

## Cotality Estimator Platinum Builder's Essentials - Standard Terms and Conditions

### 1 Definitions and Interpretations

1.1 In this agreement unless the context otherwise requires, the following words will bear the meaning set out hereunder:

**Administrator** means the person(s) having the allocated administrator log in for the Customer and having such administration rights as granted from time to time by Cotality.

**Agreement** means the Application and these terms.

**Application** means the Application to Access Cotality Products form signed by the Customer and Cotality, and includes, any relevant amendments made from time to time.

**Confidential Information** means all confidential, non-public or proprietary information, regardless of how the information is stored, which is delivered to the Customer before, on or after the date of this Agreement, relating to the valuation products, product information services or the business, technology or other affairs of Cotality, any data (including Product Data), valuation and market share analyses, valuation models and tools, indices, programs or algorithms.

**Customer** means the customer recorded in the Application, and as the context permits, includes Enabled Users.

**Customer Materials** means any and all data, information, content, photographs and other materials provided or that may be supplied to Cotality by the Customer (or otherwise obtained by Cotality from the Customer), directly or indirectly (including through an Enabled User), from time to time.

**Customer Supplied Personal Information** means first name, surname, email and mobile phone data provided by the Customer to Cotality as part of the Customer Materials (but for clarity, does not include any data provided to Cotality by any other third party).

**Effective Date** means the date on which the Customer's logins and Passwords are created (or are able to be created) and the Customer is granted access to the Website.

**Enabled User** means those staff members in the Customer's company or organisation who are authorised to access the Product on Cotality's Website and have been allocated a username and Password for that purpose.

**End User** means the person who is supplied (by the Customer or an Enabled User) a Product or a Product derivative for that person's own personal (non-commercial) use as part of the Customer's Internal Business Needs.

**Excluded Information** means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to Cotality;
- (b) the Customer can prove, by contemporaneous written documentation, was already known to it at the time of disclosure by Cotality (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality); or
- (c) the Customer acquires from a source other than Cotality where such source is entitled to disclose it.

**Fees** means the fee as set out in the Application.

**GST** means the tax imposed by the Goods and Services Tax Act 1985.

**Initial Term** means (subject to any applicable Trial Period) the initial term as set out in the Application.

**Insolvent** means, with respect to an entity, that such entity is or states that it is insolvent, is unable to pay its debts as they come due, is in liquidation, is under administration or has a controller appointed to its property, ceases conducting business in the normal course, is subject to any arrangement to protect itself from creditors or dissolves.

**Internal Business Needs** means solely for the internal business needs of the Customer and not

to be provided to any other third party unless consented to in writing by Cotality (in its discretion). For clarity it is agreed that the following are not for Internal Business Needs:

- (a) any direct or indirect supply of raw Product Data or Product Data derivatives by the Customer to third parties for on-supply, re-use or resale; and
- (b) any marketing purposes (whether unsolicited or otherwise).

**Law** means common law, principles of equity, and laws made by parliament (laws made by parliament include laws (in New Zealand) and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

**LINZ** means Land Information New Zealand.

**Party** means the Customer or Cotality and 'Parties' shall mean both of them.

**Password** means the individual password and any additional security measures which may be introduced from time to time, allocated to an individual user name which may be changed from time to time.

**Payment Cycle** means the payment cycle specified in the Application.

**Payment Date** means the 20th day of the month following the date of an invoice from Cotality.

**Product Data** means any data or results, including any property information, ownership information, sales information, photographs, valuation or market share analyses, index results or alerts, contained within or provided through the Products via the Website.

**Products means** those property information services (including any legal document or report ordering service (if access enabled)), made available by Cotality through the Website under this Agreement (and includes the Product Data) and Product means any one of them.

**Subscription Plan** means the subscription plan detailed in the Application as signed up for by the Customer.

**Subsequent Term(s)** means further rolling terms of 12 months commencing on the anniversary of the expiry of the Initial Term.

**Third Party Data Provider** means any third party provider of data that is incorporated in the Product Data (and includes LINZ).

**Trial Period** means the period during which the Customer is granted access to the Products on a trial basis, at no charge, as specified in the Application.

**Website** means the website through which the Products are made available.

- 1.2 The headings in this Agreement are for convenience of reference only and will not affect the interpretation hereof. The words 'include' and 'including' when introducing an example, do not limit the meaning of the words to which the example relates or examples of a similar kind. A reference to a clause is a reference to a clause in this Agreement. Words importing the singular number will include the plural and vice versa, and words importing the masculine gender include all other genders.

## 2 Terms of the Agreement

- 2.1 These terms and conditions become a legally binding agreement between the Customer and Cotality when the Customer signs an Application acknowledging that the Customer has read and accepted these terms and conditions and returns the completed Application to Cotality.
- 2.2 The Customer's use of the Product (including any Product Data) and access to the Website is subject to the terms and conditions set out in the Agreement.

