

## **CESSION CENTRAL (PTY) LTD t/a AGRI BURO - STANDARD TERMS AND CONDITIONS**

Before consenting to the Agreement, please ensure that it is read in full. It is particularly important that the following clauses, which are typed in bold font, are read and understood:

<b>Clause 4.</b>	<b>Grant of Rights and Services</b>
<b>Clause 7.</b>	<b>Undertakings of Compliance by Data Consumer</b>
<b>Clause 12.2.</b>	<b>Liability</b>
<b>Clause 13.</b>	<b>Indemnification by the Data Consumer</b>
<b>Clause 14.4.</b>	<b>Entitlement of CC</b>

Please note that you, the consumer, are referred to as the Data Consumer.

### **1. DEFINITIONS**

Unless otherwise expressly stated, or the context otherwise requires, the words and expressions listed below shall, when used in this Agreement, bear the following meanings ascribed to them:

- 1.1 **“Access Codes”** means all usernames, passwords, access codes or other devices issued by CC to the Data Consumer or any other person whatsoever for the purpose of controlling or providing access to the Website or any Risk Management Product;
- 1.2 **“Affiliate”** means a subsidiary, holding company or associated company of either of the Parties, together with any subsidiary, holding company or associated company thereof;
- 1.3 **“Agreement”** means these terms and conditions applying to Data Consumers and the use of Website and the Products, as amended and/or published by CC from time to time;
- 1.4 **“Authorisations”** means all licenses, permits or approvals of whatsoever nature required by the Parties in terms of any Regulatory Provision to enable them to exercise their respective rights and fulfil their respective obligations under these terms and conditions;
- 1.5 **“Competent Authority”** means collectively the National, Provincial, Regional and Local government of the Republic of South Africa and/or their successors in title, any court of competent jurisdiction or any agency, authority, body or standard-setting institution appointed by such entities to regulate and/or oversee standards applicable to the Products, the Website and/or the Search Data and includes without limitation the National Credit Regulator and the National Credit Tribunal established in terms of the National Credit Act;
- 1.6 **“Content Provider”** means any person or institution, including the State or an Organ of State, from which CC procures Search Data;
- 1.7 **“Data Consumer”** means any person authorised by CC, whether a natural or juristic person, to procure Search Data from CC by means of the Website and/or any of the Products or otherwise, whether directly through CC;

- 1.8 **“Data Enquiry”** means a request for the supply of Search Data relating to a Data Subject submitted by a Data Consumer to CC by means of the Website, a Risk Management Product or otherwise;
- 1.9 **“Effective Date”** means the earlier of the date when the software is accessed, installed, copied and/or used by the Data Consumer for the first time, or the date on which the terms of this Agreement are accepted, as contemplated in clause 3;
- 1.10 **“Information Regulator”** means, in relation to Regulatory Provisions, an independent body established in terms of section 39 of the Protection of Personal Information Act 4 of 2013;
- 1.11 **“Intellectual Property”** shall mean all present and future intellectual property rights, in whole or in part, including but not limited to patents, trademarks (whether registered, pending or unregistered in any form and/or nature whatsoever whether now used or adopted in the future), service marks, designs, design rights, all rights of copyright whether existing now or in the future including initial;
- 1.12 **“CC”** means Cession Central (Pty) Ltd t/a Agri Buro, a company with limited liability duly registered and incorporated in accordance with the laws of the Republic of South Africa with registration number 2016/505748/07, having its main place of business at Corporate Park South, 22 Reedbuck Crescent, Block 1, Suite F1, Randjespark, Midrand, 1682; a registered Credit Bureau with National Credit Regulator Registration Number: NCRCB55;
- 1.13 **“NCA”** means the National Credit Act No. 34 of 2005 together with its Regulations, as amended from time to time;
- 1.14 **“Parties”** means, collectively, CC and the Data Consumer and "Party" means any one of them;
- 1.15 **“POPI”** means the Protection of Personal Information Act, No. 4 of 2013 together with its Regulations, as amended from time to time;
- 1.16 **“Products”** means all or any part of the electronic Products offered by CC for the supply of Search Data, offered by CC from time to time including their partners' products.
- 1.17 **“Regulatory Provisions”** means, collectively, the prevailing laws, regulations, ordinances, directions, orders, decrees, policy directives and standards of the Government of the Republic of South Africa, any other Competent Authority and the data protection laws which in any way affect or apply to CC, the Data Consumer, the Website, the Products and/or the Search Data;
- 1.18 **“Search Data”** means any information relating to a Data Subject, including but not limited to information relating to a Data Subject's:
- 1.18.1 ownership of immovable property, including the identity, location and value of such immovable property;
  - 1.18.2 identity number, registration number, or other identifying number or mark;
  - 1.18.3 registration as a company, close corporation, trust or other juristic person;
  - 1.18.4 trademark registrations;
  - 1.18.5 participation in any company, close corporation, trust or other juristic

