

Terms and Conditions for Credit Reference Industry Solution – Non-Contributing Users

1 DEFINITIONS

In this agreement unless the context indicates otherwise:

“**Business Day**” means any day of the week except Saturday, Sunday or a national statutory holiday recognized in New Zealand;
“**Commencement Date**” means the date of this agreement, as specified on the cover page;
“**Contributing User**” means a person authorised by CreditWorks from time to time to use CRISworks and who also provides to CreditWorks data in respect of that person’s customers, to be used as CRISworks Data;
“**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;
“**CRISworks Data**” means the data residing in CRISworks from time to time, including the other data provided to CreditWorks for use by CreditWorks or Contributing Users and Non-Contributing Users;
“**Default Rate**” means 1.5% per month;
“**GST**” means goods and services tax payable under the Goods and Services Tax Act 1985;
“**New Services**” has the meaning given to that term in clause 6.1;
“**Non-Contributing Users**” means any person authorised by CreditWorks to use CRISworks who is not a Contributing User, and who has agreed to the terms and conditions governing the access to, and use of, CRIS works as adopted by CreditWorks from time to time;
“**Services**” means the services to be provided by CreditWorks to the User as set out in clause 4;
“**Term**” means the term of this agreement, commencing on the Commencement Date and ending on termination on notice being given under clause 3 or clause 11; and
“**Website**” means the CreditWorks website through which the User can access CRISworks.

2 INTERPRETATION

In this agreement where the context permits references to any “party” are references to a party to this agreement (including the successors and permitted assignees of that party):

3 TERM

This agreement will start on the Commencement Date. Either party may terminate this agreement by giving the other party 6 months’ prior written notice.

4 SERVICES

CreditWorks grants the User a non-exclusive, non-transferable licence to use the CRISworks Data during the Term only for the purposes of assessing the creditworthiness of existing and potential customers of the User and deciding whether and if so on what terms to offer credit to any such customers (“**Services**”). The User will not use the Services, CRISworks and the CRISworks Data for the purpose of marketing or attempting to market the User’s goods or services to any party whose credit record is displayed within CRISworks, nor will it identify or attempt to identify to whom the debts recorded in CRISworks are owed. The User agrees that, for the purpose of preventing the unauthorised use or disclosure of the CRISworks Data, it will not use, nor permit the use of, the Services, CRISworks or CRISworks Data for any other purpose nor allow any other person to do so without the prior written consent of CreditWorks. The User will continue to observe the obligations set out in this clause in respect of the data supplied by any Contributing User who has since terminated its agreement with CreditWorks and has ceased to use the Services.

5 TERMS OF ACCESS

- 5.1 Authorised Users:** The User will ensure that only persons authorised by the User have access to the Services. The User will ensure that its employees, contractors and agents comply with all security procedures notified to it by CreditWorks from time to time.
- 5.2 Terms of Use:** The User 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.

6 NEW SERVICES

- 6.1 Availability of New Services:** CreditWorks may from time to time develop new services in connection with CRISworks and may agree to provide some or all of those additional services to the User (“**New Services**”).
- 6.2 Provision of New Services:** The terms (including, without limit, description, charges and payment) for the provision of New Services will be subject to written agreement between the parties. The terms of this agreement will apply to any agreed New Service except to the extent that they are inconsistent with the specific agreed terms for the New Service.

7 RISK OF USE OF CRISWORKS

The User acknowledges that CRISworks Data is comprised of data provided by Contributing Users and other third parties. Accordingly, the User agrees that: it uses CRISworks Data at its own risk; undertakes that it will not bring any claim against any Contributing User in relation to any information supplied by the Contributing User for the purposes of CRISworks Data; and, 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 CRISworks Data.

8 CHARGES

- 8.1 Charges:** The charges for the Services as at the Commencement Date are as specified on the cover page.

