

SERVICE AGREEMENT
ENTERED INTO AND BETWEEN

Africa Weather (Pty) Ltd
REG NO: 2013/011955/07

1st Floor, Block 3
White Hills Junxion
White Hills Close
Lonehill X88
Johannesburg
South Africa
(herein duly represented by Barry Gonin)

(herein after referred to as "**the Service Provider**")

AND

THE CUSTOMER

(WHOSE particulars are stated in the **Registration Details** which forms part of this Agreement, or WHOSE IP address is recorded where no registration details have been completed)

WHEREAS the Customer will subscribe to Services of the Service Provider as more fully detailed in this Agreement;

AND WHEREAS the Customer acknowledges that the Service Provider has the necessary expertise, experience and resources required to deliver the Services;

AND WHEREAS the Customer acknowledges that the Service Provider obtains all data and information from the Meteorological Information Providers with regards to the Services rendered to the Customer.

NOW THEREFORE the parties agree as follows:

1. INTERPRETATION

1.1. Unless otherwise expressly stated or the Content otherwise requires, the word and expressions listed below shall, when used in this Agreement, bear the meanings subscribe to them. Any word or expression not defined in this clause shall have the meaning ascribed to it in the remainder of the Agreement, if any.

"the Agreement" means the terms, conditions and provisions set out in this Agreement, the schedules and annexures hereto and any terms and conditions published on the Website;

"Bundle" means a combination basket of various Services economically marketed as a unit as described in the configuration/settings pages of the Website;

"Commencement Date" means the date on which the Agreement between the parties comes in to effect, which date will be the date on which the Customer provides the Registration Details to the Service Provider;

"Confidential Information" means any information of whatsoever nature which has been or may be obtained by the Customer from the Service Provider, whether in writing or in electronic form or pursuant to discussions between them, which can be obtained by examination, testing, visual inspection or analyses, including without limitation, scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawing, specifications, sample reports, models, consumer lists, price list, studies, findings, computer software, inventions or ideas, analyses, concepts, compilations, studies and or any other material prepared by or in possession or control of the Service Provider which contain or otherwise reflect or are generated from any such information as specified herein and will also include any trade secrets or other information of a confidential nature from the Service Provider;

"Content" means any information, data, text, software, music, sound, photographs, graphics, videos, messages, tags and anything similar to the aforementioned;

"the Customer" means where the Registration Details have been completed, the person and or entity as more fully described in the Registration Details, including any successors in title or where the Registration Details have not been completed authorised assignees or the person represented by the IP address presented to the Service Provider;

"EUMETSAT" means the European Organisation for the Exploitation of Meteorological Satellites, the main purpose of which is to deliver weather and climate-related satellite data, images and products- 24 hours a day, 365 days a year to the national meteorological services of the organisation's member and cooperating states in Europe, as well as other users world-wide;

"Fax Confirmation" means a signed copy of the authorisation letter provided by the Customer to the Service provider that has been faxed to the Service Provider at the details provided in said authorisation letter;

"Forecast" means a prediction of weather conditions such as minimum/maximum temperature, rainfall and wind conditions performed by the Meteorological Information Providers;

"GPS" means Global Positioning Satellite, a service provided independently that allows a user to determine the longitude and latitude of a point on the surface of the planet and to view spatial data on an interactive map;

"Graphic" means information presented visually as a still image, animated image, table or Adobe Acrobat file;

"NCA" means the South African National Credit Act no 34 of 2005, as amended;

"Information Message Service" means a Service that sends a message containing pre-defined Content to the Customer using SMS or email as specified at a defined daily, weekly or monthly time;

"Meteorage" means Météorage S.A.S. a private company registered with the French Registre du Commerce et des Sociétés de PAU under the number (B 339 528 218);

"Meteorological Information Providers" means collectively those companies from which the Service Provider procures Weather Information which includes inter alia EUMETSAT, Meteorage, the SMHI and the SAWS;

"Notification" means a Service that sends a message containing pre-defined Content to the Customer using SMS or email as specified based on a defined event or occurrence as soon as practically possible after the occurrence of the defined event;

"Public System" means the telecommunications system upon which all Services are operated which include all the fixed and wireless telecommunications networks operated in the Republic of South Africa as well as the world wide web and the internet which are both global networks;

"Registration Details" means the personal and commercial information supplied by the Customer to the Service Provider through its Website whether or not those details whether confirmed by telefax or not;

