

Matrix Marketing (Pty) Ltd MyMoBi End User Licence Agreement

This End User License Agreement constitutes a valid and binding agreement between **Matrix Marketing (Pty) Ltd 1988/006293/07** and Yourself, as a user for the use of the Software concerned.

Prior to downloading the Software, you will be required to expressly agree to the provisions, terms and conditions of this End user licence agreement (hereinafter the "EULA or *Agreement*").

By agreeing to be bound by this EULA, you further agree that any person you authorise to use the Software will comply with the provision of this EULA.

AGREEMENT

1. Definitions

1.1 Except to the extent expressly provided otherwise, in this EULA:

"**Affiliate**" being any company or other entity that directly or indirectly controls, is controlled by, or is under common control with Matrix Marketing (Pty) Ltd

"**Charges**" means [those amounts that the parties have agreed in writing shall be payable by the User to the Licensor in respect of this EULA];

"**Documentation**" means [the documentation for the Software produced by the Licensor and delivered or made available by the Licensor to the User];

"**Effective Date**" means [the date upon which the User gives the User's express consent to this EULA, following the issue of this EULA by the Licensor];

"**EULA**" means this end user licence agreement, including any amendments to this end user licence agreement from time to time; with such amendments outlined in a separate addendum and signed by both parties to be valid.

"**Force Majeure Event**" means an event, or a series of related events, that after both parties have utilised reasonable efforts to mitigate the effects of such event, is outside the reasonable control of the party affected including failures of the internet or any public telecommunications network, hacker attacks, denial of service attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, and wars.

"**Intellectual Property Rights**" means all intellectual property rights wherever in the world, whether registrable or unregistrable, registered or unregistered, including any application or right of application for such rights (and these

"intellectual property rights" include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trademarks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"**Licensor**" means **Matrix Marketing (Pty) Ltd** a company incorporated in the Republic of South Africa (registration number **1988/006293/07**) having its head office at **147 Bram Fischer Drive, Randburg 2194** which will for purposes of serving notices and documentation be considered "*Domicilium citandi et executandi*"

"**Licensor Indemnity Event**" has the meaning given to it in Clause 13.1;

"**Maintenance Services**" means the supply to the User and application to the Software of Updates and Upgrades;

"**Minimum Term**" means, in respect of this EULA, the period of 12 months beginning on the Effective Date.

"**Non-Subscriber**" means an individual that has entered into an agreement with the Licensor to utilise limited data and content via the Software, in accordance with the **Non-Subscriber Data Agreement** clauses included herein.

"**Services**" means any services that the Licensor provides to the User, or has an obligation to provide to the User, under this EULA;

"**Software**" Refers to all computer software products consisting of programs licensed by Matrix Marketing (Pty) which are designed for execution in a computer system. It shall include any as well as all Updates and Upgrades thereto.

"**Software Defect**" means a defect, error or bug in the Software having a material adverse effect on the appearance, operation, functionality or performance of the Software, but excluding any defect, error or bug caused by or arising as a result of:

- (a) any act or omission of the User or any person authorised by the User to use the Software;
- (b) any use of the Software contrary to the Documentation by the User or any person authorised by the User to use the Software;
- (c) a failure of the User to perform or observe any of its obligations in this EULA; and/or

- (d) an incompatibility between the Software and any other system, network, application, program, hardware or software not specified as compatible in the Software Specification;

"Software Specification" means the specification for the Software set out in the Documentation;

"Source Code" means the Software code in human-readable form or any part of the Software code in human-readable form, including code compiled to create the Software or decompiled from the Software, but excluding interpreted code comprised in the Software;

"Subscriber" means an individual or business that has entered into a subscription agreement with the Licensor for the provision of data and content via the Software, in accordance with the Subscriber Agreement.

"Support Services" means support in relation to the use of the Software and the identification and resolution of errors in the Software, but shall not include the provision of training services whether in relation to the Software or otherwise;

"Term" means the term of this EULA, commencing in accordance with Clause 3.1 and ending in accordance with Clause 3.2;

"Update" means a hotfix, patch or minor version update to the Software;

"Upgrade" means a major version upgrade of the Software;

"User" means the person to whom the Licensor grants a right to use the Software under this EULA; and

"User Indemnity Event" has the meaning given to it in Clause 13.3.