- 1.18.6 person;  
ownership of any motor vehicle, including registration details and financing arrangements;
  - 1.18.7 past employment history; including the circumstances of termination of any employment, career, professional or business relationship;
  - 1.18.8 educational qualifications;
  - 1.18.9 driver's license;
  - 1.18.10 criminal record;
  - 1.18.11 credit information;
  - 1.18.12 potential contact information;
  - 1.18.13 marital status, alive status, children's identity,
  - 1.18.14 bank account;
  - 1.18.15 VAT numbers.
- 1.19 **"Services"** means the services provided by CC in providing the Products and Search Data to the Data Consumer;
- 1.20 **"SLA"** means the Service Level Agreement of CC as published on the Website in relation to anticipated response times for providing Search Data;
- 1.21 **"Subscriber Application Form"** means the form which the Data Consumer is required to complete and submit to CC on or before the Effective Date;
- 1.22 **"User"** means any employee, partner in a firm, student, member or other user entitled to bona fide, authorised access to the Products and Services for reasons linked to the activities of the Data Consumer and, in the case of a natural person, the Data Consumer;
- 1.23 **"Website"** means the website/s of CC Products;
- 1.24 The terms **"Data Subject"** and **"Information Regulator"** shall have the same meanings ascribed to them in POPI.

## **2. THE LICENCE**

- 2.1 CC hereby grants to the Data Consumer, subject to the provisions of this Agreement, the non-transferable, non-exclusive use and/or access to the Website and the Products and Services.
- 2.2 SubLicence the Website, Products or Services to a third party, subject to the express written consent of CC and subject to any terms and conditions that CC may impose on the Data Consumer and the sub-Licensee from time to time. In such event, the Data Consumer shall indemnify CC against any loss, liability, damage (whether direct, indirect or consequential) or expense of any nature whatsoever which may be suffered by CC as a result of the Data Consumer sub-licensing to a third party.

## **3. DURATION AND APPLICATION**

- 3.1 This Agreement will come into effect on the Effective Date and shall remain in force until terminated in accordance with the terms set out in this Agreement relating to termination.

3.2 Either Party may cancel this Agreement immediately by means of written notice to the other Party.

3.3 **WHERE THE DATA CONSUMER IS NOT A NATURAL PERSON, THE PERSON SIGNING OR ACCEPTING THIS AGREEMENT HEREBY WARRANTS THAT S/HE IS AUTHORISED TO ENTER INTO THE AGREEMENT FOR AND ON BEHALF OF THE DATA CONSUMER OR USER, AS THE CASE MAY BE.**

#### **4. GRANT OF RIGHTS AND SERVICES**

##### **4.1 Permitted activities.**

4.1.1 The Data Consumer acknowledges that the Content Providers shall be selected and used by CC at its sole discretion;

4.1.2 The Data Consumer may access the Website and the Products electronically;

4.1.3 The Data Consumer agrees that the Website, the Products and Search Data will be used solely by the Data Consumer and its Users.

##### **4.2 Prohibited activities.**

4.2.1 The Data Consumer shall not alter, modify, or transmit the Website and/or the Products, except insofar as such alteration, modification, transmission or reproduction has been agreed to by CC in writing;

4.2.2 The Data Consumer may not use, or allow others to use, (with the exception of its Users), the Services, Products, and/or Search Data. This restriction does not prevent Users from accessing and using the Services, Products, and/or Search Data, or prevent it from being shared with company group members of the Data Consumer. However, Users and company group members must follow the confidentiality, security and liability conditions set out in this Agreement.

4.2.3 Where the Data Consumer wishes to do any of the prohibited activities listed in clauses 4.2.1 to 4.2.2 the Data Consumer is required to obtain the express prior written approval of CC and to follow strictly any specifications required by CC where consent is granted.

4.2.4 The Data Consumer is prohibited from using the Website, Search Data or any Services in a manner that compromises or tampers with the security, information, data, resources, accounts or records of any person.

##### **4.3 Access to the Products**

4.3.1 The Data Consumer will complete a mandatory Subscriber Application Form, either electronically or a hard copy as the case may be, and such form will be submitted to CC;

4.3.2 CC shall as soon after the Effective Date as reasonably possible provide access to the Website and Products, subject to the terms of this Agreement;

4.3.3 Subject to clause 4.3.1 CC shall provide Search Data to the Data Consumer as and when requested by the Data Consumer, and where applicable with service levels measured against the time periods stipulated in the SLA;

4.3.4 CC undertakes to provide the personnel appointed by the Data Consumer with adequate training on the CC system to enable such Users to be able to use the system efficiently and effectively. The training shall be provided at the cost and on the terms agreed to between the Parties;

4.3.5 CC shall store a record of all Data Enquiries conducted by the Data Consumer and all Search Data provided to the Data Consumer pursuant to

such Data Enquiries. Search Data shall however be deleted or marked as “not to be accessed” by CC when required in terms of any Regulatory Provision or by any Competent Authority.

4.4 CC shall provide the Data Consumer with an Access Code/s. If one of the events mentioned in clause 5.6 should occur, CC shall use its best efforts to replace the relevant Access Code within twenty-four (24) hours after receiving immediate notification from the Data Consumer.

4.5 For further clarity, the Online Services and/or the Materials shall NOT be used for training large language or other artificial intelligence/machine learning models.

## **5. GENERAL RESPONSIBILITIES OF THE DATA CONSUMER**

5.1 The Data Consumer shall be solely responsible for all costs and expenses associated with downloading the Search Data by electronic means.

