subsisting in them solely for the processes that the Licensee is required to undertake in accordance with the Consumer Data Rules being those in the Licensed Field (**Licence Grant**), subject to the requirements of this Licence.

### 2.2 Scope of licence

The only licence or interest granted to the Licensee in the CDR Trade Marks or the copyright subsisting in them is that expressly provided for in this Licence. No other licence or interest is granted, either expressly or by implication, by estoppel or otherwise.

### 2.3 Sublicences

- (a) The Licensee has no right to sublicense any right to use any of the CDR Trade Marks without the Licensor's prior written consent.
- (b) The Licensor has an absolute discretion to give or withhold consent.

### 2.4 No fees for Licence Grant

No fees, royalties or other payments are payable by the Licensee to the Licensor for the Licence Grant.

### 2.5 Compliance with Consumer Data Rules and relevant standards

The Licensee must comply with:

- (a) the Consumer Data Rules as updated from time to time;
- (b) any data standards relevant to the use of the CDR Trade Marks made under section 56FA of the *Competition and Consumer Act 2010* (Cth) from time to time; and
- (c) any reasonable requirement relevant to the use of the CDR Trade Marks notified from time to time by the Licensor.

### 2.6 Register of persons entitled to use the CDR Trade Marks

- (a) The Licensor will maintain the Register.

- (b) The Licensee's right to use the CDR Trade Marks shall endure only so long as the Licensee is entered on the Register.
- (c) The Licensor may modify the form and nature of the Register, and the particulars to be entered onto the Register, at its discretion.
- (d) The Licensee must give notice to the Licensor of any changes to particulars of its entry on the Register within 14 days of such changes.

## 3 Use of the CDR Trade Marks

### 3.1 Form

The Licensee must use the CDR Trade Marks only in the form set out in the **Schedule** and may not alter them in any way.

## 4 Ownership of CDR Trade Marks

### 4.1 Ownership

- (a) The Licensee acknowledges that the Licensor owns all interest, throughout the world, in and to the CDR Trade Marks and the copyright subsisting in them.
- (b) The Licensee must not take any action during the term of this Licence that is inconsistent with the Licensor's ownership of the CDR Trade Marks or the copyright subsisting in them.

### 4.2 No other interest

Nothing in this Licence gives the Licensee any interest in any of the CDR Trade Marks or the copyright subsisting in them, other than the right to use the CDR Trade Marks in accordance with this Licence.

### 4.3 No challenge

The Licensee must not, either directly or indirectly:

- (a) challenge the registration of any of the CDR Trade Marks;
  - (b) challenge the Licensor's ownership of any of the CDR Trade Marks;
- nor assist any other person to do so.

### 4.4 Goodwill and reputation

All goodwill and improved reputation in respect of the CDR Trade Marks generated by the Licensee's use of the CDR Trade Marks inures to the Licensor's sole benefit.

## 5 Preserving value of CDR Trade Marks

### 5.1 Conduct of Licensee

The Licensee must not, by any act or omission, use any of the CDR Trade Marks in any manner that tarnishes, degrades, disparages or reflects adversely on the Licensor, or on the CDR Trade Marks, in any material respect.

## 6 Protection of licensed intellectual property

### 6.1 Maintenance of intellectual property rights.

- (a) The Licensor maintains sole control and discretion over the prosecution and maintenance of the CDR Trade Marks, subject to this **clause 6**.
- (b) The Licensor will use commercially reasonable efforts to prosecute and maintain the registration of the CDR Trade Marks when economically justifiable, at the Licensor's expense.

### 6.2 Protection of intellectual property rights.

- (a) The Licensor has the sole right, but not obligation, to bring, at its own expense, and control, any suits against any unauthorised use, infringement, misappropriation, or other breach of any of the CDR Trade Marks.
- (b) The Licensee agrees to cooperate with the Licensor in any litigation or other enforcement action that the Licensor may undertake to enforce or protect the CDR Trade Marks, at the Licensor's expense except for legal fees and costs. The Licensee has no right to participate or be represented.
- (c) The Licensee has no right to make a claim of any kind against the Licensor based on or arising out the Licensor's handling of, or decisions concerning, any such litigation, action, suit, proceeding, settlement, or compromise, and irrevocably releases the Licensor from any such claim.
- (d) The Licensee may not take any suits or action against any party alleged to be misusing any of the CDR Trade Marks.

### 6.3 Notification of infringement

The Licensee must promptly notify the Licensor and provide to the Licensor relevant background facts on becoming aware of or suspicious of:

- (a) any registrations of, or applications for registration of, marks that do or may conflict with any of the CDR Trade Marks; and
- (b) any infringement, misappropriation, imitation, illegal use or misuse of any of the CDR Trade Marks.