3. Term

3.1 This EULA shall come into force upon the Effective Date.

3.2 This EULA shall continue in force indefinitely, subject to termination in accordance with Clause 15.

4. Licence

4.1 The Licensor hereby grants to the User from the date of supply of the Software to the User until the end of the Term, a worldwide, non-exclusive licence to:

- (a) install a single instance of the Software;
- (b) use a single instance of the Software in accordance with the Documentation; and

(c) create, store and maintain up to 5 back-up copies of the Software, subject to the limitations and prohibitions set out and referred to in this Clause 4.

4.2 The User may not sub-license and must not purport to sub-license any rights granted under Clause 4.1.

4.3 Save to the extent expressly permitted by this EULA or required by applicable law on a non-excludable basis, any licence granted under this Clause 4 shall be subject to the following prohibitions:

(a) the User must not sell, resell, rent, lease, loan, supply, publish, distribute or redistribute the Software;

(b) the User must not alter, edit or adapt the Software; and

(c) the User must not decompile, de-obfuscate or reverse engineer, or attempt to decompile, de-obfuscate or reverse engineer, the Software.

4.4 The User shall be responsible for the security of copies of the Software supplied to the User under this EULA (or created from such copies) and shall use all reasonable endeavours (including all reasonable security measures) to ensure that access to such copies is restricted to persons authorised to use them under this EULA.

5. Source Code

5.1 Nothing in this EULA shall give to the User or any other person any right to access or use the Source Code or constitute any licence of the Source Code.

6. Maintenance Services

6.1 The Licensor shall provide the Maintenance Services to the User during the Term.

6.2 The Licensor shall provide the Maintenance Services with reasonable skill and care

6.3 The Licensor warrants to the User that the application of Updates and Upgrades to the Software by the Licensor will not introduce any Software Defects into the Software.

6.4 The Licensor warrants to the User that the application of Updates and Upgrades to the Software by the User in accordance with the instructions of the Licensor will not introduce any Software Defects into the Software.

6.5 The Licensor may suspend the provision of the Maintenance Services if any amount due to be paid by the User to the Licensor under this EULA is overdue,

and the Licensor has given to the User at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Maintenance Services on this basis.

- 6.6 The Maintenance Services term will reflect the same as the Term of this EULA as in clause 3.2
- 6.7 If the Licensor stops or makes a good faith decision to stop providing maintenance services in relation to the Software to its customers generally, then the Licensor may terminate the Maintenance Services by giving at least 90 days' written notice of termination to the User.
- 6.8 If the Maintenance Services are terminated in accordance with the provisions of this Clause 6:
 - (a) the User must pay to the Licensor any outstanding Charges in respect of Maintenance Services provided to the User before the termination of the Maintenance Services;
 - (b) the Licensor must refund to the User any Charges paid by the User to the Licensor in respect of Maintenance Services that were to be provided to the User after the termination of the Maintenance Services; and
 - (c) the provisions of this Clause 6, excluding this Clause 6.8, shall cease to apply, but the other provisions of this EULA will continue notwithstanding such termination.

7. Support Services

- 7.1 The Licensor shall provide the Support Services to the User during the Term.
- 7.2 The Licensor shall provide the Support Services with reasonable skill and care.
- 7.3 The Licensor may suspend the provision of the Support Services if any amount due to be paid by the User to the Licensor under this EULA is overdue, and the Licensor has given to the User at least 30 days' written notice, following the amount becoming overdue, of its intention to suspend the Support Services on this basis.
- 7.4 The Support Services term will reflect the same as the Term of this EULA as in clause 3.2
- 7.5 If the Support Services are terminated in accordance with the provisions of this Clause 7:

- (a) the User must pay to the Licensor any outstanding Charges in respect of Support Services provided to the User before the termination of the Support Services;
- (b) the Licensor must refund to the User any Charges paid by the User to the Licensor in respect of Support Services that were to be provided to the User after the termination of the Support Services; and
- (c) the provisions of this Clause 7, excluding this Clause 7.5, shall cease to apply, but the other provisions of this EULA will continue notwithstanding such termination.