- 8.2 Invoicing:** Unless otherwise agreed between the User and CreditWorks, CreditWorks will invoice the User for the Services monthly in arrears.
- 8.3 Payment Within Business 10 Days:** The User will make payments to CreditWorks for the Services within 10 Business Days of the User receiving a valid tax invoice from CreditWorks without setoff or counterclaim.
- 8.4 GST:** All amounts payable under this agreement are exclusive of GST. The User will also pay any GST on all amounts payable by the User to CreditWorks. 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 User.
- 8.5 Other Taxes:** Aside from GST payable by the User under clause 8.4, CreditWorks will be responsible for all other taxes, foreign or non-resident withholding taxes or import duties assessed on or in relation to the Services.
- 8.6 Late Payment:** All amounts (other than amounts which are the subject of a bona fide dispute which is determined in favour of the User) 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.
- 8.7 Review of Charges:** CreditWorks will undertake an annual review of the charges for the Services within 10 Business Days after each anniversary of the Commencement Date. CreditWorks may elect, but shall be under no obligation, to decrease or increase any then current charge for the Services. CreditWorks will give the User written notice of any variation to the charges.

9 WARRANTIES

- 9.1 Mutual Warranties:** CreditWorks and the User each warrant that:

9.1.1 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

9.1.2 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.

- 9.2 CreditWorks’ Warranties:** In addition to the warranties recorded in clause 9.1, CreditWorks warrants that subject, to the User’s compliance with its obligations under this agreement, and the other Contributing Users supplying similar data in relation to their respective customers, CRISworks will operate in the manner provided for in clause 4.

10 EXCLUSIONS FROM LIABILITY

- 10.1 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 10.1 do not apply to the User’s failure to pay amounts owed to CreditWorks under this agreement.
- 10.2 Disclaimer:** The User acknowledges that CreditWorks is reliant upon the User and other Contributing Users to ensure the information they provide to CreditWorks for CRISworks Data is accurate and error free. CreditWorks cannot and does not warrant that the CRISworks Data is free of errors or defects or is complete, correct or current.
- 10.3 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 User to CreditWorks during the previous 6 months.

11 TERMINATION

- 11.1 Mutual right to terminate:** Either party may terminate this agreement immediately upon written notice, if the other breaches any material obligation (including any failure by the User 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.
- 11.2 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.

12 CONSEQUENCES OF TERMINATION

- 12.1 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.
- 12.2 Services Terminate:** On termination of this agreement for any reason, all Services provided to the User will terminate. Prior to termination, CreditWorks may suspend the Services pending resolution of a default by the User.
- 12.3 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 limit clauses 8 and 10.

13 SUSPENSION FROM USE

- 13.1 Suspension:** If CreditWorks reasonably believes that:
- 13.1.1** the performance of this agreement by CreditWorks, the provision of the Services or licence of CRISworks Data may be connected with any breach of law (including without limit, statute or common law); or
 - 13.1.2** the User 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
 - 13.1.3** the User 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 User's rights to use the Services and CRISworks Data until such time as CreditWorks is satisfied that the factor(s) giving rise to the suspension is resolved.
- 13.2 No Rebate:** The User shall not be entitled to any rebate, credit, reduction in charges or other compensation in respect of any period of suspension.

14 NOTICES

- 14.1** Notices given or required under this agreement must be in writing and delivered by certified mail or electronic-mail, return receipt received, overnight mail or courier, or facsimile, to the address indicated on the as specified on the cover page or such other address as one party may notify the others in writing, and will be received when the facsimile has been sent, one Business Day after overnight mailing, or 3 Business Days after mailing by registered mail or an electronic mail response.

15 GENERAL

- 15.1 Entire Arrangement:** This agreement (including the Pricing Schedule) 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.
- 15.2 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, public enemies, war, civil disorder, fire, flood, explosion, labor disputes or strikes, or any acts or orders of any governmental authority, failure of communications or electrical service or any delay or deficiency caused by the electrical or telephone line Users or other third parties.
- 15.3 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.
- 15.4 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.
- 15.5 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.

Obligations Under the Credit Reporting Privacy Code 2020

The below obligations apply to CreditWorks and you (as set out), in addition to CreditWorks Terms and Conditions for Credit Reference Industry Solution – Non Contributing Users. Definitions used are the same as above.