5.2 The Data Consumer is responsible for providing the appropriate technical infrastructure to enable such Users to access the Website via the internet, in an effective and efficient manner.

5.3 The Data Consumer is responsible for providing the information, supporting documents and declarations of consent required by CC, whether prior to any background check, or otherwise.

5.4 The Data Consumer acknowledges that it is responsible for the validity and accuracy of all information provided by it to CC. The Data Consumer understands that there are additional risks if it relies on fingerprints not captured by the Data Consumer itself (or its duly appointed agents or staff).

5.5 The Data Consumer shall comply with all relevant Regulatory Provisions, as well as any rules and guidelines that apply to the way in which CC provides the Services in order to keep the information secure.

5.6 The Data Consumer agrees and warrants that it will ensure that:

5.6.1 All Access Codes issued to the Data Consumer shall be used exclusively for the purposes of the Data Consumer;

5.6.2 The Data Consumer shall at all times ensure that the Access Codes are kept secure and shall not release or in any way disclose or release the Access Codes to anyone else. The Data Consumer shall ensure that no unauthorised use is made of the Access Codes;

5.6.3 If for any reason any Access Code is no longer secure, is misused or ends up in the possession of any person other than a Data Consumer or its Users, or unauthorised access is made to the Service, the Data Consumer shall immediately notify CC. The Data Consumer shall immediately give full details to CC, prevent further misuse, and use all reasonable efforts to prevent any other unauthorised access to or misuse of the Service.

5.7 It is recorded that, and the Data Consumer accepts that it shall be required to accept the terms and conditions of the relevant Credit Bureau each time a credit search is conducted.

5.8 The Data Consumer will ensure that any credit data received from Search Data

may not be used for marketing purposes and will be processed in terms of the NCA.

## **6. UNDERTAKINGS BY CC**

- 6.1 CC undertakes to ensure that no employee or agent of CC shall, without the consent of CC, disclose to any third-party information relating to the Products, Services and/or Search Data.
- 6.2 CC will comply with all applicable Regulatory Provisions as well as the conditions, standards and requirements prescribed by any Regulatory Provision, or any Competent Authority, which may be applicable from time to time, in respect of the Products, the Website and/or the Search Data.

## **7. UNDERTAKINGS OF COMPLIANCE BY THE DATA CONSUMER**

- 7.1 The Data Consumer undertakes the following:
  - 7.1.1 it shall provide the necessary notices, and it shall obtain the necessary consents and permissions of the Data Subject, prior to submitting a Data Enquiry where required in terms of the NCA or other applicable Regulatory Provision;
  - 7.1.2 it shall obtain Search Data from CC and use such Search Data only:
    - 7.1.2.1 for a lawful and legitimate purpose/s; and
    - 7.1.2.2 to the extent permitted or required by one or more applicable Regulatory Provision; or
    - 7.1.2.3 as provided by:
      - 7.1.2.3.1 the consent of the Data Subject; or
      - 7.1.2.3.2 an order of court or the National Consumer Tribunal established in terms of the NCA.
  - 7.1.3 it shall ensure that all information provided to CC is up-to-date and, where necessary, update the information provided to CC;
  - 7.1.4 it does and shall at all times continue to comply with all Regulatory Provisions, as well as the conditions, standards and requirements prescribed by any Regulatory Provision, or any Competent Authority, which may be applicable from time to time, in respect of the Products, the Website and/or the Search Data;
  - 7.1.5 any personal information obtained from Search Data will be processed in accordance with applicable data protection laws;
  - 7.1.6 it shall not do or omit to do anything which may cause CC any harm or loss, including but not limited to any injury to the reputation of or goodwill of the business of CC;
  - 7.1.7 it shall immediately notify CC if there is any reason to believe that the Products, the Website and/or Search Data have become compromised or are likely to become known or used by someone not authorised to use one or other of them, or are being or are likely to be used in an unauthorised way;
  - 7.1.8 it shall use reasonable effort to provide any assistance as may be requested by CC if the event referred to in clause 5.6.3 occurs.
- 7.2 Each undertaking set out in clause 7.1:
  - 7.2.1 shall be a separate undertaking; and
  - 7.2.2 shall in no way be limited or restricted by reference to or inference from the

terms of any other undertaking; and  
7.2.3 shall be for the sole benefit of CC.

## **8. FEES AND CHARGES**

### **8.1 Payment of Fees**

- 8.1.1 The Data Consumer shall pay CC for Services rendered in accordance with CC's pricing schedule, either as published on the Website or by quotation from time to time to the Data Consumer as the case may be, as follows:
- 8.1.1.1 purchase of a pre-paid voucher for immediate credit on a Risk Management Product account; or
  - 8.1.1.2 by Debit Order; or
  - 8.1.1.3 by electronic funds transfer (EFT), subject to the following:
    - 8.1.1.3.1 Payment will be made by the Data Consumer within 30 days of receipt of an undisputed invoice issued by CC;
    - 8.1.1.3.2 Invoices will be sent to the person designated by the Data Consumer for processing payment.
- 8.1.2 CC reserves the right to alter fees following agreement in writing with the Data Consumer.
- 8.1.3 Should the Data Consumer not agree to the altered fees, the Data Consumer has the right to terminate the Agreement without any further liability except for liability incurred prior to termination.
- 8.1.4 The right to use and to continue using the Website and Products under this Agreement is subject to CC receiving full and timely payment of all amounts due under this Agreement, and notwithstanding provisions to the contrary set out elsewhere in this Agreement, CC shall have the right to prevent the Data Consumer from using its Website and Products if the Data Consumer is in arrears in regard to its payment obligations to CC.