"Services" means any product and/or Service developed by the Service Provider and marketed to the Customer as defined further in the configuration/settings pages of the Website;

"Service Provider" means Weather Intelligence Systems (Pty) Ltd (Reg No: 2004/005499/07) or its successor in title;

"SMHI" means the Swedish Meteorological and Hydrological Institute, a government agency under the Ministry of the Environment of Sweden

"Software" means the computer code and instructions which facilitates the proper functioning of the Services which for the avoidance of doubt shall include both third party software and the Service Providers propriety software, developed, written and compiled by the Service Provider or at its instance and includes all descriptive manuals and user documentation with or useful in the utilisation thereof;

"SAWS" means the South African Weather Service, the entity as established in the South African legislation in the South African Weather Services Act no 8 of 2001, as amended;

"Subscription" means the Customer committing itself to make use of the Services for a predetermined period, whether the Services selected by the Customer are provided for free or for value by the Service Provider;

"Subscription Fee" means the daily, weekly or monthly amount payable by the Customer enabling the Customer to utilise the Services, including any other fees and/or payments associated with the Services;

"Uncontrollable Events" means any circumstances beyond the Service Provider reasonable control, including (without limitation) any act of God, public enemy, fire, explosion, earthquake, perils of the sea, flood, storm or other adverse weather conditions, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, blockade, embargo, sanctions, academics, act of any government or other authority, compliance with government orders, demands or regulations, compliance with court orders, or any act or mission on the part of a third party (including South Africa Weather Services);

"use" means (without limitation) accessing, retrieving, logging on to, contributing to, storing information from or viewing a Service, and user has a corresponding meaning;

"User ID" means any user name, password, number or e-mail address or any other verification measure allocated to the user or created by the user when subscribing to or using the Services;

"VAT" means value added tax in terms of the Value Added Tax Act no 89 of 1991, as amended;

"Weather Information" means all information and associated messages, including but not limited to text- and Graphic information, provided by the Meteorological Information Providers that originates in their respective satellite, radar, lightning detection numerical weather prediction models and/or observation systems;

"Web Facility/Website" means, without limiting the generality thereof, the web pages located at www.africaweather.com through which meteorological, climatological and Weather Information is made available by the Service Provider together with associated and ancillary utilities to be provided by the Service Provider or any of its affiliates to the Customer.

1.2. Unless the contexts clearly indicate a contrary intention, any words referring to:

1.2.1 any reference to one gender includes the other gender and vice versa;

1.2.2 the singular includes the plural and vice versa;

1.2.3 any words which have not been specifically defined in this Agreement but have obtained a general and commonly- understood meaning and context in the information technology sector will be interpreted as having that meaning and context;

1.2.4 the headings in this Agreement are used for the sake of convenience only and shall not govern the interpretation clause to which they relate;

1.2.5 natural persons include a reference to juristic person and vice versa, and insolvencies include provisional, final sequestration, liquidation or judicial management;

- 1.2.6 the term "includes" means without limitation and "including" shall bear a corresponding meaning and the term is as defined, whether or not capitalised in this Agreement.
- 1.2.7 expressions defined in this Agreement shall bear the same meaning in schedules and annexure to this Agreement which do not themselves contain their own definitions;
- 1.2.8 any reference to an enactment a reference to that enactment as at the date of signature hereof and as amended or re-enacted from time to time;
- 1.2.9 any reference to the signature of this Agreement shall be the date of the last signature to this Agreement;
- 1.2.10 if a provision in a definition is a substantive provision conforming rights or imposing obligations on any party, notwithstanding that it is only in a definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
- 1.2.11 where figures are referred to in numerals and in words and there is a conflict between the two, then words will prevail;
- 1.2.12 where any term is defined with in the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the terms so defined has limited application to the relevant clause, shall bear the meaning ascribed to it for all purposes in terms of the Agreement, notwithstanding that the term has not been defined in the interpretation clause;
- 1.2.13 hyperlinks, which are not operational, will not in any way detract from the validity and interpretation of the Agreement;
- 1.2.14 any reference to "a day" shall be construed as being a reference to a calendar "day" unless qualified by the word "business" which instance a "business day" shall be any day other than a Saturday and a Sunday and or a public holiday declared in the Republic of South Africa. Any reference to "business hours" shall be construed as being the hours between 08H30 and 16H30 on any business day;
- 1.2.15 any rule of construction that the contract shall be interpreted against a party responsible for the drafting or preparing of the Agreement, shall not apply;
- 1.2.16 the expiration or termination of this Agreement shall not affect the provisions of this Agreement where it is expressly provided that they shall operate after any such expiration or termination or which of necessity must continue to have effect after such expiration or termination notwithstanding that the clauses themselves do not expressly provide for this.