1. Information Services

- 1.1. We exclude all liability we may have to you whatever you are claiming for (including loss of profits or business) and however liability arises or might arise if it were not for this clause.
- 1.2. We may change this Agreement by amending or deleting terms or by adding new terms. Changes may take the form of a new agreement. We will always give you at least one month's notification in writing (which includes by email or via our website) before we do this.
- 1.3. In return for using our information services, you agree:
 - 1.3.1. to give us all the information we require about overdue credit-related amounts owed to you of \$125 or more ("**default information**") by debtors or by guarantors. Before you give us default information you must have:
 - 1.3.1.1. notified the debtor/guarantor about the amount owing and requested payment;
 - 1.3.1.2. taken steps to recover the amount and it must have been overdue for more than 30 days (for debtor defaults); or at least 30 days must have passed since the guarantor was notified of his or her obligation to pay. You must not be prevented by or under any law from recovering the amount; Note: The default information we currently require is in our "Policies for Use Guide" document;
 - 1.3.1.3. taken reasonable steps to tell the debtor the default information is to be given to us and that we will supply it to other customers when they use our information services; and
 - 1.3.1.4. if the default information is about an individual, make sure that the individual has authorised you to give us the default information and for us to supply it as part of our information services. This obligation does not apply if you are a debt collector;
 - 1.3.2. to update the default information you have given to us so that the default information we hold remains accurate, up to date and complete; and
 - 1.3.3. if we ask, to provide us with the information we need and promptly co-operate with us so we can substantiate the default information you have given us.
- 1.4. You must use the reports and information we supply you only for your internal business use. You may disclose information we supply you in accordance with your statutory obligations, including to the individual the information is about. You must not:
 - 1.4.1. give our reports or information to anyone else; or
 - 1.4.2. reproduce or copy the reports or information we supply you, except to the extent this is an integral part of our information service. If you use our information service electronically, you may retain a printout of any report we supply you. We have copyright in the compilation of the information we use to supply information services to you, and in the reports we supply to you when you use our information services. You cannot resell, re-package or otherwise re-use our information other than as permitted under this Agreement.
- 1.5. We do not usually remove any information from our systems unless we think it is not accurate, up to date or complete. It is our decision whether we remove the information.
- 1.6. You understand that we do not independently check all information supplied to us, or the compilation of information by our systems and that information may become out-of-date. We do not guarantee the accuracy of information we supply you as part of our information services.
- 1.7. If we have given you a timetable or time estimate for providing any of our information services, we will use reasonable endeavours to meet that timetable or time estimate. We will let you know if we rely on you to do anything in order for us to meet the timetable or time estimate and you agree to co-operate with us.
- 1.8. If you access the Personal Property Securities Register (the Register) you must only search the Register in compliance with section 173 of the Personal Property Securities Act 1999.

2. Consumer Credit Reporting Services

Note: This section 2 applies when you use our consumer credit reporting services where we give you credit information about individuals. If you do not use our consumer credit reporting services, this section 2 does not apply to you. These services are regulated by the Code. The Code imposes particular obligations on us as credit reporters when we provide consumer credit reporting services.

2.1. Before you use any consumer credit reporting service, you must:

- 2.1.1. inform the individual you are enquiring of the purposes for which we collect, use and disclose information. The individual you are enquiring about must:
 - 2.1.2. [inform the individual you are enquiring of that their personal information may be collected by us and Equifax New Zealand Information Services and Solutions Limited \(Equifax\);](#)
 - 2.1.3. [inform the individual you are enquiring of the purposes for which we and Equifax collect, use and disclose information \(the respective privacy policies are available at \[www.creditworks.co.nz/privacy-policy\]\(http://www.creditworks.co.nz/privacy-policy\) and \[www.equifax.co.nz/privacy\]\(http://www.equifax.co.nz/privacy\)\); and](#)
 - 2.1.4. [inform the individual of their right to contact CreditWorks and Equifax to access and correct their information](#)

2.2 The individual you are enquiring about must:

- 2.2.1. authorise you to make an enquiry about them. This obligation does not apply if an exception under the Code applies to you; and
- 2.2.2. authorise us to list the information you give us about them on our system, use it for our credit reporting services, and supply it to our customers when they use our services. This obligation does not apply if an exception under the Code applies to you. We have example authorisation clauses which we can provide to you to help you make sure you get authorisation from individuals. Information about the exceptions under the Code is in our frequently asked questions (FAQs) on our website.

