

CREDIT BENCHMARK SUBSCRIBER SERVICE STANDARD TERMS AND CONDITIONS

1. Definitions, Interpretation and Contract Structure

1.1 The following definitions shall apply in each Agreement:

Affiliate means, in relation to an entity, any other entity that directly or indirectly, through one or more intermediaries, Controls, is Controlled by or is under common Control with the entity (but only while the other entity meets those requirements);

Agreement means, collectively, the applicable Booking Form and the Terms and Conditions;

Authentication Information means information provided to Customer by Credit Benchmark in order to allow access to Services;

Authorised User has the meaning given in clause 3.1a (i);

Booking Form means a document headed "Services Agreement Booking Form" provided by Credit Benchmark and signed by Customer and Credit Benchmark;

Business Day means a day other than a Saturday or Sunday or a Federal holiday;

Commencement Date means the date identified as such on the applicable Booking Form;

Control means the power to direct or cause the direction of the affairs, policies or management of an entity, whether through the ownership of voting securities, by contract, as trustee or executor, or otherwise;

CB Webapp means the internet site through which those Services that are web-based are to be provided by Credit Benchmark, and which are accessible by using the appropriate Authentication Information;

Customer means the entity identified as such in the applicable Booking Form;

Customer Contact means the individual identified by Customer as such on the applicable Booking Form, or subsequently advised from time to time by Customer giving written notice thereof to Credit Benchmark in accordance herewith;

Deliverables means the Outputs and any other computer file, document or other material of whatever nature delivered or to be delivered by Credit Benchmark in connection with an Agreement, including CB Webapp, Log-ons and Authentication Information (as defined herein);

Fees means the fees for the Services payable by Customer as set out on the applicable Booking Form;

Indemnifier and **Indemnified** shall have the meaning given in clause 8.3;

Intellectual Property Rights means any and all intellectual property rights of any nature anywhere in the world whether registered, registrable or otherwise, including patents, utility models, trademarks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights which subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and

procedures and advertising literature, including the "look and feel" of any websites;

Log-on means the unique user name and password details provided hereunder to Customer enabling access to those Services available through CB Webapp;

Outputs means all information provided to Customer by Credit Benchmark as part of any Service, including information provided through CB Webapp, made available for Customer to download by secure FTP or through a third party data service provider, or provided via any other medium specified in an applicable Booking Form;

Permissioned Business Unit has the meaning ascribed to it in the applicable Booking Form OR means the business unit of customer identified as such on the applicable Booking Form;

Permitted Purpose has the meaning ascribed on the applicable Booking Form;

Services means such services of those described in the Services Schedule as are to be received by Customer from Credit Benchmark pursuant hereto, being those expressly listed on the applicable Booking Form;

Services Schedule means the Services Schedule attached hereto and identified as Exhibit A;

Terms and Conditions means these Terms and Conditions, including the Schedules hereto; and

Year means, in respect of each Agreement, each successive 12-month period commencing on the Commencement Date of such Agreement or any anniversary thereof.

1.2 In each Agreement:

a. where a specific remedy is specified herein, it shall be without prejudice to such further or alternative remedies as may otherwise be available in the circumstances; and

b. the term "including" shall not imply any limitation.

1.3 Each Agreement incorporates the Terms and Conditions and shall constitute a separate and independent contract between the parties for the applicable Services. Each party shall be severally liable for its obligations under each Agreement.

2. Obligations of Credit Benchmark

2.1 Credit Benchmark shall perform the Services using and exercising reasonable care and skill and in compliance with all applicable laws and regulations.

2.2 Credit Benchmark shall use reasonable efforts to ensure that CB Webapp shall be in good operating condition.

2.3 Credit Benchmark may immediately without liability modify or cease provision of the Outputs to the extent that (a) any third party ceases to provide data which would otherwise have been incorporated in or used to produce the Outputs; (b) any part or all of the Outputs becomes contrary to applicable law; and/or (c) any part of the Services or the Outputs is withdrawn generally from the marketplace by Credit Benchmark.

2.4 Within 5 Business Days of Credit Benchmark's written request at any time, Customer's relevant compliance officer or equivalent shall confirm in writing to Credit Benchmark on behalf of Customer that Customer's use of the Outputs is in accordance with the terms of the applicable Agreement.

