

DATED

200

(1) THE SECRETARY OF STATE FOR BUSINESS INNOVATION
AND SKILLS

(2) [*SUBSCRIBER*]

SALES AGREEMENT

For the supply of access to up-to-date data from the Electronic Individual Insolvency
Register
Annual Contract

PARTIES

(1) THE SECRETARY OF STATE FOR BUSINESS INNOVATION AND SKILLS ("the Secretary of State") of 1 Victoria Street, London, SW1H 0ET

(2) [*subscriber*], whose registered office is at [*address*]

(collectively known as the Parties)

WHEREAS the Subscriber wishes to subscribe to the Product and the Secretary of State is willing to supply the Product to the Subscriber on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:-

"Agreement"	means this Agreement signed by the Parties, comprising these Clauses and all Schedules or Annexes appended hereto;
"Commencement Date"	the date set out in Schedule 1;
"First Year"	the period of 12 months commencing on the Commencement Date;
"Force Majeure"	means, in relation to either party, any circumstances beyond reasonable control of that party (including without limitation any strike, lock-out or other industrial action);
"Individual Insolvency Register"	means the public record maintained by The Insolvency Service, which provides on line access to the database of public records of individual insolvencies;
"Information"	means information in the Product obtained from The Insolvency Service;
"The Insolvency Service"	The Secretary of State for Business Innovation and Skills acting through the Inspector General of The Insolvency Service, 21 Bloomsbury Street, London WC1B 3QW;
"The Insolvency Service Literature"	means any document, brochure, tariff list, user guide or instructions as current from time to time published (whether on paper or in electronic form) by or on behalf of The

Insolvency Service in connection with the provision of or in any way relating to the Individual Insolvency Register;

- “Password” means such personal identification names(s) or number(s) as may be allocated to the Subscriber initially by the Secretary of State on subscribing to the Individual Insolvency Register, and which may be changed thereafter from time to time by the Secretary of State upon written notification to the other;
- "Product" means access to the XML based data file of the Individual Insolvency Register capable of being downloaded by the Subscriber once a day;
- “Software” means the software programmes (if any) provided by the Secretary of State to the Subscriber for the purpose of using the Individual Insolvency Register;
- “Subscription Charge” means the Secretary of State’s charge for the daily download access of the Product calculated as set out in Schedule 1;
- “System Identification Number” means such unique network or account identification(s) issued to the Subscriber by the Secretary of State as the Secretary of State shall deem fit in order to allow the Subscriber to download and have access to the Product.

1.2 Any reference in this Agreement to "writing" or cognate expressions includes reference to any communication effected by telex, cable, facsimile transmission or any comparable means.

1.3 The interpretation and construction of the Agreement shall be subject to the following provisions:

- 1.3.1 a reference to any statute, enactment, order, regulation or similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as subsequently amended or re-enacted;
- 1.3.2 the headings in these Clauses are for ease of reference only and shall not affect the interpretation or construction of the Agreement;
- 1.3.3 references to “person”, where the context allows, includes a corporation or an unincorporated association; and
- 1.3.4 the masculine includes the feminine and the neuter; and the singular includes the plural and vice versa.

2 ACTS BY THE SECRETARY OF STATE

Any decision, act or thing which the Secretary of State is required or authorised to take or do under the Agreement may be taken or done by any person authorised, either expressly or impliedly, by the Secretary of State to take or do that decision, act or thing.

3 SUPPLY OF THE PRODUCT

3.1 During the continuance of this Agreement The Insolvency Service shall supply and the Subscriber shall subscribe to the Product subject to the terms and conditions in this Agreement.

3.2 The Insolvency Service shall use its reasonable endeavours to ensure the Product is available for the Subscriber to download daily.

3.3 Any agreement between the parties to vary the terms of supply set out in Clause 3.2 may include additional charges to those provided for in Clause 5. Any agreement between the parties to vary the terms of this Agreement must be in accordance with Clause 20.

