

# NameScan Subscription Agreement

Effective from 1 July 2019

## 1 Agreement

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- (a) This Subscription Agreement (“**Agreement**”) is between NameScan, a division of Member Check Pty Limited (ABN 64 129 012 344) of Suite 213, 7 Railway Street, Chatswood NSW 2067, Australia (“**MemberCheck**”) and the Client registered with MemberCheck as a user of the NameScan Service as defined below (“**Client**”).
- (b) This Agreement governs the Client’s use of the NameScan Service (defined in clause 2). The Client may not receive the NameScan Service unless and until the Client has:
  - (1) been registered by MemberCheck as a Client; and
  - (2) agreed to this Agreement, (which includes any Addenda), by clicking on the Website ‘I HAVE READ AND AGREE TO THE TERMS OF THE SUBSCRIPTION AGREEMENT’.
- (c) Any individual who enters into this Agreement on behalf of the Client warrants that he or she is authorised to enter into this Agreement on behalf of the Client and to bind the Client to this Agreement.
- (d) This Agreement commences on the date it is agreed to by the Client (“**Commencement Date**”).
- (e) MemberCheck may amend this Agreement from time to time and will publish those amendments on its Website. The Client’s continued use of the NameScan Service after such amendments will constitute acceptance of the amendments by the Client.

## 2 Scope of NameScan Service

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- (a) “**NameScan Service**” means the service supplied by MemberCheck described in Schedule 1, including any part of that service supplied by MemberCheck from a third party, through NameScan’s Website such as the services referred to in clause 2(b) below.
- (b) Some parts of the NameScan Service are subject to specific terms and conditions. These include:
  - (1) Specific Terms of Use for the Ruby Check Service set out in Addendum A to this Agreement (“**Ruby Check Addendum**”) - **Addendum A**.
  - (2) Specific Terms of Use for the Sapphire Check Service are as set out in Addendum B to this Agreement, (“**Sapphire Check Service Addendum**”) – **Addendum B**.
- (c) Those specific terms and conditions may incorporate third parties, as specified in each Addendum.

## 3 Client’s use of the NameScan Service

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- (a) MemberCheck will supply to the Client the NameScan Service in accordance with this Agreement.
- (b) During this Agreement, MemberCheck grants to the Client a non-exclusive, non-transferable, revocable licence to access and use the NameScan Service only for the purposes, and subject to any restrictions, specified in this Agreement, including in any Addenda.
- (c) The Client must:
  - (1) use the NameScan Service only for the purpose of:
    - (A) assisting in complying with legal duties and regulations which apply to the Client;
    - (B) performing a statutory role as a Governmental organisation;
    - (C) performing law enforcement duties; or
    - (D) assisting a third-party entity in relation to the obligations set out in (A) to (C) above.
  - (2) only allow Permitted Users to access and use the NameScan Service;
  - (3) only access the Ruby Check Service if the Client is in Australia or New Zealand;
  - (4) prevent any third person from using the Client’s user ID or password;
  - (5) inform MemberCheck immediately of any actual or potential unauthorised access to the Client’s MemberCheck account, or to any part of the NameScan Service.

- (d) The Client must not:
- (1) reproduce, distribute, display, sell, publish, broadcast or circulate the NameScan Service or any information retrieved from the NameScan Service to any third party (than otherwise required by law), nor make the NameScan Service available for any such use, unless authorised in writing by MemberCheck;
  - (2) use any device, software or routine to interfere or attempt to interfere with the proper working of the NameScan Service or any activity conducted through the Website; or
  - (3) take any action which imposes an unreasonable or disproportionately large load on MemberCheck infrastructure.
- (e) The Client allows the use of its name and logo in any NameScan Service marketing material, including references to you as a user of the NameScan Service, on the NameScan Services Website.

#### 4 Term

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- (a) This Agreement commences on the Commencement Date and continues unless terminated in accordance with this Agreement.

#### 5 Fees

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- (a) The Client must pay to MemberCheck the fees specified on the Website.

#### 6 GST

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- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Australian Act 1999* is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Unless expressly included, the consideration for any supply made under or in connection with this agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this agreement (other than an amount referred to in clause 6(g), which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (Supplier) under or in connection with this agreement, the consideration to be provided under this agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 6(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this agreement the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 6(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (g) If one of the parties to this agreement is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 6(e).

#### 7 Privacy

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Each party agrees to comply with all privacy and other data protection laws that apply to it and the reasonable directions of the other party in relation to personal information supplied by that other party.

#### 8 Intellectual Property Rights

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- (a) The intellectual property rights in all software, content, and functionality of the NameScan Service and all information supplied through the NameScan Service are owned by MemberCheck or another third party ("**MemberCheck IP**"). MemberCheck grants to the Client a non-exclusive, revocable licence to use the MemberCheck IP solely for the purpose of, and in accordance with, this Agreement.
- (b) The Client retains all intellectual property rights in all information and other materials the Client supplies to MemberCheck under this Agreement. The Client grants to MemberCheck a nonexclusive licence to use such information and materials for the purpose of MemberCheck supplying the NameScan Service to the Client.