2. INTRODUCTION

- 2.1. The Service Provider provides Services to the Customer subject to the terms and conditions of this Agreement, which Agreement includes any and all terms and conditions as reflected on the Website.
- 2.2. The Customer will be bound by this Agreement for any use of the Services regardless of the existence of any Subscription or the manner of Subscription.
- 2.3. The Customer agrees that by subscribing or using the Services of the Service Provider that the Customer has read and understood and are bound by the terms and conditions set out in the Agreement.
- 2.4. The Service Provider may reasonably change any or all of the terms and conditions of the Agreement by providing thirty (30) days' notice to the Customer and such changes will become effective at the end of this notice period. The Customer agrees that by continuing to use the Services after the changes have been made the Customer agrees to be bound by the revised terms and conditions.
- 2.5. The Customer acknowledges that by subscribing to the Services he has no exclusive right to the Content and/or Services and the Service Provider can continue with or enter into further subscriptions with any third parties and/or use any Content and/or Services for their own benefit.
- 2.6. The Customer shall not in any way hold itself out as the representative, agent or employee of the Service Provider or any of the Meteorological Information Providers.

3. COMMENCEMENT, DURATION AND TERMINATION

- 3.1. Notwithstanding the date of receipt of the Fax Confirmation, this Agreement will commence on the Commencement Date, and, subject to the terms and conditions hereof, continue in full force and effect for as long as the Customer continues to make payment of the Subscription Fee, unless either party notifies the other, not less than 30 days prior notice that they wish the Agreement to terminate.
- 3.2. The Service Provider may terminate the Customer's Subscription immediately if the Registration Details provided by the Customer do not pass verification by the Service Provider and automatically if any Subscription fee and/or any other fees are not paid by the Customer on the due date thereof. This will not discharge the Customer's liability for payment of any Subscription fees and/or other fees due on a monthly basis or otherwise in terms of the Agreement.
- 3.3. The Service Provider may suspend, interrupt, change or end any Services or any part thereof at any time for any reason, in the Service Provider's discretion, while applying reasonable efforts to provide advance notice to the Customer but without any liability to the Customer and/or any third party whether such notice was supplied or not.
- 3.4. The Service Provider may also give notice of any interruption of a Service due to maintenance or any other reason which is in the view of the Service Provider necessary and the Service Provider reserves the right to change the Software and/or hardware which is required to gain access to the Services having provided notice to the Customer.

4. SUBSCRIPTION FEES, CHARGES AND PAYMENT

- 4.1. All fees and payments by the Customer in terms of this Agreement are payable every month in advance before or on the monthly anniversary of the Commencement Date and in the case that the monthly anniversary day falls on a Saturday, Sunday or public holiday the first business day preceding the Saturday, Sunday or public holiday.
- 4.2. Payment by the Customer to the Service Provider will be made by direct debit using electronic transfer facilities and the first payment will be collected as soon as practical after the Commencement Date.
- 4.3. The Service Provider will not generate invoices to the Customer prior to the Subscription Fee being debited off the Customer's bank account unless specifically requested by the Customer to do so.

- 4.4. The Service Provider reserves the right to amend or vary any Subscription and/or Subscription fee from time to time and any amendment or variation of such Subscription and/or Subscription fees will not be deemed to be an amendment of this Agreement and will not require the signature of both parties to be of force and effect. In the event that the Service Provider amends its Subscription and/or Subscription fees,

4.4.1 it will give the Customer at least 30 days prior notice of such amendment by posting the revised Subscription and/or Subscription fees on the Website, and

4.4.2 limit the increase to 90% of the Consumer Price Index year on year growth to the month in which the increase is made.

4.5. The Customer acknowledges that it is not entitled to withhold any payment whatsoever due to the Service Provider by reason or any alleged breach by the Service Provider of the terms and conditions of the Agreement or for any other reason whatsoever. The Customer acknowledges that it is not permitted to apply set off to or demand any discount, rebate or reduction in respect of any Subscription fees owed to the Service Provider. The Customer will be liable for attorney and own customer costs, including tracing and or collecting and or any additional expenditure with regards to any efforts by the Service Provider to collect unpaid amounts from the Customer. By submitting the Registration Details and clicking on the 'Accept Terms and Conditions' button on the website the Customer accepts and acknowledges its responsibility to familiarise itself with all Subscription fees and payment dates and all aspects relevant to the payment of amounts to the Service Provider. The Customer will have been deemed to have agreed to the terms and conditions of this Agreement and any terms and conditions posted on the Website and or any amendments thereto.

