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# TERMS AND CONDITIONS OF USE

IN TERMS OF SECTION 11 OF THE [ELECTRONIC COMMUNICATIONS AND TRANSACTIONS \(ECT\) ACT 25 OF 2002](#) AND THE COMMON LAW OF CONTRACT, THESE TERMS AND CONDITIONS ARE VALID, BINDING AND ENFORCEABLE AGAINST ALL PERSONS THAT ACCESS THE ABSi WEBSITE OR USE THE SERVICE THROUGH THE ABSi WEBSITE OR ANY PART THEREOF.

IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS AND CONDITIONS, YOU MUST LEAVE THE WEBSITE(S) IMMEDIATELY AS FURTHER USE WILL AUTOMATICALLY BIND YOU TO THESE TERMS AND CONDITIONS.

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## DEFINITIONS AND INTERPRETATION

- a) **"ABSi"** means ABSi Database (Pty) Ltd, reg. no. 2005/031427/07 of Capespan, Parc du Cap, Mispel Road, Bellville, 7530, Cape Town, South Africa;
- b) **"Website"** means the ABSi website, including the services available on and through the website and any page, part or element thereof;
- c) **"User"** means any person who enters or uses the Website;
- d) References herein to the singular includes the plural and vice versa; and
- e) Hyperlinks herein to legal documents should be deemed part of these terms and conditions in terms of section 11(3) of the [ECT Act](#). The fact that some or all of the hyperlinks may, from time to time, be non-operational, shall not affect the validity and interpretation of these terms and conditions.

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## 1. GENERAL

The goal of this Website is to:

- 1.1. Communicate stakeholders' (fresh produce growers and packers') information on food safety, ethical trading practices and other matters relating to good agricultural practice and market access requirements to their clients; and
- 1.2. Supplying information on clients' requirements regarding these matters to fresh produce suppliers in a user-friendly format.

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## 2. ALLOWED USE AND LICENSE

- 2.1 ABSi licenses the User to view, download, and print the content of the Website provided that such use is for private, personal, educational, and/or non-commercial purposes only.
- 2.2 Content from the Website may not be used or exploited by Users for any commercial and non-private purposes without the prior written consent of ABSi.
- 2.3 Users may only access, browse and use the Website for legitimate personal or commercial purposes and may not use the Website for:
  - 2.3.1 Harmful purposes;
  - 2.3.2 Illegal purposes;
  - 2.3.3 Disclosing, sharing or publishing material that may be offensive, defamatory, regulated, copyrighted, incorrect, untrue, prohibited, infringing or damaging to any person; and/or
  - 2.3.4 The creation, storage and sending of unsolicited commercial communications.

- 2.4 The caching of the Website shall only be allowed if:
- 2.4.1 The purpose of the caching is to make the onward transmission of the content from the Website more efficient;
  - 2.4.2 The cached content is not modified in any manner whatsoever;
  - 2.4.3 The cached content is updated at least every 12 (twelve) hours; and
  - 2.4.4 The cached content is removed or updated when so required by ABSi.
- 2.5 If any User uses content from the Website in breach of the provisions detailed herein:
- 2.5.1 ABSi reserves the right to claim damages from the User;
  - 2.5.2 ABSi reserves the right to institute criminal proceedings against the User; and
  - 2.5.3 ABSi shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of such content by the User or any third party who obtained any content from the User.
- 2.6 Hyperlinks to the Website from any other source shall be directed at the home page of the Website. Links beyond the ABSi home page may only be used with ABSi's prior written consent.
- 2.7 ABSi shall not be liable, in any manner whatsoever, for any damage, loss or liability that resulted from the use of content, products or services available from the Website, if such content, products or services was accessed through a hyperlink not directed at the home page of the Website. Persons that wish to link to pages beyond the home page of the Website without ABSi's prior written consent shall do so at their own risk and indemnify ABSi against any loss, liability, or damage that may result from the use of such hyperlinks. ABSi's non-liability for deep linking is because deep links bypass these terms and conditions.
- 2.8 Users may quote small and reasonable amounts of content available from the Website and only if such a quote is placed in inverted commas and acknowledged.
- 2.9 No person may, without the prior written consent of ABSi, frame the Website in any manner whatsoever.
- 2.10 Apart from bona-fide search engine operators and use of the search facility provided on the Website by Users, no person may use or attempt to use any technology or applications (including web crawlers, robots or web spiders) to search, collect or copy content from the Website for any purpose whatsoever, without the prior written consent of ABSi.
- 2.11 Email addresses, names, telephone numbers, and fax numbers published on the Website may not be incorporated into any database used for electronic marketing or similar purposes. No permission is given or should be implied that information on the Website may be used to communicate unsolicited communications to ABSi and all rights detailed in section 45 of the [ECT Act](#) are reserved.
- 2.12 All licenses and/or permissions granted in terms of this clause 2 are provided on a non-exclusive and non-transferable basis and may be terminated or cancelled by ABSi at any time without prior notice or reasons.