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## 9 Client Warranties

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- (a) The Client warrants and undertakes that:
- (1) this Agreement creates legally binding obligations of the Client; and
  - (2) it is bound by and agrees to comply with the terms of the Ruby Check Service Addendum, which appears in Addendum A, if the Client is provided access to the Ruby Check Service; and/or
  - (3) it is bound by and agrees to comply with the terms of the Sapphire Check Service Addendum, which appears in Addendum B, if the Client is provided with access to the Sapphire Check Service.

## 10 MemberCheck Warranties

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- (a) MemberCheck warrants that:
- (1) the NameScan Service will operate substantially as described in Schedule 1; and
  - (2) it is entitled to enter into this Agreement and perform its obligations under this Agreement.
- (b) The Client may have rights under statutory consumer protection laws in its jurisdiction (including the Australian Competition and Consumer Act 2010 (Cth)), which cannot be excluded, restricted, limited or modified. The following exclusions of warranties, and the limitation of liability in clause 11 below, apply subject to any non-excludable rights the Client may have under such laws.
- (c) Subject to clause 10(b), all representations, warranties, conditions, terms, guarantees and other provisions implied or imposed by or under statute or common law including, without limitation, warranties, guarantees or other terms as to suitability, merchantability, satisfactory or acceptable quality and fitness for a particular purpose, are excluded to the maximum extent permitted by law. Unless expressly provided, the NameScan Service is delivered "as is" without warranty of any kind. MemberCheck does not warrant or represent that the NameScan Service (or information or material supplied to MemberCheck on which all or part of the NameScan Service depends) will be delivered free of any inaccuracies, interruptions, delays, omissions or errors ("Faults"), or that all Faults will be corrected. MemberCheck shall not be liable for any loss, damages or costs resulting from any such Faults. The Client assumes sole responsibility and entire risk as to the suitability and results obtained from use of the NameScan Service, and any decisions made or actions taken based on the information contained in or generated by the NameScan Service.
- (d) If the Client is in New Zealand, the parties agree that any goods or services supplied or acquired under this Agreement are supplied or acquired in trade as defined in the *Consumer Guarantees Act 1993 (NZ) (CGA)*. The parties agree that the CGA will not apply to this Agreement and it is fair and reasonable that the parties are bound by this provision. The Client agrees that any provisions of the CGA that applies to a non-contracting supplier of services are excluded to the extent permitted by the CGA.
- (e) The Client understands that MemberCheck is an aggregator and provider of information for general information purposes only and does not provide financial, tax, accounting or legal advice. MemberCheck is also not responsible for any loss, damages or costs resulting from any decisions of the Client, or anybody accessing the NameScan Service through the Client, that are made in reliance on the NameScan Service, including decisions relating to legal, compliance and/or risk management decisions. The Client agrees that it uses the NameScan Service at its own risk.

## 11 Limitation of liability

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- (a) If any term, condition, warranty, guarantee or other provision is implied or imposed in relation to this Agreement (whether by legislation, common law or otherwise) and it cannot be excluded (a "**Non-Excludable Term**"), but MemberCheck is able to limit its liability for a breach of such Non-Excludable Term, then MemberCheck's liability for such a breach of the Non-Excludable Term is limited to one or more of the following at MemberCheck's option, the supplying of the services again or the payment of the cost of having the services supplied again.
- (b) Subject to paragraph 11(a) above and clause 4 of Addendum B in relation to the Sapphire Check Service, MemberCheck's liability, whether arising in contract, tort (including negligence), statute or otherwise under or in connection with the NameScan Service or this Agreement:
- (1) is limited to an amount equal to 50% of the total Fees paid by the Client in the 12 months preceding such claim.; and
  - (2) is excluded in respect of all Consequential Loss.

- (c) Subject to clause 12, the Client's liability whether arising in contract, tort (including negligence), statute or otherwise under or in connection with the NameScan Service or this Agreement is excluded in respect of all Consequential Loss.
- (d) Nothing in this Agreement limits liability that cannot be limited under law (including in relation to Non-Excludable Terms).

## 12 Indemnity

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- (a) The Client agrees to indemnify MemberCheck and its related entities, representatives, partners, directors, agents and employees from and against any and all liabilities, claims, costs, losses, damages and expenses, including reasonable legal fees on a full indemnity basis, suffered or incurred by MemberCheck, its related entities, representatives, partners, directors, agents and employees as a result of:
  - (1) the use of the NameScan Service for a purpose or in a manner other than as permitted by this Agreement (including Addenda A and B) or a breach of this Agreement (or Addenda A or B);
  - (2) any negligent, unlawful or willfully wrong act or omission of the Client or its related entities, representative, partners, directors, agents or employees; or
  - (3) any claim by a third party arising out of or in connection with the Client's use of the NameScan Service.
- (b) Where the Client is a trustee, the Client's liability for debts incurred in acting as trustee are limited to the trust assets, provided the trustee has not acted without power or in breach of the trust.
- (c) If the trustee acts without power or acts in breach of trust, then the trustee is personally liable for debts incurred in acting as trustee.

