



# Locate

**License Agreement** between Customer:

Company Information

Name: \_\_\_\_\_

ABN/ACN: \_\_\_\_\_

**Company Address**

**Postal Address (if different)**

Address: \_\_\_\_\_

Address: \_\_\_\_\_

Locality: \_\_\_\_\_

Locality: \_\_\_\_\_

State: \_\_\_\_\_

State: \_\_\_\_\_

Postcode: \_\_\_\_\_

Postcode: \_\_\_\_\_

**Company Contact**

**Finance Contact (if different)**

Title: \_\_\_\_\_

Title: \_\_\_\_\_

First Name: \_\_\_\_\_

First Name: \_\_\_\_\_

Surname: \_\_\_\_\_

Surname: \_\_\_\_\_

Phone: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

*and*

**ACCELEON PTY LIMITED**

ABN: 26 301 946 287

Suite 401B, 198 Harbour Esplanade, Docklands VIC 3008

**For the Use of Product(s):**

Locate

Locate Batch

Signed by authorised representatives:

**For the Customer:**

**For Acceleon:**

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Position: Director



### Terms and Conditions

Please read these terms carefully. These terms form a legally binding agreement between you ("**Customer**") and Acceleon Pty Ltd (ABN 26 301 946 287) ("**Acceleon**")

1. These terms and conditions govern the terms on which the Customer may access Acceleon's products ("**Products**"). By accessing this website and the Products you agree to abide by these terms.
2. This agreement has no specific term and shall apply to all credits purchased by the Customer and any Locate Batch assignments undertaken by Acceleon, until further notice by Acceleon or termination as provided for in this agreement.

### Access

3. Access is by the registration of the Customer as a user through Acceleon's website, or by alternative means agreed to by Acceleon, which together entitle the Customer to carry out certain searches through the website.
4. Access to the Products will be by user identity and password selected by the Customer for individual users through Acceleon's website registration process. The Customer accepts sole responsibility for all searches carried out and all charges incurred through such registration and issue of the password. The Customer will ensure that proper and effective security is provided for the user identity and password so that unauthorised or unlawful use of the Products is prevented. The Customer also agrees to supervise persons having access to the user identity and the password to ensure that the terms and conditions of this Licence are strictly observed. The Customer acknowledges that the password, and, if necessary, user identity, can be changed as often as is necessary through Acceleon's website to maintain security.
5. If credits purchased are not utilised within 6 months of purchase, Acceleon may withdraw the Products and refund to the Customer on a proportionate basis the value of any unused credits. Credits purchased are not otherwise returnable or refundable.
6. The Customer is responsible for providing itself with such computer and other facilities as may be required to access the website and receive information from it, and where applicable to provide data to Acceleon in a format acceptable to Acceleon.
7. While Acceleon will use reasonable endeavours to ensure the Products are accessible and operational at all times, it does not guarantee this will be the case. The Customer acknowledges that the Products rely on data and information from third party suppliers and from time to time, certain data and information may not be available to the Products (for example, if there is a technical failure of the servers utilised by a third party data provider, or scheduled downtime, or maintenance issues, or investigations of breaches of security). The Customer will have no claim of any kind upon Acceleon for the failure of any data or information including Acceleon's telephone directory to be available at any particular time or at all whether temporarily or permanently. Acceleon will use reasonable endeavours to ensure that where possible, prior notification of an scheduled maintenance will be provided by Acceleon to the Customer.

### Payment

8. Where services are provided by Acceleon without prepayment, payment of invoices shall be due and payable within 14 days of the invoice date.
9. Where the Customer disputes an item on an invoice then the Customer will pay that invoice, less the disputed amount by the due date and the balance shall be paid (as appropriate) once the dispute has been resolved.
10. Acceleon reserves the right to charge interest, compounded daily, on all overdue invoices. Interest on overdue invoices shall be charged at the rate of 2% above the prevailing overdraft index rate as quoted by the Commonwealth Bank of Australia, or should that not be available, the rate which the Commonwealth Bank of Australia designates as being an appropriate substitute for the overdraft index rate.