## 3 Duration of User Agreement

- 3.1 This Agreement will commence on the Effective Date and will continue during the Initial Term and

any Subsequent Term(s) (as applicable).

- 3.2 Upon expiry of the Initial Term this Agreement will automatically renew for successive periods equal to the Subsequent Term unless notice of cancellation is given by the Customer not less than 30 days prior to the expiry of the Initial Term.
- 3.3 If this Agreement is terminated by the Customer before expiry of the Initial Term the Customer remains liable for any further Fees that would be due under the Initial Term had it not been terminated.
- 3.4 If the Customer's Subscription Plan includes a Trial Period the Customer is bound by these terms in the same manner as if the Subscription Plan did not include a Trial Period. A Subscription Plan's Initial Period will be inclusive of any applicable Trial Period. The Customer is entitled to use the Products free of charge for the Trial Period. On expiry of the Trial Period the Customer's Subscription Plan will automatically continue for the remainder of the Initial Term.

## 4 Licensing

- 4.1 Subject to the terms of this Agreement and the Customer's performance of its obligations, Cotality hereby grants to the Customer a non-exclusive, non-transferable, non-sublicensable limited license during the Initial Term (including any Trial Period) and any Subsequent Term(s) to access and use the Products and the Product Data forming the relevant Subscription Plan, solely for support of the Customer's Internal Business Needs. It is agreed by the Parties that the following are not actions solely in support of the Customer's Internal Business Needs:
  - 4.1.1 the on-supply of Products or Product Data for direct commercial gain (as opposed to incidental gain); and
  - 4.1.2 the bundling of Products or Product Data with other products or services and provision of this to any other third party.
- 4.2 Where a Customer on-supplies a Product or Product Data to an End User pursuant to its Internal Business Needs in accordance with this clause 4, the Customer is required to advise the End User that they are specifically prohibited from:
  - 4.2.1 using the Product or any Product Data other than for the End User's personal non-commercial use;
  - 4.2.2 providing the Product or any Product Data to any other party; and
  - 4.2.3 that the End User is otherwise bound by the restrictions and obligations set out in these terms relating to or in connection with the Products.
- 4.3 Except as set forth in clause 4.1, the Customer is not licensed to use the Products and undertakes not to do so.
- 4.4 Except as expressly permitted under this Agreement or to the extent permitted by applicable Law, the Customer, the Enabled Users and any other employees and representatives of the Customer will not, nor will they encourage any person or entity to:
  - 4.4.1 decompile, disassemble or otherwise reverse engineer all or any portion of the Products, including any source code, object code, algorithms, methods or techniques used or embodied therein whether by scraping, harvesting or some other means;
  - 4.4.2 use a data extraction software or programme of any kind whatsoever or attempt to harvest the Product Data for any purpose whatsoever, including for the purpose of setting up or adding another database;
  - 4.4.3 modify or create any derivative works based upon the Products or the Product Data;
  - 4.4.4 license, sublicense, distribute, resell, disclose, incorporate into any database, commercially exploit or otherwise transfer any Product or Product Data to any third party, or use the Products or the Product Data on behalf of or for the benefit of any third party;
  - 4.4.5 remove or alter any copyright, trademark, logo or other proprietary notice or label appearing on or in the Products or the Product Data;
  - 4.4.6 incorporate any portion of the Products or the Product Data into any other materials, products

- or services that are not intended for the Customer's Internal Business Needs; or
- 447 use, or offer to use, the Products or any Product Data for or in connection with any direct marketing activities, including any telemarketing campaign or telephone survey (excluding the Customer Supplied Personal Information).

## 5 Creative Commons Licence

- 5.1 Cotality is a party to a worldwide, royalty-free, non-exclusive, Creative Commons Custom Licence under which it receives some imagery and data (CCL Material) used in the Products and on the Website.
- 5.2 The CCL Material is licensed under a Creative Commons Attribution 3.0 New Zealand Licence (Creative Commons Licence) details of which can be found at <http://creativecommons.org/licenses/by/3.0/nz/legalcode>. The CCL Material is not the property of Cotality and is credited to the original author (Original Author) as shown in the metadata of the CCL Material.
- 5.3 Cotality does not assert or imply any connection with sponsorship or endorsement by the Original Author of Cotality's use of the CCL Material.
- 5.4 Cotality makes the CCL Material available to the Customer on the terms of the Creative Commons Licence and in no way implies that it has the right to sublicense the CCL Material to the Customer or any third party.
- 5.5 Cotality does not impose any terms on the use of the CCL Material by the Customer or any third party that alter or restrict the terms of the Creative Commons Licence or any rights granted under it or has the effect or intent of restricting the ability to exercise any such rights.
- 5.6 Cotality has not imposed any digital rights management technology on the CCL Material, any adaption of the CCL Material or the CCL Material as incorporated with other separate works, that alter or restrict the terms of the Creative Commons Licence or any rights granted under it or has the effect or intent of restricting the ability to exercise those rights.

