

HOULDEN & MORAWETZ INSOLVENCY NEWSLETTER

LICENSE AGREEMENT

WHEREAS the DATA FILES and associated documentation herein are provided on the terms and conditions set out in this license agreement;

AND WHEREAS the installation of the DATA FILES constitutes the licensee's acceptance and agreement to be bound by the terms and conditions of this license agreement;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the mutual covenants and promises contained in this Agreement, the parties agree as follows:

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- 1.2 The term "LICENSEE" means the end user, being any partner, officer, director or employee of such end user.
- 1.3 The term "LICENSOR" means Carswell, a division of Thomson Reuters Canada Limited, incorporated under the laws of the province of Ontario.
- 1.4 The term DOCUMENT DELIVERY SERVICE means a service, whether or not established or conducted for profit, of making a copy of a work and supplying the copy to any individual or entity.

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- 3.3 The LICENSEE may copy the DATA FILES in any machine-readable form for back-up purposes, or onto a hard disk in support his or her use of the DATA FILES on the designated computer terminals for which license fees have been paid.
- 3.4 The DATA FILES may be reproduced by the LICENSEE for use in the preparation of client documentation only in the course of the LICENSEE'S practice of law, but the LICENSEE may not otherwise reproduce or copy, or transfer any part of the DATA FILES to any other party.
- 3.5 Notwithstanding Articles 3.2, 3.3 and 3.4 herein, the LICENSEE may make the DATA FILES available on its Intranet to users who are located at a branch office of the LICENSEE, so long as that branch office is a full subscriber to the DATA FILES.
- 3.6 The LICENSEE shall not, without the written permission of the LICENSOR:
- (a) copy all or part of the DATA FILES, save and except an insubstantial part thereof, onto a memory storage facility of any computer, and keep on such storage facility, provided that insubstantial parts thereof may be downloaded and temporarily stored in a computer only for so long as the initial project of the LICENSEE requiring it is continuing. Such temporary storage facility must consist preponderantly of the LICENSEE'S work product;
 - (b) use all or any part of the DATA FILES in a Document Delivery Service, commercial time sharing, rental network, computer service, research service, service bureau business or interactive cable television arrangement;

(c) publish, sell, lease, rent, licence, sub-licence, transfer, market, distribute, redistribute or otherwise part with all or part of the DATA FILES in any manner or in any form;

(d) copy, modify, alter, disassemble, de-compile, translate or convert into human readable form, or reverse engineer, all or any part of the DATA FILES; or

(e) use all or part of the DATA FILES to develop any derivative works, any functionally comparable or competitive software, or a directory or database prepared for commercial sale.

4. ASSIGNMENT

4.1 The LICENSEE may not assign, sub-license, or otherwise transfer this Agreement or any of the LICENSEE'S rights or obligations under this Agreement, to any person except with the prior written consent of the LICENSOR.

4.2 The LICENSOR may assign, sub-license, or otherwise transfer this Agreement or any of the LICENSOR'S rights or obligations under this Agreement to any affiliate of the LICENSOR without the prior written consent of the LICENSEE.

4.3 The LICENSOR or such affiliate of the LICENSOR as set out in Article 4.2 above may assign, sub-license or otherwise transfer this Agreement or any of the LICENSOR'S or said affiliate's rights or obligations under this Agreement to any third-party successor without the prior written consent of the LICENSEE.

5. TERMINATION OF LICENCE

5.1 This agreement terminates automatically, without notice from the LICENSOR, if the LICENSEE fails to comply with any term of condition of this Agreement.

5.2. Upon termination of this agreement the LICENSEE agrees that it shall erase or destroy any downloaded DATA FILES or parts thereof together with all copies thereof.

5.3 The provisions of Articles 2, 3.6 and 6 of this agreement shall survive the termination of this agreement.

5.4 Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall the obligation to pay

fees accrued prior to termination.

