

VERSION NUMBER 1.0



JSE DATA AGREEMENT (JDA) GENERAL TERMS AND CONDITIONS

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1. APPLICATION OF THESE GENERAL TERMS AND CONDITIONS

- 1.1 Unless otherwise stated in these General Terms and Conditions or any other Contract Document, or the context clearly indicates a contrary intention:
- 1.1.1 the Interpretation Provisions set out in the Interpretation and Definitions Annexure attached as Annexure A to these General Terms and Conditions are included by reference into each Contract Document; and
- 1.1.2 capitalised terms used in each Contract Document have the same meaning as terms defined in the Interpretation and Definitions Annexure.

2. INTRODUCTION, SUBSCRIPTION AND IDENTITY OF DATA AGREEMENT

- 2.1 The JSE collects, creates and/or compiles data (or causes data to be collected, created and/or compiled) and gives persons the non-exclusive right to use such data.
- 2.2 By signing the Products and Services Form (**PSF**), the Contracted User:
- 2.2.1 enters into the Data Agreement and becomes bound by all the documents which make up the Data Agreement. These documents are identified in the PSF; and
- 2.2.2 subscribes to the Products and Services.
- 2.3 The Data will be supplied by the JSE in accordance with South African law and will be sent to a Contracted User:
- 2.3.1 which is a JSE User, by or on behalf of the JSE, to the JSE User or a person nominated by the JSE User, through the relevant Delivery System; alternatively
- 2.3.2 which is not a JSE User, by or on behalf of a User which is allowed to redistribute the Data, to the Contracted User or a person nominated by the Contracted User.
- 2.4 Subject to the JSE's obligations to any particular category of User under applicable laws, the JSE agrees to supply the Data to the Contracted User with a level of quality (consistency and accuracy) and on terms and conditions substantially equal to those which the JSE provides to any other Contracted User of the same or substantially the same data.

3. GENERAL USE PROVISIONS

3.1 general User capacities/categories

- 3.1.1 In addition to any specific User capacity/category and principles expressly dealt with in the Policies, the JSE allows a person to use the Data in its capacity as an In-House User, Distributor, Re-Distributor, Group Company, Group Company Re-Distributor, End User and/or Non-Display User. The Contracted User must comply with all terms of the Data Agreement relating to the capacity in which it receives and uses any Data.
- 3.1.2 Without limiting the above general provisions and unless the JSE agrees in writing to any change to the receipt or use of any Data before such change is implemented, the Contracted User and each Group Company may only:
- (a) receive the Data at the Location;
- (b) use the Data in the corresponding capacity chosen in relation to that Data in the PSF, and in accordance with the Data Agreement; and
- (c) use the Data for creating the corresponding User Products in relation to that Data set out in the PSF, using the corresponding Technology in relation to that Data and for the specific business uses set out in the PSF.

3.2 Group Company details

3.2.1 The Contracted User must:

- (a) make sure any Subsidiary, Holding Company or Subsidiary of its Holding Company which is reflected as a Group Company in the PSF in fact meets all the qualifying criteria set out in the definition of **Group Company**;
- (b) make sure that at all times the Group Company information set out in the PSF remains up to date and accurate and that no person uses or accesses any Data as a Group Company unless it qualifies as a Group Company and it has been included as a Group Company in the PSF duly signed by both the Contracted User and the JSE; and
- (c) upon request from the JSE, promptly provide the JSE with such documents and other information as the JSE may reasonably require in order to assess if an entity qualifies as a Group Company.

3.2.2 If the JSE, acting reasonably, is not satisfied that an entity qualifies as a Group Company, the JSE is not obliged to include such entity in the PSF and may, if applicable, amend the PSF to remove such entity as a Group Company.

3.3 *distribution to and use by third parties, liability and indemnity*

3.3.1 ***The Contracted User must not distribute or use, must not allow the distribution or use of and must make sure that no Data Recipient distributes any Data to, or allows the use of any Data by any person, unless expressly allowed to do so in terms of the Data Agreement.***

3.3.2 ***If the Contracted User distributes any Data to any person in accordance with the Data Agreement or otherwise enables the use of any Data, the Contracted User must make sure that:***

- (a) ***it complies with the Data Agreement in relation to such distribution and other use;***
- (b) ***where the Data Agreement places an obligation on the Contracted User to make sure that any Data Recipient acts or refrains from acting in the prescribed way or the Data Agreement otherwise restricts the distribution or other use of any Data by any Data Recipient, the Contracted User must make sure that the Data Recipient does not distribute or otherwise use any Data in contravention of these provisions; and***
- (c) ***it has appropriate agreements in place with each Data Recipient to make sure that each Data Recipient:***
 - (i) ***is contractually bound to the Contracted User to comply with all applicable provisions of the Data Agreement, including all provisions relating to the Data Recipient's right, if any, to distribute or otherwise use any Data and its obligations in relation to the distribution and other use of such Data, including its obligation to keep records in relation to all use of such Data; and***
 - (ii) ***must give the JSE and its agents (as a stipulation in favour of the JSE and its agents, or otherwise in a form which gives the JSE and its agents these rights) access to its premises and records at all reasonable times to conduct an audit.***

3.3.3 ***If:***

- (a) ***any Data Recipient distributes or otherwise uses any Data in a way which is contrary to the provisions of the Data Agreement, or if in relation to any such distribution or use, the Contracted User breaches any provision of the Data Agreement; or***

- (b) **any Data Recipient acts or fails to act in a way which is contrary to the provisions of the Data Agreement,**

then, whether or not the Contracted User knows about that breach or unauthorised use and without reducing or taking away any other right or remedy the JSE may have under the Data Agreement or in law, the Contracted User must pay the JSE on written demand by the JSE, an amount equal to the JSE's loss of income in relation to that breach or unauthorised use. This loss of income will be calculated with reference to the Price List and the nature and extent of the breach or unauthorised use. The Interest Amount will be added to the amount due by the Contracted User, calculated from the date that amount should have been paid to the JSE to the date payment is received by the JSE.

3.3.4 **In addition, if the JSE has reasonable grounds to believe that any Data Recipient:**

- (a) **is using any Data in an unauthorised way;**
(b) **is acting or failing to act in a way which is contrary to the Data Agreement; and/or**
(c) **is otherwise in breach of any data agreement between the JSE and such Data Recipient,**

then, in addition to any investigations the JSE and/or its agents may carry out and if requested in writing by the JSE to do so, the Contracted User must:

- (d) **carry out investigations which the JSE reasonably requests, in relation to any act or failure to act by such Data Recipient; and/or**
(e) **provide such assistance and within such period as the JSE reasonably requests to protect the JSE's rights in relation to the Data, including immediately discontinuing the supply of or access to the relevant Data to such Data Recipient.**

3.3.5 **If the Contracted User distributes any Data to any Data Recipient or enables a Data Recipient to use any Data, other than a Data Recipient with whom the JSE has an agreement in place for that use of that Data (Non Contracted Data Recipient), without reducing or taking away any other right or remedy the JSE may have under the Data Agreement or in law, the Contracted User will be liable to the JSE in relation to, and indemnifies the JSE against, all loss of any nature suffered by the JSE as a result of any act or failure to act on the part of any such Non Contracted Data Recipient which is contrary to the provisions of the Data Agreement.**

3.4 **data agreement required with the JSE**

The Contracted User must make sure that any Data Recipient which is identified in any Policy or the General Terms and Conditions as a person which is required to enter into a data agreement directly with the JSE, in fact enters into such an agreement before using the Data in a way which triggers this requirement.

3.5 **policies**

The Contracted User must use the Data, and make sure that any Group Company and/or any Service Facilitator that distributes or uses the Data in any other way does so, in accordance with the Data Agreement, including all applicable Policies, having regard to the capacity of the User, the type of Data used and manner in which it is used.

3.6 **protection of Data**

The Contracted User must install and/or implement and monitor suitable control and security systems in order to prevent any unauthorised use of any Data.

3.7 **misrepresentation of Data**

The Contracted User must not misrepresent (and must make sure that no Data Recipient misrepresents) the Data in any way. In particular, Delayed Data must not be represented as Live Data.

3.8 **Service Level Agreement (SLA)**

If a SLA applies to any Products and Services, it is included in the PSF.

4. **IMPLEMENTATION DATE**

4.1 Within a reasonable period after a Contracted User has requested these, the JSE will provide the User with details of the Implementation Date Requirements, information in relation to the interdependencies of these requirements and the person responsible for making sure each requirement is met.