## 6 Access

- 6.1 The Customer may access the relevant Products through the Website. On receipt and processing of the Application, Cotality will, in consultation with the Customer, provide the Customer with the user names and Passwords for each Enabled User.
- Cotality will also assign one or more Enabled User(s) to be the Administrator(s) and will allocate an administrator login for the Administrator(s).
- 6.2 The Customer acknowledges and agrees that it:
- 621 bears sole responsibility for protecting all user names and Passwords;
- 622 will not provide such user names and Passwords to any third party;
- 623 is responsible for all use of the Website, including all ordering of Products made by Enabled Users whether or not the order is made by the Customer, its staff or by someone else using the user name(s) (lawfully or otherwise) and that Cotality is entitled to rely upon, and process, any order it receives in writing from a Customer's or Enabled Users' login; and
- 624 will remain fully responsible and liable for any authorised or unauthorised use of any user names and Passwords.
- 6.3 The Customer acknowledges and agrees that Cotality is entitled to update the Customer's (and any Enabled Users') passwords whenever Cotality considers it appropriate under its internal security protocols.
- 6.4 The Customer must ensure each Enabled User does not knowingly or recklessly allow any other person to access the Product or Website using their user name and Password. If the Customer knows or has reason to believe that there has been or is about to be fraudulent or other unlawful use

of a user name and Password the Customer must immediately notify Cotality by email to [info@corelogic.co.nz](mailto:info@corelogic.co.nz) and immediately change the Password of the relevant Enabled User.

- 6.5 The Customer will be responsible for obtaining access to the Products and Website, and for any and all costs and expenses in connection with accessing and using the Products and Website, including Internet service provider fees, telecommunications fees, and the cost of any and all equipment (including hardware and software) used by the Customer in connection with its access and use of the Products as permitted by this Agreement.
- 6.6 The Customer acknowledges that Cotality will have no obligation to assist the Customer in using or accessing the Products and Website except as expressly provided in this Agreement. For clarity, Cotality will not be liable for any delay, defect, deficiency and/or loss of service in connection with the Products or the Website or any loss caused by or on account of any of the following:
- 6.6.1 equipment, data or services supplied by the Customer or any third party; or
- 6.6.2 any telecommunications organisation equipment or services (including any speeds or capabilities of such equipment or services) or any requirements of the telecommunications authority.
- 6.7 Cotality will not provide the Customer with any software, and all access to the Products will be through the Website as provided in clause 6.1, except to the extent expressly provided in the Application.
- 6.8 If Cotality has good reason to believe that any information the Customer has supplied is not accurate, or if Cotality considers that the Customer has breached this Agreement, including unauthorised disclosure or sharing of user name(s) (and Password(s)), it may immediately terminate this Agreement without liability to the Customer and the Customer will cease to be an authorised user of the Website.

## 7 Modification of Website, Service or Materials

- 7.1 Cotality reserves the right to change or refine the features and functionality of any Product and the Website.
- 7.2 Subject to clause 10 Cotality will maintain the Website through which the Products are accessed. Cotality reserves the right to perform network, hardware or service maintenance services or upgrades, change, modify, suspend or discontinue any or all parts of the Website or Products at any time. This may require Products to be non-accessible for a period of time. Cotality will endeavour to perform such services or upgrades during typically low usage periods but reserves the right to restrict the Customer's access to parts or all of the Product without notice or liability.
- 7.3 Some of the materials in the Website and the Products are sourced from Third Party Data Providers (whether identified to the Customer or not). Cotality may at any time be required to amend or delete any material (or any part of the material) on the Website and the Product that is sourced from a Third Party Data Provider. This means that material which may have previously been available and which the Customer may have accessed, may no longer be available the next time the Customer accesses the Website or the Products.

## 8 Customer Materials

- 8.1 The Customer (either directly or through any Enabled Users) may from time to time provide or otherwise make available to Cotality the Customer Materials. The Customer Materials shall be deemed to be non-confidential and Cotality shall have no obligation of any kind with respect to such information. The Customer (on behalf of itself and any Enabled Users) hereby grants Cotality and its service providers a worldwide, royalty-free, perpetual, irrevocable, non-exclusive right and license to use, reproduce, distribute, transmit, perform, display (publicly or otherwise), adapt, make derivative works of, and otherwise commercialise and exploit, the Customer Materials, excluding the Customer Supplied Personal Information.
- 8.2 Furthermore, Cotality shall be free to use any ideas, concepts, know-how or techniques contained in the Customer Materials for any purpose whatsoever, including, but not limited to, developing,

manufacturing and marketing products and other items incorporating such information, excluding the Customer Supplied Personal Information.