4. COMMENCEMENT AND CONTINUATION

4.1 This Agreement shall be deemed to have commenced on the Commencement Date and subject to the following provisions of this Clause shall continue in force for 365 days. A further agreement will be needed for each period of 12 months thereafter unless terminated by either party giving to the other not less than one month's prior written notice in accordance with Clause 15.

5 PRICE AND PAYMENT

5.1 In consideration of the Secretary of State providing access to the Individual Insolvency Register data file the Subscriber shall pay to the Secretary of State the annual Subscription Charge as set out in Schedule 1.

5.2 The price and method of payment for subscription to the Product for the First Year shall be that calculated in accordance with the provisions contained in Schedule 1. The Secretary of State shall publish details of the annual subscription charge in The Insolvency Service Literature. Any increase or decrease in the subscription charge shall be so published not less than 1 month before such increase or decrease comes into effect.

5.3 The Subscription Charge due to the Secretary of State under this Agreement shall be payable by the Subscriber in advance of the Product being made available.

5.4 Payment of all amounts due shall be made by the Subscriber in full by cheque or by such other method as may reasonably be specified by the Secretary of State from time to time.

6 USE OF THE PRODUCT

6.1 The Subscriber (including any agent or sub-contractor thereof) may extract Information obtained from the Product and transfer such Information to its own database. Thereafter the Subscriber may only copy and use the Information extracted from the Product for internal purposes or for providing Information to clients of the

Subscriber and may do so only by means of extraction from its own database. Under no circumstances may the Subscriber reproduce the Individual Insolvency Register, the Product, or a service similar to it comprising the Information extracted from the Individual Insolvency Register.

6.2 The Secretary of State shall not be responsible for the Subscriber's use of the Information. Without limitation to the generality of the foregoing, the Subscriber shall be responsible for complying with any applicable data protection, copyright and other legislation and regulations.

6.3 The Subscriber is not authorised to part with possession of the Product. The Subscriber is not authorised to provide duplicate copies of the Product to any other party.

6.4 Should the Subscriber engage a sub-contractor in accordance with Clause 17 for the analysis of any Information contained in the Product or the capture of the same as computer data, such a sub-contractor shall be required by the Subscriber to comply with all the provisions of this Agreement and all acts of that sub-contractor shall be deemed to be acts of the Subscriber.

7 CONTENT OF THE PRODUCT

7.1 The Insolvency Service may vary the content of the Product or the format of the Product at its discretion upon giving the Subscriber four months prior written notice, except where legislation requires earlier implementation and so hinders or prevents such length of notice.

8 SYSTEM IDENTIFICATION NUMBER

8.1 The Insolvency Service shall allocate a System Identification Number(s) to the Subscriber.

8.2 The Subscriber shall at all times comply with the conditions of use of the System Identification Number as specified herein or as otherwise notified to the Subscriber by The Insolvency Service from time to time or as may be included in The Insolvency Service Literature from time to time.

9 ALLOCATION

9.1 The Insolvency Service will allocate a System Identification Number and Password following receipt of payment of the Subscription Charge from the Subscriber. That System Identification Number and Password will expire after 365 days. The Insolvency Service may withdraw a System Identification Number and Password and forthwith allocate a new System Identification Number and Password to the Subscriber at no extra charge where The Insolvency Service has reason to believe such System Identification Number or Password has been discovered and/or used by a person without the knowledge, consent or permission, express or implied of the Subscriber, and on such other occasion as The Insolvency Service shall deem necessary in its reasonable opinion.

9.2 The Insolvency Service has the right to withdraw the System Identification Number and Password from the Subscriber if this Agreement or any part hereof is

terminated or suspended for any reason.

9.3 The Insolvency Service has the right to withdraw a System Identification Number and Password where in its opinion there are reasonable grounds for believing the Subscriber has not complied or is not complying with this Agreement.

9.4 The Insolvency Service shall have the right to reveal or disclose the System Identification Number, Password, Subscriber Name, address and telephone number of a Subscriber to any person to satisfy the legal demand of a court of law, government body or other competent tribunal or as required by any applicable law, rule or regulation.