4.6. Unless the Customer declares a dispute regarding Subscription Fee payable before the next payment date it will have been deemed that the Customer accepts the Subscription Fee as correct.

4.7. If the Customer breaches any payment in terms of this Agreement and fails to make payment of any amount due to the Service Provider, the Service Provider may, without prejudice to any of its other rights in terms of this Agreement or otherwise:

4.7.1 suspend the Customer's access to all Services without notice to the Customer until such time as the outstanding amount, together with interest thereon, has been paid in full;

4.7.2 cancel the Agreement with immediate effect with or without a claim for damages; or

4.7.3 take steps that may be necessary to recover any outstanding amount, including (without limitation) the use of debt collection procedure, and if the debt arises from an agreement which is a credit agreement, then in accordance with the collection and repayment practices as per the NCA.

4.8. All amounts due and payable by the Customer to the Service Provider will be determined and proved by a certificate signed by any one director of the Service Provider, or the financial manager of the Service Provider or the accountant of the Service Provider, whose appointment, qualification and authority need not to be proved. Such a certificate will be prima facie proof of the Customer's indebtedness towards the Service Provider and will be sufficient to obtain summary judgement against the Customer.

4.9. The Customer acknowledges being aware of the "mail order telephone order rules" with regards to electronic payments and declares that he is aware of the service description included in the First Schedule by making repeated payment of Subscription fees and/or other fees on the Website acknowledges that the Service Provider performed fully in delivering all Services in terms of this Agreement.

5. INTELLECTUAL PROPERTY

5.1. Intellectual Property rights includes (without limitation) any and all present and future rights, title and interest in and to (whether registered or not) any Intellectual Property, copy right, related rights, patents, utility models, trade marks, trade names, Service marks, designs, know-how, trade secrets, and inventions (whether patentable or not), goodwill, source codes, meta tags, data basis, text, content, graphic, icons, hyperlinks, Websites, user specific web portals, any Notification or Information Message Services and all other identical or similar Intellectual Property as may exist anywhere in the world and any applications for registration of such rights which are all as such protected by domestic and international legislation and treaties from infringement.

5.2. The Customer is obliged to comply with all laws applicable to any Intellectual Property right as referred to herein in respect of any data, files and or information accessed, retrieved or stored by the Customer through the Customer's use of the Website.

5.3. The Meteorological Information Providers retain the Intellectual Property rights on any information, data, meteorological and advisory services, computer programmes, inventions, discoveries and improvements generated by them in the fulfilment of their obligations to the Service Provider and the Service Provider has been given the right to provide the Services to the Customer. Nothing contained in this Agreement is to be construed as granting or conferring on the Customer any right in or title, expressly or by implication, to the Intellectual Property or the Information.

5.4. The Customer acknowledges the Service Provider's exclusive right, title, interest, claim and demand in and to the Information and Intellectual Property which it obtained from and/or was authorised either expressly or impliedly to use by the Service Provider and will not at any time do or cause to be done any act or thing contesting or in any way impairing or tending to impair any part of that right, title, interest, claim or demand. The Customer shall in no way represent that it has any ownership in any of the Intellectual Property or Information.

5.5. If the Customer becomes aware of any infringement or threatened infringement by a third party of the Intellectual Property, it must immediately notify the Service Provider in writing. The Customer shall not take any steps in relation to the infringement without the prior written consent of the Service Provider. The Customer shall at its expense cooperate fully in the enforcement of the Service Provider's rights in and to the Intellectual Property. The Customer shall not do or permit to be done any act or thing that will result in a reduction of the value of the Intellectual Property or Information. The Customer shall not remove, obscure, amend or deface any confidentiality notice or notice of ownership or origin on or contained in the Information.

6. SCOPE OF SERVICE

6.1. The Service Provider will at all times, throughout the duration of the Agreement, provide meteorological, climatological and Weather Information to the Customer in the form of Services which the Customer will acquire through use and/or Subscription.

6.2. The configuration/settings pages on the Website indicate the Services, a brief description of each Service included in each Bundle and the price payable for the specific Bundles subscribed to. The Customer selects a Bundle from those published in the configuration/settings pages on the Website to which the Customer Subscribes by way of providing the Registration Information.