- 8.3 The Customer represents and warrants to Cotality (and its service providers) that:
- 8.3.1 it has the right to grant the foregoing licenses in and to the Customer Materials;
  - 8.3.2 the Customer Materials do not and will not infringe upon or misappropriate any rights, including, without limitation, intellectual property rights of any third parties;
  - 8.3.3 that such Customer Materials are, and will remain, free of worms, viruses, Trojan Horses, and other disabling code; and
  - 8.3.4 the Customer will not run any network scanning software, spiders, spyware software, robots, open relay software, or any such similar software in relation to the Website or which is designed to extract unauthorised data from the Website.

## 9 Fees

- 9.1 The Customer will pay the Fees for the Subscription Plan as set out in the Application. If specifically provided for in the Application the Customer will be liable for payment of the Fees for the part period from the Effective Date until the date of the first Payment Cycle. Otherwise, the Customer will be liable for the Fees from the date of the first invoice. All Fees are payable monthly in advance on or before the relevant Payment Date. All Fees once paid are non-refundable.
- 9.2 Further charges may apply in respect of Products (as notified at the time of ordering) and any such charges (Product Charges) incurred by the Customer (including the ordering of legal documents or reports) will be invoiced by Cotality in arrears and be payable on the Payment Date. Invoices for the Fees and the Product Charges (if any) will be payable by the Customer by way of direct debit on the Payment Date unless expressly agreed otherwise between the Parties.
- 9.3 The Parties agree that when executed this Agreement amounts to a tax invoice. Fees are exclusive of GST (unless stated otherwise). If provision of the Products under this Agreement is subject to GST, the Customer must pay to the Company an additional amount equal to the relevant Fee multiplied by the applicable GST rate. Such additional amount is payable at the same time as the related Fee.
- 9.4 Following the Initial Term, Cotality may vary the Fees on 30 days written notice. If the Customer does not agree to the Fee increase they have a right to terminate the Agreement within 30 days of receipt of the notice of variation. If the Customer does not exercise its termination right the continued use of the Product will constitute binding acceptance of the variation.
- 9.5 The Customer acknowledges and agrees that the Product Charges for Products received from Third Party Data Providers may be increased at any time by Cotality giving notice to the Customer no less than 30 days prior to the increases taking effect.
- 9.6 Any Fees or proportion of Fees not paid by the Customer will be subject to interest of 1.5% per month, calculated on a daily basis.
- 9.7 If the Customer has been offered a Trial Period or any other discount and at completion of the Trial Period or discounted period the first or subsequent payments are dishonoured, Cotality can charge in full an amount equivalent to the Fees for the Trial Period or discounted period.
- 9.8 Any failure to pay shall constitute a breach of the Agreement and Cotality may immediately suspend and/or terminate the Customer's access to the Products.
- 9.9 Where the Customer's access to the Products is suspended due to the failure to pay, access will be suspended until payment of all outstanding Fees, Product Charges and any interest due is paid. Once payment is received access to the Products may be reinstated but without prejudice of any other rights or remedies of Cotality.
- 9.10 In the event of non-payment of any amounts payable by the Customer under this Agreement by the relevant Payment Date, the Customer will pay all of the actual costs of any debt collection incurred by the Company in recovering the Fees and any applicable interest.