3. Obligations of Customer

3.1 Customer shall:

- a. ensure that:
 - (i) all Log-on and Authentication Information provided to Customer by Credit Benchmark is kept strictly confidential and not shared with, revealed to or used by any other person than the one to whom it was originally issued ("Authorised User") and takes full responsibility for the consequences of use of its Log-ons and Authentication Information other than in accordance herewith;
 - (ii) each Authorised User shall keep a secure password for their use of the Services, regularly change their password, and not disclose their password to any other person;
 - (iii) no password or login shall be used by more than one person, or by anyone who is not an Authorised User;
 - (iv) it shall maintain a written, up to date list of current Authorised Users and provide such list to Credit Benchmark within 5 Business Days of Credit Benchmark's written request at any time; and
- b. inform Credit Benchmark of any breach of clause 3.1a as soon as practicable after it becomes aware of such breach, use reasonable endeavours to remediate such breach and inform Credit Benchmark of the remedial actions taken by Customer in such respect;
- c. inform Credit Benchmark, immediately, if a Log-on or any Authentication Information is to be revoked; and
- d. be at all times responsible and liable for the acts and omissions of each Authorised User in relation to each Agreement (whether or not such Authorised User is a member of staff of Customer) as though they were the acts and omissions of Customer itself.

3.2 Customer is responsible for and Credit Benchmark shall have no liability in respect of the purchase, installation, operation and maintenance of all software, hardware and telecommunications links which may be used or required for the receipt of the Services, the receipt and analysis of Outputs or other Deliverables and any other matter related to the Services.

3.3 Customer warrants that it has taken all requisite corporate actions and obtained all necessary third party consents and licences to enable Customer to (a) receive the benefit of the Services and (b) fulfil its obligations under the applicable Agreement.

3.4 Customer must not:

- a. remove or alter any copyright statement included in the Outputs;
- b. include the Outputs or any information derived from the Outputs in any reports provided to anyone outside the scope of Customer's licence set out in clause 4; or
- c. access, store, distribute or transmit any Viruses, or any material during the course of its use the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or offensive, facilitates illegal activity or causes damage or injury to any person or property. "Virus" means any program, routine, device or other feature, including a time bomb, automatic shut-down, virus, software lock, drop dead device, malicious logic, worm, Trojan horse or trap or back door, or other harmful code or device which (i) is designed to delete, disable, deactivate, provide unauthorised access to, interfere with or otherwise harm any software, program, data, device, system or service; (ii) is intended to provide unauthorised access or to produce unauthorised modifications; or (iii) causes data to be inaccessible, any part of the Services to become inoperable or otherwise incapable of being used in the full manner for which they are being provided.

3.5 Whenever accessing the Service from a country other than the United States of America, Customer is solely responsible for ensuring that it is lawful to access and use the Service and the Outputs in such country and Credit Benchmark shall have no liability in this respect.

3.6 Customer shall use reasonable efforts at all times to ensure that the Deliverables are stored securely and protected from access which is not permitted by this Agreement.

3.7 Customer warrants that in performing its obligations and exercising its rights pursuant to the applicable Agreement it will act in compliance with all applicable laws and regulations.

3.8 Customer will not use the Services in any anti-competitive manner.

3.9 Customer may provide to Credit Benchmark personal data relating to the Customer's employees and other staff ("Users" and "User Data") to the extent required to facilitate access to and manage the Services ("Facilitating Purposes") as defined below.

- a. Credit Benchmark may process the User Data for the Facilitating Purposes.
- b. Customer represents and warrants to Credit Benchmark that in providing the User Data to Credit Benchmark for Credit Benchmark to process it for the Facilitating Purposes, Customer will comply with all applicable provisions of the applicable laws and regulations regarding personal data.
- c. For the purposes of this Agreement the "Facilitating Purposes" are to:
 - i. enable Customer's Users to access the Services;
 - ii. administer the Services, including permissioning and billing for the Services;
 - iii. provide customer support for the Services; and
 - iv. provide service and other information to Users about the Service and Credit Benchmark's related services (if any).