6.3. All meteorological, climatologically and Weather Information are received and based on data received from the Meteorological Information Providers and the Service Provider can not be held,

- accountable and responsible for any inaccurate data reported on the Website and/or contained in a Service.
- 6.4. The Customer shall have absolute discretion in determining which location to use when subscribing to any Notification or Information Message Service. The Customer may change the Town and/or Suburb for Notification and/or Information Message Service included in its Bundle no more frequently than once every 2 (two) days.
- 6.5. The Customer shall not resell or onward provide any Service acquired pursuant to this Agreement to any third party, whether for consideration or not. Any such sale shall constitute a breach of this Agreement.
- 7. EXCLUSIONS OR DAMAGES AND LIMITATION OF LIABILITY**
- Save as specifically provided to the contrary in this Agreement:
- 7.1. This limitation on damages applies to loss and compensatory-, indirect-special-, consequential-, exemplary-, or incidental damages, incurred by any person. This limitation on damages further applies to liability under contract, delict, and any other form of liability claim.
- 7.2. The Service Provider shall not be liable for any consequential- indirect-, special-, punitive- or incidental loss or damage, whether foreseeable or unforeseeable, based on claims of the Customer or any third party (including, but not limited to, claims for loss of data, loss of goodwill, the use of money or the use of the Software programs, stoppage of other work or impairment of other assets), arising out of breach or failure of express or implied warranty, breach of contract, misrepresentation, gross negligence, strict liability in delict or otherwise, whether based on this Agreement or on any commitment performed or undertaken under or in connection with this Agreement, or otherwise by the Service Provider or any third party. The Service Provider will not be liable notwithstanding the fact that the Service Provider may have been advised of the possibility of such loss or damage being incurred prior to its occurrence.
- 7.3. The Service Provider will not incur any liability for any representation of any Weather Information that is not accurate, or inaccurate enough for the Customer's specification, due to the fact that all Weather Information made available to the Customer on the Website are data that the Service Provider has no control over due to the fact that the data are received from the South African Weather Services. The Service Provider will also not be held accountable by any third party receiving any Weather Information from the Customer.
- 7.4. The Service Provider shall not be liable to the Customer in respect of any breach of this Agreement caused by revocation or alteration of any licence, permission or authorization governing the operation of the Public System or otherwise, from time to time, which occurs as a result of circumstances beyond the Service Provider's control.
- 7.5. The Service Provider shall not be liable for any technical or other failure in the Services or the Web Facility, the Public Systems or otherwise, unless same is caused as a result of the gross negligence on the part of Service Provider.
- 7.6. The Service Provider does not warrant to the Customer that the Services, the Web Facility or the Public Systems shall be fault free or free of interruptions.
- 7.7. The Service Provider can not be liable or be held responsible or accountable for any failure of any Service or communication medium such as the Web Facility or a Public System that is wholly or partially beyond its control.
- 7.8. The Service Provider is not liable to the Customer or any third party for any damages suffered by the Customer or a third party howsoever arising from the Customer's Subscription to the Services, or use thereof, or relying on any Services including (without limitation) any damages suffered by the Customer due to:
- 7.8.1 access to the Website or websites linked there to;
- 7.8.2 any interruption of or error in this Services, including inability to access the Website or Websites link thereto;
- 7.8.3 inaccurate information or unreliable results;
- 7.8.4 use of any Content from the Website, including Content accessed from a link;
- 7.8.5 failure by the Service Provider to fulfil any obligation as result of Uncontrollable Events;
- 7.8.6 disclosure of any of the Customer's personal information provided by the Customer on the Website or added to the Website and or Software by the Service Provider;
- 7.8.7 or any other reason not directly attribute to the Service Provider gross negligence;
- 7.9. In the event of Uncontrollable Events and or disasters the Service Provider will, within reason, endeavour to recover all Services but the Service Provider does not specify any recovery time, nor is the Service Provider liable for any loss or damage of whatsoever nature incurred or suffered by the Customer arising from or in connection with any costs whatsoever as a result of the Service Provider's failing to provide, or delay in providing, or providing only portion, disaster recovery or Services.
- 8. INDEMNITY**
- 8.1. Subject to any applicable limitation of liability provided for elsewhere in this Agreement, the Customer agrees unconditionally and irrevocably to indemnify and hold harmless the Service Provider (and its affiliates) and their respected officers, directors, employees, agents, successors and assigns from all costs, losses, claims, liabilities, expenses, damages, fines or injury of whatsoever nature suffered or incurred by the Service Provider or instituted against the Service Provider by any third party as a direct or indirect result of the Customer's use of the Services, the Customer's failure to comply with any of the terms and conditions of this Agreement, or any down time, outage, interruption in or unavailability of the Services arising from or in connection with or based on any of the following:
- 8.1.1 Software or hardware Services, repairs, maintenance, upgrades, modification, alterations, replacement or relocation of premises affecting any Services, and;