4.2 Within a reasonable period after the Signature Date, the JSE and the User will use their reasonable endeavours to meet their respective outstanding Implementation Date Requirements.

4.3 The JSE will notify the Contracted User of the Implementation Date at least 1 (one) Business Day before that date.

4.4 The Contracted User is entitled to receive and use the relevant Data and must pay the corresponding Consideration from the Implementation Date.

4.5 If immediately before the Contracted User enters into the Data Agreement relating to any Data, the Contracted User already receives that Data from the JSE (in the same capacity and for the same use) in terms of an existing and valid data agreement with the JSE, then in relation to that Data:

4.5.1 for Clause 5.1.1(a) (*Duration of the Data Agreement*), the First Implementation Date will be interpreted as the implementation date under that existing data agreement;

4.5.2 Clause 5.3 (*Termination before the Implementation Date*) will not apply; and

4.5.3 for Clause 9 (*Consideration*), the Implementation Date will be interpreted as the Signature Date.

5. **DURATION OF THE DATA AGREEMENT**

5.1 **general right to end the Data Agreement or any part of the Service**

5.1.1 The Data Agreement begins on the Signature Date and will continue indefinitely, but either Party may end the Data Agreement or any part of the Service:

(a) on 2 (two) months written notice to the other Party, to take effect at any time after the first day of the month which is 12 (twelve) months after the First Implementation Date (**First Anniversary**); or

(b) in terms of any other provision in the Data Agreement which expressly allows it to do so.

5.2 **payment of Consideration on termination**

Any Consideration which has been received by the JSE at the date the Data Agreement or any part of the Service ends will not be refunded to the Contracted User. The Contracted User must also pay any accrued Consideration in relation to any part of the Service which has ended and which has not been paid on the date on which it ends.

5.3 **termination before the Implementation Date**

5.3.1 If the Contracted User ends the Data Agreement or any part of the Service at any time after the Signature Date but before the Implementation Date (other than in terms of Clause 15 (*Default*)), the

Contracted User must pay the JSE the Cancellation Charges within 10 (ten) Business Days of written demand.

- 5.3.2 The Contracted User agrees that a certificate given by any manager of the JSE, whose authority need not be proved, will be sufficient proof until the contrary is proved, of the amount of the Cancellation Charges.

6. AMENDMENTS TO CONTRACT DOCUMENTS (AND RIGHT TO END THE DATA AGREEMENT)

- 6.1 The Parties accept that the whole or part of a Contract Document may need to be amended at any time, including to change the products and/or services offered by the JSE, and/or the terms on which those products and/or services are offered.

- 6.2 The Parties may amend a Contract Document by written agreement signed by the Parties. For an amendment to any section of the PSF, this written agreement may take the form of completion and signature by both parties of the corresponding Section Revision in the PSF.

- 6.3 The JSE may also amend a Contract Document at any time, provided the proposed amendment is reasonable. The JSE will give the Contracted User notice of such amendments,

- 6.3.1 **Prior notice:** The JSE will give 90 (ninety) days (or such other period as may be reasonable in the circumstances) prior written notice of any amendment, where it is reasonably able to do so. At any time after the First Anniversary referred to in Clause 5.1.1(a) (*Duration of the Data Agreement*), the Contracted User may end its subscription to any Data which is affected by the amendment, without penalty, by giving written notice to the JSE to end that subscription, before the effective date of that amendment and within the time period stated in the Amendment Notice (or if no such time period is stated in the Amendment Notice, at any time before the effective date of that amendment).

- 6.3.2 **No prior notice:** If the JSE is not reasonably able to give prior written notice of any amendment, the JSE will give notice after such amendment has been made and when it is reasonably able to do so. At any time after the First Anniversary referred to in Clause 5.1.1(a) (*Duration of the Data Agreement*) the Contracted User may end its subscription to any Data which is affected by that amendment by giving 30 (thirty) days written notice to the JSE to end that subscription. That notice must be received by the JSE at any time within 90 (ninety) days after delivery of the Amendment Notice by the JSE.

- 6.4 After any amendment in terms of this Clause 6, the Contracted User must (and undertakes to make sure that each Group Company shall):

- 6.4.1 promptly communicate that amendment to each Service Facilitator and each other Data Recipient which is or is reasonably likely to be affected by that amendment; and

- 6.4.2 to the extent necessary and, by no later than the effective date of the relevant amendment (in relation to an Amendment Notice delivered under Clause 6.3.1) and within a reasonable period after delivery of the applicable Amendment Notice (in relation to an Amendment Notice delivered under Clause 6.3.2), amend its systems and operations (or make sure that the Service Facilitator amends its systems and operations), including any User Products and any contractual arrangements with the persons referred to in Clause 6.4.1 to give effect to that amendment.

7. RESTRICTIONS, INTERRUPTIONS OR INACCURATE DATA

- 7.1 ***The JSE does not warrant or represent that the supply of any Data will be free of interruption or restriction and does not warrant the timeliness, sequence, accuracy or completeness of the Data.***

- 7.2 ***The JSE may interrupt, restrict or prevent the Contracted User's access to or use of any Data, if it needs to as a result of reasonable operational or other reasonable conditions, or if the JSE in its reasonable discretion considers it necessary or desirable for any other reason.***

- 7.3 ***If there is a delay, interruption or restriction in relation to the Data:***

- 7.3.1 ***the JSE will use reasonable endeavours:***
- (a) ***to give the JSE User notice of any such delay, interruption or restriction as soon as it is reasonably able to do so;***
 - (b) ***if it is reasonably able to do so, to provide an estimate of the expected duration of such delay, interruption or restriction;***
 - (c) ***if it is reasonably able to do so and provided that the delay, interruption or restriction is not caused by any act or failure to act by the Contracted User, any Group Company or Service Facilitator, to remove such delay, interruption or restriction as soon as it is reasonably able to do so; and***
- 7.3.2 ***if the reason for such delay, interruption or restriction is not due to any act or failure to act of the Contracted User, any Group Company or Service Facilitator, and such delay, interruption or restriction is material and exceeds 5 (five) Business Days in any Quarter and is within the reasonable control of the JSE, then the corresponding Consideration will be reduced or refunded proportionally by the number of days that the Contracted User had no, or only materially restricted, access to the relevant Data.***
- 7.4 ***The JSE will use reasonable endeavours to:***
- 7.4.1 ***notify the Contracted User of any material errors or omission in the Data as soon as it is reasonably able to do so, after it becomes aware of them; and***
 - 7.4.2 ***provide accurate and complete data and, at the JSE's election, replace any inaccurate or incomplete Data provided by the JSE with accurate and complete Data, or reduce or refund the corresponding Consideration.***
- 7.5 ***The JSE informs the Contracted User that the Data is offered and provided in the following specific conditions and circumstances:***
- 7.5.1 ***the JSE's ability to provide and deliver the Service in accordance with the Data Agreement may be dependent on third parties;***
 - 7.5.2 ***the JSE has no or limited control over Third Party Content Data or Third Party Delivered Data, including over the timeliness, accuracy or completeness of that Data and is unable to confirm and is not liable for its timeliness, accuracy and/or completeness; and***
 - 7.5.3 ***the JSE intends that the Data will be used only for the purposes set out in the PSF and otherwise as may be permitted in the Data Agreement.***
- 7.6 ***The Contracted User agrees to accept the Data in the condition and in the circumstances set out above.***

8. UNDERTAKINGS BY THE CONTRACTED USER

- 8.1 In addition to its other obligations, the Contracted User must:
- 8.1.1 immediately notify the JSE in writing as soon as it becomes aware of an Event of Default or a Potential Event of Default in relation to the Contracted User;
 - 8.1.2 at all times comply with all local and (if relevant) foreign applicable laws relating to the use of any Data;
 - 8.1.3 provide all assistance the JSE may reasonably request relating to the JSE's compliance with its own obligations under applicable laws, including any statutory reporting obligations relating to the Service;

- 8.1.4 comply with all the requirements applicable to the relevant Data, set out in the Products and Services Additional Documentation;
- 8.1.5 provide the JSE, free of charge and within a reasonable period after delivery of a written request by the JSE, with at least one User ID and password for access to the Technology if the Contracted User, Group Company Re-Distributor and/or Service Facilitator uses Internet Technology; and
- 8.1.6 make sure that each Group Company Re-Distributor and each Service Facilitator complies with each of the above obligations.

