

## CreditWorks Data Solutions Limited

### Terms and Conditions for FINZscore

These Terms and Conditions (Agreement) apply to the use of FINZscore, a financial rating service provided by CreditWorks Data Solutions Limited (CreditWorks). FINZscore provides a financial rating based on financial information supplied by builders and related entities. FINZscore operates separately from the CreditWorks credit bureau (CRISworks) and the data used for FINZscore is not added to the CreditWorks credit bureau data pool.

#### 1. DEFINITIONS

**Agreement** means this Agreement includes the Pricing Schedule;

**Business Day** means any day of the week except Saturday, Sunday or a national statutory holiday recognised in New Zealand;

**Commencement Date** means the date of this Agreement, as specified on the cover page;

**Confidential Information** means any information that is confidential in nature or marked confidential, including the terms of this Agreement, research or development, marketing, or customer information;

**CRISworks** means the Credit Reference Industry Solution, a positive database system developed by CreditWorks to provide an online credit reference system for assessment of financial and credit exposure in respect of persons recorded on the database;

**Customer** means a person who requests a FINZscore report;

**Default Rate** means 1.5% per month;

**Developments** has the meaning given in clause 9.3;

**FINZscore** means a financial rating service provided by CreditWorks to provide a financial rating report based on financial information supplied by builders and related entities;

**FINZscore Data** means financial data captured for the purpose of generating a FINZscore report.

**GST** means goods and services tax payable under the Goods and Services Tax Act 1985;

**Intellectual Property** means all intellectual property rights including trade marks, copyright, patents, designs, databases, confidential information, know-how and trade secrets;

**Pricing Schedule** means the pricing schedule provided to the Customer by CreditWorks from time to time;

**Privacy Law** mean the Privacy Act 2020 and any other applicable privacy legislation;

**Services** means the FINZscore services provided under this Agreement;

**Subject Entity** means the company that supplies financials for the purpose of generating a FINZscore report;

**Term** means the term of this Agreement, commencing on the Commencement Date and ending on termination under clause 2 or 13;

**Website** means the CreditWorks website through which the Subject Entity can upload their financials the Customer can access FINZscore reports.

#### 2. TERM

This Agreement starts on the Commencement Date and continues until terminated in accordance with clause 13.

#### 3. SERVICES

3.1. CreditWorks grants the Customer a non-exclusive, non-transferable licence to use FINZscore during the Term. FINZscore may only be used for assessing the financial health and viability of the Subject Entity and related purposes. FINZscore Data is not shared into CRISworks and remains separate.

3.2. The Customer agrees that, for the purpose of preventing the unauthorised use or disclosure of the FINZscore Data, it will not use, nor permit the use of, the Services, FINZscore or FINZscore Data for any other purpose nor allow any other person to do so without the prior written consent of CreditWorks. The Customer will continue to observe the obligations set out in this clause in respect of the data supplied by any Subject Entity who has since terminated its agreement with CreditWorks and has ceased to use the Services.

#### 4. ACCESS AND CONSENTS

4.1. The Customer is responsible for obtaining all relevant consents and authorisations from the Subject Entity. The Customer must ensure authorised use only and comply with all applicable security requirements.

- 4.2. **Authorised Users:** The Customer will ensure that only persons authorised by the Customer have access to the Services. The Customer will ensure that its employees, contractors and agents comply with all security procedures notified to it by CreditWorks from time to time.
- 4.3. **Terms of Use:** The Customer acknowledges and agrees that access to the Services will be through the Website and will be subject to the terms of use for the Website as provided on the Website from time to time. In the event that there is any conflict between such terms of use and this Agreement, the terms of this Agreement will prevail.

## 5. LICENCE OF SUBJECT ENTITY DATA

- 5.1. **Licence:** The Subject Entity grants to CreditWorks a royalty-free, perpetual licence to use the Subject Entity financial information for the purposes of producing FINZscore reports and providing the Services to the Customer, and the same or similar services to other Customers who request a FINZscore report on the Subject Entity. This licence shall be exclusive during the Term.
- 5.2. **CreditWorks may:**
- 5.2.1. use the FINZscore Data for the purposes of providing the Customer with the Services and for providing the same or similar services, and licensing FINZscore Data, to other Customers;
  - 5.2.2. not add FINZscore data to other services that it offers, aside from the production of FINZscore industry benchmarking and analytics; and
  - 5.2.3. permit its agents, consultants or contractors to use the FINZscore Data for the purposes provided for in this Agreement.