- 8.1.2 non performance or unavailability, of whatever nature and howsoever arising of any of the Services provided by a Public System used by the Service Provider or a third party;
- 8.1.3 the Customer's Subscription to or use a Service
- 8.1.4 the breach of any term or condition of this Agreement;
- 8.1.5 any breach of security by any third party or any breach of confidentiality by a third party or otherwise arising from any access however obtain by a third party to the Customer's information, data or Content;
- 8.1.6 damage, contamination or corruption of any kind of the Customer's data, material, information and or Content however occasioned, and;
- 8.1.7 without limiting the foregoing, any fact, cause or circumstances whatsoever and howsoever arising if the Service Provider substantially performed its obligations under this Agreement.
- 9. CESSION**
- 9.1. The Customer is not permitted to cede, assign or otherwise transfer any of the Customer's entitlements or obligations under this Agreement without the prior written consent of the Service Provider.
- 9.2. The use of the Services are personal to the Customer and any entitlements acquired by the Customer hereunder will terminate upon the non existence of the Customer by way of death, insolvency or otherwise.
- 9.3. The Service Provider may however cede, assign or otherwise transfer any of its rights or obligations under this Agreement to any third party without the consent of the Customer and without any notice to the Customer.
- 10. SEVERABILITY**
- In the event of any of the terms or condition of this Agreement are found to be unenforceable or void for any reason whatsoever, each provision or term shall be deemed to be severable from the remaining provisions of this Agreement, which Agreement shall remain in full force and effect but for these terms and conditions.
- 11. CUSTOMER INFORMATION**
- 11.1. The Service Provider will hold all Customer information private, but the Service Provider can not be held liable for any unauthorised unlawful disclosure of the Customer's information which is not subject to or under the Service Provider control and the Service Provider can not warrant any security of any information transmitted to the Service Provider by the Customer.
- 11.2. If the Service Provider is required to intercept, disclose, monitor and or store Customer information for any of the following reasons:
- 11.2.1 by law, including (without limitation) because of a court order or subpoena of any court with competent jurisdiction;
- 11.2.2 to conduct the business of the Service Provider;
- 11.2.3 to secure the Service Provider system;
- 11.2.4 to enforce the Service Providers rights,
- the Service Provider will do so in the manner as describe by the relevant legislation and applicable laws which may take place without the Customer's knowledge in which case the Service Provider will not be held liable to the Customer or any third party for damages howsoever arising there from.
- 12. NATIONAL CREDIT ACT NUMBER NO 34 OF 2005**
- 12.1. The Customer acknowledges that the NCA may, in certain circumstances, be applicable to this Agreement. The Service Provider accepts that the Customer is aware of the relevant provisions in the NCA and the Customer declares awareness thereof.
- 12.2. Without limiting the generality of the foregoing the Customer acknowledges:
- 12.2.1 that where the Customer is a sole proprietor or unincorporated partnership and applies for any Service or Services that sole proprietor or partnership may be subject to a credit referencing or risk assessment process. This means that the Service Provider may request and receive Confidential Information, consumer credit information and prescribed information with regards to the Customer from register credit bureau in order to perform a financial means test, in order to determine whether the sole proprietor or unincorporated partnership will be in a possession to meet his obligations under the Agreement;
- 12.2.2 that the provisions of the NCA does not apply to a juristic person whose asset value or annual turnover, together with the combined asset value or annual turnover of all related juristic person, at the time that the Agreement is completed, equals or exceeds the threshold value determined, concluded from time to time as, regulated in the NCA;
- 12.2.3 that if an instalment Agreement falls within the ambit of the NCA but was concluded at a location other than the registered business premises of the Service Provider, but not electronically, a juristic person below the aforementioned threshold, sole proprietor or partnership will be entitled to terminate the Agreement within 5 (five) business days of the date of signature of the Agreement by delivering a termination notice in terms of the relevant sections of the NCA to the Service Provider by hand or by register mail and by returning and tendering any goods of the Service Provider in its possession or paying the Service Provider for any Services received during the period before termination;
- 12.2.4 that if the instalment Agreement refer to herein above was concluded electronically the relevant registration thereto will apply;
- 12.2.5 that he had an opportunity to inspect and review the transaction before interring into the transaction and by signing the Agreement acknowledge correctness of the Content and Services associated therewith.
- 13. USER ID**
- 13.1. The Service Provider will personally identify each Customer by any of the following, user ID, password, number or e-mail address which will be allocated to each individual Customer by which the Customer will gain access to the Services as long as the Customer complies with the terms and conditions of the Agreement.
- 13.2. The Customer's use of the Services are personal and this agreement specifically excludes any use of the services for corporate and/or company purposes other than incidental use of the Weather Information for benefit of the Customer's employer or any other incorporated entity in which the Customer has an interest. Breach of this clause will result in suspension of the Customer's access.