### **8.2 Return or Refund**

- 8.2.1 If the Data Consumer applies for a refund, the application for a refund will be considered on its merits, however, charges incurred by CC in providing the Services, and a reasonable administrative fee, will be deducted.
- 8.2.2 Notwithstanding clause 8.2.1, if a Data Consumer purchases a pre-paid voucher, the full amount of the voucher must be used within three years of the date of purchase, failing which any credit balance outstanding on the voucher will not be refunded to the Data Consumer.

## **9. CONFIDENTIALITY**

- 9.1 All Search Data and personal information held by either Party in terms of this Agreement is confidential information and must be treated as such by both Parties.
- 9.2 The Parties shall keep all confidential information confidential and shall not disclose either in any way, except if disclosure of the confidential information:
- 9.2.1 may be required for legitimate purposes such as by court order or by any governmental or other regulatory authority or in terms of legislation; in which case the disclosing party shall notify the other Party of such requirement with details of the nature and contents of such disclosure and evidence in writing that the disclosure is necessary; or
  - 9.2.2 may be required for legitimate purposes (to the extent permitted by law)

- including but not limited to the exemptions allowed as per applicable data protection laws;
- 9.2.3 disclosure of the confidential information is necessary to perform an obligation under the Agreement;
- 9.2.4 disclosure of the confidential information takes place with the prior written consent of the other Party.

## **10. PERSONAL DATA PROTECTION**

- 10.1 Data Consumer is responsible for ensuring the legality of the personal data that Data Consumer or its Users provide to CC. To the extent that Data Consumer or its Users provide personal data to CC for account registration or otherwise, the parties acknowledge and agree that such information will be processed by CC in accordance with the data protection laws, the Agri Buro Privacy Policy at [www.myagriburo.com](http://www.myagriburo.com)
- 10.2 On request CC will provide Customer with data and analysis of Users' usage of the Online Services and Materials ("Analytics"). Analytics data will clearly identify individual Users and will detail their activity (including but not limited to documents and content accessed, printed, emailed, downloaded, searched). CC will provide the Analytics to you on the strict condition that:
- (a) Customers will not use it for any purpose other than supporting internal decision-making processes, policing use of the Online Services and Materials; product adoption activities carried out with CC; and assessing levels of use;
  - (b) the Analytics data is not to be shared with any third parties without CC's prior written consent;
  - (c) Customer is solely responsible for providing any required notices and obtaining any required consents and authorisations of the Users to all use of the Analytics data;
  - (d) Customer shall indemnify us and our affiliates on demand from and against any loss, liability, damages, claims, fines, penalties, costs and expenses incurred as a result of any third party claim against us arising out of or in connection with any failure by you to comply with the provisions set out in this clause.

Customer will immediately stop using and delete all Analytics on termination or expiry of this Agreement or otherwise at our direction.

## **11. INTELLECTUAL PROPERTY**

- 11.1 All Intellectual Property belongs to CC or its Content Providers.
- 11.2 **THE DATA CONSUMER ACKNOWLEDGES THAT IT DOES NOT OWN AND DOES NOT ACQUIRE ANY RIGHTS IN RELATION TO ANY AND ALL INTELLECTUAL PROPERTY IN, RELATING TO, USED OR EMBODIED IN, OR IN CONNECTION WITH THE PRODUCTS OR THE WEBSITE.**
- 11.3 The Data Consumer shall not reproduce (except those reproductions that may be considered to be fair dealing) or retransmit Website content and/or the Products or any part thereof without first obtaining written consent from CC.
- 11.4 The Data Consumer shall at no time in any way question or dispute the ownership

of any Intellectual Property by CC or its Content Providers, as the case may be.