9. CONSIDERATION

9.1 general

- 9.1.1 In consideration for providing the Data to the Contracted User in accordance with the Data Agreement, the Contracted User must pay the JSE the Consideration identified in the Price List (plus VAT, if applicable). The Consideration is payable in relation to each type of use of Data by the Contracted User and its Group Companies.
- 9.1.2 The frequency and timing of Invoices for use of the Data is set out in the Price List with reference to the relevant Data.
- 9.1.3 The prices set out in the Price List exclude any Levies which may be levied on the Consideration from time to time and which will, if applicable, be added to the Invoices at the rate prescribed by law.
- 9.1.4 The Consideration in relation to any Data is payable from the corresponding Implementation Date, within 30 (thirty) days of the date of the corresponding Invoice. ***It must be paid free of bank charges, costs of transfer, set off, counterclaim or any other deduction, into the JSE's bank account stated in that Invoice.***
- 9.1.5 Subject to any express provision to the contrary in the Data Agreement, the Consideration relating to use of any Data will remain payable by the Contracted User until the Data Agreement ends in relation to that Data, in accordance with the terms of the Data Agreement.

9.2 deposit

The JSE may require the Contracted User to pay a deposit. The requirements for any such deposit and the related terms and conditions are set out in the Deposit Policy.

9.3 Consideration Currency

- 9.3.1 The Consideration will be invoiced by the JSE and paid by the Contracted User in the Consideration Currency set out in the PSF.
- 9.3.2 The foreign currency amounts reflected in the Price List from time to time are calculated and published in the Price List with reference to the corresponding South African Rand amount, converted at a conversion rate and on a conversion date reasonably determined by the JSE.

9.4 variation in Consideration

- 9.4.1 The Consideration will be subject to at least an annual review by the JSE.
- 9.4.2 Unless the Contracted User is notified to the contrary in writing by the JSE, the Consideration will be increased every year with effect from the first day of the Financial Year, by an amount equal to CPI. If this annual increase is less than CPI, the JSE will notify the Contracted User before it takes effect, but this notice will not trigger the termination rights in Clause 6 (*Amendments to Contract Documents (and Right to End the Data Agreement)*).
- 9.4.3 In addition, if the JSE wishes to either:

- (a) increase the Consideration at the beginning of the Financial Year by an amount which is more than CPI;
- (b) increase the Consideration at any other time; or
- (c) otherwise change the Consideration at any time (including the manner in which and/or basis on which the Consideration is determined),

that increase or change will, be implemented in terms of Clause 6 (*Amendments to Contract Documents (and Right to End Data Agreement)*) and will take effect on the date stated in the applicable Amendment Notice, which date will be at least 90 (ninety) days after delivery of the Amendment Notice.

9.5 interest

Interest will be charged by the JSE on all amounts which are overdue by the Contracted User in relation to the Data Agreement, calculated at the Prime Rate plus 2% (limited to the maximum rate allowed by South African law), from the date on which payment was due to the date payment is received by the JSE. This interest will accrue daily and be compounded monthly in arrears.

9.6 use reporting

If required in terms of the Use Reporting Policy (and any other Policy which refers to the ENDF), the Contracted User must complete and submit monthly ENDF's.

10. JSE AUDIT AND RECORD KEEPING

- 10.1 The JSE, its employees, directors, officers, contractors and/or agents may enter the Contracted User's premises to inspect, examine, verify or audit any document, record, account, system, matter or thing relating to the Service or any part thereof (**Audit Item**), which in the JSE's sole discretion it needs to assess compliance with the Data Agreement. The JSE may take copies of any Audit Item relevant to the Data Agreement.
- 10.2 The Contracted User must make sure that in its contractual arrangements with third parties (as a stipulation in favour of the JSE or otherwise in a form which gives the JSE these rights), the JSE has the audit rights set out in this Clause 10 in relation to each Data Recipient and has full access to their respective Audit Items.
- 10.3 The Audit Policy contains additional terms relating to JSE audits.
- 10.4 If the Contracted User owes any amount to the JSE under the Data Agreement (and the obligation to pay this amount comes to the JSE's attention as a result of the audit, or otherwise), without reducing or taking away from the JSE's rights under Clause 15 (*Default*), the Contracted User must, within 5 (five) Business Days of delivery of written demand to the Contracted User by the JSE, pay the amount owing, as well as the Interest Amount calculated from the date the amount owing should have been paid, to the date of actual payment to the JSE.
- 10.5 The Contracted User must, even after the Data Agreement or any part of the Service ends, keep or cause to be kept, each record relating to use of all Data by the Contracted User, each Group Company and each Service Facilitator in a reasonably accessible format and for a minimum period of 3 (three) years from the date on which such record was created.

11. INTELLECTUAL PROPERTY RIGHTS

- 11.1 All Intellectual Property Rights in the Data, the Contract Documents and any other copyright work created by or on behalf of the JSE in relation to the Data, including any Compilation in any of these (**Protected Data**), is owned by the JSE or a licensor of the JSE. This Protected Data must not be used, processed, reproduced, adapted, modified, distributed or dealt with in any way by the Contracted User or any other Data Recipient, unless such use is in accordance with the Data Agreement or the JSE has first given its written consent to such use.

- 11.2 Without reducing or taking away from the general provisions of Clause 11.1, the Contracted User warrants and represents that in the event that it or any Group Company licences, markets, makes available, designs or calculates any index using the Data, such index (including the index calculation methodology/ground rules) will not infringe the trade marks, database right, copyright or any other rights of FTSE International Limited and/or the JSE (or their licensors).
- 11.3 If the Data Agreement ends for any reason, the Contracted User must immediately stop (and must make sure that each Data Recipient immediately stops) all use of the Protected Data and must destroy or delete that Protected Data.
- 11.4 The Contracted User and any Data Recipient may, however, continue to use and/or to store any Protected Data in its databases:
- 11.4.1 if that use and/or storage is compulsory under any applicable law binding on that person; or
- 11.4.2 if the JSE has given its prior written consent, and subject to any conditions specified by the JSE in relation to that consent.
- 11.5 The Contracted User acknowledges the JSE's proprietary right to allow use of any Data in any way by any person.
- 11.6 The Contracted User acknowledges, and must in any distribution or other use of any Data, acknowledge in writing (and must make sure that each Group Company Re-Distributor and Service Facilitator also acknowledges in writing) the JSE's (and/or its licensor's, if applicable) Intellectual Property Rights, if any, in that Data. These written acknowledgements must be made by the Contracted User, Group Company Re-Distributor and/or Service Facilitator in compliance with the Attribution Requirements Policy.
- 11.7 The JSE acknowledges that the Contracted User may own Intellectual Property Rights which exist in any of the User Products. The JSE may not use such User Products without first getting the written consent of the Contracted User. In spite of these obligations, the Contracted User acknowledges and undertakes not to dispute that the JSE owns the Intellectual Property Rights in relation to all the Data forming part of, or otherwise used in relation to, any such User Products.
- 11.8 The Contracted User may not include or use in any way, in any User Product or otherwise (and must make sure that no Data Recipient includes or uses in any way, in any User Product or otherwise) any JSE trade marks, whether registered or not and including applications for registration, unless the Contracted User or such Data Recipient has first entered into a separate licence agreement with the JSE for this use. The JSE may charge a separate fee for this use.
- 11.9 The JSE warrants that use of the Data by the Contracted User in accordance with the Data Agreement will not infringe any Intellectual Property Rights of any third party. The JSE will therefore indemnify the Contracted User and each Group Company Re-Distributor (**Indemnified Party**) against any loss or damage (including reasonable costs) suffered by an Indemnified Party in respect of a claim by a third party based on an Indemnified Party's breach of that third party's Intellectual Property Rights in respect of the use of the Data in accordance with the Data Agreement. An Indemnified Party may only submit and pursue a claim under this indemnity if:
- 11.9.1 there is no Event of Default or Potential Event of Default relating to a Contracted User arising out of the distribution or other use of any Data;
- 11.9.2 the third party's claim does not arise as a result of the Indemnified Party's wilful default or negligence;
- 11.9.3 the Indemnified Party promptly notifies the JSE of the claim and allows the JSE, at the JSE's expense, to defend or settle the claim and to control any proceedings; and
- 11.9.4 the Indemnified Party provides reasonable assistance to the JSE, at the JSE's expense, in relation to defending or settling the claim.