## 6. CHARGES

- 6.1. **Charges:** The charges for the Services as at the Commencement Date are as specified in the Pricing Schedule.
- 6.2. **Invoicing:** Unless otherwise agreed between the Customer and CreditWorks, CreditWorks will invoice the Customer for the Services monthly in arrears.
- 6.3. **Payment Within 10 Business Days:** The Customer will make payments to CreditWorks for the Services within 10 Business Days of the

Customer receiving a valid tax invoice from CreditWorks without setoff or counterclaim.

- 6.4. **GST:** If GST is not paid as required, all penalties, interest or costs incurred in connection with the consequential late payment of GST will also be payable by the Customer.
- 6.5. **Late Payment:** All amounts (other than amounts which are the subject of a bona fide dispute which is determined in favour of the Customer) which are not paid when due will attract default interest (calculated daily at the Default Rate and compounding) from the date on which payment of that amount falls overdue until the date on which payment of the overdue amount and default interest is made in full.
- 6.6. **Review of Charges:** CreditWorks will undertake an annual review of the charges for the Services and shall consult with the Customer as part of this review process. CreditWorks may elect, but shall be under no obligation, to decrease or increase the charges for the Services.

## 7. CONFIDENTIALITY

- 7.1. Each party will keep the other's Confidential Information confidential and only use it for the purposes of this Agreement.
- 7.2. **Information to be Confidential:** Each party will keep all Confidential Information from or of the other party confidential and will only use Confidential Information for the purposes of this Agreement. Confidential Information may only be disclosed to third parties with the prior consent in writing of the party from which the information was received or to which the information relates (Disclosing Party).
- 7.3. **Information Which Is Not Confidential:** The provisions of clause 7.2 shall not apply to the extent a party can clearly show the information:
- 7.3.1. is part of or legitimately enters the public domain;
  - 7.3.2. is already in the unrestricted possession of that party prior to disclosure and that party advises the Disclosing Party of this within a reasonable time prior to making any disclosure to a third party; or
  - 7.3.3. legally must be disclosed, provided that prior to making the disclosure that party has:
    - 7.3.3.1. given the Disclosing Party notice (if legally able to) of the request for disclosure; and

- 7.3.3.2. used all reasonable efforts to obtain, or assist the Disclosing Party to obtain, a confidentiality order or similar protection limiting the persons to whom disclosure of the Confidential Information is made.

## 8. PRIVACY

Both parties agree to comply with applicable Privacy Law in respect of FINZscore Data and any personal information. In particular, CreditWorks will:

- (a) promptly inform the Customer in writing of any actual or suspected data breach or complaint that they receive concerning the collection, use, disclosure, storage, transfer or handling of any personal information arising from this Agreement; and
- (b) comply with any reasonable direction given by the Customer in relation to any actual or suspected data breach or complaint received by either party concerning the collection, use, disclosure, storage, transfer or handling of any personal information arising from this Agreement.

## 9. INTELLECTUAL PROPERTY

- 9.1. All Intellectual Property rights in FINZscore and related materials vest in CreditWorks. FINZscore Data provided by the Subject Entity remains their property. The Subject Entity and Customer shall have no copyright in, will not be entitled to apply for any patent and will not have any other right of intellectual property or otherwise in the Intellectual Property.
- 9.2. **Customer Data:** All Intellectual Property rights in the FINZscore Data in the form provided by the Customer to CreditWorks shall remain in the ownership of the Customer and CreditWorks will not claim any such rights against the Customer. At the end of the Term, CreditWorks will not continue to use the FINZscore Data in any form in FINZscore.
- 9.3. **New Intellectual Property:** Subject to clause 9.2, in the course of providing Services or making FINZscore reports available to the Customer, CreditWorks may use or develop products, materials or methodologies, including without limit compilations of data incorporating the FINZscore Data (Developments). All Intellectual Property rights in the Developments shall vest absolutely in CreditWorks. The Subject Entity and Customer shall have no copyright in, will

not be entitled to apply for any patent and will not have any other right of intellectual property or otherwise in the Developments.