10 SUBSCRIBER'S OBLIGATIONS

10.1 The System Identification Number and Password allocated to the Subscriber by The Insolvency Service are confidential and personal to the Subscriber and it is the Subscriber's responsibility to keep its System Identification Number and Password safeguarded.

10.2 The Subscriber undertakes to use the System Identification Number and Password in accordance with the rules and instructions given by the Secretary of State to the Subscriber from time to time whether in The Insolvency Service Literature or otherwise.

10.3 The Subscriber shall notify The Insolvency Service immediately where there are grounds for suspecting that a person has discovered or is making use of the Subscriber's System Identification Number and/or Password without the knowledge, consent or permission of the Secretary of State or the Subscriber.

10.4 The Subscriber shall not hold itself out as being or representing or otherwise associated or connected with the Secretary of State nor The Insolvency Service.

10.5 Without limitation to the foregoing, the Subscriber shall not use or refer to the Secretary of State and/or The Insolvency Service nor to any of their logos in any advertising, marketing or promotional literature or press release or statement without the prior written consent of the Secretary of State.

11 ENQUIRIES

11.1 Access enquiries will be handled by The Insolvency Service Change Programme IT development team, **but they cannot** advise on technical questions about how subscribers manage the interface between XML and their internal systems. All other enquiries will be handled by The Insolvency Service HQ Secretariat. Contact details are on The Insolvency Service website at <http://www.insolvency.gov.uk/contactus/hqcontact.htm> When sending an e-mail please use the subject title "access EIIR".

12 INSPECTION

12.1 In order to ensure that the provisions of this Agreement are complied with by the Subscriber, the Subscriber shall permit an employee or representative of the Secretary of State (without written notice, within normal business hours) access to its premises

to inspect the Subscriber's manual and computer databases and any other equipment and records used for or in connection with the transfer or storage of Information obtained from or comprised in the Product PROVIDED THAT such employee or representative provides the Subscriber with written confirmation from the Secretary of State of his authority to carry out such inspection at the time of that inspection.

13 WARRANTY AND LIABILITY

13.1 Nothing in this Agreement shall exclude or restrict liability for death or personal injury resulting from the negligence of the Secretary of State or his employees while acting in course of their employment.

13.2 In no circumstances shall the Secretary of State be liable to the Subscriber for any loss or damage arising from any interruption or cessation of the Product.

13.3 The Secretary of State hereby expressly excludes all liabilities in respect of inaccurate or incomplete Information obtained via the Product howsoever arising including (without limitation) those arising as a result of inaccuracies in the Information provided to the Secretary of State.

13.4 The Software (if any) provided by the Secretary of State is supplied to the Subscriber without charge and the Secretary of State excludes to the fullest extent permitted by law all express or implied representations, conditions or warranties statutory or otherwise as to the state, quality, accuracy, fitness, performance or otherwise of the Software.

13.5 The Subscriber acknowledges that it is the Subscriber's responsibility to comply with any conditions on use of the Software imposed by the owner or licensor of the Software.

13.6 The Secretary of State accepts no liability for any damage to the Subscriber's computer system arising from the transfer of any virus.

13.7 The Secretary of State shall during the term of this Agreement allow a second download of the Product by the Subscriber should the first be defective, as soon as is practicable after receiving notification of the same from the Subscriber.

13.8 The Subscriber hereby acknowledges and agrees that Clause 13.7 is in substitution for any and all rights which the Subscriber might otherwise have against the Secretary of State in connection with the supply of the Product by virtue of any express or implied term, representation, condition or warranty (statutory or otherwise) as to the state, quality, accuracy, completeness, fitness, performance or otherwise of the Product AND all such terms representations or conditions and warranties are hereby expressly excluded to the fullest extent permitted by law.

13.9 Notwithstanding Clauses 13.7 and 13.8 above the liability of the Secretary of State under this Agreement shall in any event be limited (in respect of the aggregate of all claims brought by the Subscriber in any one year of this Agreement) to the Subscription Charge of the Product for that year as provided for in Schedule 1.

13.10 In any event the Secretary of State shall not be liable in contract, tort or otherwise for any loss of business, contracts, profits or anticipated savings or for any indirect or consequential loss whatsoever.