8. No assignment of Intellectual Property Rights

8.1 Nothing in this EULA shall operate to assign or transfer any Intellectual Property Rights from the Licensor to the User, or from the User to the Licensor. The products offered by Matrix Marketing (Pty) Ltd, including the Software and all manuals and documentation provided by Matrix Marketing (Pty) Ltd, contain essential components constituting confidential information and trade secrets and shall be deemed Matrix Marketing (Pty) Ltd's Confidential Information.

The user will not disclose Matrix Marketing (Pty) Ltd Confidential Information to any third party and will use Matrix Marketing (Pty) Ltd's confidential Information only in accordance with this EULA.

9. Charges

9.1 The User shall pay the Charges to the Licensor in accordance with this EULA.

9.2 All amounts stated in or in relation to this EULA are, unless the context requires otherwise, stated exclusive of any applicable value added taxes, which will be added to those amounts and payable by the User to the Licensor.

10. Payments

10.1 The Licensor shall issue invoices/receipts for the Charges to the User within a reasonable time to reflect the order received.

10.2 The User must pay the Charges to the Licensor in advance OR within the period of 30 days following the issue of an invoice in accordance with the prevailing Subscriber Data agreement. All fees due by the User to Matrix Marketing (Pty) Ltd, in terms of this Agreement shall, unless the context indicates otherwise, exclude any taxes and/or levies due as a result of a requirement by any governmental organisation (which shall include, but not be limited to any Value Added Tax thereon) and all these taxes and/or levies, shall be paid by the User on the due date for payment thereof.

10.3 The User must pay the Charges by In-app purchase, debit card, credit card, direct debit, bank transfer or cheque (using such payment details as are notified by the Licensor to the User from time to time).

10.4 If the User does not pay any amount properly due to the Licensor under this EULA, the Licensor may:

(a) That without prejudice to all or any of Matrix Marketing (Pty) Ltd's rights granted in terms of this Agreement, should the User fail to pay any amount which may become due to Matrix Marketing (Pty) Ltd on the due date.

Then the User shall pay Matrix Marketing (Pty) Ltd interest thereon at the prime rate calculated from the due date of payment until the actual date of payment, both dates inclusive.

11. Warranties

11.1 The Licensor warrants to the User that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

11.2 The Licensor warrants to the User that:

(a) the Software as provided will conform in all material respects with the Software Specification;

(b) the Software will be supplied free from Software Defects and will remain free from Software Defects for a period of at least 12 months following the supply of the Software;

(c) the Software will be supplied free from viruses, worms, Trojan horses, ransomware, spyware, adware and other malicious software programs; and

(d) the Software shall incorporate security features reflecting the requirements of good industry practice.

11.3 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not breach any laws, statutes or regulations applicable under South African law.

11.4 The Licensor warrants to the User that the Software, when used by the User in accordance with this EULA, will not infringe the Intellectual Property Rights of any person in any jurisdiction and under any applicable law.

11.5 If the Licensor reasonably determines, or any third party alleges, that the use of the Software by the User in accordance with this EULA infringes any person's

Intellectual Property Rights, the Licensor may acting reasonably at its own cost and expense:

- (a) modify the Software in such a way that it no longer infringes the relevant Intellectual Property Rights, providing that any such modification must not introduce any Software Defects into the Software and must not result in the Software failing to conform with the Software Specification; or
- (b) procure for the User the right to use the Software in accordance with this EULA.

11.6 The User warrants to the Licensor that it has the legal right and authority to enter into this EULA and to perform its obligations under this EULA.

11.7 All of the parties' warranties and representations in respect of the subject matter of this EULA are expressly set out in this EULA. To the maximum extent permitted by applicable law, no other warranties or representations concerning the subject matter of this EULA will be implied into this EULA or any related contract.

12. Acknowledgements and warranty limitations

12.1 The User acknowledges that complex software is never wholly free from defects, errors and bugs; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be wholly free from defects, errors and bugs.

12.2 The User acknowledges that complex software is never entirely free from security vulnerabilities; and subject to the other provisions of this EULA, the Licensor gives no warranty or representation that the Software will be entirely secure.

12.3 The User acknowledges that the Software is only designed to be compatible with that software specified as compatible in the Software Specification; and the Licensor does not warrant or represent that the Software will be compatible with any other software.

12.4 The User acknowledges that the Licensor will not provide any [legal, financial, accountancy or taxation advice] under this EULA or in relation to the Software; and, except to the extent expressly provided otherwise in this EULA, the Licensor does not warrant or represent that the Software or the use of the Software by the User will not give rise to any legal liability on the part of the User or any other person.