## 13 Termination

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- (a) Either party may terminate this Agreement at any time.
- (b) If this Agreement is terminated, the Client must:
  - (1) cease using the NameScan Service by the effective date of expiration or termination;
  - (2) pay to MemberCheck all Fees for all NameScan Services supplied up to the effective date of termination; and
  - (3) return to MemberCheck, or at MemberCheck's direction, destroy, all copies of all information, content and other materials obtained by the Client from the NameScan Service, except to the extent the Client is required by law to retain any such information, content or other materials.

## 14 Confidentiality

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- (a) Each party must keep confidential and not use or disclose any Confidential Information of the other party, except as permitted by this Agreement.
- (b) The obligation of confidence in clause 14(a) extends to Confidential Information provided to or obtained by a party before entering into this Agreement.
- (c) The obligation of confidence in clause 14(a) does not apply to Confidential Information that is:
  - (1) required to be disclosed by law, as long as the recipient:
    - (A) discloses the minimum amount of Confidential Information required to satisfy the law; and
    - (B) before disclosing any information gives a reasonable amount of notice to the discloser and takes all reasonable steps (whether required by discloser or not) to maintain that Confidential Information in confidence;
    - (C) in the public domain otherwise than as a result of a breach of this Agreement or another obligation of confidence; or
  - (2) already known by the recipient independently of its interaction with the other party and free of any obligation of confidence.
- (d) Each party must take all steps and do all things necessary prudent or desirable in order to safeguard the confidentiality of the Confidential Information of the other party.
- (e) Each party acknowledges that the value of the other party's Confidential Information is such that an award of damages or an account of profits may not adequately compensate if this clause 14 is breached.
- (f) The obligations of confidentiality in this clause 14 survive the termination of this agreement.

## 15 Assignment

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The Client may not assign any rights arising out of this Agreement without the prior written consent of MemberCheck which consent is not to be unreasonably withheld.

## 16 Interpretation

Specifying anything in this Agreement after the words 'include' or 'for example' or similar expressions does not limit what else is included.

## 17 Definitions and interpretation

The meanings of the terms used in this agreement are set out below.

Term	Meaning
<b>Agreement</b>	means this Subscription Agreement including all Schedules, Addenda and Annexures.
<b>Confidential Information</b>	in relation to a party means any information: <ol style="list-style-type: none"> <li>1 regarding the business or affairs of that party;</li> <li>2 regarding the customers, employees or contractors of, or other persons doing business with that party;</li> <li>3 regarding the terms of this Agreement, or the commercial arrangements between the parties;</li> <li>4 which is by its nature confidential or which is designated as confidential by that party;</li> <li>5 which is designated as confidential in this Agreement; or</li> <li>6 which the other party knows, or ought to know, is confidential.</li> </ol>
<b>Consequential Loss</b>	means loss of revenues, profits, goodwill, bargain or loss of opportunities, anticipated savings, loss of or corruption of data, and any indirect, incidental, special or consequential loss or damage, howsoever caused (regardless of whether or not the possibility of the loss or damage was contemplated or communicated when this Agreement was entered into).
<b>Insolvency Event</b>	is when a receiver, receiver and manager, administrator, trustee or similar official is appointed over any of the Client's assets or undertakings, an application or order is made for the winding up or dissolution of the Client, or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of the Client.
<b>Permitted User</b>	means an individual who is either: <ol style="list-style-type: none"> <li>1 an employee of the Client and who is authorised by the Client to access and use the NameScan Service; or</li> <li>2. performing the functions of an employee on a temporary basis, independent contractor or consultant who is performing work solely for the Client at the Client's offices and is authorised by the Client to access and use the NameScan Service, for so long such user remains authorised by the Client to perform work for the Client;</li> </ol>
<b>Website</b>	means www.namescan.io, namescan.com.au, namescan.ai or other domains under which the NameScan Service has been provided.

## 18 Entire Agreement

This Agreement is the entire agreement between the parties in respect of its subject matter. It supersedes all prior discussions, negotiations, understandings and agreements in respect of its subject matter.

## 19 Severance

Part or all of any clause of this Agreement that is unenforceable or illegal will be severed from this Agreement and will not affect the enforceability of the remaining provisions of this Agreement.

## 20 Notice

A notice or other communication under this Agreement can be in writing and delivered by hand or sent by pre paid post or fax to a party at the address or the fax number for that party or email or similar electronic means of communication or as otherwise specified by a party by notice.

## 21 Waiver

A party's failure to insist that the other party perform any obligation under this Agreement is not a waiver of that right:

- (1) to insist the other party perform, or to claim damages for breach of, that obligation; or
- (2) to insist the other party perform any other obligation, unless other party provides a waiver in writing.