## 10 Limited Warranty

- 10.1 Cotality hereby represents and warrants that it will use commercially reasonable efforts to ensure that the Products are accessible via its Website in accordance with this Agreement. In the event of any breach of this warranty, the Customer agrees Cotality's sole and exclusive obligation (and the Customer's sole and exclusive remedy), is to use commercially reasonable efforts to modify, correct or provide access to the relevant Products or Website.
- 10.2 To the fullest extent permitted by applicable Law and subject to clause 10.4, the warranty set forth in clause 10.1 is in lieu of any other warranties. All other warranties are hereby excluded, and Cotality and its service providers hereby expressly disclaim all warranties and associated liabilities. Without limiting the generality of the foregoing, it is acknowledged and agreed that Cotality does not warrant:
- 10.21 that the Products or the Product Data will meet the Customer's requirements;
  - 10.22 that the Products or the Product Data will be error-free;
  - 10.23 that Cotality's Website through which the Products and Product Data are accessed will function in an uninterrupted manner, be available 24 hours a day, 7 days a week, or be fully secure;
  - 10.24 the correctness, accuracy, reliability or otherwise of the Products or the Product Data;
  - 10.25 that the statistical methods on which any of the Products are based use appropriate or accurate assumptions, are fit for the Customer's particular purpose or are otherwise suitable for the Customer's use;
  - 10.26 that the performance of the Products will not be affected by data entry errors, including incorrect entries, double entries or delayed entries, or incorrect or untimely data supplied by Cotality's Third Party Data Providers;
  - 10.27 that the material on the Website will be free from infection, viruses or destructive code and Cotality shall not be liable to the Customer for any damage or loss suffered by the Customer as a result of material on the Website infecting or damaging the Customer (or any Enabled User's) computer equipment, software and/or any other electronic device; and
  - 10.28 that the material on the Website and the Products, as delivered, (whether or not it is combined with the Customer's data) will be capable of being processed on the Customer's computer equipment and software or that the Customer's data will be compatible with the material on the Website and the Product, or work effectively in combination with the material on the Website and the Product.
- 10.3 Cotality has no obligations to convert the material on the Website and the Products for use by the Customer with their computer equipment and software (such conversion being entirely at the Customer's own risk), nor does Cotality have any obligation for training the Customer or the Customer's personnel in the use of the material on the Website and the Product.
- 10.4 Where Cotality is a supplier (as that term is defined in the Consumer Guarantees Act 1993 (CGA)) of the Products, the Product Data or other goods or services, the Customer confirms that the Products, the Product Data or other goods or services provided by Cotality under this Agreement are acquired for the purposes of a business (as that term is defined in the CGA) and the Customer agrees that the CGA does not apply to the Products, the Product Data or other goods or services supplied by Cotality under this Agreement.
- 10.5 The Customer acknowledges and agrees that the Products do not constitute an appraisal of the subject property and are merely an estimate. Products should not be relied upon in lieu of an appraisal or underwriting process. The accuracy of the methodology used to develop the Product Data generated by the Products, the existence of the subject property, and the accuracy of the predicted value and all rule sets provided are estimates based on available data and are not guaranteed or warranted.
- 10.6 The Customer further acknowledges and agrees that the condition of the subject property and

current market conditions can greatly affect the validity of the Products and the Product Data. Any Products or Product Data generated does not include a physical inspection of the subject property or a visual inspection or analysis of current market conditions by a licensed or certified appraiser, which is typically included in an appraisal.

- 10.7 The Products and the Product Data, including, without limitation, any information, data, prices, and quotations contained therein, are subject to change without notice.
- 10.8 Where the Customer's Subscription Plan relates to the Product, Cityscope the Customer acknowledges that the Product, Cityscope only relate to limited areas of Auckland, Wellington and Christchurch.
- 10.9 Except as otherwise expressly provided herein, the Products and the Product Data are provided to the customer on an 'as is, as available' basis without any representations or warranties of any kind, either express or implied, including, but not limited to, any implied warranties of merchantability, fitness for particular purposes, title, non-infringement, security, availability, accuracy, or otherwise.
- 10.10 The Customer understands, acknowledges and accepts that the Products (including any Product Data) supplied:
- 10.10.1 are not a certified copy of any district valuation roll entry;
  - 10.10.2 are not provided for lending purposes; and
  - 10.10.3 are not a valuer's report for the purposes of the New Zealand Trustee Act 1956, as may be amended from time to time.
- 10.11 The Customer acknowledges and agrees that the limitations and exclusions of liability contained in:
- 10.11.1 clauses 10.1, 10.2, 11.2 and 11.2 (with all references to Cotality deemed to be replaced with references Third Party Data Providers (whether expressly identified by Cotality or not); and
  - 10.11.2 clause 11.3, apply for the benefit of and may be enforced by any Third Party Data Provider (whether expressly identified by Cotality or not) in relation to the material on the Website and the Product Data sourced by Cotality from a Third Party Data Provider for the purposes of the Contracts (Privity) Act 1982, as may be amended from time to time. For the avoidance of doubt, this clause shall not in any way limit Cotality's right to enforce any of the provisions of this Agreement in relation to the material sourced by Cotality from a Third Party Data Provider.

## 11 Liability

- 11.1 Cotality shall not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any indirect, consequential, special or other similar loss, damage, liability, or expense sustained by the Customer or any other person, directly or indirectly, from any use whatsoever of the material on the Website and the Product (including Product Data) or otherwise in connection with this Agreement (even if Cotality has been advised of, or has knowledge of, the possibility of such loss, damage, liability or expense). Such loss and/or damage includes, damage to property, injury to persons, loss of profits, business interruption loss, loss of data, any other loss, damage or expense that arises either as a result of the material on the Website or the Product being shown to be wholly or partially incorrect or unsuitable, or arising from non-delivery or delay in delivery of the material on the Website or the Product and loss as a result of any amendment to or deletion of the material on the Website or the Product.
- 11.2 Cotality shall not be liable (whether in contract, tort (including negligence), equity or on any other basis) for any loss, damage, liability or expense sustained by any other person, directly or indirectly, from any use whatsoever of the material on the Website or the Product, or otherwise in connection with this Agreement including any loss arising from any modification, amendment or deletion (whether pursuant to clause 7 of this Agreement or otherwise) made to the material on the Website or the Product or any compilation or derivative work created from or using the material on the Website or the Product in each case whether made by the Customer, or by any other person.
- 11.3 Without detracting from clause 11.1 Cotality's and any Third Party Data Provider's total aggregate liability

under or in connection with this Agreement, or arising out of any use, reproduction, modification, amendment or deletion of the material on the Website or the Product, or creation of compilations or derivative works of or from the material on the Website or the Product (by you or by any other person), whether that liability arises in tort (including negligence), contract, equity or on any other basis, shall be limited as follows:

- (a) Cotality's total aggregate liability shall be limited to \$100; and
- (b) any Third Data Provider's total aggregate liability shall be limited to \$1.00

The limitations in this clause 11.3 are also expressed for the benefit of the Third Party Data Providers for the purposes of the Contracts (Privity) Act 1982.

## 12 Customer Warranty & Indemnity

- 12.1 The Customer warrants that the Customer's main business is as described in the Application.
- 12.2 The Customer shall indemnify and hold harmless Cotality and its directors, officers and employees (each an Indemnified Party) from and against any and all losses, claims, liabilities, damages, costs and expenses (including any direct or indirect consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) that any Indemnified Party may suffer or incur by reason of or in connection with the provision of the Products to the Customer and/or any breach of this Agreement by the Customer or any wilful, unlawful or negligent act or omission of the Customer or any of its employees, agents or contractors.

## 13 Intellectual Property Rights

- 13.1 The Customer acknowledges and agrees that, as between Cotality and the Customer, Cotality, or one or more of its service providers, is and will remain the sole and exclusive owner of all right, title and interest in and to the Products and the Product Data, including all material published on the Website (including, but not limited to, the textual material, artwork, photographs, computer software, audio and visual elements, and any and all other creations, inventions and intellectual property rights (including any enhancement, suggestion, modification or derivative works of any intellectual property) contained or embodied within the Products and the Product Data.
- 13.2 The Customer agrees that it acquires no rights in or to the Products or the Product Data provided pursuant to this Agreement except for the limited license set out in clause 4, and that it will not, and will not permit any other person or entity to, infringe upon, harm or contest the validity of Cotality's, or its service providers', ownership of the Products or the Product Data,
  - or the creations, inventions and intellectual property rights contained or embodied within the Products and the Product Data.
- 13.3 The Customer agrees that it will not make copies (other than a single copy for its own historical reference purposes) or derivative works of the Products and the Product Data.
- 13.4 The Customer agrees not to remove, cover, overlay, obscure or change any copyright notices, legends, or terms of use which Cotality may post on the Website, the Products or the Product Data.
- 13.5 The name and logo of Cotality and its associated brands are registered trademarks. Where the Customer on-supplies the Product or any Product Data to End Users in any manner whatsoever, including but not limited to printing or emailing the Product or Product Data, the Customer must display the proprietary device specified at clause 13.7 below.
- 13.6 Where the Products are on-supplied to End Users in the format in which they were supplied as well as on any reproduction or adaptation of the Product, the Customer shall use or ensure the use of the following proprietary device:
  - © CoreLogic NZ Limited trading as Cotality
- 13.7 Subject to clause 13.5 and 13.6 the Customer is not permitted to use or reproduce or allow anyone to use or reproduce the trade mark specified in clause 13.5 above for any reason without Cotality's express written permission, which may be withheld.

The software which operates the Website is proprietary software and the Customer is not permitted to

use it except as expressly allowed for under the terms of this Agreement. Any other use or purported licensing, modification, enhancement or interference is strictly prohibited.

## 14 Advertising Material

- 14.1 Material appearing on the Website may include advertising and other information submitted by parties other than Cotality, and the Website may provide links to other sites operated by advertisers and third parties. Those parties (and not Cotality) are responsible for ensuring that such information and such sites comply with all relevant Laws and regulations. To the full extent permissible or by Law, Cotality disclaims all responsibility for any error, omission or inaccuracy of such information or its failure to comply with the relevant Laws or regulations.
- 14.2 Cotality has no responsibility regarding any information the Customer obtains from any other website, even if the Customer accesses it via a link from this Website. For the avoidance of doubt this includes, but is not limited to, any material the Customer obtains from the Yellow® White Pages website.