## **12. LIABILITY**

- 12.1 CC gives only those warranties required by the Consumer Protection Act, Act 68 of 2008 (the "CPA"), or as may be set out elsewhere in this Agreement and no other warranties. All other implied representations and warranties are expressly excluded. The effect of this clause is that other than those warranties provided for in the CPA, CC does not represent or warrant that the Services meet any specific standards, characteristics or criteria.
- 12.2 CC's liability to the Data Consumer arising out of a failure by CC to perform the Services envisaged in this Agreement shall be limited to the liabilities or remedies provided for in the CPA.
- 12.3 Section 54 of CPA provides that, should CC fail to provide quality service, the Data Consumer may require CC to either remedy the defect or pay a reasonable portion of the price paid for the Services. This is subject to the provisions on refunds in clause 8.2.
- 12.4 **NEITHER THE SERVICE NOR ANY PART OF IT HAS BEEN TAILORED TO MEET THE INDIVIDUAL REQUIREMENTS OF THE DATA CONSUMER. FAILURE TO MEET THE REQUIREMENTS OF THE DATA CONSUMER SHALL NOT ENTITLE THE DATA CONSUMER TO MAKE A CLAIM AGAINST CC.**
- 12.5 **TO THE EXTENT PERMITTED BY LAW, CC DISCLAIMS ANY WARRANTY AS TO THE PERFORMANCE OF ITS SOFTWARE.**
- 12.6 **THE DATA CONSUMER ACKNOWLEDGES THAT THE SEARCH DATA IS BASED ON INFORMATION PROVIDED TO CC BY CONTENT PROVIDERS AND THAT CC CANNOT CONTROL THE ACCURACY OF THE SEARCH DATA NOR THE TIMELY ACCESSIBILITY TO THE SEARCH DATA.**
- 12.6.1 The Data Consumer agrees that it will not make any business decisions based solely on the Search Data provided by CC;
- 12.6.2 **THE DATA CONSUMER AGREES THAT CC CANNOT BE HELD LIABLE FOR ANY DECISIONS BASED ON THE SEARCH DATA PROVIDED;**
- 12.6.3 **THE DATA CONSUMER SHALL MAKE NO CLAIMS AGAINST CC REGARDING THE CONTENT OF THE SEARCH DATA.**
- 12.7 **THE DATA CONSUMER AGREES THAT CC CANNOT BE HELD LIABLE FOR ANY LOSS INCURRED BY THE DATA CONSUMER AS A RESULT OF THE FOLLOWING CONDUCTED IN A MANNER CONTRARY TO THIS AGREEMENT:**
- 12.7.1 **USE OF THE WEBSITE OR ANY RISK MANAGEMENT PRODUCT;**
- 12.7.2 **SUBMISSION OF ANY DATA ENQUIRY;**
- 12.7.3 **USE OF ANY SEARCH DATA.**
- 12.8 **THE TOTAL LIABILITY OF CC TO THE DATA CONSUMER FOR ANY CLAIM FOR NEGLIGENCE, TERMINATING THE AGREEMENT, OR ANY OTHER LIABILITY OR OBLIGATION IS LIMITED TO THE VALUE OF THE FEES AND CHARGES PAID TO CC FOR THE PROVISION OF THE PRODUCTS AND SERVICES RELATING SOLELY TO THE SUBJECT MATTER OF ANY CLAIM**

**AND NOT IN RESPECT OF ANY PREVIOUS OR LINKED PRODUCTS AND SERVICES.**

**TO THE EXTENT PERMITTED BY LAW, CC SHALL NOT UNDER ANY CIRCUMSTANCES WHATSOEVER BE LIABLE FOR ANY CONSEQUENTIAL DAMAGES SUFFERED BY THE DATA CONSUMER, INCLUDING BUT NOT LIMITED TO LOSS OF PROPERTY, PROFIT, BUSINESS, REVENUE, GOODWILL OR ANTICIPATED SAVINGS.**

12.9 This clause 12 shall survive termination of this Agreement.

### **13. INDEMNIFICATION BY THE DATA CONSUMER**

13.1 **TO THE EXTENT PERMITTED BY LAW, THE DATA CONSUMER AGREES TO, AND SHALL, INDEMNIFY, DEFEND AND HOLD HARMLESS CC, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, SHAREHOLDERS, OFFICERS, AGENTS, EMPLOYEES, SUCCESSORS AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS INCLUDING THIRD PARTY CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGEMENTS, DAMAGES, COSTS, LOSSES, EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES) AND OTHER LIABILITIES ARISING FROM AND IN CONNECTION WITH OR RELATED IN ANY WAY, WHETHER DIRECTLY OR INDIRECTLY, TO:**

13.1.1 **THE DATA CONSUMER'S PERFORMANCE OF OR FAILURE TO COMPLY WITH ITS OBLIGATIONS IN TERMS OF THIS AGREEMENT AND/OR THE REGULATORY PROVISIONS;**

13.1.2 **ANY LOSS OR DAMAGE INCURRED IN RESPECT OF ANY DECISION BASED ON THE SEARCH DATA;**

13.1.3 **ANY CLAIMS, PENALTIES AND/OR MEASURES BY THIRD PARTIES, DATA SUBJECTS AND/OR THE INFORMATION REGULATOR, LODGED AGAINST OR IMPOSED ON CC DUE TO A BREACH OF THE AGREEMENT AND/OR THE REGULATORY PROVISIONS BY THE DATA CONSUMER;**

13.1.4 **ANY CLAIM BY A DATA SUBJECT THAT IS CONNECTED IN ANY WAY WITH A DATA ENQUIRY OR SEARCH DATA;**

13.1.5 **ANY CLAIM BY A THIRD PARTY ARISING FROM ANY CLAIM, INJURY, LOSS OR DAMAGE FOR WHICH CC IS EXEMPTED FROM LIABILITY IN TERMS OF CLAUSE 12;**

13.1.6 **THE EXERCISE BY CC OF ANY OF ITS RIGHTS IN TERMS OF THIS AGREEMENT, SUBJECT TO ANY LIMITATIONS IMPOSED BY LAW;**

13.1.7 **ANY THIRD-PARTY CLAIM WHICH ARISES OUT OF OR IN CONNECTION WITH A DATA CONSUMER'S USE OF SEARCH DATA IN A MANNER THAT IS NOT STRICTLY PERMITTED BY THIS AGREEMENT;**