12. CONFIDENTIALITY

- 12.1 For this Clause, **Confidential Information** means any information given to a Party (**Receiving Party**) by or on behalf of another Party (**Disclosing Party**) or their authorised agents, relating to the negotiation, conclusion or implementation of the Data Agreement (and in so far as this information is confidential in nature).
- 12.2 The Receiving Party must keep all Confidential Information confidential and must not disclose it to any person, whether by press release, public announcement or otherwise, without first getting the written consent of the Disclosing Party, which may not be unreasonably withheld.
- 12.3 The Receiving Party must keep all Confidential Information confidential, must not make unlawful use of it, and subject to the remaining provisions of this Clause 12 below, may disclose it only to their officers, directors, employees, consultants and professional advisers who:
- 12.3.1 have a need to know (and then only to the extent that each of those people have a need to know); and
- 12.3.2 are aware of the Receiving Party's obligations under this Clause and therefore that the Confidential Information must be kept confidential.
- 12.4 The obligations in this Clause do not extend to information which:
- 12.4.1 at the time of the disclosure, that information is known to be in the lawful possession or control of the Receiving Party;
- 12.4.2 is or becomes public knowledge, otherwise than as a result of any act or default of any Party;
- 12.4.3 is disclosed to a Party by a person which did not get the information under an obligation of confidentiality; or
- 12.4.4 must be disclosed by the provisions of any law or statute or regulations.
- 12.5 The JSE may, acting reasonably, disclose Confidential Information to any User from whom the Contracted User receives any Data if and to the extent that in the JSE's reasonable opinion, that Confidential Information impacts on the Contracted User's obligations to the JSE.
- 12.6 Nothing in this Clause 12 will prevent the JSE from disclosing to any person, the nature and extent of any actual or potential default by any other User relating to the Data Agreement and whether that default comes to the JSE's attention as a result of an audit done by or on behalf of the JSE, or in any other circumstances. Unless it is entitled to do so in terms of any other provision in this Clause 12 the JSE will not, however, disclose the specific identity of the Contracted User or any person to whom the Contracted User distributes any Data.
- 12.7 If in terms of a contractual arrangement between the JSE and any third party, such third party supplies to any User any data which is the same or similar to the Data, the JSE may give that third party any information in relation to the Contracted User and/or the Data Agreement required in order to make sure that the Contracted User is correctly invoiced for use of the Data.

13. LIMITATION OF LIABILITY

- 13.1 **To the extent allowed by law:**
- 13.1.1 **except as set out in Clause 11.9 (Intellectual Property), the JSE makes no representations or warranties in relation to, or in any way guarantees the timeliness, sequence, accuracy or completeness of, the Data and/or the Service;**
- 13.1.2 **the JSE will not be liable for any loss or damages arising from or in connection with non-delivery or defective delivery of any Data from the moment that Data has left the Delivery System;**

- 13.1.3 ***the JSE will not be liable for any loss or damages (including legal costs and expenses) arising from or in connection with delays, interruptions, restrictions, inaccuracy or incompleteness of, in or in relation to the JSE's third party data providers (including Third Party Content Providers and parties that deliver Data on behalf of the JSE);***
- 13.1.4 ***the JSE's liability for loss or damages arising from or in connection with claims under Clause 7.3 (arising from or in connection with Data delays, interruptions or restrictions) are limited to claims for a reduction or refund of the corresponding Consideration applicable to the affected Data for the affected period during which the User had no or restricted access to the affected Data;***
- 13.1.5 ***the JSE's liability for loss or damages arising from or in connection with claims under Clause 7.4 (arising from or in connection with the inaccuracy or incompleteness of Data) are limited to claims for a reduction or refund of the corresponding Consideration applicable to the affected Data for the affected period during which the User received inaccurate or incomplete Data (which claims are subject to the JSE's election in Clause 7.4.2 to give such a reduction or refund or replace the affected Data);***
- 13.1.6 ***notwithstanding any provision in the Data Agreement (including this Clause 13), neither Party will be liable to the other Party for any indirect or consequential loss or damages arising out of or in connection with the Data Agreement, including loss of profit or anticipated savings, wasted expenditure and special damages; and***
- 13.1.7 ***in addition to any other exclusions from liability set out in the Data Agreement (including this Clause 13) the JSE's liability for any loss or damages arising out of or in connection with the Data Agreement is limited, in the aggregate and in any year of the Data Agreement, in respect of all claims whenever these may be made in such year, to an amount equal to the lower of:***
- (a) ***R2 000 000; and***
 - (b) ***the aggregate Consideration paid by the Contracted User in the 12 (twelve) month period before the claim is made (which Consideration will, if the claim relates to particular Data or a particular Data market, be calculated with reference to only that Data or Data market).***

14. FORCE MAJEURE

- 14.1 In spite of any other provision in the Data Agreement, a Party (**Non Performing Party**) will not be liable to the other Party if it fails to perform any of its obligations in the Data Agreement, if that failure was due to circumstances beyond the Non Performing Party's reasonable control and if:
- 14.1.1 as soon as reasonably possible after those circumstances arise, the Non Performing Party notifies the other Party in writing that such circumstances have arisen and of the effect on the Non Performing Party's obligations under the Data Agreement; and
- 14.1.2 as soon as reasonably possible after those circumstances no longer exist, the Non Performing Party notifies the other Party in writing and continues to comply with its obligations under the Data Agreement.
- 14.2 If in relation to a Party the circumstances referred to in Clause 14.1 continue for more than 15 (fifteen) consecutive Business Days, the other Party may end the Data Agreement on 10 (ten) Business Days written notice to that Party.

15. DEFAULT

15.1 Events of Default

The following are Events of Default:

15.1.1 by or in relation to the Contracted User, if the Contracted User:

- (a) fails to pay any Consideration or other amount (including contractual damages or any penalty) which is due and payable and that failure continues for 5 (five) Business Days after the due date for that payment;
- (b) or any Data Recipient distributes or otherwise uses any Data in breach of the provisions of the Data Agreement unless that breach can be remedied, and the Contracted User fails to remedy that breach to the JSE's reasonable satisfaction within 5 (five) Business Days after the JSE delivers written notice to the Contracted User to do so;
- (c) fails to provide any required ENDF on its due date and that failure continues for 5 (five) Business Days after the due date;
- (d) fails to comply with its obligation to keep records as provided for in Clause 10.5 (*JSE Audit and Record Keeping*), or any of these records are unavailable or inadequate for any reason, which results in the JSE or its agent being unable to do a full and/or meaningful audit relating to any Data and/or to quantify any part of its loss or damages in relation to the Data Agreement; or
- (e) is in breach of any obligation under Clause 3 (*General Use Provisions*) unless such breach is capable of remedy and is remedied to the JSE's reasonable satisfaction within 5 (five) Business Days of written notice from the JSE to do so;

15.1.2 by or in relation to either Party (**Defaulting Party**), if any of the following occur:

- (a) the Defaulting Party carries on business recklessly, with gross negligence, with the intention of defrauding or for fraudulent purposes; or carries on business or trades under insolvent circumstances; or an application to court for an administration order against the Defaulting Party has been made; or the Defaulting Party is under business rescue or business rescue is pending, threatened against it or any steps have been taken, at any time, to begin business rescue against it under chapter 6 of the Companies Act No 71 of 2008 (**Companies Act**); or it is financially distressed as defined in Chapter 6 of the Companies Act; or any other circumstances exist which justify business rescue;
- (b) any step (including an application to court, proposal or convening of a meeting) is taken with a view to a moratorium or a composition or similar arrangement with any of the Defaulting Party's creditors or with a view to its winding-up or liquidation (either provisionally or finally), dissolution or deregistration; or any comparative step is taken in any jurisdiction;
- (c) a representation or warranty in the Data Agreement, or any document delivered to the other Party (**Non Defaulting Party**) relating to the Data Agreement is incorrect or misleading in any material respect and, if it can be remedied, is not remedied to the Non Defaulting Party's reasonable satisfaction within 10 (ten) Business Days after delivery of written notice to the Defaulting Party by the Non Defaulting Party; or
- (d) the Defaulting Party fails to comply with any other obligation in the Data Agreement, unless such breach is capable of remedy and the Defaulting Party fails to remedy that breach to the Non Defaulting Party's reasonable satisfaction within 10 (ten) Business Days after delivery of written notice to the Defaulting Party by the Non Defaulting Party.