## 15 Usage

- 15.1 Without limiting any other term of this Agreement:
  - 15.1.1 The Customer will follow all reasonable instructions Cotality gives from time to time with regard to the use of the Products and Product Data.
  - 15.1.2 The Customer will permit Cotality at all reasonable times to check that the Products are being used in accordance with the terms of this Agreement, and for such purposes the Customer shall maintain complete and accurate records of the Customer's use of the Products.
  - 15.1.3 The Customer expressly acknowledges that Cotality has entered into various licensing agreements for ongoing use of data with various data suppliers and as such Cotality has undertaken certain contractual obligations. To assist Cotality in meeting these obligations the Customer agrees to comply with and/or accept responsibility for all of Cotality's obligations expressed or implied in such supplier agreements.
- 15.2 The Customer acknowledges and agrees that Cotality's ability to provide the Products and the Product Data is subject to its agreements with third party suppliers:
  - 15.2.1 which agreements may expire or terminate; or
  - 15.2.2 which suppliers may not provide the services, products or data as provided under such agreements, and that in such circumstances Cotality may not be able to, and will have no obligation to, provide some or all of the Products or the Product Data, either on a timely basis or otherwise.
- 15.3 If any use is made of the Products or the Product Data by any person or entity other than the Customer and such use is attributed to the act or default of the Customer, then without prejudice to Cotality's other rights and remedies the Customer will immediately be liable to pay to Cotality an amount equal to the charges which such person or entity would have been obliged to pay had Cotality granted a licence to the unauthorised user at the beginning of the period of the unauthorised use.
- 15.4 The Customer will be fully responsible for any act or omission of any of its employees or agents (including Enabled Users).
- 15.5 Cotality reserves the right to suspend or terminate the Customer's access to the Products:
  - 15.5.1 in the event that any Fee is not paid when due;
  - 15.5.2 in the event that Cotality or its service providers reasonably believe that the Customer has used or disclosed the Products, Product Data or other Confidential Information in a manner not permitted under this Agreement or otherwise has materially breached this Agreement; or
  - 15.5.3 an event of force majeure occurs that affects Cotality's ability to provide the Products or the Website.

## 16 Customer Details

- 16.1 The Customer is required to provide Cotality with complete and accurate registration information

and to update the Customer's information with Cotality to Cotality's e-mail or postal address if it changes, including any change in the Customer's company or organisation name and changes in Enabled Users or ownership.

- 16.2 The Customer, or the Administrator(s), must advise Cotality of any Enabled User changes relevant to the use of the Website, including new appointments, changes in roles of staff or resignations. Cotality will, for new appointments, assign and advise the Administrator(s) of the unique user name and Password for each new required user name and will be responsible for managing any notified user name changes.
- 16.3 If the Customer fails to notify Cotality of any change as required in accordance with clause 16.1 or 16.2 above, the Customer is deemed in breach of this Agreement.

## 17 Confidential Information

- 17.1 No Confidential Information may be disclosed by the Customer to any person or entity except:
- 17.1.1 employees of the Customer requiring the information for the purposes of this Agreement who:
- (a) are aware of the confidentiality obligations imposed in this clause 17.1; and
  - (b) have entered into written confidentiality agreements with the Customer which require such employees to comply with confidentiality obligations no less restrictive than those set forth in this clause 17;
- 17.1.2 to the extent the Customer is required to do so by applicable Law; or
- 17.1.3 to the extent the Customer is required to do so in connection with legal proceedings relating to this Agreement.
- 17.2 The Customer must not use Confidential Information except for the purpose of exercising its rights or performing its obligations under this Agreement.
- 17.3 Clauses 17.1 and 17.2 do not apply to Excluded Information.
- 17.4 Notwithstanding clauses 17.1 and 17.2, the Customer may disclose parts of the Product Data, or conclusions or summaries of information based on the Product Data, provided that the Customer has first obtained Cotality's prior written consent for such disclosure and the Customer gives Cotality credit as the source for the underlying data where appropriate, in a manner reasonably instructed by Cotality.
- 17.5 The Customer will take any action that is necessary to prevent or remedy any breach of the Customer's confidentiality obligations or other unauthorised disclosure of Confidential Information.
- 17.6 The Customer may not make press or other announcements or releases relating to this Agreement and the transactions that are the subject of this Agreement without Cotality's prior written approval as to the form and manner of the announcement or release, unless and to the extent that the announcement or release is required to be made by the Customer by applicable Law or by a stock exchange with which the Customer is listed.
- 17.7 Except as required by clause 17.1, no Party will disclose the terms of this Agreement to any person or entity other than its employees, accountants, auditors, financial advisers or legal advisers on a confidential basis.
- 17.8 The Customer acknowledges that due to the unique nature of the Confidential Information, any breach by the Customer of its obligations under this clause 17 would result in irreparable harm to Cotality for which there is no adequate remedy; and therefore, upon any such breach or threat thereof, Cotality will be entitled to injunctive and other appropriate equitable relief (without the necessity of proving damages, or posting bond or other security), in addition to whatever remedies Cotality may seek under all applicable Law.

## 18 Privacy

- 18.1 The Customer must ensure that its use of the Products, including Product Data, complies with all applicable Law, including the Privacy Act 1993.