3.10 Credit Benchmark shall not be liable for delays or failures in providing the Services to the extent that such delays or failures result from a failure or delay by Customer in performing its own obligations under the Agreement.

4. Intellectual Property and Licence

- 4.1 As between Credit Benchmark and Customer, all Intellectual Property Rights arising from or in any respect related to the Services or the Outputs and all other Deliverables, and in each case all parts and derivatives thereof, shall be and remain vested in Credit Benchmark Limited or the applicable third party suppliers.
- 4.2 Credit Benchmark grants Customer a revocable, non-exclusive, non-transferable, non-sublicensable license

for Customer's Permissioned Business Unit to use and copy the Outputs only for the Permitted Purpose in accordance herewith.

4.3 Customer shall not:

- a. publish Outputs or any information derived from the Outputs in any way other than for the Permitted Purpose;
- b. use the Outputs or any part of the Outputs:
 - (i) in the press or on the internet;
 - (ii) as a reference point in any contract with any third party, or in any data or service provided to any third party; or
 - (iii) for the purpose of creating any financial product, index or service ("Product") where the performance or capital or income value of any Product is related to the Outputs or any part thereof;

or

- c. otherwise distribute or disclose the Outputs or any information, work or product derived in whole or in part from the Outputs outside its Permissioned Business Unit.

4.4 Unless and to the extent explicitly stated to the contrary in the Booking Form, Customer shall ensure that any external publication included within the Permitted Purpose:

- a. is not and does not become a source of or a substitute for the Services or any substantial part thereof; and
- b. is conditioned upon such external publication being (i) in extract form only, (ii) not systematic, (iii) attributed to Credit Benchmark (using such form of attribution as Credit Benchmark may advise Customer in writing from time to time) and (iv) accompanied by such statement or disclaimer notified in writing by Credit Benchmark to Customer from time to time.

5. Fees and Suspension of Services

5.1 Customer shall pay to Credit Benchmark the Fees set out in the applicable Booking Form.

5.2 Fees shall be invoiced by Credit Benchmark annually in advance.

5.3 Invoices are payable within 30 days of the date thereof. Interest shall be due and payable on overdue invoices that are not the subject of a *bona fide* dispute from the due date of the invoice until the date of payment and interest will continue to accrue following a judgment (if any) ordering payment of such invoice. The rate of interest will be 2% per month, or such lower rate as is required by applicable law.

5.4 The Fees specified herein are exclusive of any applicable taxes, including without limitation value added tax, on sales or supplies of goods or services in any applicable jurisdiction, and Customer must pay these to Credit Benchmark as well as the amounts concerned where such taxes apply. For the avoidance of doubt, where subsequent to an invoice of the Fees it is determined that a tax on sales or supplies was payable in respect of all or part of the Services but was not included in the relevant invoice, Credit Benchmark may invoice Customer for such tax and Customer shall pay such invoice as set forth above.

5.5 Credit Benchmark shall have the right but not the obligation to suspend providing Services to Customer, or, at its option, may terminate the applicable Agreement, in the event Customer:

- a. is late in making any payment of an invoice (other than one under a bona fide dispute) by more than 28 days from the due date; or
- b. breaches any provision of clause 4 or uses the Outputs in a manner that exceeds the licence granted in clause 4.3.

5.6 Credit Benchmark may only increase the Fees once in any twelve (12) month period, such increase to be no more than the aggregate of 5% plus the CPI index (annually adjusted) rate during the previous twelve (12) month period; provided that Credit Benchmark shall give Customer no less than 3 months' notice before applying any such increase. Upon such an increase being effective other than on a renewal hereof, Credit Benchmark may invoice Customer for the amount of such increase pro rated to the next renewal date.

6. Use of the Services

6.1 If Credit Benchmark reasonably believes that Customer is permitting use of any Deliverable, Log-on, Authentication Information or Output otherwise than in accordance herewith, Credit Benchmark shall notify Customer, and Customer shall promptly use its best efforts to ensure any such use ceases immediately. Credit Benchmark may suspend the Services to Customer if such non-compliant use persists, and in any event may immediately block any relevant Log-on.