13.3. The Customer will be responsible to keep the User ID confidential and not disclose it to any third party and the Customer will inform the Service Provider immediately if any third party gains access to the Services through the Customer's User ID.

13.4. Any User ID of the Customer remains the property of the Service Provider and may the Customer not deal therewith or transfer it to any third party.

14. BREACH

14.1. Should the Customer be in breach of any of the terms and conditions of the Agreement, then the Service Provider is entitled, without prejudice to any other rights that the Service Provider may have and having provided 5 (five) days' notice to the Customer, to:

14.1.1 forthwith with claim immediate payment of all outstanding Subscription fees due to the Service Provider together with the cancellation fee equal to the remainder of all the Subscription fees and or charges that would have become due and payable for the unexpired portion of the minimum duration of the Agreement;

14.1.2 terminate or suspend the Customer's use of any or all of the Services;

14.1.3 terminate the relationship between Service Provider and Customer;

14.1.4 list the Customer with any of the credit bureau's agencies and;

14.1.5 appoint tracing agents if required, and while, in all instances, the Service Provider is entitled to retain all Subscription fees and other fees and charges already paid by the Customer and recover all of its costs associated with the Customer's breach, including without limitation, default administration charges, collection costs, legal costs on an attorney and own customer scale, whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction of such judgment or in regards to the enforcement of the Service Provider's terms and conditions in the Agreement.

14.2. Should the Service Provider be in breach of any of the terms and conditions of the Agreement, then the Customer must give the Service Provider 14 (fourteen) days notice of the Service Provider's breach before the Customer may proceed with any further steps.

15. SETTLEMENT OF DISPUTES

15.1. Should any dispute, excluding any payment dispute, arise between the parties in connection with the interpretation of application of the provisions of this Agreement or its breach or termination or the validity of any documents furnished by the parties pursuant to the provisions of this Agreement, that dispute will, unless resolved amongst the parties, be referred to and be determined by arbitration in terms of this clause.

15.2. The Service Provider can elect, in his absolute discretion, to take any payment dispute on arbitration in terms hereof, or not.

15.3. Any party to this Agreement may demand that a dispute be determined in terms of this clause by written notice given to the other party.

15.4. This clause will not preclude any party from obtaining interim relief on an urgent basis from a court of competent jurisdiction pending the decision of the arbitrator.

15.5. The arbitration will be held:

15.5.1 in Johannesburg;

15.5.2 with only the legal and other representatives of the parties to the dispute present;

15.6. in accordance with the formalities and procedures settled by the arbitrator, and may be held in an informal and summary manner, on the basis that it will not be necessary to observe or carry out the formalities or procedures, pleadings and discovery or the strict rules of evidence, it being the intention that the arbitration will be held and completed as soon as possible; and

15.6.1 on the basis that the arbitrator will be entitled to decide the dispute in accordance with what he considers to be just and equitable in the circumstances.

15.6.2 The arbitrator will be acceptable to both parties and, if the matter in dispute is principally:

15.6.3 a legal matter, a practising attorney or advocate of the Johannesburg Bar of at least 10 (ten) years' standing;

15.6.4 an accounting matter, a practising chartered accountant of Johannesburg or Pretoria of at least 10 (ten) years' standing;

15.6.5 any other matter, any independent suitably qualified person.

15.7. Should the parties to the dispute fail to agree whether the dispute is principally a legal, accounting or other matter within 7 (seven) days after the arbitration was demanded, the matter will be deemed to be a legal matter.