### 3. INTELLECTUAL PROPERTY RIGHTS

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- 3.1 All intellectual property on the Website, including but not limited to content, trademarks (or any confusingly similar trademarks), trade names, logos, pictures, video, downloads, domain names, patents, design elements, software, source code, meta tags, databases, text, graphics, icons and hyperlinks are the property of or licensed to ABSi and as such, are protected from infringement by domestic and international legislation and treaties. Subject to the rights licensed to the User in [section 2](#), all other rights to intellectual property on the Website are expressly reserved.

- 3.2 No person shall amend, copy, use, decompile and/or reverse engineer the source code of the Website.
- 3.3 No person may use logos, icons, or trademarks from the Website as hyperlinks or other purposes without ABSi's prior written consent.

#### 4. SOFTWARE AND EQUIPMENT

It is the responsibility of the User to acquire and maintain, at his/her own expense, the necessary computer hardware, software, communication lines and Internet access accounts required to access the Internet and the Website and/or download content from the Website.

#### 5. DISCLOSURES REQUIRED BY SECTION 43 OF THE ECT ACT

Access to the Website may be classified as "electronic transactions" as defined in terms of the [ECT Act](#) and therefore Users have the rights detailed in Chapter 7 of the [ECT Act](#) and ABSi has, amongst others, the duty to disclose the following information:

FULL NAME AND LEGAL STATUS OF WEBSITE OWNER	ABSi Database (Pty) Ltd
REGISTRATION NUMBER	2005/031427/07
PHYSICAL ADDRESS	Capespan, Parc du Cap, Mispel Road, Bellville, 7530, Cape Town, South Africa
POSTAL ADDRESS	P.O. Box 505 Bellville, 7535
TELEPHONE NUMBER	+27 21 917 26 95 +27 21 917 27 42
FAX NUMBER	+27 21 917 28 00
WEBSITE ADDRESS	<a href="http://www.absi.co.za">www.absi.co.za</a>
EMAIL ADDRESS	<a href="mailto:info@absi.co.za">info@absi.co.za</a>
MEMBERSHIP OF SELF-REGULATORY BODIES	N/A
CODE OF CONDUCT	N/A
PHYSICAL ADDRESS FOR RECEIPT OF LEGAL SERVICE	Capespan, Parc du Cap, Mispel Road, Bellville, 7530, Cape Town, South Africa
ALTERNATIVE DISPUTE RESOLUTION	Subject to urgent and/or interim relief, all disputes regarding: i) access and use of the Website; ii) the inability to access the Website; iii) the services and content available from the Website; or iv) these terms and conditions, shall be referred to arbitration in terms of the <a href="#">expedited rules of the Arbitration Foundation of South Africa</a> and such arbitration proceedings shall be conducted in Cape Town in English. The arbitration ruling shall be final and the unsuccessful party shall pay the costs of the successful party on a scale as between attorney and own client. The expedited rules of the Arbitration Foundation of South Africa may be downloaded from the following website: <a href="http://www.arbitration.co.za">http://www.arbitration.co.za</a>
COMPLAINTS	<a href="mailto:info@absi.co.za">info@absi.co.za</a>

COOLING OFF RIGHTS

NA

## 6. CHANGES AND AMENDMENTS

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ABSi reserves the right, in its sole and absolute discretion, to do any of the following, at any time without prior notice or justification:

- 6.1 change these terms and conditions;
- 6.2 change the content and/or service available from the Website;
- 6.3 discontinue any aspect of the Website or service(s) available from the Website; and/or
- 6.4 change the software and hardware required to access and use the Website.