13. Indemnities

13.1 The Licensor shall indemnify and shall keep indemnified the User against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the User and arising directly or indirectly as a result of any breach by the Licensor of this EULA (a "**Licensor Indemnity Event**").

13.2 The User must:

- (a) upon becoming aware of an actual or potential Licensor Indemnity Event, notify the Licensor;
- (b) provide to the Licensor all such assistance as may be reasonably requested by the Licensor in relation to the Licensor Indemnity Event;
- (c) allow the Licensor the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the Licensor Indemnity Event; and
- (d) not admit liability to any third party in connection with the Licensor Indemnity Event or settle any disputes or proceedings involving a third party and relating to the Licensor Indemnity Event without the prior written consent of the Licensor,

13.3 The User shall indemnify and shall keep indemnified the Licensor against any and all liabilities, damages, losses, costs and expenses (including legal expenses and amounts reasonably paid in settlement of legal claims) suffered or incurred by the Licensor and arising directly or indirectly as a result of any breach by the User of this EULA (a "**User Indemnity Event**").

13.4 The Licensor must:

- (a) upon becoming aware of an actual or potential User Indemnity Event, notify the User;
- (b) provide to the User all such assistance as may be reasonably requested by the User in relation to the User Indemnity Event;
- (c) allow the User the exclusive conduct of all disputes, proceedings, negotiations and settlements with third parties relating to the User Indemnity Event; and
- (d) not admit liability to any third party in connection with the User Indemnity Event or settle any disputes or proceedings involving a third party and

relating to the User Indemnity Event without the prior written consent of the User,

13.5 The indemnity protection set out in this Clause 13 shall be subject to the limitations and exclusions of liability set out in this EULA.

14. Limitations and exclusions of liability

14.1 Nothing in this EULA will:

- (a) limit or exclude any liability for death or personal injury resulting from negligence;
- (b) limit or exclude any liability for fraud or fraudulent misrepresentation;
- (c) limit any liabilities in any way that is not permitted under applicable law; or
- (d) exclude any liabilities that may not be excluded under applicable law,

and, if a party is a consumer, that party's statutory rights will not be excluded or limited by this EULA, except to the extent permitted by law.

14.2 The limitations and exclusions of liability set out in this Clause 14 and elsewhere in this EULA:

- (a) are subject to Clauses 14.1 and 17.6; and
- (b) govern all liabilities arising under this EULA or relating to the subject matter of this EULA, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty, except to the extent expressly provided otherwise in this EULA.

14.3 The Licensor will not be liable to the User in respect of any losses arising out of a Force Majeure Event.

14.4 The Licensor will not be liable to the User in respect of any loss of profits or anticipated savings.

14.5 The Licensor will not be liable to the User in respect of any loss of revenue or income.

14.6 The Licensor will not be liable to the User in respect of any loss of business, contracts or opportunities.

14.7 The Licensor will not be liable to the User in respect of any loss or corruption of any data, database or software.

- 14.8 The Licensor will not be liable to the User in respect of any special, indirect or consequential loss or damage.
- 14.9 The liability of the Licensor to the User under this EULA in respect of any event or series of related events shall not exceed the greater of:
- (a) the total amount paid and payable by the User to the Licensor under this EULA in the 12 month period preceding the commencement of the event or events].
- 14.10 The aggregate liability of the Licensor to the User under this EULA shall not exceed the greater of:
- (a) the total amount paid and payable by the User to the Licensor under this EULA.

15 Confidential Information

- 15.1 Both Parties agree to keep confidential all information concerning the other party's business or its ideas, products, customers or services that could be considered to be "confidential information". "Confidential information" is any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature and that is furnished or disclosed to the other party. Confidential information will remain the property of the disclosing party and the receiving party will not acquire any rights to that confidential information.
- 15.2 The Parties agree that due to the terms of the EULA each party may hold/have access to the other's records in order to give effect to this Agreement, however the Party where the information originated shall at all times remain the owner of those records and hereby gives the other party permission to store the data on their system for the use in terms of this EULA specifically related to effect of this EULA.