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## 22 Dispute Resolution

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- (a) If a dispute arises out of or relates to this Agreement, or the breach, termination, validity or subject matter thereof, or as to any claim in tort, in equity or pursuant to any domestic or international statute or law, the parties to this Agreement and to the dispute expressly agree to try to settle the dispute by mediation administered by the Australian Disputes Centre (“ADC”) or similar body before having recourse to litigation:
- (1) A Party claiming that a dispute has arisen, must give written notice to the other Party to the dispute specifying the nature of the dispute.
  - (2) On receipt of the notice specified in (1) the Parties to the dispute must within seven (7) days of receipt of said notice seek to resolve the dispute.
  - (3) If the dispute is not resolved within seven (7) days or within such further period as the Parties agree in writing then the dispute is to be referred to ADC for mediation.
  - (4) The mediation shall be conducted in accordance with ADC Guidelines for Commercial Mediation operating at the time the dispute is referred to ADC.
- (b) If mediation fails to resolve the dispute within thirty (30) days of the dispute being referred to ADC, either party may give notice to the other to end the mediation.

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## 23 Governing law and jurisdiction

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- (a) This agreement is governed by the law in force in New South Wales.

Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in New South Wales and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

## Schedules

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## Schedule 1

### The NameScan Service

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The NameScan Service provides users with the ability to carry out checks in order to assist with their *Anti-Money Laundering and Counter-Terrorism Financing Act* obligations. The NameScan Service provides access to various data sources for carrying out these checks, which may include the following:

- PEPs (Political Exposed Persons), their relatives and close associates
- Sanctions and Official Lists
- Persons of Special Interest

Access to these sources is governed by the Subscription Agreement and various Addenda annexed to the Subscription Agreement.

The NameScan Service consists of reporting and research material, scanning and matching algorithms provided through a web based user interface.

The Client has the option to choose from Emerald Check, Sapphire Check, or Ruby Check Services as described on the NameScan Website.

## Addenda

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## ADDENDUM A – RUBY CHECK SERVICE ADDENDUM

The following terms and conditions apply to the Client's use of the NameScan Service which may incorporate the Ruby Check Service from 1 July 2019. If there is any inconsistency between this Addendum and clauses 1 to 22 of the Agreement, this Addendum prevails. Terms used in this Addendum are defined in the Agreement unless defined in clause 8 of this Addendum. Unless otherwise specified clause references are to clauses in this Addendum.

### 1. REFINITIV SCREENING PURPOSE

- 1.1 Subject to clause 1.2, the Client must only use the Refinitiv Screening Content:
  - 1.1.1 for the Refinitiv Screening Purpose; and
  - 1.1.2 if the Client is in Australia or New Zealand.
- 1.2 Where the Client has been approved in writing by MemberCheck, the Client may use the NameScan Service to provide Refinitiv Screening Content to its customers.
- 1.3 If the Client's Commencement Date is on or after 1 July 2017, the Client warrants that it is not:
  - 1.3.1 a bank;
  - 1.3.2 a client of Refinitiv or Thomson Reuters;
  - 1.3.3 reselling or redistributing any content from the NameScan Service to any third party unless MemberCheck has approved the Client under clause 1.2;
  - 1.3.4 operating in the Financial Services / Fund Management or Super Fund Industry with Assets Under Management over AUD 20 Billion;
  - 1.3.5 operating outside Australia, New Zealand and Asia Pacific regions.
- 1.4 If at any time the Client will be in breach of a warranty given in clause 1.3, it must seek the approval of MemberCheck to its continued use of the NameScan Service. The Client acknowledges additional charges may apply to its continued use of the NameScan Service.
- 1.5 The Client must not redistribute Refinitiv Screening Content to any third party other than as permitted by clause 1.2 or to advisors, regulatory authorities or other government agencies.
- 1.6 If the Client is permitted by MemberCheck in writing to provide an Affiliate or a customer of the Client with access to Refinitiv Screening Content, the Client must procure that the Affiliate or customer (as the case may be) agrees to and complies with all provisions of the Agreement applicable to the Client.

### 2. REFINITIV SCREENING CONTENT

- 2.1 The Client acknowledges and agrees that:
  - 2.1.1 the information contained in the Refinitiv Screening Content is provided to MemberCheck by Refinitiv (and may include Information from Third Party Providers) and is provided by MemberCheck on a pass-through basis;
  - 2.1.2 it should not rely solely upon the Refinitiv Screening Content when making any decision to deal with any person or entity and that before making any such decision the Client should make independent checks of such person or entity to verify the information contained in the Refinitiv Screening Content and their resulting suitability as a commercial counterparty;
  - 2.1.3 MemberCheck provides Refinitiv Screening Content without giving any opinion or recommendation about any individual or entity named in them;
  - 2.1.4 if the Refinitiv Screening Content contains negative allegations about any person or entity, it should be assumed that such allegations are denied by them;
  - 2.1.5 the Refinitiv Screening Content cannot be an exhaustive source of information on persons or entities of whom the Client may wish or be obliged to make enquiries before entering into a financial or other relationship with them.
- 2.2 The Client acknowledges that:

- 2.2.1 the inclusion or exclusion of any person or entity in or from the Refinitiv Screening Content should not automatically be taken to draw any particular inference (negative or otherwise) about them including as the result of the linking of any person or entity to any other person or entity identified therein. The nature of linking varies considerably;
  - 2.2.2 many persons are included in the Refinitiv Screening Content solely because they hold prominent political or other positions or are connected to such individuals;
  - 2.2.3 MemberCheck cannot guarantee that information contained in Refinitiv Screening Content is up to date or accurate;
  - 2.2.4 MemberCheck cannot guarantee that it will find any or all of the published information available in connection with any individual or entity;
  - 2.2.5 MemberCheck makes no warranty or representation about and, to the extent permitted by law, disclaims all liability for the accuracy, completeness or currency of the Refinitiv Screening Content;
  - 2.2.6 the designation of a Low-Quality Alias is made at Refinitiv's discretion and such designation may not correspond to the Client's own assessment of its strength as a means of positive identification of the person or entity in question. The Client must satisfy itself that such designation is appropriate and applicable to the Client's level of risk appetite;
  - 2.2.7 PEP Sub-Classifications are made based on TR's assessment of the nature of the office held or the relationship to the office holder. Such assessment may not correspond to Client's own assessment and categorisation and the Client must satisfy itself that such assessment and categorisation is appropriate and applicable to the Client's level of risk appetite;
  - 2.2.8 Native Aliases may be included in the Refinitiv Screening Content. MemberCheck will not undertake any translation or quality control on the accuracy of Native Aliases and MemberCheck is not responsible for any errors in them.
- 2.3 The Client will not obtain, retain, use, or provide access to the Refinitiv Screening Content to any third party (other than as permitted under this Addendum) but in any case not in a manner that may breach any applicable export control or economic sanctions laws and regulations for any jurisdiction, including the United States of America and the European Union and its Member States. The Client warrants that it is not affiliated with a specially designated or sanctioned entity under any of those laws and that, in any transaction it will not involve sanctioned parties, including without limitation through the use of bank accounts at banks that are sanctioned parties.

### 3. INTELLECTUAL PROPERTY

- 3.1 The Client will not remove or conceal any proprietary rights notice in the NameScan Service or Refinitiv Screening Content and will include such notices on any copy it is permitted to make.
- 3.2 The Client must not use the name of any Third-Party Provider (including TR) other than as provided for in this Addendum or permitted by MemberCheck in writing.

### 4. TERMINATION AND CONSEQUENCES OF TERMINATION

- 4.1 MemberCheck may, with notice ("**MemberCheck's Notice**"), terminate the NameScan Service in whole or in part, or modify it or the terms on which it is provided, if all or part of the NameScan Service depends on an agreement between MemberCheck and a third party, and that third party agreement or the third party's materials or other input is modified or terminated, MemberCheck will endeavour to provide Client with reasonable prior notice of any such termination or modification, but may not be able to do so if the triggering event is under the control of a third party.
- 4.2 Where MemberCheck terminates the NameScan Service under clause 4.1, the Client will be entitled to a pro rata refund of any Annual Subscription Fees that Client has paid in advance.
- 4.3 Following termination at MemberCheck's request the Client will promptly return, delete or destroy all Information. However, the Client may retain copies to the extent required by, and used only to comply with, law or regulation.
- 4.4 Termination of all or any part of the Addendum will not affect a party's respective accrued rights and obligations. The following clauses of this Addendum will survive termination: 3, 4.2, 4.3, 5, 6, 7 and 8 along with any others that by their nature should survive.

## 5. DATA PRIVACY

- 5.1 The Client will at all times comply with applicable laws and regulations governing the collection, use, disclosure, handling and processing of Client Personal Data and PII Data.
- 5.2 Without limiting clause 5.1, the Client acknowledges the sensitive nature of the PII Data and shall ensure that its users:
- 5.2.1 are appropriately trained in dealing with such sensitive personal data;
  - 5.2.2 fully understand the Refinitiv Screening Purposes; and
  - 5.2.3 operate strictly within the parameters of the Refinitiv Screening Purposes and all applicable regulatory requirements and in accordance with the Agreement.
- 5.3 The Client will ensure that any employees or third parties (such as contractors) involved in using PII Data will: (a) use the PII Data in accordance with the Agreement; (b) act in accordance with the Client's instructions; and (c) will respect and maintain the confidentiality and security of the PII Data.
- 5.4 The Client will respond promptly and properly to any reasonable and proper enquiries from MemberCheck relating to the Client's handling of PII Data received as a result of its use of the NameScan Service and co-operate in good faith with and assist MemberCheck, its Third Party Providers and any privacy or data protection authority concerning all such enquiries within a reasonable time. In the event of an investigation, complaint, dispute or claim brought by an individual or data protection authority against the Client in connection with PII Data, the Client will inform MemberCheck about any such investigation, complaint, dispute or claim, and will co-operate with a view to settling them amicably and in a timely fashion.
- 5.5 The Client warrants and certifies that it will not use any Refinitiv Screening Content as a factor in establishing a consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes, for employment purposes or for any other purpose authorized under the Fair Credit Reporting Act (15 U.S.C.A. § 1681b).