### 6.4 No assurance of protection

The Licensee acknowledges that, except as set out in this Licence:

- (a) the CDR Trade Marks are not currently registered; and
- (b) the Licensor makes no representation or warranty regarding intellectual property protection for any of the CDR Trade Marks.

### 6.5 Defence against Infringement Claims

- (a) The Licensor and the Licensee must cooperate to diligently defend the Licensee against any third party infringement claims, demands or actions alleging that the Licensee's use of the CDR Trade Marks infringes the rights of a third party (**Infringement Claim**).

- (b) The Licensee must promptly inform the Licensor of any Infringement Claim against the Licensee.
- (c) If an Infringement Claim challenges the Licensor's rights in the CDR Trade Marks, the Licensor has the option to defend the Infringement Claim at its own expense. The Licensee agrees to cooperate with the Licensor with respect to the defence of the Infringement Claim, at the Licensor's expense (other than attorneys' fees).
- (d) The Licensee has the right to participate and be represented with respect to any such Infringement Claim by its own counsel at its own expense.
- (e) The Licensee has no right to and shall not make a claim of any kind against the Licensor based on or arising out of the Licensor's handling of or decisions concerning any such Infringement Claim or related settlement or compromise, and irrevocably releases the Licensor from any such claim.
- (f) If:
  - (i) the Licensor does not exercise the option in **clause 6.5(c)**; or
  - (ii) the Infringement Claim does not challenge the Licensor's rights in the CDR Trade Marks,the Licensee is responsible for defending or otherwise resolving the Infringement Claim. However, the Licensor may intervene in the defence of the Infringement Claim at any time at its own expense.
- (g) The Licensor has the right to approve any settlement that involves any of the CDR Trade Marks, and may withhold consent in its absolute discretion.
- (h) Except as otherwise provided in this **clause 6.5**, each party must bear the costs, fees and expenses it incurs in complying with this clause.

## 7 Representations and warranties

### 7.1 Licensor representations and warranties

The Licensor represents to the Licensee that, to the best of the Licensor's knowledge:

- (a) the Licensor:
  - (i) is the owner of the CDR Trade Marks; and
  - (ii) has the right to grant the licences set out in this Licence;
- (b) before the date of this Licence, no person has asserted that the Licensor's use of the CDR Trade Marks infringes on that person's own rights; and
- (c) the Licensee's use of the CDR Trade Marks within the scope of the Licence Grant does not infringe the intellectual property rights of any person.

## 8 Term and termination

### 8.1 Term

- (a) The term of this Licence commences on the date on which the Licensee is registered on the Register and continues subject to the Licensee's compliance with the terms of this Licence and the Consumer Data Rules, until such time as the Licensee ceases to be so registered.
- (b) In the case of an accredited person, this Licence will automatically terminate if the person's accreditation is revoked, suspended or surrendered.

### 8.2 Termination

The Licensee will not be permitted to use the CDR Trade Marks, and this Licence will automatically terminate, if the Licensee:

- (a) breaches any of the Licensee's obligations under this Licence; and
- (b) the breach is not remedied within 14 days after the Licensee receives written notice of the breach from the Licensor.

### 8.3 Effect of termination

Upon termination of this Licence:

- (a) the Licensee must immediately cease all use of the CDR Trade Marks in any manner whatsoever; and
- (b) the Licensee's name shall be immediately removed from the Register.

## 9 Force Majeure

- (a) **Force Majeure** means a circumstance beyond the reasonable direct or indirect control and without the fault or negligence of the party claiming force majeure, including accident, fire, explosion, epidemic, strike, lockout, labour conditions, civil disturbance, riot, any act of God, act of war, terrorist incident, cyclone, flood, storm or earthquake.
- (b) Delay in or failure of performance by a party (other than the payment of money) does not constitute a breach of this Licence by that party if and to the extent that the delay or failure is caused by a Force Majeure, provided the party claiming Force Majeure:
  - (i) gives notice to the other party within 7 days of the occurrence of the Force Majeure providing details of the Force Majeure and its anticipated likely duration and effect; and
  - (ii) uses its best endeavours to resume fulfilling its obligations as promptly as possible and gives notice to the other party with written notice within 7 days of the cessation of the Force Majeure.
- (c) If a delay caused by Force Majeure continues for more than 28 days, either party may terminate the Licence evidenced by this document by giving 14 days' notice to the other parties.