7. Confidentiality

7.1 Each party (the "**Receiving Party**") shall keep confidential any information disclosed to it by the other party (the "**Disclosing Party**") in connection with any Agreement, whether directly or indirectly and by any means ("**Confidential Information**"). This includes all information so disclosed comprising or relating to the business affairs, operations and processes of the Disclosing Party or those of its clients or customers and any information that is marked as being confidential or which, from its nature, content or the circumstances in which it is provided, would reasonably be supposed to be confidential. For the avoidance of doubt and without limiting the foregoing, the Outputs and other Deliverables, including, without limitation, any credit data information regarding any company, institution or organization that is included in the Outputs or Deliverables, shall be Confidential Information of Credit Benchmark.

7.2 Credit Benchmark provides data and information on different companies, institutions and/or organisations ("**Entity Observations**") to Customer as Receiving Party. Such Entity Observations shall be deemed the Confidential Information of Credit Benchmark. Without prejudice to the customer's other obligations under this agreement as Receiving Party, Customer undertakes not to disclose such Entity Observations, whether directly or indirectly, to any company, institution and/or organisation that is the subject of such Entity Observations.

7.3 The Receiving Party shall not use the Disclosing Party's Confidential Information for any purpose other than as expressly permitted under this Agreement, and shall not disclose the Disclosing Party's Confidential Information to anyone else except to:

- a. its employees who need such Confidential Information in order to enable the Receiving Party to carry out any

of its obligations under an Agreement or who are expressly permitted to have access to such Confidential Information hereunder;

- b. its auditors or lawyers; or
- c. any temporary staff, contractors or consultants working for the Receiving Party provided that disclosure of the Confidential Information is necessary in order to enable the person to whom it is disclosed to carry out the work concerned. The Receiving Party shall be responsible for ensuring that any person to whom Confidential Information is disclosed by them complies with obligations of confidentiality substantially similar to those in this clause 7.1.

7.4 The obligations of confidentiality set out in clause 7.1 do not apply to any information that is:

- a. generally available to the public, unless this availability results from a breach of an Agreement;
- b. already in the possession of the Receiving Party or which it obtains or originates independently in circumstances in which it is free to disclose it to others; or
- c. trivial or obvious.

7.5 Should the Receiving Party be required to disclose Confidential Information by any court, tribunal or regulatory authority that is entitled by law to order its disclosure, it shall, to the extent permissible by law, notify the Disclosing Party of such requirement and the Disclosing Party shall be afforded the opportunity to make representations to such body in relation to such disclosure for the purpose of seeking confidential treatment of such Confidential Information and minimising the extent and effect of such disclosure.

7.6 Notwithstanding clause 7.1 Credit Benchmark shall be entitled to disclose the fact that Customer is a customer of Credit Benchmark to potential buyers of, investors in, or lenders to all or part of the Credit Benchmark business.

8. Indemnities

8.1 Subject to clause 9 and to compliance by Customer with clause 8.3, Credit Benchmark shall indemnify Customer against each loss, liability and cost (including reasonable legal costs and attorneys' fees) that Customer incurs or becomes liable for arising out of or in connection with:

- a. any claim of infringement of an Intellectual Property Right of a third party ("IPR Claim") resulting from the Customer's receipt or use of the Deliverables in accordance with the applicable Agreement (including, without limitation, each loss, liability and cost incurred as a result of defending or settling such claim), save to the extent that such IPR Claim arises out of Customer's modification of the Deliverables or combination of the Deliverables with other materials'; and/or
- b. any breach by Credit Benchmark of clause 7 (Confidentiality).

8.2 Subject to clause 9 and to compliance by Credit Benchmark with clause 8.3, Customer shall indemnify Credit Benchmark and its applicable third party suppliers against each loss, liability and cost (including reasonable legal costs and attorneys' fees) that Credit Benchmark and its applicable third party suppliers incur or become liable for arising out of or in connection with:

- a. Customer's use of the Services and/or the Deliverables in breach of clauses 3 and/or 4, including without limitation Customer's provision of the Outputs

or any information derived from the Outputs directly or indirectly to any third party not expressly permitted by this Agreement;

- b. any decision taken or advice given by the Customer as a result of Customer's use of the Services; and/or
- c. any breach by Customer of clause 7 (Confidentiality).