### Support

11. For Customers introduced by a third party sales channel ("**Channel**"), first level telephone support will be available to Customers from the Channel to assist generally with Product use between 9am and 5pm AEDST on weekdays, excluding public holidays and any weekdays when the Channel or Acceleon's offices are closed during the Christmas-New Year period each year. Should any support issue raised go beyond the capacity of the Channel to resolve, becoming a second level issue, Acceleon will similarly provide support on those issues.
12. Support services to be provided by Acceleon or the Channel do not include:
  - a. correction of errors or defects caused by the Customer or a third party, including the failure by the Customer or a third party to maintain a suitable operating environment or to use the Products in the approved fashion;
  - b. diagnosis or rectification of faults not associated with the Products;
  - c. resolution of installation or implementation issues, technical architecture issues and other customer specific issues.

### Use

13. The Customer must access and use the Products only as incidental to its bona fide and lawful business being a business where any failure of the Products could not lead to death, personal injury or environmental damage (such as nuclear facilities, air traffic control or life support systems). In particular without limiting the generality of the foregoing the Customer shall not use any data or information from the Products:
  - a. for resale or provision to any third party
  - b. in any information storage and retrieval system
  - c. for the production of any kind of telephone directory other than incidental to its business (such as for debt collection or client information records), nor:
  - d. to data mine or conduct automated searches or attempt to reverse engineer, decompile, create derive works from any elements of the Acceleon website, the Products or the data accessible through it, nor attempt to create a substitute similar service or otherwise disassemble or attempt to extract the source code contained in the Products.
14. The Customer will not use Public Number Directory (PND) data for the purpose of using a telephone number to find a name and/or address, or using an address or part thereof to find a name and/or telephone number.
15. The Customer agrees to indemnify Acceleon against any claims arising against Acceleon as a result of any unlawful use of the Products by the Customer, its servants or agents, or otherwise through use of the Customer's user identity and/or password.
16. The Customer hereby grants to Acceleon and to its suppliers of data an irrevocable, perpetual, worldwide, royalty-free, assignable and sub-licensable licence to use any content provided by the Customer for the purposes of improving the Products and the quality of the searches carried out through the Products. The Customer warrants that any use by Acceleon or others involved in the provision of services for the Products does not violate the rights of any third party, whether by way of privacy, intellectual property or otherwise.

### Indemnity

17. The Customer hereby indemnifies and holds harmless Acceleon and its directors, officers, employees, agents and contractors from and against any loss, damage, claims, liability, cost or expense (including legal fees) incurred in connection with a breach of these terms by the Customer. It is not necessary for Acceleon to incur any expense or to make any payment before enforcing a right of indemnity conferred by these terms.

**Ownership of data / information**

18. The Customer acknowledges that the suppliers to Acceleon of data and information used in the Products hold or claim ownership and/or copyright in that data and information, and the Customer shall respect, observe and not dispute any such rights and claims. These terms do not grant the Customer any licence or other right in relation to the intellectual property contained in the Products, data or information, except as expressly provided.

**Termination/Suspension of License - Default by Customer**

19. In addition to any other rights it may have at law or in equity, Acceleon may, without notice, suspend access to the Products and/or terminate this agreement :

- a. If the Customer fails to pay when due any sum payable under this agreement;
- b. If the Customer fails to perform or observe any of the provisions of this agreement;
- c. If the Customer provides false or misleading information in regard to this agreement;
- d. If Acceleon is reasonably of the opinion that the Customer or any other person using the Customer's user identity or password has used, or may use, the Products or any information contained therein for any unlawful or improper purpose or in a manner that may jeopardise security, contravene any Federal or State law, or may interfere in or impede the proper functioning of the Products,
- e. If the operation of the Products or any of Acceleon's obligations under these terms become unlawful.

and in any such case the Customer shall not be entitled to any refund for unused credits.