## 7. PRIVACY

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- 7.1 ABSi shall take all reasonable steps to protect the personal information of Users and for the purpose of this clause, "*personal information*" shall be defined as detailed in the [Promotion of Access to Information Act 2 of 2000](#) (PAIA).
- 7.2 ABSi may electronically collect, store and use the following personal information of Users:
  - 7.2.1 name and surname;
  - 7.2.2 area code;
  - 7.2.3 street address;
  - 7.2.4 postal address;
  - 7.2.5 title;
  - 7.2.6 contact numbers;
  - 7.2.7 non-personal browsing habits and click patterns;
  - 7.2.8 e-mail address; and / or
  - 7.2.9 IP address.
- 7.3 ABSi collects, stores and uses the abovementioned information for the following purposes:
  - 7.3.1 Communicate requested information to the User;
  - 7.3.2 Provide services to the User as requested by the User;
  - 7.3.3 Authenticate the User;
  - 7.3.4 Provide the User with access to restricted pages on this website; and / or
  - 7.3.5 Compile non-personal statistical information about browsing habits, click-patterns, and access to the Website.
- 7.4 Information detailed above is collected either electronically by using cookies or is provided voluntarily by the User. Users may determine cookie use independently through their browser settings.
- 7.5 ABSi may collect, maintain, save, compile, share, disclose and sell any information collected from users, subject to the following provisions:
  - 7.5.1 ABSi shall not disclose personal information from Users unless the User consents thereto;
  - 7.5.2 ABSi shall disclose personal information without the User's consent only through due legal process; and

- 7.5.3 ABSi may compile, use and share any information that does not relate to any specific individual.
- 7.6 ABSi own and retain all rights to non-personal statistical information collected and compiled by ABSi.

## 8. HYPERLINKS TO THIRD PARTY SITES

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- 8.1 ABSi may provide hyperlinks to websites not controlled by ABSi ("target sites") and such hyperlinks do not imply any endorsement, agreement on or support of the content, products, and/or services of such target sites.
- 8.2 ABSi does not editorially control the content, products and/or services on target sites and shall not be liable, in any manner whatsoever, for the access to, inability to access, use, and inability to use or content available on or through target sites.

## 9. SECURITY

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- 9.1 ABSi shall take all reasonable steps to secure the content of the Website and the information provided by and collected from Users from unauthorised access and/or disclosure. However, ABSi does not make any warranties or representations that content shall be 100% safe or secure.
- 9.2 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, ABSi is under no legal duty to encrypt any content or communications from and to Users and is also under no legal duty to provide digital authentication of any pages on the Website.
- 9.3 Users may not deliver or attempt to deliver, whether on purpose or negligently, any damaging code, such as computer viruses, robots or spy ware, to the Website or the server and computer network that support the Website.
- 9.4 Notwithstanding criminal prosecution, any person who delivers or attempts to deliver any damaging code to the Website, whether on purpose or negligently, shall, without any limitation, indemnify and hold ABSi harmless against any and all liabilities, damages, risks and losses that ABSi and its partners / affiliates may suffer as a result of such delivery, attempt or damaging code.
- 9.5 Users may not develop, distribute, or use any device or programme designed to breach or overcome the security measures of the restricted pages, products and services on the Website and ABSi reserves the right to claim damages from any and all persons involved, directly and indirectly, in the development, use and distribution of such devices or programmes.
- 9.6 Users who commit any of the offences detailed in sections 85 to 88 of the [ECT Act](#) shall, notwithstanding criminal prosecution, be liable for all resulting liabilities, losses, destruction or damages suffered and/or incurred by ABSi and its partners / affiliates due to or related to these illegal actions.