16 BREACH

- 16.1 Should any party ("the defaulting party") commit a breach of any of the provisions of this Agreement, then the other party ("the aggrieved party") shall be obliged to give the defaulting party 14 (fourteen) days' written notice or such longer period as may reasonably be required in the circumstances, to remedy the breach.
- 16.2 If the defaulting party fails to comply with such notice, the aggrieved party shall be entitled to cancel this Agreement against the defaulting party or to claim immediate payment and/or specific performance by the defaulting party of all the defaulting party's obligations whether or not the due date for payment and/or performance shall have arrived, in either event without prejudice to the aggrieved party's rights to claim damages.
- 16.3 The foregoing is without prejudice to such other rights as the aggrieved party may have at law; provided always that, notwithstanding anything to the contrary contained in this agreement, the aggrieved party shall not be entitled to cancel this agreement for any breach by the defaulting party unless such breach is a material breach going to the root of this agreement and is incapable of being remedied by payment in money, or if it is capable of being remedied by payment in money, the defaulting party fails to pay the amount concerned within 14 (fourteen) days after such amount has been finally determined.

17 DOMICILA AND NOTICES

- 17.1 Any notices to be given to the parties in terms of this Agreement shall be in writing and delivered by hand during ordinary business or dispatched by e-mail during normal business hours to the addresses mentioned hereunder, which respective addresses the parties choose as their *domicilia citandi et executandi* for the delivery or service of all notices, communications or legal processes arising out of this Agreement.

17.2

17.2.1 LICENSOR:

147 Bram Fischer Drive, Randburg 2194

17.2.2 USER :

17.3 Or such other addresses in the Republic of South Africa as a party may choose by written notice to the others from time to time.

17.4 Every notice shall be deemed to have been properly given, in the absence of proof to the contrary:

17.4.1 If delivered by hand, on the business day following the day of delivery;

17.4.2 If sent to a party at its e-mail address on the business day following the day of delivery where it is transmitted during normal business hours of the receiving instrument, and on the next business day where it is transmitted outside those business hours, in either event provided that it has been confirmed by registered letter posted no later than the business day immediately following the date of transmission.

17.5 Notwithstanding anything to the contrary herein contained, a written notice as communication actually received by one party from the other shall be an adequate written notice as communication to such receiving party notwithstanding that it was not sent to or delivered at the party's chosen domicilium citandi et executandi.

18. Termination

18.1 The Licensor may terminate this EULA by giving to the User written notice of termination, during the Term, to terminate the agreement at the end of the Term.

18.2 The User may terminate this EULA by giving to the Licensor written notice of termination, during the Term, to terminate the agreement at the end of the Term.

18.3 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

- (a) the other party commits any material breach of this EULA, and the breach is not remediable;
- (b) the other party commits a material breach of this EULA, and the breach is remediable but the other party fails to remedy the breach within the period of 30 days following the giving of a written notice to the other party requiring the breach to be remedied; or
- (c) the other party persistently breaches this EULA (irrespective of whether such breaches collectively constitute a material breach).

18.4 Either party may terminate this EULA immediately by giving written notice of termination to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all (or substantially all) of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up[(other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under this EULA)]; or
- (d) if that other party is an individual:
 - (i) that other party dies;
 - (ii) as a result of illness or incapacity, that other party becomes incapable of managing his or her own affairs; or
 - (iii) that other party is the subject of a bankruptcy petition or order.]

18.5 The Licensor may terminate this EULA immediately by giving written notice to the User if:

- (a) any amount due to be paid by the User to the Licensor under this EULA is unpaid by the due date and remains unpaid upon the date that that written notice of termination is given; and
- (b) the Licensor has given to the User at least [30 days'] written notice, following the failure to pay, of its intention to terminate this EULA in accordance with this Clause 18.5.

19. Effects of termination

19.1 Upon the termination of this EULA, all of the provisions of this EULA shall cease to have effect, save that the following provisions of this EULA shall survive and continue to have effect (in accordance with their express terms or otherwise indefinitely): [Clauses 1, 4.1, 10.2, 10.4, 13, 14, 19, 20 and 21].

19.2 Except to the extent that this EULA expressly provides otherwise, the termination of this EULA shall not affect the accrued rights of either party.