8.3 If a party ("Indemnified") becomes aware of a matter which might give rise to a claim against it as contemplated under clause 8.1 or 8.2:

- a. the Indemnified shall promptly notify the other party ("Indemnifier") of the matter and consult with the Indemnifier with respect to the matter; provided, any failure by the Indemnified to provide such notice will not relieve the Indemnifier of its indemnification obligations under the applicable Agreement except to the extent the Indemnifier can demonstrate actual, material prejudice to its ability to mount a defence as a result of such failure in which case the Indemnifier shall be relieved of only that part of its liability that can be attributed to such delay by the Indemnified.
- b. The Indemnified shall not admit liability in respect of or settle the matter nor otherwise knowingly prejudice the defence of the claim without first obtaining the Indemnifier's written consent (not to be unreasonably withheld or delayed).

8.4 Notwithstanding the indemnities in this clause 8, the Indemnified shall be obliged to mitigate such losses as it may incur in respect of such indemnified matters.

9. Exclusions and limitations

9.1 Neither party's liability is excluded or limited by any provision of any Agreement in respect of:

- a. death or personal injury caused by the party's negligence or the negligence of the party's employees or agents;
- b. fraud or fraudulent misrepresentation; or
- c. any other liability which cannot be limited or excluded by law.

9.2 Subject to clause 9.1, Credit Benchmark shall not be liable to Customer under or in relation to any Agreement or the Services (whether such liability arises in tort (including negligence), breach of contract, misrepresentation or otherwise) for any loss of or damage to: profits, sales, turnover, contracts, customers, business, reputation, software, data, wasted management or other staff time, losses or liabilities under any other contracts, or any indirect, special or consequential loss or damage, in each case regardless of whether the relevant party was aware of the possibility of such matter. The term "loss" as used herein includes a partial loss or reduction in value as well as a complete or total loss.

9.3 Subject to clauses 9.1, 9.2, 9.4 and 9.5, Credit Benchmark's total liability arising from or in connection with each Agreement (and whether the liability arises because of breach of contract, negligence, misrepresentation or for any other reason) shall be limited, in respect of all events occurring in any Year, to the greater of:

- a. the value of the Fees paid or payable under such Agreement during such Year; or
- b. \$50,000.

9.4 The limitations set out in clause 9.3 shall not apply to any liability under any indemnity in this Agreement.

9.5 Customer recognises that the Outputs (and any other Deliverables) are designed to assist in the management of credit risk, but that Customer shall have and bear sole and complete responsibility for all such decisions and management. Accordingly, Credit Benchmark will not be liable under any Agreement (even where any other term of any Agreement might suggest otherwise) or in tort (including negligence) or otherwise for any losses, damages, expenses, legal actions or claims whatsoever incurred or sustained by Customer relating to the quality or appropriateness of any analysis, recommendations, advice or decisions made (in whole or in part) with the aid of any Output (or other Deliverable).

9.6 Each party (a) acknowledges that, in entering into each Agreement, it has not relied on any statement, representation, warranty, promise, undertaking or assurance made by the other party that has not been set out in the applicable Agreement; (b) agrees that it will not rely on any statement, representation, warranty, promise, undertaking or assurance made by the other party except to the extent that the statement, representation, warranty, promise, undertaking or assurance concerned is contained in the applicable Agreement; and (c) no conditions, warranties or other terms apply to any Services or Deliverables supplied under an Agreement except to the extent that they are expressly set out in the applicable Agreement. No implied conditions, warranties or other terms shall apply (including any implied terms as to satisfactory quality, fitness for purpose or conformance with description).

9.7 NOTWITHSTANDING ANY OTHER PROVISION OF ANY AGREEMENT, CREDIT BENCHMARK DOES NOT GUARANTEE THE ACCURACY OR THE COMPLETENESS OF ANY DELIVERABLE SUPPLIED BY IT OR ANY INFORMATION INCLUDED THEREIN. CREDIT BENCHMARK MAKES NO WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL WARRANTIES AS TO RESULTS TO BE OBTAINED BY CUSTOMER OR ANY OTHER PERSON OR ENTITY FROM THE USE OF THE DELIVERABLES SUPPLIED BY CREDIT BENCHMARK OR ANY INFORMATION INCLUDED THEREIN. CREDIT BENCHMARK MAKES NO EXPRESS OR IMPLIED WARRANTIES, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE WITH RESPECT TO THE DELIVERABLES SUPPLIED BY CREDIT BENCHMARK OR ANY INFORMATION INCLUDED THEREIN. WITHOUT LIMITING ANY OF THE FOREGOING, IN NO EVENT SHALL CREDIT BENCHMARK HAVE ANY LIABILITY FOR ANY SPECIAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.