## 10. DISCLAIMER AND LIMITATION OF LIABILITY

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- 10.1 Subject to the provisions of sections 43(5) and 43(6) of the [ECT Act](#), if applicable, and as far as allowed by law, ABSi (including its owners, employees, suppliers, Internet service providers, partners, affiliates and agents) shall not be liable for any damage, loss or liability of any nature incurred by whomever and resulting from:
- 10.1.1 access to the Website;
- 10.1.2 access to and use of the service;

- 10.1.3 access to websites linked to the Website;
  - 10.1.4 inability to access the Website or use the service;
  - 10.1.5 inability to access websites linked to the Website;
  - 10.1.6 content available on the Website;
  - 10.1.7 services available from the Website; or
  - 10.1.8 any other reason not directly related to ABSi' gross negligence.
- 10.2 The ABSi website is supplied on an "as is" basis and has not been compiled to meet the User's individual requirements. It is the responsibility of the User to satisfy himself or herself, prior to entering into this agreement with ABSi, that the content available from and through the Website meet the User's individual requirements and is compatible with the User's computer hardware and/or software.
- 10.3 Information, ideas and opinions expressed on the Website should not be regarded as professional advice or the official opinion of ABSi and Users are encouraged to consult professional advice before taking any course of action related to the information, ideas or opinions expressed on the Website.
- 10.4 ABSi does not make any warranties or representation that content and services available from the Website shall in all cases be true, correct or free from any errors. ABSi shall take all reasonable steps to ensure the quality and accuracy of content available from the Website.
- 10.5 ABSi does not make any warranties or representations that the Website shall be available at all times. Users acknowledge that the Website may be unavailable due to updates or other causes beyond the reasonable control of ABSi, including, but not limited to virus infection, unauthorised access (hacking), power failure or other "acts of God."
- 10.6 The Website and the service are provided "as is" and no warranties, implied or express, are given or implied.

## **11. REMOVAL AND CORRECTION OF CONTENT**

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Users are encouraged to report untrue, inaccurate, defamatory, illegal, infringing, and/or harmful content available from the Website to ABSi and ABSi undertakes to correct and/or remove such content or any part thereof if the person reporting such content provided reasonable grounds to prove the alleged nature of the content.

## **12. INTERCEPTION OF COMMUNICATIONS**

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- 12.1 Subject to the provisions of the [Regulation of Interception of Communications \(RIC\) Act 70 of 2002](#), the User agrees to ABSi's right to intercept, block, filter, read, delete, disclose and use all communications (including all "data messages" as defined in the [ECT Act](#)) send or posted by the User to the Website, its staff and employees.
- 12.2 The User agrees and acknowledges that the consent provided by the User in clause 12.1 satisfies the "writing" requirement as detailed in the [ECT Act](#) and the RIC Act.

## **13. ENTIRE AGREEMENT AND SEVERABILITY**

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- 13.1 These terms and conditions constitute the entire agreement between ABSi and the User and shall take precedent over any disclaimers and/or legal notices attached to any communications and/or postings received by ABSi from the User.
- 13.2 Any failure by ABSi to exercise or enforce any right or provision shall in no way constitute a waiver of such right or provision.

- 13.3 In the event that any term or condition detailed herein is found unenforceable or invalid for any reason, such term(s) or condition(s) shall be severable from the remaining terms and conditions. The remaining terms and conditions shall remain enforceable and applicable.

#### **14. AGREEMENT IN TERMS OF SECTION 21 OF THE ECT ACT**

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The User and ABSi agree that:

- 14.1 the User shall be bound to these term and conditions and such agreement is concluded in Cape Town (South Africa) at the time the User enters the Website for the first time;
- 14.2 data messages (as defined in the [ECT Act](#)) addressed by the User to ABSi shall only be deemed to have been received if and when responded to;
- 14.3 data messages (as defined in the [ECT Act](#)) addressed to the User by ABSi shall be deemed to be received by the User as detailed in section 23(b) of the [ECT Act](#);
- 14.4 data messages (as defined in the [ECT Act](#)) addressed by the User to ABSi shall be deemed to have been created and sent by the User from within the geographical boundaries of South Africa;
- 14.5 electronic signatures, encryption and/or authentication is not required for valid electronic communications between the User and ABSi; and
- 14.6 the User agrees and warrants that data messages that are sent to ABSi from a computer, IP address or mobile device normally used by or owned by the User, was sent and/or authorised by the User personally.

#### **15. APPLICABLE AND GOVERNING LAW**

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The ABSi Website is hosted, controlled and operated from the Republic of South Africa and therefore, subject to [clause 5](#) the South African law enforced by the South African courts governs the use or inability to use the Website, its content, services, products and these terms and conditions.

#### **16. LEGAL COSTS**

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ABSi shall not be liable for costs incurred by Users to obtain professional advice relating to these terms and conditions.

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