19.3 Within 30 days following the termination of this EULA for any reason:

- (a) the User must pay to the Licensor any Charges in respect of Services provided to the User before the termination of this EULA and in respect of licences in effect before the termination of this EULA; and
- (b) the Licensor must refund to the User any Charges paid by the User to the Licensor in respect of Services that were to be (but are not) provided to the User after the termination of this EULA and in respect of licences that were to be (but are not) in effect after the termination of this EULA,

without prejudice to the parties' other legal rights.

19.4 For the avoidance of doubt, the licences of the Software in this EULA shall terminate upon the termination of this EULA; and, accordingly, the User must immediately cease to use the Software upon the termination of this EULA.

19.5 Within 10 Business Days following the termination of this EULA, the User must:

- (a) return to the Licensor or dispose of as the Licensor may instruct all media in its possession or control containing the Software; and
- (b) irrevocably delete from all computer systems in its possession or control all copies of the Software.

20. General

- 20.1 No breach of any provision of this EULA shall be waived except with the express written consent of the party not in breach.
- 20.2 If any provision of this EULA is determined by any court or other competent authority to be unlawful and/or unenforceable, the other provisions of this EULA will continue in effect. If any unlawful and/or unenforceable provision would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the provision will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant provision will be deemed to be deleted).
- 20.3 This EULA may not be varied except by a written document signed by or on behalf of each of the parties.
- 20.4 Neither party may without the prior written consent of the other party assign, transfer, charge, license or otherwise deal in or dispose of any contractual rights or obligations under this EULA.
- 20.5 This EULA is made for the benefit of the parties, and is not intended to benefit any third party or be enforceable by any third party. The rights of the parties to terminate, rescind, or agree any amendment, waiver, variation or settlement under or relating to this EULA are not subject to the consent of any third party.
- 20.6 Nothing in this EULA shall exclude or limit any liability of a party for fraud or fraudulent misrepresentation, or any other liability of a party that may not be excluded or limited under applicable law.
- 20.7 Subject to Clauses 14.1 and 20.6, this EULA shall constitute the entire agreement between the parties in relation to the subject matter of this EULA, and shall supersede all previous agreements, arrangements and understandings between the parties in respect of that subject matter.
- 20.8 This EULA shall be governed by and construed in accordance with South African law.
- 20.9 The courts of the Republic of South Africa shall have exclusive jurisdiction to adjudicate any dispute arising under or in connection with this EULA.

21. Interpretation

- 21.1 In this EULA, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 21.2 The Clause headings do not affect the interpretation of this EULA.
- 21.3 In this EULA, general words shall not be given a restrictive interpretation by reason of being preceded or followed by words indicating a particular class of acts, matters or things.
- 21.4 **“APPENDIX A”** contains all clauses relating to the use of the Information supplied to the User by the Licensor as part of the agreement. These clauses constitute a whole and are not to be construed as separate from or in addition to the EULA.
- 21.5 Where applicable, the wording in Appendix A in its entirety may be superseded by the acceptance, by both parties, of a **“Data Usage (Subscriber) Rental Agreement”** which will append to this agreement. Together the EULA and the Subscriber Rental Agreement will constitute a whole and are not to be construed as separate from or in addition to the EULA.
- 21.6 **“APPENDIX B”** contains all clauses relating to the request by a **User**, for the **Company** to undertake specific research on their behalf. These clauses constitute a whole and are not to be construed as separate from or in addition to the EULA.

APPENDIX A

DATA USAGE (GENERAL) RENTAL AGREEMENT TERMS AND CONDITIONS

“Information” shall mean all or any information provided in any form by the Company to a Subscriber.

“Company” shall mean Matrix Marketing (Pty) Ltd.

“Term” refers to the period of 12 months after initial access which the user may make use of the Information provided by the company.

“User” shall mean an individual or business licensed to use the Company’s web-enabled or mobile-enabled platforms to access Information.

Information provided electronically, or printed, is for the exclusive use of the User and may not be divulged, published or used on behalf of any other person, company, business or organization.

The Company, whilst exercising reasonable care, does not guarantee the correctness or the effective delivery of the aforesaid information. Nor shall the Company be held liable for any loss or damage resulting from negligence, delay or failure on the part of the Company or its employees and agents in procuring, presenting or communicating the said information.

The User agrees to purchase Information via the web-enabled or mobile-enabled application, payment options.