2.3 Every time you use our consumer credit reporting service you must tell us the purpose for which you will use the information we give you. We are required to only let you use the service if we believe, on reasonable grounds, we are allowed to under the Code. Note: A summary of the purposes we are allowed to provide our credit reporting services for is in our FAQs on our website.

2.4 In order to help us ensure our consumer credit reporting services are used in compliance with the Code, you must:

- 2.4.1. have written policies and procedures for your employees, agents and contractors to follow when they use our consumer credit reporting services so that all those people comply with your obligations for use of those services;
- 2.4.2. have controls over who uses those services. Your controls must include:
 - 2.4.2.1. use of any passwords and log on details you use to access our services; and
 - 2.4.2.2. being able to identify which of your users has used our consumer credit reporting service every time someone uses them;
- 2.4.3. provide information and training on the policies, procedures and controls so that your employees, agents and subcontractors follow those policies, procedures and controls for use of our services;
- 2.4.4. monitor your use of our consumer credit reporting services and regularly check compliance with your internal policies, procedures and controls;
- 2.4.5. take appropriate action if you identify any breaches of those policies, procedures and controls;
- 2.4.6. take all other appropriate measures to safeguard information we give you against improper access; and
- 2.4.7. if you are providing the individual with a quotation of the cost of credit (as opposed to making a credit decision affecting the individual), disclose this to us.

2.5 The Code requires us to monitor and systematically review your use of our consumer credit reporting services and your compliance with this Agreement. You must co-operate with our reasonable requirements to monitor and review your use of those services and your compliance with this Agreement, including reviewing the effect of the policies, procedures and controls you have in place. You must supply, upon request, evidence to confirm compliance with the requirements of Code or evidence to substantiate any credit account information, credit default information, serious credit infringement information or credit non-compliance action information (as these terms are defined in the Code) disclosed to us by you. For example, if we ask you to, you must give us:

- 2.5.1. copies of your policies and procedures for use of our consumer credit reporting services; and
- 2.5.2. evidence to confirm you have:
 - 2.5.2.1. an authorisation from an individual, or that you do not need one;
 - 2.5.2.2. undertaken an enquiry only for the purpose you told us you were using our consumer credit reporting service for; and
 - 2.5.2.3. information identifying which of your users has used our consumer credit reporting service.

We will only use any information you give us under this clause for the purposes of the monitoring and reviews we are obliged to do under the Code; and we will keep that information confidential, except where we are obliged by law

2.6 The Code requires us to maintain an access log. This access log will record each time you use our consumer credit reporting service. We are required to give an individual a copy of their access log if they ask us to.

2.7 The Code requires us to suppress certain information if the individual the information relates to believes he or she may be likely to become a victim of fraud. You acknowledge some information may be suppressed for this reason and you must co-operate to assist us if we need you to in verifying whether credit accounts are genuine and unaffected by third party fraud.

2.8 Where you collect and provide a driver licence number to us, you must:

- 2.8.1. make it clear to the individual that providing this number is voluntary;
- 2.8.2. collect and disclose the number to us; and
- 2.8.3. where you collect it from the individual in person, take reasonable steps to ensure the individual is the person shown on the driver licence.

2.9 If we provide you our MOJ Overdue Fines Balance Search product, you must make sure that any individual you are enquiring about authorises you to make an enquiry about them. You must have a record and keep evidence of that consent, and provide it to us if we ask you to.

2.10 If you give us serious credit infringement information or credit non-compliance action information, you must:

- 2.10.1. update that information so that it remains accurate, up to date and complete; and
- 2.10.2. if it is credit non-compliance action information, after 3 months but before 6 months from when you first give it to us, confirm to us your view remains that the individual intends not to comply with his or her credit obligations and that in forming that view, you have acted as a reasonable person would.



- 3.2 If you seek to have us pre-screen a direct marketing list under Rule 10(1B) of the Code, you must be eligible under condition 1, and meet all applicable requirements under conditions 2 and 3 of Schedule 9 of the Code.
- 3.3 If you seek to have us use credit reporting information under Rule 10(1D) of the Code for tracing purposes to facilitate the return of money owed to individuals, you must meet all applicable requirements of Schedule 10 of the Code.

4 Quotation Enquiries Service