**Variations**

20. Acceleon may from time to time change the terms and conditions of this licence in its sole discretion, including but not limited to situations where Acceleon reasonably considers appropriate to meet legal requirements or restrictions or any Code that applies to any participant in the telecommunications industry, the laws of any relevant foreign country, or of international law, or to meet the reasonable requests or requirements of officials such as the Privacy Commissioner or Australian Information Commissioner.. Where notice of such changes is practicable before they take effect, Acceleon shall give such notice in writing. Acceleon shall otherwise give such notice of the changes as soon as is practicable, and shall include up-to-date licence information in the on-screen licence information acknowledged by users accessing the Products from time to time. If as a result of any such changes it is necessary for Acceleon to request that the Customer execute a new form of agreement then the Customer agrees to do so and return such new agreement to Acceleon within 7 days of such agreement being presented for execution. By accessing this website or the Products after the date of variation the Customer acknowledges that they have agreed to the terms as varied. If the changes are such that the Customer is materially and adversely affected by them, the Customer must stop accessing this website and the Products and may terminate this agreement and shall be entitled to a refund for any unused credits. Acceleon will not be responsible for any loss sustained including without limitation any consequential loss, loss of profits or economic loss associated with such variation.

21. Acceleon shall be entitled from time to time to modify or substitute some or all of the databases upon which the Products are based, provided that where a database is removed a substitute database is provided that contains information of a type similar to that contained in the database whose use has ceased.

**Variation of fees**

22. Acceleon reserves the right to vary its fees at any time and from time to time. In any such case, the Customer shall be entitled to a refund for unused credits held.



### **Data quality**

23. The Customer acknowledges that the information contained within the Products is obtained from a variety of suppliers and is provided on an "as is" and "as available" basis. Acceleon discloses that the Products contain omissions and errors and none of Acceleon, its related companies, employees and agents, nor the suppliers to Acceleon of data used in the Products, warrants or represents that the Products or information contained therein are complete, accurate or free from errors or omissions, nor that they are of any particular quality or suitable for any particular purpose. The Customer acknowledges that Acceleon is not liable for any losses incurred which may be wholly or partly caused by any inaccuracy, omission, defect or error in the Products or information or data contained therein.

### **ASIC Data**

24. Without detracting from the generality of clause 27, the Customer acknowledges certain information contained within the Products is obtained from the Australian Securities and Investments Commission (ASIC). The Customer further acknowledges that the information and data is provided to ASIC by third parties and ASIC has not verified the accuracy, currency, reliability or completeness of that data and makes no representation or warranty as to its accuracy, currency or reliability. Neither Acceleon nor ASIC will have any liability to the Customer or any other person for any inaccuracy, omission, defect or error in such data.

### **Withdrawal / return of information**

25. If a supplier of data or information to Acceleon requires that data or information supplied to the Customer be withdrawn or returned or deleted from all records, for example if confidential information has been inadvertently supplied, the Customer shall comply with any such request made by Acceleon as soon as reasonably practicable.

### **Reports, Audit**

26. The Customer acknowledges that some of Acceleon's suppliers may be entitled to call for reports and/or audit the use of their data by Acceleon, and the Customer consents to Acceleon performing its obligations in respect of any such reporting or audit process including in relation to use by the Customer of the Products.
27. The Customer shall keep proper records of every activity undertaken pursuant to including without limitation all its use of the Products or data or information contained therein.
28. Upon reasonable notice to the Customer, Acceleon or its authorised representatives, reserves the right to inspect and audit the Customer's records and make copies of those records concerning the Products or information or data derived therefrom for the purpose of verifying the Customer's compliance with these terms.
29. The Customer agrees to Acceleon disclosing such information as may reasonably be requested pursuant to law by any government, semi-government or statutory authority concerning the provision of data information generally by Acceleon, and concerning provision of that information to the Customer specifically, if such information is apparently lawfully requested.