15.2 consequences of an Event of Default

15.2.1 If an Event of Default by a Party (**Defaulting Party**) occurs and is continuing, the other Party (**Non Defaulting Party**) may, without reducing or taking away any right or remedy it may have in law:

- (a) claim specific performance; and/or

- (b) claim contractual damages; or
- (c) as an alternative to contractual damages, claim any penalty provided for in the Data Agreement.

15.2.2 In addition, if there is an Event of Default referred to in Clause 15.1.1(c) the JSE may, without reducing or taking away from any other right or remedy it may have in law (including under Clause 15.2.1), estimate the Consideration due. The estimated amount must be reasonable in the circumstances and must be paid by the Contracted User immediately on delivery of the relevant Invoice to the Contracted User. In this regard and in relation to an Event of Default referred to in Clause 15.1.1(c), if at any time it is evident that:

- (a) the JSE has underestimated the actual amount due, the shortfall will be immediately due and payable by the Contracted User; or
- (b) the JSE has overestimated the actual amount due, the excess will be kept by the JSE and set off against amounts owing by the Contracted User from time to time. The Contracted User will not receive interest on these amounts.

15.3 **Material Events of Default**

The following are Material Events of Default:

15.3.1 in relation to the Contracted User:

- (a) an Event of Default under Clauses 15.1.1(a) to 15.1.1(e); and
- (b) any other Event of Default which the JSE, acting reasonably, identifies as a Material Event of Default in any written notice delivered to a Contracted User which records an Event of Default; and

15.3.2 in relation to either Party, an Event of Default under Clauses 15.1.2(a) to 15.1.2(c).

15.4 **consequences of a Material Event of Default**

In addition to the remedies relating to an Event of Default referred to in Clause 15.2, if a Material Event of Default in relation to the Contracted User occurs and is continuing, the JSE may, without reducing or taking away from any other remedy it may have at law, including under Clause 15.2, and by delivery of a written notice to the Contracted User:

15.4.1 immediately end the Data Agreement and/or the provision of all or any part of the Service; or

15.4.2 suspend all or any part of the Service and/or require the Contracted User to suspend the provision of any Data to any Data Recipient. If, however, the JSE, acting reasonably, is satisfied that any Material Event of Default cannot be remedied to its reasonable satisfaction, the suspension may only continue for a further 30 (thirty) days after the date on which the JSE becomes so satisfied. After any such suspension ends, the JSE may, without reducing or taking away from any other remedy it may have at law, exercise any right referred to in Clauses 15.2 and/or 15.4.1.

15.5 **remedies in Policies**

If any Policy provides for any remedy of the JSE arising from non compliance with the terms of such Policy, to the extent allowed by law and unless expressly stated to the contrary in such Policy, any such remedy will be in addition to any remedy set out elsewhere in the Data Agreement, including this Clause 15.

15.6 certificate of amounts owed

A certificate signed by any manager of the JSE, whose appointment it will not be necessary to prove, will be proof until the contrary is proved of any amount owed by the Contracted User under the Data Agreement.

16. PENALTIES

16.1 In spite of any other provision in the Data Agreement, if there is an Event of Default in relation to the Contracted User, the JSE may, if it chooses and without reducing or taking away any other rights which the JSE may have as a result of that Event of Default but subject to Clause 16.3:

16.1.1 claim payment of any penalty expressly provided for in the Data Agreement (including these General Terms and Conditions, in any Policy or the Price List); or

16.1.2 impose a penalty, in an amount not more than 3 (three) times the Annual Consideration.

16.2 Unless any provision in the Data Agreement provides otherwise, any penalty imposed by the JSE will be due and payable within 5 (five) Business Days of delivery of written demand to the Contracted User by the JSE.

16.3 If the JSE is allowed to claim payment of a penalty under the Data Agreement, including under this Clause 16:

16.3.1 the JSE may claim this penalty as an alternative to damages; and

16.3.2 the penalty must comply with the Conventional Penalties Act No 15 of 1962.

17. MISCELLANEOUS MATTERS**17.1 address for service of notices**

17.1.1 Subject to Clause 17.2, any written notice in connection with the Data Agreement may be addressed to each Party at their respective address or details set out for this purpose in the PSF. In addition, for the purposes of delivery of notices by the JSE to the Contracted User of any delay, restriction, interruption or inaccuracy in the Service in terms of Clause 7 (*Restrictions, Interruptions, Limitations or Inaccurate Data*), the JSE may send any notice to the Contracted User at the SMS or text message address/number or email address provided for this purpose in the PSF.

17.1.2 Subject to Clause 17.1.4, any notice will be deemed to be (that is treated as) duly sent and delivered, and received:

- (a) on the date of delivery, if delivered to the Party's then physical address during business hours or the next Business Day if not delivered during business hours;
- (b) on the date and at the time of sending, if sent to the Party's then telefax number during business hours or the next Business Day if not sent during business hours;
- (c) on the date and at the time of sending, if sent to the Party's then e-mail address during business hours or the next Business Day if not sent during business hours; and
- (d) on the date and at the time of sending, in relation to a notice sent by SMS or text message referred to in Clause 17.1.1, if sent to the Contracted User's then SMS or text message address/number.

17.1.3 A Party may change its above address or details by giving the other Party 5 (five) Business Days notice of that change and must refer to this Clause in that notice. References in this Clause 17.1 to a Party's "then" address or details will be to the address and/or details provided in the PSF, or as amended in terms of this Clause 17.1.3.

17.1.4 This Clause 17.1 will not invalidate the giving or receipt of any notice which is actually received by a Party other than by a method set out in this Clause 17.1.

17.2 **address for service of legal documents**

17.2.1 Subject to Clause 17.2.3, the Parties choose the physical legal address set out for this purpose in the PSF at which documents in legal proceedings in relation to the Data Agreement may be served (i.e. their *domicilium citandi et executandi*).

17.2.2 A Party may change its above address by giving the other Party 5 (five) Business Days notice of that change and must refer to this Clause in that notice.

17.2.3 For this Clause 17.2:

- (a) if the Contracted User or any Group Company is a Resident, the Contracted User must provide a physical address in South Africa; and
- (b) in relation to all other Contracted Users, if requested by the JSE at the Signature Date or at any time after that, the Contracted User must provide a physical address in South Africa if the Consideration payable by the Contracted User, or is reasonably expected to be payable by the Contracted User, over any 12 (twelve) month period exceeds an amount determined by the JSE from time to time and reflected in the PSF. The Contracted User must, within 5 (five) Business Days of any such request received from the JSE, notify the JSE in writing of the South African physical address requested.

17.3 **entire contract**

The Data Agreement contains all the express provisions agreed on by the Parties with regard to the subject matter of the Data Agreement and the Parties waive the right to rely on any alleged express provision not contained in the Data Agreement.

17.4 **no representations**

Neither Party may rely on any representation which allegedly induced that Party to enter into the Data Agreement, unless the representation is set out in the Data Agreement.

17.5 **variation, cancellation and waiver**

Subject to the provisions of Clause 6 (*Amendments to the Data Agreement (and Right to End Data Agreement)*) and any other Clause which expressly allows amendments to any provision of the Data Agreement, no contract varying, adding to, deleting from or cancelling the Data Agreement, and no waiver of any right under the Data Agreement, will be effective unless it is in writing and signed by or on behalf of the Parties.

17.6 **cession**

17.6.1 Neither Party may cede and/or delegate or otherwise transfer to a third party any right and/or obligation under the data Agreement without the written consent of the other Party. This consent may not be unreasonably withheld or delayed. In spite of this:

- (a) the JSE does not need consent to cede and/or delegate any of its rights and/or obligations under the Data Agreement to a person which will continue to operate the business of the JSE, or any part of its business. The JSE will, however, notify the Contracted User of that cession and/or delegation within a reasonable time after it has taken effect; and
- (b) the Contracted User may cede and/or delegate its rights and/or obligations under the Data Agreement to a Holding Company, Subsidiary or Subsidiary of its Holding Company which the JSE has confirmed in writing is financially acceptable to the JSE for that cession and/or delegation. The JSE will not unreasonably withhold or delay its response to any request for

such confirmation and any consent given may be subject to such conditions as the JSE may reasonably stipulate.

17.7 **indulgences**

No Party loses any of its rights under the Data Agreement if that Party does not immediately and in every instance insist on them and the other Party may not raise it as a defence if that Party did not enforce its rights at any particular time.