9.8 Where the Outputs are identified in the applicable Booking Form as being provided through a third party's data service or otherwise provided through a third party service, Credit Benchmark shall have no liability or responsibility to Customer for the quality, functionality or any other aspect of such service, or the accuracy, timeliness or completeness of Outputs received by Customer through such service, and Customer shall be solely responsible for maintaining a services agreement directly with the provider of such service for usage of Outputs. Customer agrees not to make any claim against such third party service provider in relation to any aspect of the Outputs, including quality, fitness for purpose or conformance with description thereof.

10. Term and Termination

10.1 Save as expressly set out in an applicable Booking Form:

- a. the term of each Agreement shall commence on the Commencement Date and shall continue until terminated pursuant to this clause 10;
- b. each Agreement will renew automatically for successive twelve (12) month terms unless either party shall have given written notice to the other in accordance with clause 10.1c; and
- c. either party may elect for an Agreement not to renew at the end of the then current term hereof by giving the other not less than 90 days' prior written notice.

10.2 Termination of an Agreement shall not affect any other Agreement save that if Credit Benchmark is entitled to terminate an Agreement pursuant to clause 10.3 it may, at its option, immediately on written notice to Customer, terminate any or all Agreements entered into with Customer to which it is a party.

10.3 Without prejudice to any rights that have accrued under an Agreement, either party may terminate an Agreement immediately and without notice in the event that:

- a. the other commits a material breach of such Agreement and, in the case of a breach capable of remedy, the other has failed to remedy such breach within 20 Business Days of a notice requiring such remedy; or
- b. the other party becomes insolvent.

11. Consequences of termination

11.1 Termination shall not affect the accrued rights and liabilities of the parties.

11.2 The provisions of clauses 1 (definitions, interpretation and contract structure), 4 (intellectual property and licence), 6 (use of the services), 7 (confidentiality), 8 (indemnity), 9 (exclusions and limitations), 11 (consequences of termination) and 12 (general) shall survive any expiry or termination of each Agreement and shall remain in full force and effect.

12. General

12.1 No amendment to any Agreement shall be effective unless in writing and signed on behalf of both parties. However, Credit Benchmark may update these Credit Benchmark Standard Terms and Conditions, including by way of example the descriptions of Services in the Services Schedule, from time to time by amending such Schedule, uploading the amended Credit Benchmark Standard Terms and Conditions to the relevant website and notifying Customer no less than 30 days prior to any material amendment taking effect, provided that no such amendment shall be effective prior to the next renewal date of the applicable Agreement to the extent that it has the effect of being materially more onerous or less beneficial to Customer unless mutually agreed in writing between the parties.

12.2 Any inconsistencies between the documents comprising an Agreement shall be resolved in the following order of priority:

- a. the applicable Booking Form;
- b. these Terms and Conditions; and
- c. the Services Schedule.

12.3 All notices, agreements and consents under each Agreement shall be in writing. Notices shall be deemed effectively served if sent to the address of the relevant party set out on the applicable Booking Form or to such

other address as either party shall notify to the other in accordance with this clause 12.3, provided that no notice to Credit Benchmark shall be effective unless a copy has been sent to the attention of Credit Benchmark's Group Legal Counsel at Credit Benchmark's address as specified on the applicable Booking Form. Any such letter may be delivered by hand or first class pre-paid letter and shall be treated as having been delivered (a) if delivered by hand, when so delivered; or (b) if by first class post, 5 days after posting.

12.4 Notwithstanding any other provision of any Agreement, neither party will be responsible or liable for any delay or failure in performing any of its obligations under an Agreement if such delay or failure is caused by circumstances outside its reasonable control, including any failure or delay in the operation of any third party network, hardware, software or telecommunications link, or acts of God, war, strikes or labour disputes, embargoes, government orders, or regulatory action.