## 6. INDEMNITY

- 6.1 Client will indemnify MemberCheck, TR, their Affiliates and their officers, employees, agents, independent contractors, successors and assigns from and against all liabilities, claims, demands, causes of action and Damages incurred as a result of a third party claim: (a) arising from Client's, its Affiliates', customers or sub-contractors' use of the NameScan Service or the Refinitiv Screening Content in breach of the Agreement (including this Addendum); (b) arising from a failure by the Client to comply with applicable laws, or (c) asserted by any person who has benefited from the Client's use of the NameScan Service including a customer of the Client where the Client is permitted to provide Refinitiv Screening Content to its customers under clause 1.2.

## 7. MISCELLANEOUS

- 7.1 The Addendum and any dispute or claim arising out of or in connection with the Addendum will be governed by and construed in accordance with the laws of New South Wales. Each party hereby consents to the non-exclusive jurisdiction of the Courts of New South Wales to settle all disputes or claims arising out of or in connection with the Addendum
- 7.2 Neither party will be liable for any Damages or failure to perform its obligations under the Agreement due to circumstances beyond its reasonable control. If such circumstances cause material deficiencies in the NameScan Service and continue for more than 30 days, either party may terminate the NameScan Service upon notice to the other party.
- 7.3 The Client acknowledges and agrees that in entering into the Agreement MemberCheck acts on its own behalf and as trustee for each Third-Party Provider ("Beneficiaries"). Accordingly, the Client acknowledges and agrees that: (a) MemberCheck is able to recover from the Client any Damages suffered or incurred by the Beneficiaries in connection with this Addendum, as if they were suffered or incurred by MemberCheck itself; (b) each Beneficiary is entitled to separately and directly enforce against the Client the benefits, rights and remedies conferred on MemberCheck by the Agreement (including this Addendum) and (c) to the extent a Beneficiary is liable to the Client, the Beneficiary can rely on the limitations of liability in clause 12 of the Agreement.
- 7.4 Each party acknowledges that it has not relied on any representations made by the other party that are not expressed in the Agreement or this Addendum.

## 8. DEFINITIONS

8.1 Subject to clause 9.2, in this Addendum terms have the meanings assigned to them in the MemberCheck Subscription Agreement (**Agreement**).

8.2 The meanings of the terms used in this Addendum are as follows:

**Addendum** means this Annexure B as amended from time to time.

**Affiliate** means in the case of MemberCheck or a Third Party Provider, any entity that, from time to time, is directly or indirectly controlled by MemberCheck or the Third Party Provider; in the case of the Client, any entity that, from time to time, is directly or indirectly controlling, controlled by, or under common control of the Client. "Control" means the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.

**Client** means the entity that has entered into an Agreement with MemberCheck.

**Client Personal Data** means any personal information provided by the Client to MemberCheck for the purpose of the provision of the NameScan Service.

**Damage(s)** any loss, damage or cost.

**Derived Data** means Information modified by the Client (e.g. perform calculations or combining it with other data) to such a degree that it cannot be recognized as deriving from the Information, reverse engineered or otherwise traced back to the Information, without an extraordinary amount of time and effort other than by the creator. All other Information that does not satisfy these criteria constitutes "Information."

**Information** means the information (including, but not limited to, data, text, images and sound recordings) contained in the NameScan Service (and Refinitiv Screening Content) in raw form and such information as it may be modified by the Client, except to the extent that the modified information is Derived Data.

**Low Quality Aliases** means an assumed or alternative name designated on a profile comprised in the Refinitiv Screening Content as being of low quality;

**Native Alias** means in relation to a profile subject comprised in the Refinitiv Screening Content, its name in any non-Latin language;

**PEP Sub-Classification** means the allocation to a person or entity profiled in the Refinitiv Screening Content as a Political Person or with the subcategory of "Politically Exposed Person" (PEP) of a further subcategory to identify the nature of the office held by them or the nature of their relationship to an office holder;

**PII Data** means any Refinitiv Screening Content which identifies an individual or from which an individual can be identified whether by reference to other data or otherwise;

**Refinitiv** means Refinitiv Australia Pty Limited. Both Refinitiv and Thomson Reuters can be used interchangeably;

**Refinitiv Screening Content** means the content contained in the NameScan Service which has been supplied to MemberCheck by Third Party Providers from their respective databases;

**Refinitiv Screening Purposes** means use of the Refinitiv Screening Content by the Client as part of the Client's own internal compliance processes (as opposed to use for any external commercial purposes, which is not permitted except to the extent specifically authorised by MemberCheck in writing) to process the PII Data to (i) prevent, detect or investigate any unlawful act or (ii) discharge any function designed to protect the public against dishonesty, malpractice or seriously improper conduct; provided that in no case shall any personal data contained in the Refinitiv Screening Content be used for purposes governed by the US Fair Credit Reporting Act (15 U.S.C.A. § 1681b).