17.8 **relationship of the parties**

The Data Agreement does not create an agency, joint venture or partnership between the Parties. Unless otherwise expressly provided for in the Data Agreement, neither Party may bind the other to any contract or obligations.

17.9 **applicable law**

The Data Agreement must be interpreted and implemented in accordance with the law of South Africa.

17.10 **dispute resolution**

Any dispute arising in relation to the Data Agreement is regulated by the Dispute Resolution Policy.

17.11 **jurisdiction**

Subject to the Dispute Resolution Policy:

17.11.1 the Parties may, but will not be required, to institute any proceedings arising out of or in connection with the Data Agreement in any of the South African Magistrates' Courts having jurisdiction; and

17.11.2 if either Party chooses to begin proceedings in the South African High Courts both parties agree to the non-exclusive jurisdiction of the South Gauteng High Court, Johannesburg.

17.12 **costs**

Each Party must pay its own legal costs of and relating to the negotiation, preparation, settling, signing and implementation of the Data Agreement. Any costs, including reasonable attorney and own client costs, incurred by a Party as a result of a default by the other Party of or in relation to the Data Agreement, must be paid by the Party in default.

18. **SEVERABILITY**

18.1 Each provision of the Data Agreement, and each part of any provision, is separate and separable from the others. To the extent that any provision in the Data Agreement or any part of a provision is, becomes or is declared by a court of competent jurisdiction or other competent authority to be unlawful, invalid or unenforceable for any reason or in any jurisdiction, then it will, to the extent that it is unlawful, invalid or unenforceable, be severed from the Data Agreement and treated as if it had not been written, without invalidating or affecting the enforceability of the remaining provisions of the Data Agreement or affecting the validity or enforceability of the remainder of those provisions or the remainder of the Data Agreement.

18.2 The Parties will, however, enter into negotiations in good faith for a period of 30 (thirty) days if any Party notifies the other to begin negotiations (**Negotiation Period**) to establish whether an alternative provision or part of a provision can be formulated and included by agreement into the Data Agreement to achieve the same objectives as the severed provision or part but without being unlawful, invalid or unenforceable. The Parties will apply all reasonable speed and co-operation in achieving this result. If the Parties fail to reach this result within the Negotiation Period and either Party (the **Notifying Party**), acting reasonably, is of the view that the absence of the severed provision or part of the severed provision materially adversely affects or is reasonably likely to materially adversely affect its rights under the Data Agreement, the Notifying Party may, subject to Clause 5.1.1(a) (*Duration of the Data Agreement*), on 30 (thirty) days

written notice to the other Party (or such longer period as the Notifying Party may determine, acting reasonably) end the Data Agreement immediately by delivery of written notice to the other Party.

19. **RESERVATION OF RIGHTS**

In spite of any provision to the contrary in the Data Agreement, it is intended that no provision of the Data Agreement limits any right of the Contracted User or any obligation or liability of the JSE arising under any law to the extent that such limitation is not allowed by law, therefore each provision of the Data Agreement must be treated as being qualified to the extent necessary to give effect to this intention.

INTERPRETATION AND DEFINITIONS ANNEXURE

1. INTERPRETATION PROVISIONS

- 1.1 Unless otherwise stated in a Contract Document, or the context clearly indicates a contrary intention, words referring to:
- 1.1.1 one gender include a reference to the other genders;
 - 1.1.2 the singular include the plural and the plural include the singular;
 - 1.1.3 an **amendment** includes an amendment, supplement, novation, re-enactment, replacement, restatement or variation and **amend** will be interpreted in this way;
 - 1.1.4 a **person** includes any individual person and any Juristic Person and includes its successors in title, permitted assigns and permitted transferees;
 - 1.1.5 a provision of law is a reference to that provision as extended, applied, amended or re-enacted, and includes any subordinate legislation;
 - 1.1.6 an Event of Default or Potential Event of Default being **continuing** means that it has not been remedied within the remedy period allowed for such event of default, if any, or has not been waived;
 - 1.1.7 the Contract Documents and other documents published by the JSE from time to time include (without reducing or taking away from any restriction on amendments and any amendment procedure set out in any Contract Document) all amendments to those documents, from time to time;
 - 1.1.8 a time of day is a reference to South African Standard Time; and
 - 1.1.9 a month or part thereof is to a calendar month, or part thereof.
- 1.2 If any provision in a definition is a substantive provision creating rights or imposing obligations on any Party, effect must be given to it as if it were a substantive provision in the body of the document where that definition is used, even though it is contained in the definition.
- 1.3 A reference in a Contract Document to a **Clause**, a **Schedule** or **Annexure** is a reference to a clause of, a schedule to or an annexure to that Contract Document.
- 1.4 Headings of clauses, schedules and annexures are included for the sake of convenience only and do not affect the interpretation of the Contract Documents.
- 1.5 A reference to a Contract Document includes a reference to all annexures and schedules to that Contract Document.
- 1.6 The use of the word **including** or **includes** followed by specific examples must not be interpreted as limiting the meaning of the general wording before it.
- 1.7 The rule that an agreement must be interpreted against the party which drafted or prepared that agreement must not be used in the interpretation of the Contract Documents.
- 1.8 Except as expressly otherwise stated in a Contract Document, any number of days set out in the Data Agreement must be calculated by including the first and excluding the last day, unless that last day falls on a day that is not a Business Day in which case the last day will instead be the next Business Day.

- 1.9 The expiry or ending of a Contract Document will not affect those of its provisions which expressly provide that they will continue in force or which of necessity must continue to apply after that expiry or ending.
- 1.10 References in a Contract Document to a person's or Device's **use** of any Data will be interpreted to include references to that person's or Device's access to and/or receipt of that Data and/or to that person or Device being enabled to access and/or receive that Data (regardless of whether or not any Data was actually accessed, received or otherwise used by any such person or Device).
- 1.11 References in a Contract Document to a person's **distribution** of any Data will be interpreted to include references to that person enabling use of that Data by any person or Device, regardless of whether or not any Data was actually accessed, received or otherwise used by any such person or Device.
- 1.12 References in a Contract Document to an audit by the JSE (or its agent) will be a reference to the audit contemplated in the General Terms and Conditions, read together with the Audit Policy.
- 1.13 References in a Contract Document to an obligation to pay any fee will, unless otherwise expressly stated, be references to the applicable fee in the Price List.
- 1.14 References in a Contract Document to an agreement required to be entered into between the JSE and any Data Recipient will be treated as references to a written agreement.
- 1.15 References in a Contract Document to a User's or Group Company Re-Distributor's right to use any Data will be interpreted to include references to any Service Facilitator's right to use that Data, on the terms of the Data Agreement.
- 1.16 References in a Contract Document to a named Policy are references to that named Policy in the Market Data Policies Document.
- 1.17 The text of the South African legislation referred to in the Data Agreement may be accessed on the publicly available websites referred to for this purpose on the JSE Website.
- 1.18 Unless (and only to the extent that) a Contract Document creates an express exception, if there is any conflict between the provisions of any one or more Contract Documents, the provisions of the Contract Documents will be interpreted in the following order of priority: the General Terms and Conditions; the Market Data Policies Document (in relation to the specific subject matter of each Policy); the Price List; the PSF and any other Contract Document.

2. DEFINITIONS

- 2.1 **Amendment Notice** means a notice from the JSE to a Contracted User which sets out an amendment to the Data Agreement.
- 2.2 **Annual Consideration** means, in relation to a claim under the Data Agreement:
- 2.2.1 the aggregate Consideration payable by the Contracted User in the 12 (twelve) months immediately before that claim is made; or
- 2.2.2 if the Annual Consideration must be calculated within the first 12 (twelve) months after the Signature Date, the actual Consideration payable by the Contracted User up to the date that claim is made will be used to calculate the Annual Consideration, which is the amount which would have been payable if the Contracted User continued to use the Data on substantially the same basis for a period of 12 (twelve) months.
- 2.3 **Business Day** means a day on which the JSE market is open for trading business.
- 2.4 **Cancellation Charges** means all reasonable costs, expenses and other charges of the JSE arising between the Signature Date and the Implementation Date, including all professional advisors' fees, connectivity fees and administration costs.