The User warrants that all information in all formats under license will be removed and will not be used in any way whatsoever after the termination date. A breach of this warranty shall entitle the Company, without prejudice to its rights, to claim and obtain payment from the User of an amount equivalent to 3 times the aggregate annual fee payable in terms of this Subscription, by way of a license fee..

Credits allocated or purchased for download are carried over month to month and must be utilised within the Term.

Please note that a Subscription provides for searching, viewing & printing.

Lists supplied by the Company for one-time usage may not be copied or re-used in any way and must be used within the specified agreement Term

All Prices are quoted/supplied are exclusive of VAT.

INDEMNITY

Each of the parties hereby indemnifies the other party against all claims as may be made against the other party by any third party, for any loss or damage, arising from, or occasioned by:

a) Any act or omission by the first party which amounts to a breach of the terms of this Subscription;

b) Any act or omission by the first party which amounts to a contravention of any statutory provision or other law;

Neither party nor any of its servants or agents will, save as aforesaid, be liable for any loss or damage to the other party whether direct, indirect or consequential and howsoever caused, arising out of, or associated with, this Subscription;

The Subscriber uses the database entirely at its own risk.

UPDATES

The system updates records automatically on a monthly basis.

CONTROL NAMES

The data supplied will be seeded with control names, a common practice in the industry to reveal usage. Receipt of control names post the termination of the contract period will trigger invoices for usage.

DIRECT MARKETING ASSOCIATION OF SOUTH AFRICA

As a member of the Association, the Company subscribes to certain protection of privacy issues. The Subscriber accordingly agrees and warrants in favour of the Company, that it will comply with, and not breach, any guidelines or directives published or issued by the Association (which are or will be made available on request and which are deemed to be specifically incorporated herein).

The USER UNDERSTANDS THAT attention must be given to adhere to current rules and legislation pertaining to direct marketing and electronic mail communication. It is the Users' duty and the Company carries no liability, should the User not act in accordance with these rules.

The Company shall be entitled to review and increase the fees set out in the schedule hereto on an annual basis; such increases to take effect on the Subscription anniversary date. Increases will be in accordance with the ruling CPI Index or 8%, whichever is the highest, said variation in fees shall not entitle a Subscriber to terminate this Subscription.

APPENDIX B

RESPONSIBILITIES WITH RESPECT TO MATRIX MARKETING (PTY) LTD'S UNDERTAKING TO UPDATE INFORMATION ON BEHALF OF THE USER.

"Information" shall mean all or any information provided in any form by the Company to a Subscriber.

"Company" shall mean Matrix Marketing (Pty) Ltd.

"Term" refers to the period of 12 months after initial access which the user may make use of the Information provided by the company.

"User" shall mean an individual or business licensed to use the Company's web-enabled or mobile-enabled platforms to access Information.

The **User** may request the **Company** to update and add **information** to the database on their behalf, from time to time. The application expressly makes available a process for such requests to be made within the application functionality. Functionality to request single or one-off events as well as bulk lists are catered for.

The **Company** undertakes to take reasonable steps to:

1. Process the request for information within a period of 6 – 8 weeks from the request being received. This time is required to issue the request to a researcher, compile and quality control the product and then process the information back into the database.
2. Determine, based upon reasonable assessment, the suitability of the request, the financial impact of the request and the overall benefit to the **Company** on whether to accept the request or, to decline it.
3. Reward the **User** with credits which may be used to export or print data at the **User's** discretion, for acceptance of the request to update **Information**. The credits will be awarded to the **User** on the successful inclusion of the **Information** in the database.
4. Communicate their decisions to the **Users** in a reasonable and timely manner.

The **User** undertakes to:

1. Request information on *bona fide* businesses that they have a direct interest in targeting for marketing purposes or already enjoy a business relationship.
2. To provide the **Company** with sufficient, accurate contact data to facilitate the research endeavour and to assist the **Company** with enquiries should it require it.

The **Company** clearly wishes to express its intent that this service is offered as a value-added provision over and above any obligation in terms of the Data Usage agreement (**Appendix A**) and does not form part of any obligations therein.

Failure to perform this offer may not constitute a breach of the Data Usage Agreement (**Appendix A**) or provide grounds for remedy in the allegation of a breach of the Data Usage Agreement, (**Appendix A**)