14 SUSPENSION OF SERVICES

14.1 The Insolvency Service may at its sole discretion elect to suspend forthwith provision of the access to the Individual Insolvency Register data file until further notice on notifying the Subscriber either orally (confirming such notification in writing) or in writing in the event that:

- a) the Secretary of State is entitled to terminate this Agreement for any reason;
- b) The Insolvency Service withdraws the Subscriber's System Identification Number and / or Password under Clause 9.1; or
- c) the Secretary of State is obliged to comply with an order, instruction or request of government, emergency services organisation or other competent administrative authority; or
- d) The Insolvency Service has reason to believe that the Subscriber is in breach of the terms of this Agreement.

14.2 Any exercise by the Secretary of State of his rights of suspension in respect of an event referred to in Clause 14.1 shall not exclude the Secretary of State's rights subsequently to terminate this Agreement.

14.3 Where the service is suspended due to the Subscriber's breach of the terms of this Agreement. The Subscriber shall reimburse The Insolvency Service for all reasonable costs and expenses incurred in the implementation of such suspension and/or the recommencement of the provision of the Product.

15 TERMINATION

15.1 Either party may terminate this Agreement by giving to the other party one month's written notice of termination to be effective from the end of the last day of the notice period. The notice period must expire no later than the following anniversary of the Commencement Date.

15.2 If either party commits a material breach of the Agreement which is either not capable of remedy, or, if it is capable of remedy, he fails to remedy such breach within 28 days of being notified by the other party in writing to do so, that other party shall be entitled to terminate the Agreement with immediate effect by notice in writing to the party that committed the material breach and without prejudice to any other rights or remedies of either party in respect of the breach concerned or any other breach of the Agreement.

15.3 The Secretary of State shall be entitled forthwith to terminate this Agreement by written notice to the Subscriber if:-

- 15.3.1 an encumbrancer takes possession or a receiver is appointed over any of the property or assets of the Subscriber;
- 15.3.2 the Subscriber makes any voluntary arrangement with its creditors;
- 15.3.3 the Subscriber becomes subject to an administration order;

- 15.3.4 the Subscriber goes into liquidation (except for the purposes of an amalgamation, reconstruction or other reorganisation and in such a manner that the company resulting from the reorganisation effectively agrees to be bound by or to assume the obligations imposed on that other party under this Agreement);
- 15.3.5 the Subscriber ceases or threatens to cease to carry on business;
- 15.3.6 there is a change in the control of the Subscriber (which shall mean a change in the directors of the Subscriber or a substantial change in the ownership of the Subscriber other than as a result of any listing on the Stock Exchange or other similar market for shares). If the Subscriber gives notice in writing to The Insolvency Service Secretariat of any proposed change under this Clause 15.3.6, stating the nature of the proposed change and the identity of the party or parties involved, if Secretary of State does not exercise his right of termination within 30 days of receipt of that notice, then the right of the Secretary of State to terminate shall cease;

15.4 The rights to terminate this Agreement given by this Clause shall not prejudice any other right or remedy of either party in respect of the breach concerned (if any) or any other breach.

15.5 Upon the termination of this Agreement for any reason subject as otherwise provided in this Agreement (especially Clause 16) and to any rights or obligations which have accrued prior to termination neither party shall have any further obligation to the other under this Agreement.

16 EFFECT OF TERMINATION

16.1 Termination of this Agreement shall not prejudice or affect any right or action or remedy which shall have accrued or shall thereafter accrue to the Subscriber or to the Secretary of State.

16.2 Neither the Secretary of State nor The Insolvency Service shall be obliged to fulfil any of his obligations hereunder and shall not be obliged to refund to the Subscriber any payment made by the Subscriber to the Secretary of State or The Insolvency Service (save in the case of termination by the Subscriber pursuant to Clause 15.2 above in which event the Secretary of State shall refund to the Subscriber such part of the price paid that relates to the period after the date the written notice terminating this Agreement is received by the Secretary of State).