**Third Party Provider** means Refinitiv or other third party whose Information is included or used in the Refinitiv Screening Content;

Thomson Reuters means Thomson Reuters (Markets) Australia Pty Limited (TR). Both Thomson Reuters and Refinitiv can be used interchangeably;

## ADDENDUM B – SAPPHIRE CHECK SERVICE ADDENDUM

The following terms and conditions apply to the Client's use of the NameScan Service to the extent the Client has selected to subscribe for or uses scans designated as being from the Sapphire Data Source ("Sapphire Check Service") after 1 July 2019. If there is any inconsistency between this Addendum and clauses 1 to 23 of the Agreement, this Addendum prevails in so far as it relates to the Sapphire Check Service. By using the Sapphire Check Service the Client agrees to be bound by and comply with this Addendum B. Terms used in this Addendum are defined in the Agreement unless defined in clause 1 of this Addendum. Unless otherwise specified clause references are to clauses in this Addendum.

### 1. Definitions

- 1.1 **Data** means data requested from the Database by a Permitted User as part of a Data Request.
- 1.2 **Database** means the Sapphire Data Source.
- 1.3 **Data Request** means a request made by a Permitted User through the Sapphire Check Service, being a Search Request and/or a Monitor Request.
- 1.4 **Monitor Request** means a request made through the Sapphire Check Service to monitor an individual or entity against the Database.
- 1.5 **Search Request** means a request made through the Sapphire Check Service to search for information relating to an individual or entity in the Database.

### 2 The Sapphire Check Service

- 2.1 The Client acknowledges that MemberCheck provides the Database under licence from Mergermarket Consulting (Singapore) Pte Ltd trading as Acuris Risk Intelligence of 96 Robinson Road, #13-02 SIF Building Singapore 068899 ("C6") and it is a requirement of that licence that certain terms and conditions are included in the Client's Agreement in relation to the use of the Database and Data.
- 2.2 MemberCheck grants a non-transferable, non-assignable, non-sublicenseable and non-exclusive licence to Client to allow Client's Permitted Users to access and use the Database to retrieve the Data identified in a Data Request.

### 3 Scope of Use

- 3.1 The Client undertakes that it shall, and shall procure that each Permitted User shall at all times:
  - 3.1.1 not use the Data in any way which might infringe any licence granted to MemberCheck or C6, any law (including criminal and/or data protection law) and/or use any Data for any unlawful and/or unauthorised purpose;
  - 3.1.2 only allow Permitted Users to make use of and have access to the Database;
  - 3.1.3 not remove any copyright or other notice contained or included in any Data;
  - 3.1.4 acknowledge that the Data is licensed, not sold, and that it obtains no ownership of the Data;
  - 3.1.5 not use the Database and/or Data to compete in any way with MemberCheck;
  - 3.1.6 not in any circumstances use nor allow any third party to use, any automated software, process, programme, robot, web crawler, spider, data mining, trawling, screen scraping or other similar software (regardless of whether or not the resulting information would then be used for its internal purposes);
  - 3.1.7 promptly upon becoming aware of any breach of this clause 3.1 notify MemberCheck of the breach, and promptly provide such details as MemberCheck may reasonably request.
- 3.2 The Client acknowledges and accepts as reasonable that the undertakings given in clause 3.1 above are of material importance to MemberCheck and that MemberCheck has entered into the Agreement in reliance on these undertakings. The Client acknowledges that without affecting any rights or remedies that MemberCheck may have, damages would not be an adequate remedy for any breach by the Client of clause 3.1 and that MemberCheck shall be entitled to apply for the remedies of injunction, specific performance and other equitable relief for any breach of clause 3.1.
- 3.3 The Client acknowledges that:
  - 3.3.1 the Database and the Data are licensed to the Client, not sold; and
  - 3.3.2 it obtains no ownership of the Database or the Data;
  - 3.3.3 it has no right (and shall not permit any third party) to adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Database or the Data; and
  - 3.3.4 if and to the extent MemberCheck or C6 is liable to the Client in respect of the Database or the Sapphire Check Service liability is limited in accordance with Clause 4 of this Addendum.