15.8. Should the parties fail to agree on an arbitrator within 14 (fourteen) days after the giving of notice in terms hereof the arbitrator will be appointed at the request of any party to the dispute by the Chairman for the time being of the Johannesburg Bar Council (or its successor).

15.9. The decision of the arbitrator will be final and binding on the parties to the dispute and may be made an order of any court to whose jurisdiction the parties are subject at the instance of any of the parties to the dispute.

15.10. The arbitrator will be entitled to make such award, including an award for specific performance, an interdict, damages or a penalty or otherwise as he in his sole discretion may deem fit and appropriate and to deal as he deems fit with the question of costs, including if applicable, costs on the attorney and own Customer scale, and his own fees.

15.10.1 The provisions of this clause:

15.10.2 constitute an irrevocable consent by the parties to any proceedings in terms hereof and no party will be entitled to withdraw therefore or claim at any such proceedings that it is not bound by such provisions;

15.10.3 are severable from the rest of this Agreement and will remain in effect despite the termination of or invalidity for any reason of this Agreement.

16. NOTICES AND DOMICILIUM

16.1. The parties hereto chose as their domicilium citandi et executandi ("domicilium") for the purposes of the giving of any notice, the serving of any process and for any other purpose arising from this Agreement at the addresses and telefax numbers as set out hereunder, namely;

16.1.1 the Customer: chooses his physical- and postal addresses as well as his fax number and e-mail address supplies as part of the Registration Information for this purpose.

16.1.2 the Service Provider:

16.1.3 Physical Address: the address as in the preamble to this Agreement

Postal Address: P.O. Box 1498, Lonehill, 2060

Contact (011) 300 7840

Fax: (011) 465 8928

E-mail: legal@afriweather.com

16.2. The parties hereto shall be entitled, from time to time, by written notice to the other party, to vary its domicilium to any other address which is not a post office box or poste restante, provided that such address is within the Republic of South Africa.

16.3. Any notice given by the one party to the other party shall be in writing and if:

16.3.1 delivered by hand during the normal business hours at the party's domicilium for the time being, shall be presumed, until the contrary is proved by the addressee, to have been received by the other party on the same day delivered;

16.3.2 delivered by prepaid registered post or courier to the other party at the domicilium for the time being, shall be presumed, until the contrary is proved by the other party, to have been received by the other party on the 5th (fifth) day following dispatch by the one party to the other party;

16.3.3 transmitted by telefax to the other party at the other party's telefax address for the time being, shall be presumed, until the contrary is proved by the other party, to have been received by the other party on the first business day after the date of transmission;

16.3.4 transmitted by electronic mail (e-mail) to the other party at the other parties electronic mail (e-mail) address for the time being, shall be presumed, until the contrary is proved by the other party, to have been received by the other party on the first business day after the date of transmission.

17. VARIATION

No addition to or variation, consensual cancellation or novation of this Agreement or term hereof and no waiver of any right arising from this Agreement or its breach or termination shall be of any force or effect unless reduced to writing and signed by both the parties or their duly authorized representatives.

18. RELAXATION

No latitude, extension of time or other indulgence which may be given or allowed by either party to any other party in respect of the performance of any obligation hereunder or the enforcement of any right arising from this Agreement and no single or partial exercise of any right by any party shall under any circumstances be construed to be an implied consent by such party or operate as a waiver or a novation of, or otherwise affect any of that party's rights in terms of or arising from this Agreement or stop such party from enforcing, at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

19. WHOLE AGREEMENT

This Agreement constitutes the whole Agreement between the parties as to the subject matter hereof and no Agreements, representations or warranties between the parties other than those set out herein are binding on the parties, unless same is reduced to writing and signed by both parties hereto.

20. APPOINTMENT AND NOMINATION

20.1. The Customer, duly represented by the undersigned (if applicable), do hereby nominate and appoint the Service Provider and/or any of the Service Provider's employees with power of substitution to render the Services to the Customer as determined in terms of this Agreement. The Service Provider has the right to obtain all the relevant information and documentation which the Service Provider deems reasonable for the purposes of the appointment.

20.2. Any person signing this Agreement on behalf of a company, closed corporation, trust or any other separate legal entity will be jointly and severally liable and accountable for payment of all amounts due in terms of the Agreement and any amendments thereof. Such a person signing this Agreement warrants that he has the authority to do so and that he will be personal liable and held responsible if the Customer does not perform in terms of the Agreement.

21. GOVERNING LAW

This agreement shall be governed by the laws of the Republic of South Africa.