17 ASSIGNMENT AND SUB-CONTRACTING

17.1 The Subscriber shall not give, bargain, sell, assign, sub-contract or otherwise dispose of the Agreement or any part thereof without the previous agreement in writing of the Secretary of State.

17.2 The Subscriber shall not use the services of self-employed individuals in connection with the Agreement for downloading data without the previous agreement in writing of the Secretary of State.

17.3 If the Subscriber uses a sub-contractor for the purpose of downloading data, the Subscriber shall include in the relevant contract a provision which requires the

Subscriber to pay for those goods or services within 30 days of the Subscriber receiving a correct invoice from the sub-contractor.

17.4 The Subscriber shall be responsible for the acts and omissions of his sub-contractors downloading the data as though they were his own.

17.5 The Secretary of State shall be entitled to assign any or all of its rights under the Agreement to any Secretary of State as defined in Regulation 3(1) of the Public Services Contracts Regulations 1993, provided that such assignment shall not materially increase the burden of the Subscriber's obligations under the Agreement.

18 ENTIRE AGREEMENT

18.1 The Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior written and oral representations, agreements or understandings between them relating to the subject matter of the Agreement provided that neither party excludes liability for fraudulent misrepresentations upon which the other party has relied.

19 SEVERABILITY

19.1 If any Condition, clause or provision of the Agreement not being of a fundamental nature is held to be unlawful, invalid or unenforceable by a court or tribunal in any proceedings relating to the Agreement, the validity or enforceability of the remainder of the Agreement shall not be affected. If the court finds invalid a provision so fundamental as to prevent the accomplishment of the purpose of the Agreement, the parties shall immediately commence negotiations in good faith to remedy the invalidity.

20 VARIATION OF AGREEMENT

20.1 No amendment or variation to the terms of the Agreement shall be valid unless previously agreed in writing between the Secretary of State and the Subscriber.

21 APPLICABLE LAW

21.1 The Agreement shall be governed by and construed in accordance with English Law and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

22 NOTICES AND SERVICE

22.1 Any notice or other communication that either party gives under the Agreement shall be made in writing and given either by hand, first class recorded postal delivery or facsimile transmission. Notice given by hand shall be effective immediately, notice given by recorded postal delivery shall be effective two working days after the date of posting, notice given by facsimile transmission shall be effective the working day after receipt by the notifying party of a transmission slip showing that the transmission has succeeded.

22.2 The addresses of the Parties for service of notices in accordance with Clause 22.1 are:-

Secretary of State: Inspector General of The Insolvency Service
21 Bloomsbury Street
LONDON
WC1B 3QW

Subscriber:

23 FORCE MAJEURE

23.1 If either party is affected by Force Majeure it shall promptly notify the other party of the nature and extend of the circumstances in question.

23.2 Notwithstanding any other provision of this Agreement neither party shall be deemed to be in breach of this Agreement or otherwise be liable to the other for any delay in performance or the non-performance of any of its obligations under this agreement to the extent that any delay or non-performance is due to any Force Majeure of which it has notified the other party. The time for performance of that obligation shall be extended by such reasonable period as shall be agreed between the Parties.

SIGNED by

Date

on behalf of

SIGNED by

Date

**an official of The Insolvency Service Agency authorised to act on behalf of the
SECRETARY OF STATE FOR BUSINESS INNOVATION AND SKILLS**

SCHEDULE 1

Commencement date

The Secretary of State shall commence supply of the product on

Subscription Charge and method of payment

- 1.1 The Subscription Charge is payable annually in advance prior to any access to the Product. The Commencement Date of the Agreement is as set out in Clause 4, and all dates are reckoned from that Commencement Date.
- 1.2 Any revision thereafter of the Subscription Charge shall depend on the cost of the resources to supply the Product and shall be communicated to the Subscriber in accordance with Clause 5.2.

Please make cheques payable to The Insolvency Service and quote EIIR with your remittance.

Alternatively, you can pay by BACS to CitiBank. Please quote EIIR on your BACS remittance

BANK:	CitiBank
SORT CODE:	08/33/00
ACCOUNT NO:	12307618
ACCOUNT NAME:	GBS RE INSS VOTE