

## ICE DATA SERVICES GENERAL TERMS AND CONDITIONS

### **1. AGREEMENT AND DEFINED TERMS**

- (a) The terms of this agreement (this “**Agreement**”) consist of: (1) these ICE Data Services General Terms and Conditions (including the Additional Terms and Conditions for Feeds Services set forth in Exhibit A and any and all Annexes to Exhibit A, attached hereto) (the “**General Terms and Conditions**”); (2) an order form or schedule making reference to these General Terms and Conditions (the “**Order Form**”) and signed by both ICE Data Services Limited, a limited liability company under English law, having its registered office located at Milton Gate, 60 Chiswell Street, London EC1Y 4SA, registered in the companies register of England and Wales under number 05300420, or its Affiliate, as defined below, (the “**Supplier**”) and the client identified in such Order Form (the “**Client**”); and (3) any Additional Terms Schedule(s) referred to in the Order Form (each, an “**Additional Terms Schedule**”).
- (b) Capitalised terms, wherever used in this Agreement, have the meanings given in these General Terms and Conditions, the Order Form and the applicable Additional Terms Schedule.
- (c) In the event of any conflict or inconsistency the order of interpretation shall be as follows: (1) Order Form; (2) Additional Terms Schedule; (3) General Terms and Conditions.
- (d) A provision of these General Terms and Conditions is referred to as a “**Clause**” (except that a provision of Exhibit A to these General Terms and Conditions is referred to as a “**Section**”), and a provision of an Additional Terms Schedule is referred to as a “**paragraph**”.
- (e) In this Agreement, the term “**Affiliate**” means: (1) in respect of the Supplier, any partnership or joint venture of which the Supplier is a part, or any subsidiary, parent, subsidiary of a parent (in each case, direct or indirect) or affiliated corporation of the Supplier, including, but not limited to, Intercontinental Exchange, Inc., Intercontinental Exchange Holdings, Inc., ICE Futures U.S., Inc., ICE Futures Europe, ICE Futures Canada, Inc., New York Stock Exchange LLC, NYSE Arca, Inc., NYSE LIFFE Holdings, LLC, LIFFE Administration & Management, NYSE Technologies Connectivity Inc., NYSE Technologies Canada, Ltd. ICE Futures Singapore Pte Ltd, ICE Data Services Europe Limited, ICE Data LP, ICE Data Services, Inc., ICE Data Connectivity & Feeds, Inc., ICE Data Services Wireless LLC, ICE Data Services Singapore Pte. Ltd., ICE Data Services Hong Kong Limited, ICE Data Services Japan KK, ICE Data Services Australia Pty LTD and any entity carrying on business under any of the foregoing names (or any derivative form of any of those names) and any operator of any ICE or NYSE Liffe regulated market; and (2) in respect of the Client, any entity directly or indirectly controlling, controlled by or under common control with another entity, where “control” means ownership of more than 50% of the voting stock or other equity interests of an entity, or the rights to direct the management of such entity.
- (f) “**Backwards Compatible Change**” means a non-material change to the Services, including, but not limited to, the addition to the Services of new information, messages and/or fields using the existing formats of the Services and/or additional or enhanced Data being made available via the Services.
- (g) “**Data**” or “**Data Services**” means all information and content (as specified in the applicable Order Form as part of Connectivity Services and/or Feeds Services), and information derived therefrom, that is generated by the Supplier or distributed or made available to the Supplier by its Affiliates and/or Third-party Providers, and that the Supplier makes available to the Client via the Services (as defined below), and such reference to the Services shall include Data and Data Services.
- (h) “**Deposit**” means the sum specified in the Order Form(s) which sum shall be payable to the Supplier against loss of or damage to the Equipment.
- (i) “**End User**” means any third party, other than an Affiliate of the Client, who the Client permits to use and access the Services in accordance with this Agreement.
- (j) “**Equipment**” means any computer, server or other equipment supplied by the Supplier or a Third-party Provider to support the Services as specified in the Order Form(s).

- (k) **“Extraordinary Installation and Maintenance Fees”** means fees payable by the Client to the Supplier for extraordinary installation and extraordinary maintenance. Extraordinary installation includes (without limitation) special cable requirements such as cabling in excess of 10 feet, installation work performed during non-business hours, electrical work done external to the Equipment, and expedited order handling and shipping. Extraordinary maintenance includes (without limitation) electrical work external to the Equipment, maintenance on accessories or attachments, repair of damage to the Equipment resulting from accident, neglect, misuse or causes other than ordinary use.
- (l) **“Hardware”** means any hardware, software and/or related services or the procurement of any of such items, from third parties on behalf of Client as further detailed in the applicable Order Form and the ICE Data Services Additional Terms Schedule - Hardware & Managed Services.
- (m) **“Intellectual Property Rights”** means all intellectual property rights (including, but not limited to, patents, copyrights, trade secrets, database rights, design rights, goodwill and trademark rights), whether registered or not, and including applications for registration thereof, rights in know-how and moral rights.
- (n) **“Non-Backwards Compatible Change”** means a material change to the Services.
- (o) **“Supplier Indemnitees”** means the Supplier, its Affiliates and their Third-party Providers (and their respective officers, directors, employees, agents and representatives).
- (p) **“Third-party Provider”** means a supplier (including an exchange) or provider of services, technology, Data, information, software, or other items to the Supplier that are part of or otherwise used in connection with the Services.