## 10 Notices

### 10.1 General

A notice, demand, certification, process or other communication relating to this Licence must be in writing in English and may be given by an agent of the sender.

### 10.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail; or
- (d) emailed to the current email address for notices.

### 10.3 Particulars for delivery of notices

- (a) The particulars for delivery of notices are initially:

<b>The Licensor</b>	<b>The Australian Competition and Consumer Commission</b>
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Delivery address:	23 Marcus Clarke Street Canberra ACT 2601
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Postal address:	GPO Box 3131 Canberra ACT 2601
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Email:	<a href="mailto:accc-cdr@accc.gov.au">accc-cdr@accc.gov.au</a>
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Attention:	Consumer Data Right Branch
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- (b) Each party may change its particulars for delivery of notices by notice to each other party.

### 10.4 Communications by post

Subject to **clause 10.5**, a communication is given if posted:

- (a) within Australia to an Australian postal address, three Business Days after posting; or
- (b) outside of Australia to an Australian postal address or within Australia to an address outside of Australia, ten Business Days after posting.

### 10.5 After hours communications

If a communication is given:

- (a) after 5.00 pm in the place of receipt; or
- (b) on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9.00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

## **10.6 Process service**

Any process or other document relating to litigation, administrative or arbitral proceedings relating to this Licence may be served by any method contemplated by this **clause 10** or in accordance with any applicable law.

## **11 General**

### **11.1 Legal costs**

Except as expressly stated otherwise in this Licence, each party must pay its own legal and other costs and expenses of performing its obligations under this Licence.

### **11.2 Amendment**

This Licence may be varied or replaced by the Licensor giving written notice of not less than 14 days.

### **11.3 Waiver and exercise of rights**

- (a) A single or partial exercise or waiver by a party of a right relating to this Licence does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.
- (c) No waiver will be construed as a continuing waiver.

### **11.4 Rights cumulative**

Except as expressly stated otherwise in this Licence, the rights of a party under this Licence are cumulative and are in addition to any other rights of that party.

### **11.5 Consents**

Except as expressly stated otherwise in this Licence, a party may conditionally or unconditionally give or withhold any consent to be given under this Licence and is not obliged to give its reasons for doing so.

### **11.6 Further steps**

Each party must promptly do whatever any other party reasonably requires of it to give effect to this Licence and to perform its obligations under it.

### **11.7 Governing law and jurisdiction**

- (a) This Licence is governed by and is to be construed in accordance with the laws applicable in the State of Victoria and the Commonwealth of Australia.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Victoria and in the Commonwealth of Australia and any courts which have jurisdiction to hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.

## 11.8 Assignment

- (a) The Licensee must not assign or deal with any right under this Licence without the Licensor's express prior written consent, which the Licensor may withhold at its absolute discretion.
- (b) Any purported dealing in breach of this **clause 11.8** is of no effect.

## 11.9 Severability

- (a) Subject to **clause 11.9(b)**, if a provision of this Licence is illegal or unenforceable in any relevant jurisdiction, it may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Licence.
- (b) **Clause 11.9(a)** does not apply if severing the provision:
  - (i) materially alters the:
    - (A) scope and nature of this Licence; or
    - (B) the relative commercial or financial positions of the parties; or
  - (ii) would be contrary to public policy.

## 11.10 Construction

Unless expressed to the contrary, in this Licence:

- (a) words in the singular include the plural and vice versa;
- (b) any gender includes the other genders;
- (c) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (d) 'includes' means includes without limitation;
- (e) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it;
- (f) a reference to:
  - (i) a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes the person's legal personal representatives, successors, assigns and persons substituted by novation;
  - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;
  - (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
  - (v) a right includes a benefit, remedy, discretion or power;
  - (vi) this or any other document includes the Licence as novated, varied or replaced and despite any change in the identity of the parties;

- (vii) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
  - (viii) this Licence includes all schedules and annexures to it; and
  - (ix) a clause, schedule or annexure is a reference to a clause, schedule or annexure, as the case may be, of this Licence;
- (g) if the date on or by which any act must be done under this Licence is not a Business Day, the act must be done on or by the next Business Day; and
- (h) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

**11.11 Headings**

Headings do not affect the interpretation of this Licence.

**SIGNED** for and on behalf of  
 ..... by  
 a duly authorised representative who  
 warrants that they have the authority to sign  
 this form on behalf of.....

\_\_\_\_\_  
 Name of authorised representative (print)

\_\_\_\_\_  
 Name of witness (print)

\_\_\_\_\_  
 Signature of authorised representative

\_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Date

Schedule

The CDR Trade Marks



**Consumer  
Data Right**

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