12.5 If a party (a) delays in enforcing its rights under an Agreement (whether in relation to a breach by the other party or otherwise); or (b) agrees not to enforce its rights, or to delay doing so, then unless such party expressly agrees otherwise, that delay or agreement shall not be treated as waiving the rights of such party. Any waiver of a party's rights in relation to a particular breach of the applicable Agreement shall not operate as a waiver of any subsequent breach. No right, power or remedy to which either party is entitled under an Agreement is exclusive of any other right, power or remedy available to that party.

12.6 Each Agreement is personal to the parties and neither party may assign its rights or obligations under it without the consent of the other party provided that Credit Benchmark may:

- a. assign its rights under any Agreement(s) to an Affiliate of Credit Benchmark on notice to Customer; or
- b. subcontract its obligations hereunder to any of its Affiliates;

provided that in each case Credit Benchmark shall remain ultimately responsible to Customer for Credit Benchmark's obligations hereunder. Further, Credit

Benchmark may assign its rights under any Agreement(s) in connection with the sale of all or substantially all of the shares or assets of Credit Benchmark or its holding company.

12.7 There are no third party beneficiaries to any Agreement, and a person who is not party to an Agreement may not enforce any of its terms.

12.8 If any provision of an Agreement is held for any reason to be ineffective or unenforceable, this shall not affect the validity or enforceability of (a) any other provision of such Agreement; or (b) the Agreement as a whole.

12.9 Each Agreement is the parties' entire agreement with respect to its subject matter and supersedes any prior agreement or oral or written representations with respect thereto, including any prior non-disclosure or confidentiality agreement between the parties. In entering into any Agreement, the parties have not relied on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not expressly set out in the Agreement. Each Party agrees that its only remedies in respect of those statements, representations, assurances or warranties that are set out in the Agreement shall be for breach of contract in accordance with the terms of the Agreement.

12.10 Any dispute arising out of or in connection with any Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect; if these rules conflict with the applicable Agreement, then the applicable Agreement shall control. The number of arbitrators shall be one. The arbitration shall be conducted in New York, New York. The language to be used in the arbitral proceedings shall be English. Each Agreement, and all matters arising directly or indirectly from each Agreement, shall be governed by and construed in accordance with the laws of the State of New York, without regard to its conflict of laws rules. Notwithstanding anything to the contrary herein, either party may bring an action for immediate injunctive relief if necessary to avoid irreparable harm in any court of competent jurisdiction.

EXHIBIT A SERVICES SCHEDULE

This Services Schedule ("Services Schedule") constitutes a description of Credit Benchmark's available services. The Services that Customer is entitled to receive shall be those listed in the applicable Booking Form, subject to the terms of the applicable Agreement. In this Services Schedule, terms not otherwise defined have the meaning given to them elsewhere in the applicable Agreement.

1. Credit Benchmark Subscriber Service

- 1.1 The Credit Benchmark Subscriber Service is a credit risk analysis service available to customers of Credit Benchmark. This service will develop over time and initially comprises access to a series of Credit Benchmark Outputs, together with customised consultative services to ensure subscribers are maximising the benefits of the Service. These services will include user training and ongoing support.
- 1.2 Access to Credit Benchmark Outputs is defined on the Booking Form, and may include one or more of the following access options:
 - a. A regularly updated file which will be provided to subscribers via secure FTP transfer or secure online portal.
 - b. A web service ("CB Webapp") that Customer may log on to using Log-ons and Authentication Information issued by Credit Benchmark for such purpose,
 - c. An API
 - d. An Excel Plugin.
 - e. Access via third party data distributors
- 1.3 Customer will receive consensus risk estimates on individual entities and aggregated groups. Such data is generated from the banks and institutions who contribute to Credit Benchmark's platform.
- 1.4 The Credit Benchmark Subscriber Service includes the following:
 - a. such training of Customer's Permissioned Business Unit in the use of the Credit Benchmark Subscriber Service as may be necessary or desirable to fully understand and benefit from the Credit Benchmark Subscriber Service, the scheduling and location of which to be agreed between Credit Benchmark and Customer.
 - b. Access to analysts within Credit Benchmark to assist in the production of customised reports and analysis using the Credit Benchmark data