13.2 **CC SHALL NOT BE LIABLE TO THE DATA CONSUMER FOR ANY LIABILITIES INCURRED BY THE DATA CONSUMER AS A RESULT OF ANY UNLAWFUL OR UNAUTHORISED ACCESS TO OR USE OF THE SEARCH DATA OR PRODUCTS.**

13.3 **CC SHALL NOT BE LIABLE TO THE DATA CONSUMER FOR ANY SEARCH DATA PROVIDED, OR FOR THE FAILURE TO PROVIDE SEARCH DATA, WHERE THE DATA CONSUMER FAILS TO PROVIDE CC WITH INFORMATION THAT IS UP TO DATE.**

13.4 THE DATA CONSUMER SHALL PROMPTLY NOTIFY CC OF ANY CLAIM MADE AGAINST THE DATA CONSUMER IN RESPECT OF THE SEARCH DATA, PRODUCTS AND/OR SERVICES. THE DATA CONSUMER SHALL BEAR FULL RESPONSIBILITY FOR DEFENDING SUCH A CLAIM, INCLUDING ANY SETTLEMENTS, PROVIDED, HOWEVER, THAT:

13.4.1 THE DATA CONSUMER SHALL KEEP CC INFORMED OF AND CONSULT CC IN CONNECTION WITH THE PROGRESS OF SUCH LITIGATION OR SETTLEMENT AND FOLLOW THE REASONABLE DIRECTIONS OF CC IN THAT REGARD; AND

13.4.2 THE DATA CONSUMER SHALL NOT HAVE ANY RIGHT, WITHOUT NOTICE TO CC, TO SETTLE ANY SUCH CLAIM IF SUCH SETTLEMENT ARISES FROM OR IS PART OF ANY CRIMINAL ACTION, SUIT OR PROCEEDING OR CONTAINS A STIPULATION OR ADMISSION OR ACKNOWLEDGEMENT OF, ANY LIABILITY OR WRONGDOING (WHETHER IN CONTRACT, DELICT OR OTHERWISE) ON THE PART OF CC AND/OR ANY OF CC'S AFFILIATES.

13.5 THIS INDEMNIFICATION APPLIES TO THE EXTENT PERMITTED BY LAW AND DOES NOT INCLUDE ANY GROSS NEGLIGENCE ON THE PART OF CC, OR ANY EMPLOYEE OF CC ACTING IN THE COURSE AND SCOPE OF EMPLOYMENT.

#### 14. ENTITLEMENT OF CC

14.1 To the extent permitted by law, CC shall be entitled, on reasonable notice to the Data Consumer, to:

14.1.1 change the make-up or the technical specification of the Website or any Risk Management Product;

14.1.2 suspend the Data Consumer's access to the Website for operational reasons such as repair, maintenance or improvement, or because of an emergency, on reasonable written notice at the least possible inconvenience to the Data Consumer;

14.1.3 require the Data Consumer to provide CC with written proof of any consent required to be procured from a Data Subject pursuant to the NCA or any applicable Regulatory Provision, prior to releasing Search Data to the Data Consumer or as part of an audit review process;

14.1.4 suspend the Data Consumer's access to the Website and/or any Risk Management Product if the Data Consumer has breached this Agreement, subject to the provisions of clause 15.1 below;

14.1.5 to schedule maintenance of its network and Website. This may mean that there will be downtime where the Data Consumer is unable to transmit and receive information. CC will keep such downtime to a minimum and CC will not be liable to the Data Consumer for any compensation in respect of any downtime of the Website or the Risk Management Product, where applicable.

14.2 CC reserves the right to temporarily suspend the Data Consumer's access to the Website and/or the Products at any time if there is a serious risk of compromise to the integrity of the Website, any Risk Management Product, the Search Data or otherwise.

- 14.3 The Data Consumer grants CC a royalty-free, non-transferrable, continuous license to use the information supplied by it to CC. CC is entitled to use the information supplied to it to improve the Service and any of its databases to provide similar services.

## **15. BREACH AND TERMINATION**

- 15.1 Notwithstanding any other provision of this Agreement, if either Party is in any way in breach of this Agreement, the aggrieved Party may, without prejudice to any of its other rights and remedies, terminate this Agreement by giving the other Party written notice to that effect in the event of the other Party's failure to remedy the breach within 14 (fourteen) days of its receipt from the aggrieved Party of a written notice requiring the other Party to do so.

- 15.2 If any of the following should occur, CC shall be entitled to terminate the Data Consumer's access to the Website and/or the relevant Risk Management Product or portion thereof with immediate effect:

15.2.1 any Content Provider:

- 15.2.1.1 terminates any agreement with CC;
- 15.2.1.2 is unable or unwilling to provide any Search Data to CC;
- 15.2.1.3 is unavailable, or becomes unavailable, to provide Search Data to CC; or

15.2.2 CC elects:

- 15.2.2.1 to modify the Website subject to the provisions of clause 14.1.1;
- 15.2.2.2 to modify or discontinue a Risk Management Product; or
- 15.2.2.3 not to continue supplying Search Data or any form or category of Search Data.