6. LIMITED WARRANTIES AND LIMITATION OF LIABILITY

- 6.1 THE LICENSOR DISCLAIMS ANY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE DATA FILES. THE LICENSOR DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE DATA FILES WILL MEET THE LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE DATA FILES WILL BE UNINTERRUPTED OR ERROR FREE.
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- 6.5 THIS ARTICLE 6 APPLIES REGARDLESS OF THE BASIS ON WHICH THE LICENSEE IS ENTITLED TO CLAIM, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT OR TORT, EVEN IF THE DAMAGES ARE CAUSED BY BREACH OF CONTRACT (INCLUDING, WITHOUT LIMITATION, FUNDAMENTAL BREACH), CONTRACTUAL FAULT OR BY THE NEGLIGENCE, GROSS NEGLIGENCE, NEGLIGENT MISREPRESENTATION OR OTHER FAULT OF THE LICENSOR, AND EVEN IF THE LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES.
- 6.6 IN NO EVENT SHALL THE LICENSOR, ITS AFFILIATES AND/OR CONTRIBUTORS BE LIABLE TO THE LICENSEE FOR ANY CLAIMS RELATING IN ANY WAY TO THE LICENSEE'S INABILITY OR FAILURE TO PERFORM LEGAL OR OTHER RESEARCH OR WORK PROPERLY OR COMPLETELY EVEN IF ASSISTED BY THE LICENSOR, ITS AFFILIATES OR CONTRIBUTORS, OR ANY DECISION MADE OR ACTION TAKEN BY THE LICENSEE IN RELIANCE UPON THE DATA FILES.
- 6.7 THE LICENSEE ACKNOWLEDGES THAT THE PROVISION OF THE DATA FILES ENTAILS THE LIKELIHOOD OF SOME HUMAN AND MACHINE ERRORS, DELAYS, INTERRUPTIONS AND LOSSES, INCLUDING THE INADVERTENT LOSS OF DATA FILES OR DAMAGE TO MEDIA.
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- 6.9 THE LICENSOR DOES NOT RATIFY, ENDORSE, WARRANT, CONFRIM OR REPRESENT THE EXPERTISE OR COMPETENCE OF ANY OF THE INDIVIDUALS OR ORGANIZATIONS LISTED IN ANY DIRECTORIES.

7. **RELEASE OF INFORMATION**

- 7.1 The LICENSEE hereby authorizes and warrants to the LICENSOR that it has the authority to authorize the release to the LICENSOR of LICENSEE and user information pertinent to this licence, including: the LICENSEE's name, address and email address, and the individual names, email addresses and legal practice areas of all users of the DATA FILES under this agreement.
- 7.2 Where the LICENSEE is an academic institution, the LICENSEE hereby authorizes the release to the LICENSOR of information pertinent to this agreement, including the LICENSEE'S name, address, email address, status as student, faculty member or librarian, course of study and expected year of graduation.
- 7.3 Authorization provided pursuant to Articles 7.1 and 7.2 includes any permission required under any applicable information or privacy legislation anywhere in Canada.
- 7.4 The LICENSOR undertakes to use the information collected under this clause only for its own internal purposes and will not distribute the information, in whole or in part, to any outside organization.

8. GOVERNING LAW

- 8.1.1 This agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the law of Canada applicable therein.

9. EFFECT OF AGREEMENT

- 9.1 This Agreement constitutes the entire agreement of all the parties with respect to the subject-matter hereof, except as stated in this agreement and supersedes any and all prior understandings and agreements, oral or written, relating to the subject-matter of this agreement.
- 9.2 This agreement contains all of the representations, undertakings and agreements of all parties respecting the subject-matter. There are no representations, undertakings or agreements of any kind between all the parties respecting the subject-matter hereof except those contained in this agreement.