## 10. WARRANTIES

- 10.1. **Mutual Warranties:** CreditWorks and the Customer each warrant that:
- 10.1.1. it has the knowledge, skills, resources and capacity to, and will, perform and discharge its obligations and liabilities under this Agreement promptly, efficiently, diligently, professionally and in accordance with relevant laws; and
  - 10.1.2. each person employed or otherwise engaged by it to perform or discharge its obligations and liabilities under this Agreement will be suitably qualified and appropriately skilled to carry out those obligations and liabilities.
- 10.2. **CreditWorks' Warranties:** In addition to the warranties recorded in clause 10.1, CreditWorks warrants that:
- 10.2.1. subject to the Subject Entity's compliance with its obligations to supply FINZscore Data and otherwise complying with its obligations under this Agreement, the Services will operate in accordance with their description;
  - 10.2.2. the FINZscore Data will not be shared, combined with or in any other way added to the wider data pool held by CRISworks; and  
  
the FINZscore Data will not be added or collated as part of any credit reports conducted.
- 10.3. **Subject Entity Warranties:** In addition to the warranties recorded in clause 10.1, the Customer warrants that:
- 10.3.1. it is authorised by its officers relevant to provide the FINZscore Data to CreditWorks for the purposes contemplated by this Agreement;
  - 10.3.2. the provision of the FINZscore Data to CreditWorks and CreditWorks' use of the FINZscore Data for the purposes contemplated by this Agreement will not be in breach of any applicable law, including but without limitation, the Privacy Act 2020; and
  - 10.3.3. to the knowledge of the Subject Entity, the financial data provided to

CreditWorks is accurate, complete and up to date.

## 11. RISK AND DISCLAIMER

- 11.1. The Customer acknowledges that FINZscore relies on financial information provided by the Subject Entity and that CreditWorks does not warrant the accuracy of the data provided by the Subject Entity.
- 11.2. **Disclaimer:** The Customer acknowledges that the FINZscore Data utilised in this report is comprised of financial information provided by the Subject Entity and other third-party sources. Accordingly, the Customer agrees that:
- 11.2.1. it uses the Data at its own risk;
- 11.2.2. it undertakes that it will not bring any claim against any Subject Entity in relation to information supplied by that Subject Entity for the purposes of compiling this report; and
- 11.2.3. in the absence of negligence or breach of this agreement on the part of CreditWorks, it will not bring any claim against CreditWorks in relation to the FINZscore Data,
- CreditWorks takes no responsibility for decisions made as a result of reference to or use of information in this report.
- 11.3. **Mutual Exclusions:** Notwithstanding any other provision in this Agreement, a party is not liable for any special, exemplary, punitive, incidental, indirect or other consequential damages of any kind, lost profits, lost revenue or lost savings, whether based in contract, tort (including negligence) or otherwise, which arise out of or are in any way connected with (i) this Agreement, (ii) any use of the Services or its content, (iii) any failure or delay (including the use of or inability to use any component of the Services), or (iv) the performance or non-performance by either party, even if such party had been advised of the possibility of such damages. The limitations contained in this clause 11.3 do not apply to the Customer's failure to pay amounts owed to CreditWorks under this Agreement.
- 11.4. **Limit of Liability:** Notwithstanding any other provision in this Agreement, if CreditWorks should be found liable for any loss or damage

that arises out of or is in any way connected with this Agreement (including but not limited to any indemnification obligation), the total liability will not exceed, in the aggregate, the sum of the charges paid by the Customer to CreditWorks during the previous 6 months.

## 12. THIRD PARTY ACTIONS

- 12.1. **Indemnity:** Each party (indemnifying party) agrees to indemnify the other party (indemnified party) for all reasonably foreseeable losses and liabilities resulting from any claim, suit, action or proceeding (collectively called an Action) by any third party brought against the indemnified party to the extent that:
- 12.1.1. in the case of an Action brought against the Customer, the action is based on or connected to a claim that the provision of the Services by CreditWorks, or the licence of FINZscore data, or the Customer's use of the Services, in accordance with this Agreement infringes any third party's Intellectual Property rights; or
- 12.1.2. in the case of an Action brought against CreditWorks, the Action is based on or connected to a claim that the licence of the Customer Data by the Customer or the use by CreditWorks infringes any third party's Intellectual Property rights, or infringes any third party's rights to privacy.
- 12.2. **Notice and Conduct of Action:** CreditWorks will not be liable under clause 12.1 unless (i) CreditWorks is given immediate and complete control of such Action, (ii) the Customer does not prejudice CreditWorks' defence of such Action, and (iii) the Customer gives CreditWorks all reasonable assistance with such Action. CreditWorks will have the right to replace or change all or any part of the Services in order to avoid any infringement.

## 13. TERMINATION

- 13.1. **Termination at Will:** Either party may terminate this Agreement by giving the other party 1 months' prior written notice.
- 13.2. **Termination for Breach:** Either party may terminate this Agreement immediately upon written notice, if the other breaches any material obligation (including any failure by the Customer to pay amounts owed to CreditWorks) under this Agreement and such breach has not been remedied within 20 Business Days after the first party has given the other written notice requesting it to remedy the breach.