#### 4 **Liability**

- 4.1 Notwithstanding any other provision of the Agreement or this Addendum, no liability is excluded or limited to the extent that the same may not be excluded or limited by any applicable law.
- 4.2 THE CLIENT ACKNOWLEDGES THAT MEMBERCHECK AND C6 (TOGETHER THE "SUPPLIERS") COMPILE DATA BUT DO NOT ORIGINATE IT. ACCORDINGLY, THE DATABASE, ANY SERVICE AND/OR DATA ARE PROVIDED ON AN AS IS AND AS AVAILABLE BASIS AND THE SUPPLIERS DO NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND WHETHER STATUTORY, EXPRESS OR IMPLIED, RELATING TO THE DATA (INCLUDING RELATING TO THE TIMELINESS, CURRENCY, CONTINUITY, ACCURACY, COMPLETENESS, MERCHANTABILITY, ACCEPTABLE QUALITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE THEREOF.) IN PARTICULAR, THE CLIENT ACKNOWLEDGES THAT DATA MAY BE OBTAINED FROM SOURCES INCLUDING THE DARKWEB, AND ACCORDINGLY NO REPRESENTATION AND/OR WARRANTY IS GIVEN THAT THE PROVISION OF THE DATA BY SUPPLIERS COMPLIES WITH ANY LAW.
- 4.3 THE CLIENT ACKNOWLEDGES THAT EVERY BUSINESS DECISION INVOLVES THE ASSUMPTION OF A RISK AND THAT THE SUPPLIERS, IN FURNISHING THE DATA TO THE CLIENT, DO NOT AND WILL NOT UNDERWRITE THAT RISK, IN ANY MANNER WHATSOEVER. NEITHER THE SUPPLIERS NOR ANY OTHER DATA SUPPLIER, SHALL BE LIABLE TO EITHER THE CLIENT OR ANY THIRD PARTY FOR ANY LOSS CAUSED IN WHOLE OR IN PART BY THE SUPPLIERS PROCURING, COMPILING, COLLECTING, INTERPRETING, REPORTING, COMMUNICATING, SUPPLYING OR DELIVERING THE DATA AND THE CLIENT AGREES NOT TO BRING ANY CLAIM AGAINST MEMBERCHECK, C6 AND/OR OTHER DATA SUPPLIERS IN RESPECT THEREOF.
- 4.4 THE CLIENT ACKNOWLEDGES THAT (A) USE OF THE DATABASE BY IT AND/OR ANY PERMITTED USER IS AT THE CLIENT'S SOLE RISK, (B) WHILST THE SUPPLIERS OBTAINS THE DATA IN GOOD FAITH FROM SOURCES WHICH THE SUPPLIERS CONSIDER TO BE RELIABLE, THE CONTENTS OF THE DATABASE ARE BASED ON DATA SUPPLIED BY THIRD PARTIES AND ARE NOT INDEPENDENTLY VERIFIED, (C) THE SUPPLIERS DO NOT GUARANTEE THE SEQUENCE, ACCURACY, COMPLETENESS AND/OR TIMELINESS OF THE DATABASE, (D) THE SERVICE IS NOT INTENDED TO AND DOES NOT PROVIDE TAX, LEGAL OR INVESTMENT ADVICE, (E) THE CLIENT SHOULD SEEK INDEPENDENT TAX, LEGAL AND/OR INVESTMENT ADVICE BEFORE ACTING ON DATA OBTAINED FROM THE DATABASE, AND (F) THE SUPPLIERS SHALL NOT BE UNDER, AND EXCLUDE TO THE FULLEST EXTENT PERMITTED BY LAW ALL LIABILITY TO THE CLIENT FOR, ANY LIABILITY WHATSOEVER IN RESPECT OF (i) ANY MISTAKES, ERRORS, INACCURACIES OR OMISSIONS IN, OR INCOMPLETENESS OF, THE DATABASE, (ii) DELAYS IN UPDATING THE DATABASE OR NON-AVAILABILITY THEREOF (iii) LOSS OF PROFIT, BUSINESS REVENUE, GOODWILL AND ANTICIPATED SAVINGS (WHETHER DIRECT OR INDIRECT) INCURRED THROUGH THE USE OF THE DATABASE; (iv) TRADING, INVESTMENT OR OTHER LOSSES WHICH CLIENT MAY INCUR AS A RESULT OF USE OF OR RELIANCE UPON THE DATABASE AND/OR DATA AND/OR (v) INTERNET FAILURE, AND/OR FAILURE OF THE CLIENT TO HAVE IN PLACE ANY NECESSARY SOFTWARE OR EQUIPMENT; AND/OR (vi) ANY CLAIM THAT THE PROVISION OF THE DATA INFRINGES ANY LAW.
- 4.5 For the avoidance of doubt MemberCheck and its licensors may disclose the identity of the Client, its Permitted Users and employees to meet any requirement of any obligation of law. The Client warrants and represents that it has secured the consent of each Permitted User or other person whose personal data is disclosed to MemberCheck to the use and disclosure of that information by MemberCheck and its licensors as may be required under any applicable law.

#### 5 **Governing Law of Addendum**

This Addendum shall be governed by and construed in accordance with the laws of England and Wales and the parties hereto hereby agree to submit to the non-exclusive jurisdiction of the English courts.