10. AMENDMENT OF AGREEMENT

- 10.1 The LICENSOR may amend the terms and conditions of this agreement by giving at least 30 days prior notice of the Additional Terms to the LICENSEE in writing or online, subject to the LICENSEE'S right to terminate this agreement immediately upon giving written notice to the LICENSOR within 30 days of being deemed to have received notice from the LICENSOR of the Additional Terms.
- 10.2 Any other amendment to this agreement shall be made in writing signed by the LICENSOR and the LICENSEE.

11. SEVERABILITY

- 11.1 The invalidity or unenforceability of any provision of this agreement shall not affect the validity or enforceability of any other provision.

12. WAIVER OF BREACH

- 12.1 No waiver on behalf of any part of any breach of the provisions shall be effective or binding on such party unless the same shall be expressed in writing and any waiver so expressed shall not limit or affect such party's rights with respect to any future breach of any of the provisions of this agreement.

13. INTERPRETATION NOT AFFECTED BY HEADINGS

- 13.1 The division of this agreement into paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.

14. NOTICES

- 14.1 Any notice or other documents required or permitted to be given hereunder shall be in writing and shall be delivered by e-mail or courier, mailed by pre-paid registered mail, return receipt requested or sent by facsimile transmission addressed to the party or parties to whom it is to be given at the address shown below or at such other

address or addresses as the party or parties to whom such writing or document is to be given shall have last notified all other parties hereto in accordance with the provisions of this section:

if to the LICENSOR:

Thomson Reuters Canada, Legal
One Corporate Plaza
2075 Kennedy Road
Scarborough, Ontario
M1T 3V4
(Attention: Customer Relations) Or:

customerrelations@thomsonreuters.com.

- (b) if to the LICENSEE at the most recent address in the LICENSOR'S records, or online.

14.2 Any such notice or other document shall:

- (a) if delivered by e-mail or courier be deemed to have been given and received on the date of delivery, provided that if such date is a day other than a business day in the place of receipt, such notice or document shall be deemed to have been given and received at the place of receipt on the first business day in the place of receipt, thereafter;
- (b) if transmitted by facsimile transmission, be deemed to have been given and received at the place of receipt on the next business day in the place of receipt, following the day of sending, and
- (c) if mailed, be deemed to have been given and received at the place of receipt three business days following the posting in the Canadian postal system.

14.3 In the event of postal disruption, such notices or documents must either be delivered personally or by e-mail, courier or facsimile transmission.

15. DISPUTE RESOLUTION

- 15.1 All disputes, controversies or claims arising out of or in connection with or in relation to this agreement, including any question regarding its existence, validity or termination, or arising out of or relating to the DATA FILES, oral or written statements, advertisements, or promotions relating to this agreement or to the DATA FILES, or to the relationships which result from this agreement, including relationships with third parties who are not signatories to this agreement shall be submitted to and be subject to arbitration, to the exclusion of the courts.
- 15.2 The LICENSEE agrees to waive any rights the LICENSEE may have to commence or to participate in any class action against the LICENSOR related to any claim and, where applicable, also agrees to opt out of any class proceedings against the LICENSOR.
- 15.3 Written notice of any dispute, controversy or claim submitted to arbitration shall be given by the party submitting the claim to arbitration to the other party in accordance with the notice provisions in Article 14.
- 15.4 Arbitration of claims shall be conducted in such forum and pursuant to such rules as the LICENSOR and LICENSEE agree upon, and failing agreement, arbitration shall be conducted by one arbitrator pursuant to the laws and rules relating to commercial arbitration in the Province of Ontario that are in effect at the date of the notice to arbitrate.

16. INDEMNITY

- 16.1 The LICENSEE will indemnify the LICENSOR and hold the LICENSOR harmless for and against any and all claims which a third party may assert against the LICENSOR by reason of or as a consequence of the LICENSEE'S use of the DATA FILES.

17. LANGUAGE

- 17.1 At the request of the parties, the official language of this agreement and all communications and documents relating hereto is the English language, and the English-language version shall govern all interpretation of the agreement.