### **Limitations on Liability**

30. Acceleon and the suppliers to it of data used in the Products shall not be liable for any damages, injury or loss arising or resulting, directly or indirectly, from the Customer's use of the Products, nor for any loss or damage arising or resulting directly or indirectly, from any statement information or advice made or given, whether negligently or otherwise, in relation to the Products or their compilation or production or the use to which any data in them is intended to be put.
31. Acceleon does not exclude or limit the applicability of any statute (such as the *Competition and Consumer Act 2010* (Cth)) where to do so would contravene that statute, or cause any part hereof to be void. Subject to that and to the extent permitted by law, Acceleon, its related companies and their officers employees and agents exclude all express or implied representations, conditions, warranties guarantees that are not included in these terms including those relating to acceptable quality, timeliness or fitness for purpose and will have no liability (including liability for negligence) to the Customer for any loss, damage, cost or expense (including but not limited to consequential



loss, economic loss, lost profits or data) incurred or arising by reason of any person relying on any material published in any of the Products, nor by reason of any error, omission or misrepresentation, nor in respect of any difficulties that the Customer may have from time to time or at any time in accessing or otherwise using any of the Products, or in accessing or securing assistance from any telephone or other support service that Acceleon provides from time to time. Acceleon's liability for breach of any obligation or for a condition or warranty that by law cannot be excluded is limited (at Acceleon's option) to the supplying of the services again, or the payment of the cost of having the services supplied again.

#### **Force majeure**

32. Acceleon shall not be liable for any failure to perform its obligations under these terms where that performance is delayed, prevented, restricted or interfered with for any reason outside Acceleon's reasonable control.

#### **Website terms and conditions**

33. The Customer will observe the Terms and Conditions that are a pre-requisite to entering the Acceleon website from time to time.

#### **Telephone information - unlisted numbers, suppressed addresses**

34. Acceleon is not to provide the Customer with any unlisted number or suppressed address, but should any such information come into the possession of the Customer (for example, due to errors in data supplied to Acceleon), the Customer will not publish it or use it in any way and will, immediately on becoming aware of the status of that information, permanently delete it from any record it holds.

#### **Privacy**

35. The following provisions in relation to privacy shall prevail to the extent of any inconsistency with these terms or any other document.

36. "**Personal Information**" means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion.

"**Privacy Laws**" means:

- a. the *Privacy Act 1988* (Cth), the *Telecommunications Act 1997* (Cth), the Australian Privacy Principles; and
- b. any other legislation, principles, industry codes and policies relating to the collection, use, disclosure, storage or granting of access rights to Personal Information, applicable to a party, or which Acceleon notifies the Customer is a Privacy Law for the purposes of this agreement.

37. The Customer must comply with all Privacy Laws in relation to the Personal Information, whether or not the Customer is an organisation or agency bound by the Privacy Laws.

38. The Customer must:

- a. ensure that any person to whom Personal Information is disclosed does not do or omit to do anything which, if done or omitted to be done by the Customer would constitute a breach by the Customer of any obligation of the Customer hereunder;
- b. obtain from any contractor of the Customer to whom information is disclosed written agreement to comply with Privacy Laws and provisions having the same effect as these terms;
- c. not do anything or omit to do anything with the Personal Information that will cause Acceleon to breach its obligations under a Privacy Law.



39. The Customer must:

- a. collect, store, use, disclose or otherwise deal with the Personal Information as directed by Acceleon, except to the extent that compliance with the direction would cause the Customer to breach a Privacy Law;
- b. give Acceleon all information necessary to enable it to assess or audit the Customer's compliance with this clause;
- c. provide all assistance as required by Acceleon to assist Acceleon in complying with its obligations under any Privacy Law;
- d. notify Acceleon if it becomes aware of any breach or alleged breach of its obligations under this clause and comply with any reasonable direction from Acceleon with respect to remedying that breach; and
- e. take all reasonable steps to ensure that the Personal Information is protected against misuse and loss, or unauthorised access, modification or disclosure, including without limitation undertaking any staff training as may be required.

40. The Customer must not transfer Personal Information to a person or entity (including itself) in a foreign country without Acceleon's prior written consent.

41. The Customer acknowledges that it has not relied on any information from Acceleon to the Customer as advice regarding the Customer's obligations under Privacy Laws.

**General**

42. Any provision of these terms that is wholly or partially void or unenforceable is severed to the extent that it is void or unenforceable. The validity or enforceability of the remainder of these terms is not affected.
43. A failure to or delay in Acceleon exercising enforcing its rights will not constitute a formal waiver. A provision or right under these terms may not be waived unless in writing signed by the party granting the waiver.
44. These terms are governed by the laws of Victoria, Australia and the Customer irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and the Commonwealth of Australia.