## **16. AMENDMENT**

- 16.1 CC reserves the right to amend the Agreement, Price Lists and SLAs from time to time, which amendments will be posted on the Website or provided to the Data Consumer as the case may be, and shall be binding on the Data Consumer.
- 16.2 CC will use its reasonable efforts to give the Data Consumer reasonable notice of such changes by posting notification on the Website, Software, or sending formal client communications regarding such amendments.
- 16.3 CC will bring to the Data Consumers' attention any significant or material changes.
- 16.4 Data Consumers are advised to check the prevailing Agreement, Price Lists and SLAs.

## **17. EVENTS BEYOND OUR CONTROL**

**CC SHALL NOT BE LIABLE TO THE DATA CONSUMER FOR ANY DEFAULT OR DELAY IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS IF, AND TO THE EXTENT THAT, SUCH DEFAULT OR DELAY IS CAUSED BY ANY ACT OF GOD, WAR OR CIVIL DISTURBANCE, COURT ORDER, ANY DELAY IN ANY PERFORMANCE DUE FROM ANOTHER PARTY OR ANY OTHER CIRCUMSTANCE BEYOND ITS REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION, FAILURES AND FLUCTUATIONS IN ELECTRICAL**

**POWER OR COMMUNICATIONS, PROVIDED THAT THE DEFAULTING PARTY IS WITHOUT FAULT IN CAUSING SUCH DEFAULT OR DELAY. FOR CLARITY IT IS RECORDED AND AGREED THAT A FAILURE TO MAKE PAYMENT SHALL NOT EXCLUDE LIABILITY IN TERMS OF THIS CLAUSE 17**

**18. TRANSFERRING RIGHTS**

Neither Party shall be entitled to assign, cede, delegate nor transfer any rights or obligations acquired in terms of this Agreement, in whole or in part, to any other party or person without the prior written consent of the other Party.

**19. CONFLICTS AND AMBIGUITIES**

If there is any conflict between this Agreement and any other terms, rules or regulations of the Products, this Agreement shall prevail.

**20. STATUS OF THE RELATIONSHIP BETWEEN THE PARTIES**

20.1 This Agreement shall not operate to constitute the Data Consumer as a partner, employee and/or agent of CC and the Data Consumer shall not represent itself as such.

20.2 Nothing contained in the Agreement shall authorise or empower one Party to enter into any contracts or other commitments on behalf of the other Party.

**21. DISPUTE RESOLUTION**

21.1 CC shall at their sole discretion be entitled but not obliged to refer any dispute arising from this Agreement for adjudication by arbitration in accordance with this clause 21.

21.2 Such arbitration must be held:

21.2.1 at Johannesburg or such other place nominated by CC;

21.2.2 in the manner to be prescribed by the arbitrator in accordance with clause 21.2.4 below;

21.2.3 promptly, with the view to finalise the same within 45 (forty-five) business days from the date on which the dispute is referred for arbitration or such longer period as determined by the arbitrator; and

21.2.4 subject to the provisions of the Arbitration Act 42 of 1965, as amended, save for where this clause 21 states otherwise.

21.3 CC shall nominate 3 (three) possible arbitrators by written notice to the Data Consumer, which notice may be forwarded to the Data Consumer by email to the email address used to communicate with the Data Consumer. The persons nominated as such shall be practicing advocates practicing as such for a period of at least 10 (ten) years and/or retired judges.

21.4 The Data Consumer shall, within 5 (five) business days from the date of transmission of such written notice, nominate 1 (one) arbitrator from the ranks of the said 3 (three) nominated arbitrators, to act as arbitrator in the matter, failing which CC shall be entitled to nominate the arbitrator.

21.5 The parties shall within 5 (five) business days from the date of nomination of the arbitrator in accordance with clause 21.4 or as soon as possible thereafter on a

date suitable to the arbitrator, schedule a pre-trial conference with the arbitrator to determine:

- 21.5.1 a timetable within which the exchange of such pleadings prescribed by the arbitrator and discovery must take place;
  - 21.5.2 when the arbitration will take place;
  - 21.5.3 the manner in which and the timeframe within which a joint trial bundle must be made available to the arbitrator; and
  - 21.5.4 the manner in which testimony must be recorded.
- 21.6 The parties shall pay the costs related to the premises where the arbitration will be held as well as the recording and transcription of the arbitration proceedings in equal parts, subject to clause 21.8 below.
- 21.7 The parties further irrevocably agree that the decision of the arbitrator in such arbitration proceedings will be final and binding on them, and that there will be no right appeal in respect of such decision and that either party will be entitled to have such decision / award made an order of any competent court.
- 21.8 The arbitrator shall be entitled to make an order as to costs as he may deem fit.

## **22. GOVERNING LAW**

- 22.1 The law governing this Agreement, including without limitation its interpretation and all disputes arising out of this Agreement, is the law of South Africa. The Parties submit to the exclusive jurisdiction of the South African courts in respect of any matter arising from or in connection with this Agreement, including its termination.
- 22.2 The Data Consumer represents and warrants on an ongoing basis that it and the Authorised Users:
- (a) are not Sanctioned Parties;
  - (b) will not provide access to the Product to any Sanctioned Party;
  - (c) will not access the Product from a country subject to Sanctions List and/or applicable embargoes; and
  - (d) will not use any Sanctioned Party in any manner in connection with this Agreement.