- 2.5 **Client** means an external End User to whom any Data is distributed by a Contracted Distributing User or a Service Facilitator (but excluding any other Group Company).
- 2.6 **Compilations** means literary works including compilations, published editions and/or any other category of work entitled to protection under any law, including the Copyright Act No 98 of 1978, as amended.
- 2.7 **Consideration** means the fees and charges payable by the Contracted User to the JSE in terms of Clause 9 (*Consideration*) of the General Terms and Conditions.
- 2.8 **Consideration Currency** means the currency reflected in the PSF in which the Consideration is invoiced by the JSE and must be paid by the Contracted User.
- 2.9 **Consumer Protection Act** means the Consumer Protection Act No 68 of 2008.
- 2.10 **Contract Documents** means the Data Agreement and all Products and Services Additional Documentation, identified in the PSF.
- 2.11 **Contracted Distributing User** means a Contracted User which is a Distributor or a Re-Distributor and each Group Company Re-Distributor, or any of them, as required by the context.
- 2.12 **Contracted User** means the User which has entered into this Data Agreement directly with the JSE, and identified as the Contracted User in the PSF.
- 2.13 **Controlled User Environment** means an environment in which every User which receives Data from a Contracted User or Group Company in accordance with the Data Agreement, is capable of being easily identified by the Contracted User or relevant Group Company (by way of User ID or otherwise).
- 2.14 **CPI** means the annual change in the Consumer Price Index calculated for the month which falls 8 (eight) months before the beginning of each Financial Year, in respect of all items for all urban areas of South Africa, as published by Statistics South Africa, from time to time.
- 2.15 **Data** means the information, data and Compilations which make up the Products and Services.
- 2.16 **Data Agreement** means, in relation to the Products and Services, the agreement between the JSE and the Contracted User comprised of all the documents identified in the PSF as forming part of the Data Agreement.
- 2.17 **Data Recipient** means, in relation to the Contracted User: each Group Company, each Service Facilitator, each Client and each other person to whom the Contracted User, each Group Company or Service Facilitator distributes the relevant Data.
- 2.18 **Delayed Data** means Data in respect of which 15 (fifteen) minutes or more has passed from the time that Data was first sent from the Source, as evidenced by the time stamp, if any, of the relevant Source. If there is no such time stamp, then the time period will be calculated from the time the Data is received by the User which receives that Data directly from the relevant Source.
- 2.19 **Delivery System** means the technology infrastructure, including all the computer hardware and software applications, used by or on behalf of the JSE from time to time to provide the Data.
- 2.20 **Derived Data** means any data (including products or Compilations) derived from or based on the Data, by the recipient of the Data.
- 2.21 **Device** means any mobile or non-mobile piece of equipment intended for use by one individual person at any time, which is capable of using any Data and which is able to display that Data. A Device includes equipment referred to as "terminals" in the Contract Documents.
- 2.22 **Distributor** means a Contracted User which receives the Data directly from the JSE, which may use any Data for its own Internal Business Activities and may distribute any Data to any Group Company or Client for the sole purpose of:

- 2.22.1 use by that Group Company as disclosed in the PSF; and
- 2.22.2 use by that Client in its Internal Business Activities (and for distribution by that Client if that Client has, in its capacity as Re-Distributor, entered into the required data agreement with the JSE in relation to that use of such Data).
- 2.23 **End User** means an Individual End User and a Juristic End User or both, unless otherwise stated in a Contract Document.
- 2.24 **ENDF** means the End User Declaration Form for internal and external end user use of the Data by the Contracted User, each Group Company Re-Distributor and each external End User, in the form required by the JSE from time to time, or in another form reasonably acceptable to the JSE.
- 2.25 **Event of Default** means each of the events identified as an Event of Default in Clause 15.1 (*Events of Default*) of the General Terms and Conditions.
- 2.26 **Financial Year** means the financial year of the JSE, which begins on 1 January each year.
- 2.27 **First Implementation Date** means the Implementation Date or, if there is more than one Implementation Date under the Data Agreement (for example in relation to different Data), the first of those Implementation Dates.
- 2.28 **General Terms and Conditions** means the terms and conditions embodied in the document to which this Interpretation and Definitions Annexure is attached, which is made available by the JSE on the JSE Website.
- 2.29 **Group Company** means any Subsidiary, a Holding Company and any Subsidiary of a Holding Company (**Affiliate**):
- 2.29.1 in respect of which (and without detracting from any obligation of the Contracted User in the Data Agreement, including Clauses 3.2 and 3.3 of the General Terms and Conditions) the Contracted User at all times for the duration of the Data Agreement has:
- (a) such information and knowledge about the systems and processes (including relating to control of access to the Data) used by that Affiliate in relation to its use of any Data (and, in the case of an Affiliate which is a Group Company Re-Distributor, in relation to its distribution of any Data) as is required in order for the Contracted User to at all times be in a position to assess if the conduct of that Affiliate complies with the provisions of the Data Agreement;
 - (b) the legal right to access such information (including records, documents and systems) in relation to that Affiliate as may be required by the Contracted User in order to obtain the information and knowledge referred to in Clause 2.29.1 (a) above;
 - (c) a formal arrangement in place with that Affiliate in terms of which that Affiliate:
 - (i) acknowledges the liability of the Contracted User under the Data Agreement in relation to that Affiliate's use of the Data (and therefore the Contracted User's liability for payment of any claims by the JSE arising out of that Affiliate's use of the Data); and
 - (ii) gives the JSE and its agents (as a stipulation in favour of the JSE and its agents, or otherwise in a form which gives the JSE and its agents these rights) access to its premises and records at all reasonable times to conduct an audit;
- 2.29.2 which is identified as a Group Company in the PSF; and
- 2.29.3 which may use any Data only for its own Internal Business Activities (unless it is a Group Company Re-Distributor).

- 2.30 **Group Company Re-Distributor** means a Group Company of a Distributor identified as a Group Company Re-Distributor in the PSF, which receives the corresponding Data identified in the PSF from the Contracted User (or from another Group Company), which may use any Data for its own Internal Business Activities and may also distribute any Data to any other Group Company or Client for the sole purpose of:
- 2.30.1 use by that Group Company as disclosed in the PSF; and
- 2.30.2 use by that Client in its Internal Business Activities (and for distribution by that Client if that Client has, in its capacity as Re-Distributor, entered into the required data agreement with the JSE in relation to that use of such Data).
- 2.31 **Holding Company** means any juristic person in relation to which the Contracted User is a Subsidiary.
- 2.32 **Implementation Date** means, in relation to each of the Products and Services subscribed to in the Data Agreement, the date notified by the JSE to the Contracted User as the Implementation Date, being a date which falls within a reasonable period after the Implementation Date Requirements have been met to the JSE's satisfaction, acting reasonably (or have been waived by the JSE in writing), on which the subscription for such Products and Services begins (and which, in respect of Data provided by or on behalf of the JSE, is the date on which that Data is ready to be provided by or on behalf of the JSE to the Contracted User).
- 2.33 **Implementation Date Requirements** means, in relation to each of the Products and Services, those requirements which must be met by the JSE, the Contracted User and/or any other person, as the case may be, to put the JSE in a position to provide the Service in relation to that Data.
- 2.34 **Individual End User** means, in relation to Data, a user which is an individual person (and not a Juristic Person) and which may use that Data for its own Internal Business Activities only.
- 2.35 **In-House User** means a Contracted User which may only:
- 2.35.1 use any Data for its own Internal Business Activities; and
- 2.35.2 distribute any Data to any Group Company for use by that Group Company for its own Internal Business Activities only.
- 2.36 **Internal Business Activities** means, in relation to use of any Data, the use of that Data only for internal business activities and excludes, amongst other things, Non-Display Use and any other use of any Data to create any service, product or other offering which is accessible by, received by, distributed to or otherwise used in any other way by any third party.
- 2.37 **Intellectual Property Rights** means patents, registered designs, copyright, trademarks, trade names, service marks, database rights, (whether registered or not and including applications for registration), domain names, trade secrets, know-how and any other related or similar rights which may exist anywhere in the world.
- 2.38 **Interest Amount** means, in relation to any amount owing by the Contracted User to the JSE under the Data Agreement, the amount of interest applicable to that amount, calculated in accordance with Clause 9.5 (*Interest*) of the General Terms and Conditions.
- 2.39 **Interpretation and Definitions Annexure** means this Interpretation and Definitions Annexure attached as Annexure A to the General Terms and Conditions.
- 2.40 **Invoice** means an invoice for the Consideration, issued by the JSE to the Contracted User.
- 2.41 **JDA General Terms and Conditions** means the General Terms and Conditions.
- 2.42 **JSE** means JSE Limited, a company duly registered and incorporated with limited liability under the company laws of South Africa under registration number 2005/022939/06, licensed as an exchange under the Securities Services Act, 2004.