- 13.3. **Termination event:** Either party may terminate this Agreement if insolvency proceedings are commenced with respect to the other party, or in the event that the other party ceases to do business as a going concern, admits in writing its inability to pay debts as they become due, or the appointment of a trustee, receiver, liquidator or other external administrator with respect to the other party or any substantial part of its assets or properties.

#### 14. CONSEQUENCES OF TERMINATION

- 14.1. **Existing Rights and Obligations:** Termination in any manner shall not prejudice any rights or obligations which may have properly accrued under this Agreement to either party prior to termination.
- 14.2. **Return of other's property:** Subject to clause 5.1 on termination of this Agreement for any reason, each party shall immediately return to the other party all property which belongs to that party and all material containing that party's Confidential Information in its possession, power or control. For the avoidance of doubt the Customer and Subject Entity acknowledges that CreditWorks will not be required to return to the Customer or Subject Entity any data supplied by the Customer or Subject Entity and incorporated in the FINZscore Data. Upon termination, all Services provided to the Customer will terminate. Prior to termination, CreditWorks may suspend the Services pending resolution of a default by the Customer.
- 14.3. **Survival of obligations:** Termination of this Agreement for any reason shall not extinguish or otherwise affect the obligations under this Agreement which by their nature are intended to survive termination, including without limitation clauses 6, 7 and 9 to 12 (inclusive).

#### 15. SUSPENSION FROM USE

- 15.1. **Suspension:** If CreditWorks reasonably believes that:
- 15.1.1. the performance of this Agreement by CreditWorks, the provision of the Services or licence of FINZscore Data may be connected with any breach of law (including without limit, statute or common law); or
  - 15.1.2. the Customer is in breach of any provisions of this Agreement whether by its own acts or omissions or by those of its contractors or agents; or
  - 15.1.3. the Customer has failed to pay any amount due on the due date for payment,
- then CreditWorks may suspend all or part of its performance under this Agreement and/or the

Customer's rights to use the Services and FINZscore Data until such time as CreditWorks is satisfied that the factor(s) giving rise to the suspension is resolved.

- 15.2. **No Rebate:** The Customer shall not be entitled to any rebate, credit, reduction in charges or other compensation in respect of any period of suspension.

#### 16. PRIORITY

Where the Customer has previously entered into a contracting relationship with CreditWorks under any other terms and conditions, the provisions of those terms and conditions shall take priority and prevail in relation to their subject material while the provisions in this Agreement shall take priority and prevail in relation to the FINZscore Service provided by CreditWorks.

#### 17. NOTICES

Notices given or required under this Agreement must be in writing and delivered by email, to the address indicated on the cover page or such other address as one party may notify the others in writing, and will be received when the email has been sent.

#### 18. GENERAL

- 18.1. **Entire Arrangement:** This Agreement records the entire arrangement between the parties relating to all matters dealt with in this Agreement and shall supersede all previous arrangements, whether written, oral or both, relating to such matters.
- 18.2. **No Assignment:** The Customer will not assign any of its rights under this Agreement without CreditWorks's prior written consent. Any change in the beneficial ownership of the Customer which alters its effective control shall be deemed a proposed assignment of this Agreement under this clause.
- 18.3. **Force Majeure:** Except for payments due hereunder, either party will be relieved of its obligations under this Agreement to the extent that performance is delayed or prevented by any cause reasonably beyond its control, including, acts of God, failure of communications or electrical service or any delay or deficiency caused by the electrical or telephone line to Customers or other third parties.
- 18.4. **Waiver:** No waiver of any breach, or failure to enforce any provision, of this Agreement at any time by either party shall in any way limit or waive the right of such party to subsequently enforce and compel strict compliance with the provisions of this Agreement.
- 18.5. **Relationship Between the parties:** Nothing in this Agreement is intended to, or shall be

deemed to, appoint one of the parties as an employee or agent of the other or to constitute a partnership, joint venture or fiduciary relationship between the parties.

- 18.6. **Invalidity:** If any provision of this Agreement is deemed to be illegal, invalid or unenforceable under any applicable law then such contravention or invalidity or unenforceability will not invalidate or render the entire agreement unenforceable. Such provision shall be deemed to be modified to the extent necessary to render it legal, valid or enforceable, but if no such modification will render it legal, valid or enforceable then this Agreement will be construed as if not containing the provisions deemed to be illegal, invalid or unenforceable and the rights and obligations of the parties will be construed and enforced accordingly.
- 18.7. **Amendments:** No amendment to this Agreement will be valid unless recorded in writing and signed by a duly authorised senior representative of each party.
- 18.8. **Governing Law and Jurisdiction:** This Agreement is governed by the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts in respect of all matters relating to this Agreement.