Breach of this clause shall entitle CC to terminate immediately on written notice, without prejudice to any other rights available by law or contract.

“Sanctions List” means each of:

- (a) OFAC's list of Specially Designated Nationals ('SDN List');
- (b) the UK's HM Treasury's Consolidated List of Sanctions Targets;
- (c) the EU's Consolidated List of Persons, Groups, and Entities Subject to EU Financial Sanctions;
- (d) BIS's Entity List; or
- (e) any other applicable sanctions list.

“Sanctioned Party” means any person (entity or individual) who is subject to sanctions or export controls imposed by the United States, United Kingdom, European Union or other applicable authority, including, but not limited to any person:

- (a) identified on any Sanctions List; or

- (b) (who is 50 percent or more owned, directly or indirectly, individually or in the aggregate, or otherwise controlled, by any person identified in (a).

## **23. NOTICES AND LEGAL PROCESS**

- 23.1 Each Party chooses as its address for all purposes under this Agreement (“chosen address”), whether for serving any court process or documents, giving any notice, or making any other communications of whatsoever nature and for any other purpose arising from this Agreement (“notice”), the address specified by CC in this Agreement and the Data Consumer the address completed by the Data Consumer on the online form submitted by the Data Consumer to CC to subscribe to access the Website and the Products and Services.
- 23.2 Any notice required or permitted under this Agreement shall be valid and effective only if in writing.
- 23.3 Any Party may by notice to the other Party change its chosen address to another physical address in the Republic of South Africa and such change shall take effect on the seventh day after the date of receipt by the Party who last receives the notice.
- 23.4 Any notice to a Party contained in a correctly addressed envelope and delivered by hand to a responsible person during ordinary business hours at its chosen address, shall be deemed to have been received on the date of delivery.
- 23.5 Notwithstanding anything to the contrary herein, a written notice actually received by a Party, including a notice sent by email, shall be adequate notice to it.

## **24. GENERAL AND MISCELLANEOUS**

- 24.1 This Agreement constitutes the sole record of the agreement between the Parties with regard to the subject matter hereof. Neither Party shall be bound by any express or implied term, representation, warranty, promise or the like not recorded herein.
- 24.2 No relaxation or indulgence by either Party may constitute a waiver of the rights of such Party and shall not preclude such Party from exercising any rights which may have arisen in the past or which might arise in future.
- 24.3 Any provision of this Agreement which contemplates performance or observance subsequent to any termination or expiration of this Agreement shall survive any termination or expiration of this Agreement and continue in full force and effect.
- 24.4 No addition to, variation of, or agreed cancellation of, this Agreement shall be of any force or effect unless in writing and signed in handwriting by or on behalf of both the Parties.
- 24.5 If any provision of this Agreement is found to be unenforceable, invalid or contrary to law, this shall not affect any other part or aspect of this Agreement which shall remain in force and effect pursuant to its terms minus the challenged provision unless such severance would invalidate the principal purposes of this Agreement. If any provision is so severed the Parties agree to use best efforts to achieve the same result as was intended by such provision.

- 24.6 Should CC be prevented from fulfilling any of its obligations to the Data Consumer as a result of any event of force majeure, then those obligations shall be deemed to have been suspended to the extent that and for as long as CC is so prevented from fulfilling them and the Customer's corresponding obligations shall be suspended to the corresponding extent. In the event that force majeure continues for more than thirty days after it has first occurred then CC shall be entitled (but not obliged) to terminate all of its rights and obligations in terms of or arising out of these terms of use and/or any service by giving notice to the Customer. An "event of force majeure" shall mean any event or circumstance whatsoever which is not within the reasonable control of the affected party including, without limitation, vis major, casus fortuitous, any act of God, theft, the downtime of any external telecommunications line, power failure, international restrictions, any requirement of any international authority, any requirement of any government or other competent local authority, any court order or export control.
- 24.7 The Parties shall comply with all relevant Regulatory Provisions, as well as any rules and guidelines that apply to the way in which CC provides the Services in order to keep the information secure.

## **25. DEBIT ORDER TERMS AND CONDITIONS**

- 25.1 I/We the undersigned, hereby authorise Cession Central (Pty) Ltd (the Creditor) and \_\_\_\_\_ Bank on the Creditor's behalf, to debit my/our banking account from time to time with varying amounts, at my/our cost for searches and document copy requests, and to credit the Creditor's account at FNB, payment being effected on the fifteenth day of each month.
- 25.2 I/We acknowledge that \_\_\_\_\_ Bank acts merely as the Creditor's collecting bank and accordingly all disputes regarding the amount or validity of any debit or any other issue in connection with any transaction shall be a matter between the Creditor and me/us, and insofar as it may be necessary to do so, I/we waive any and all claims that I/we may have against FNB.
- 25.3 I/We understand and undertake that the Creditor will receive all amounts without prejudice to its rights. I/We confirm that this debit order authorisation has been signed in terms of the mandates held by my/our bank.

Signed at: \_\_\_\_\_ on this \_\_\_\_\_ day of \_\_\_\_\_ 20 .

\_\_\_\_\_  
Data Consumer Name

\_\_\_\_\_  
Data Consumer Signature