- 2.43 **JSE User** means a Contracted User which receives any Data directly from the Delivery System.
- 2.44 **JSE Website** means the following website: www.jse.co.za or any other website which the JSE may identify as the JSE Website and notify to the Contracted User in writing. If the Data Agreement refers to information made available on the JSE Website, that information is generally available under the Information Products section of the JSE Website.
- 2.45 **Juristic End User** means, in relation to Data, a Juristic Person which may use that Data for its Internal Business Activities only.
- 2.46 **Juristic Person** means any juristic person, including, a company, close corporation, unincorporated association or body (including a trust, partnership, fund, joint venture, voluntary association or consortium), body corporate, government, state, agency, organisation or other entity whether or not having separate legal personality.
- 2.47 **Level 1** means, in relation to Live Data, the best bids and offers in relation to such Data.
- 2.48 **Level 2** means, in relation to Live Data, the full depth of the order book in relation to such Data.
- 2.49 **Levies** means any tax (other than VAT) or statutory charge in relation to the Consideration which the JSE is obliged to levy from time to time.
- 2.50 **Live Data** means Data which is used by or made available to the End User at any time up to 15 (fifteen) minutes from the time it is first sent from the Source, as evidenced by the time stamp, if any, of the relevant Source. If there is no such time stamp, then the time period will be calculated from the time that Data is received by the User which receives that Data directly from the relevant Source.
- 2.51 **Location** means the place identified in the PSF where the Contracted User will receive the Data.
- 2.52 **Market Data Policies Document** means the document titled "Market Data Policies" which sets out certain data policies and is made available by the JSE on the JSE Website.
- 2.53 **Material Event of Default** means each Event of Default identified as a Material Event of Default in Clause 15.3 (*Material Events of Default*) of the General Terms and Conditions.
- 2.54 **Member User** is a User which is a member of the JSE.
- 2.55 **Non-Display Use** means the access, processing, consumption or other use of any Data by any person for any purpose other than in support of that person's display or distribution of any Data to internal or external End Users (and details of which are set out in the Non-Display Policy).
- 2.56 **Non-Display User** means a User which uses any Data referred to in the Non-Display Use Policy, for Non-Display Use. In relation to any applicable Data (and depending on its use of such Data), a User may be only a Non-Display User, or in addition to being a Non-Display User may also be an In-House User, Distributor, Re-Distributor, or Group Company Re-Distributor.
- 2.57 **Non-Professional End User** has the meaning ascribed to this term in the Professional and Non-Professional End User Policy.
- 2.58 **Parties** means the JSE and the Contracted User, being the parties to the Data Agreement and the signatories to the PSF.
- 2.59 **Policies** means the data policies published by the JSE, which are set out in the Market Data Policies Document and made available on the JSE Website.
- 2.60 **Potential Event of Default** means an event or circumstances which are continuing and which, with the ending of a remedy period, the giving of notice or the making of any determination under the Data Agreement, or any combination of these, will be an Event of Default.

- 2.61 **Potential Material Event of Default** means an event or circumstances which, with the ending of a remedy period, the giving of notice or the making of any determination under the Data Agreement, or any combination of these, will be a Material Event of Default.
- 2.62 **Price List** means the Price List identified in the PSF and made available on the JSE Website.
- 2.63 **Prime Rate** means the rate of interest quoted by the JSE's bankers as being its current prime overdraft rate, calculated on a 365 (three hundred and sixty five) day year factor, as certified by any manager of the JSE's bankers, whose appointment need not be proved.
- 2.64 **Products and Services** means the products and/or services identified in the PSF as the products and services subscribed to by the Contracted User.
- 2.65 **Products and Services Additional Documentation** means all documents, including systems related documents, identified as Products and Services Additional Documentation in the PSF.
- 2.66 **Professional End User** has the meaning ascribed to this term in the Professional and Non-Professional End User Policy.
- 2.67 **PSF or Products and Services Form** means, in relation to any products and/or services made available by or on behalf of the JSE to a Contracted User, the document titled "Products and Services Form" (which document title may be preceded by an agreement description, such as "JDA Products and Services Form" or "LDA Products and Services Form"), completed and signed by or on behalf of the JSE and the Contracted User.
- 2.68 **Quarter** means a period of 3 (three) months beginning on 1st January, 1st April, 1st July or 1st October in each year.
- 2.69 **Re-Distributor** means, in relation to Data, a User which:
- 2.69.1 receives that Data from a Distributor, from a Group Company Re-Distributor or from another Re-Distributor;
- 2.69.2 is a party, in its capacity as Re-Distributor, to the required data agreement with the JSE; and
- 2.69.3 may use that Data for its own Internal Business Activities and may distribute that Data to any Group Company or Client only for:
- (a) use by that Group Company as disclosed in the PSF; and
- (b) use by that Client in its Internal Business Activities (and for distribution by that Client if that Client has entered into the required data agreement with the JSE relating to use of that Data).
- 2.70 **Resident** means any person who has taken up permanent residence in, is domiciled in or registered in the common monetary area (being South Africa, Lesotho, Swaziland or Namibia as at the date of this version of the General Terms and Conditions).
- 2.71 **Service** means the provision of the applicable Data to the Contracted User by or on behalf of the JSE.
- 2.72 **Service Facilitator** means any third party identified as a Service Facilitator in the PSF, which may use any Data in terms of the Service Facilitator Policy.
- 2.73 **Signature Date** means the date on which the corresponding PSF is signed by the last Party to do so, which is the date on which the Data Agreement becomes binding on the Parties.
- 2.74 **SLA or Service Level Agreement** means, in relation to the relevant Products and Services, the applicable service level agreement, if any, which applies to JSE Users only and which (if applicable) is included in the PSF.

- 2.75 **Source** means the specific Delivery System through which the relevant Data is transmitted by or on behalf of the JSE, which is identified in the PSF.
- 2.76 **Subsidiary** means, if the Contracted User is a Juristic Person:
- 2.76.1 a subsidiary as defined in section 3 of the Companies Act No 71 of 2008, being (as at the date of this version of the General Terms and Conditions) another juristic person:
- (a) in respect of which the Contracted User, or one or more other subsidiaries of the Contracted User, or one or more nominees of the Contracted User, alone or in any combination:
 - (i) is or are directly or indirectly able to exercise, or control the exercise of, a majority of the voting rights associated with issued securities of that juristic person, whether pursuant to an agreement or otherwise; or
 - (ii) has or have the right to appoint or elect, or control the appointment or election of, directors of that company who control a majority of the votes at a meeting of the board; and
- 2.76.2 an entity of which the Contracted User has direct or indirect control or owns directly or indirectly a majority of the voting capital or similar right of ownership, and control for this purpose means the power to direct the management and the policies of the entity whether through the ownership of voting capital, by contract or otherwise.
- 2.77 **Technology** means, in relation to the Data identified in the PSF, any Device or other means used by a Contracted User or a Group Company to use that Data.
- 2.78 **Third Party Content Data** means the Data identified as Third Party Content Data in the PSF, which Data (or any part of that Data) originates from a person other than the JSE.
- 2.79 **Third Party Delivered Data** means in relation to Data provided to a JSE User, Data identified as Third Party Delivered Data in the PSF, which Data (or any part of that Data) is directly or indirectly delivered by a party other than the JSE.
- 2.80 **Uncontrolled User Environment** means an environment other than a Controlled User Environment, in which a User has access to Data which is generally accessible to an indefinite number of unidentifiable Users, (such as the Internet).
- 2.81 **User** means a person which uses the relevant Data and must do so in accordance with the Data Agreement. Unless specified to the contrary in a Contract Document, a reference to a User will be interpreted as a reference to both an individual person and a Juristic Person which uses the relevant Data.
- 2.82 **User ID** means a personal identification code for one individual person to gain a single access to the Data at any time (via a Device or other means).
- 2.83 **User Products** means any and all products, including Derived Data, created by a Contracted User or any Group Company using any Data.
- 2.84 **VAT** means value added tax charged on the Consideration in accordance with the Value Added Tax Act No 89 of 1991 and at the rate set out in that Act from time to time.