- 182 Cotality is an Agency for the purposes of the Privacy Act 1993, as may be amended from time to time. All personal information the Customer supplies to Cotality will be dealt with by Cotality in accordance with that Act. Cotality may from time to time send the Customer information on selected products and services and invite others to do so. Should the Customer not wish to receive, or for any of its staff to receive, this material, the Customer must email this request to [info@corelogic.co.nz](mailto:info@corelogic.co.nz). The Customer is deemed to have given its and that of its' staff's permission to Cotality to convey all or part of its registration information to independent auditors for the sole purpose of verifying site usage statistics. As part of the verification process, the Customer may be contacted by these independent auditors and asked to confirm that the Customer has registered with the Website. Accordingly, the Customer may not register any personal details other than its or their own.
- 183 The Customer has the right to access its personal profile and if there are errors in the information, correct any of its personal information.
- 184 Cotality reserves the right to deal with Customer Supplied Personal Information for the purposes of meeting its obligations under this Agreement and enhancing the Website and Products made available to the Customer and other customers of Cotality.

## 19 Termination

- 19.1 The Customer is entitled to terminate the Agreement upon expiry of the Initial Term by way of written notice given to Cotality 30 days prior to the end of the Initial Term.
- 19.2 If the Agreement is terminated during the Initial Term the Customer will remain liable for any further Fees that would have been payable under the Initial Term, had it not be terminated.
- 19.3 Subsequent Terms of this Agreement may be terminated by the Customer at any time on 30 days notice to Cotality. This notice period will take effect from the first day of the month following the date on which the termination notice was received by Cotality.

## 20 Notices

- 20.1 All notices hereunder will be in writing addressed to the Parties at the respective addresses shown in the Application or as updated by notice in writing to the other party.
- 20.2 Notice will be deemed given:
- 20.21 in the case of hand-delivered mail upon delivery or alternatively in the case of ordinary mail on the fourth day after the date of posting; and
- 20.22 in the case of email transmission upon notification of a delivery receipt.
- 20.3 A Party may change its address for service of notices under this clause by giving written notification of the new address to the other Party.

## 21 Miscellaneous

- 21.1 The Customer warrants that it has not relied on any representation made by Cotality which has not been expressly stated in this Agreement or upon the descriptions or allusions or specifications contained in any document including any catalogue or other material produced or made available by Cotality.
- 21.2 Cotality will not be liable for any failure to perform or delay in performing its obligations if the failure or delay results from circumstances beyond the control of Cotality (whether happening in the New Zealand or elsewhere, including acts of God, refusal of licence, refusal or revocation of any telecommunications organisation's consent in respect of data communication equipment, government act, fire, explosion, accident, strike, industrial dispute, civil commotion or impossibility of obtaining material and/or data).
- 21.3 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to

public policy.

- 21.4 Nothing contained or implied in this Agreement constitutes one Party the partner, agent, or legal representative of the other Party for any purpose or creates any partnership, agency or trust, and neither Party has any authority to bind the other Party in any way.
- 21.5 The rights and remedies provided in this Agreement are in addition to other rights and remedies given by applicable Law independently of this Agreement.
- 21.6 This Agreement (together with the Application and any relevant amendments) shall constitute the entire agreement of the Parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- 21.7 The Customer agrees that Cotality may send the Customer commercial electronic messages marketing Cotality's goods and services and new products. The Customer also agrees that Cotality may send electronic messages containing updated information in relation to the services, news and various other information of related interest.

## 22 Variation to this Agreement

- 22.1 Cotality may vary the provisions of this Agreement at any time on 30 days' notice. If the Customer does not agree to the variation they have the right to terminate the Agreement within 30 days of receipt of the notice of variation. If the Customer does not exercise its termination right the continued use of the products will constitute binding acceptance of the variation.
- 22.2 No right under this Agreement will be deemed to be waived except by notice in writing signed by the Party to be bound.

## 23 Assignment

- 23.1 The Customer may not assign, transfer, novate, subcontract or otherwise dispose of any benefits, rights, liabilities or obligations under this Agreement or any part of this Agreement without the prior written consent of Cotality.
- 23.2 Cotality is permitted to assign its interests and novate its obligations (without recourse by the Customer) under this Agreement by notice in writing to the Customer.

## 24 Governing Law

- 24.1 This Agreement is deemed to have been made in New Zealand and is governed by New Zealand Law. Any dispute relating to this Agreement shall be referred to the New Zealand courts and the New Zealand courts shall have jurisdiction to hear and determine such dispute.

## 25 General

- 25.1 All provisions of this Agreement intended to survive termination or expiry of this Agreement shall so survive and this includes clause 8, 11, 12, 13, 17 and 18.
- 25.2 If one or more of the provisions of this Agreement will be invalid, illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions will not in any way be affected, prejudiced or impaired.
- 25.3 This Agreement may be executed in several counterparts (including email PDFs), all of which when signed and taken together constitute a single agreement between the Parties. The Parties consent to entry into this Agreement by electronic means pursuant to the Electronic Transactions Act 2002.