## **2. INITIAL TERM**

This Agreement shall commence from the date of execution of the Order Form (the **“Effective Date”**) and the initial term of this Agreement is the period stated in the Order Form (the **“Initial Term”**), unless earlier terminated in accordance with the terms of this Agreement. After the Initial Term, the Agreement will continue and such continuation shall be the **“Term”**, unless terminated as set forth in this Agreement.

## **3. PROVISION OF SERVICES**

- (a) Subject to the terms of this Agreement, the Supplier will provide the service(s) described in the Order Form and, if applicable, the Additional Terms Schedule, to the Client (the **“Services”**), which may include, but are not limited to, connectivity services, Data, Equipment, Hardware, software, Data access, selected or bulk delivery of Data, hosted solutions, contract programming, consulting, technical assistance, and support services, that are specified in the Order Form as being provided as part of the Connectivity Services and/or Feeds Services.
- (b) Where such Services include Data Services then, subject to the terms of this Agreement, the Supplier grants the Client a non-exclusive, non-transferable, revocable right to receive and access the Data in accordance with any permitted use and restrictions thereof as specified in this Agreement.
- (c) The Supplier may from time to time introduce Backwards Compatible Changes to the Services without notice to the Client.
- (d) The Supplier may introduce Non-Backwards Compatible Changes to the Services upon at least sixty (60) days’ prior written notice to the Client, provided that, if any such modification or adjustment has a material adverse impact on the Client or its rights under the Agreement, the Client may, within five (5) days from the implementation of such modification or adjustment, provide the Supplier with no more than one (1) month’s written notice of termination of this Agreement (except such right of termination shall not apply if the Non-Backwards Compatible Changes are introduced as a result of Third-party Provider requirements).
- (e) The Supplier reserves the right of entrance for its employees, agents and contractors to the Client’s premises for the purposes of installing, repairing, maintaining and inspecting the Equipment and

facilities. The Client is responsible for arranging access to any rights of way, Equipment space and conduit necessary to provide the Service on the Client's premises.

- (f) The Client shall provide on a timely basis the necessary equipment space, conduit and electrical power required to install, repair, maintain, inspect, replace and remove the equipment and facilities used to provide the Service on the Client's premises without charge or cost to the Supplier. The Client shall be responsible for assuring all such Client premises, including, without limitation, rights of way, equipment space and conduit, are safe for the Equipment, facilities and personnel and that security procedures are in place to safeguard the Equipment, facilities and personnel and to protect the Equipment and facilities against misuse. The Client shall also insure its premises where there is the Equipment and facilities against fire, theft, vandalism or other casualty, and ensure that the use thereof complies with all applicable laws, rules and regulations and with all applicable leases or other contractual agreements. The Client shall also maintain insurance in respect of death of, and any personal injury suffered by, any of the Supplier's personnel whilst on the Client's premises. In cases in which additional protections are required, as determined by the Supplier, the same shall be provided by the Client at the Client's expense.
- (g) Except where the Client rents Equipment from the Supplier, the Client shall be responsible for providing and maintaining any computer terminal or other equipment required to receive the Services, including any third party proprietary software packages. The Client acknowledges that use of any such third party proprietary software packages, whether or not acquired through the Supplier, shall at all times be subject to the terms and conditions specified by the owner of that software. Whilst the Supplier may provide general advice to the Client with respect to the compatibility of the Services and the Client's equipment, the Supplier does not warrant and specifically disclaims any responsibility for continued compatibility between the Client's equipment and the Services. The Client hereby assumes all liability arising from or in connection with the use of Client's equipment including, without limitation, interface software, printing capabilities and quality and response times.
- (h) Where Equipment is supplied to the Client as part of the Services, the Equipment shall be maintained by the Supplier in good working order and at no extra charge provided that the Client pays the Deposit (where specified in the Order Form). The installation cost of the Equipment shall form part of the set up and installation fees shown in the Order Form. Any other Equipment (including without limitation all communication equipment) will be subject to additional installation and maintenance charges. The Client shall also be liable for the cost of any Extraordinary Installation and Maintenance Fees. Upon termination of the applicable Order Form howsoever arising and subject to the receipt of Equipment by the Supplier as stipulated in Clause 3(j) below, the Client shall receive a full refund of the Deposit.
- (i) The Client shall not attach, or permit or cause to be attached, any devices or communication lines to the Supplier Equipment except for the purpose of receiving the Data. Furthermore the Client shall not move the Equipment without the permission of the Supplier.
- (j) Where Equipment is supplied to the Client as part of the Services, upon termination of the applicable Order Form the Client shall (at the Supplier's request), arrange for the return of all Equipment in good condition, such arrangement (including insurance of at least one thousand pounds sterling (£1000) per piece of Equipment) at the Client's expense. In the event of the Supplier upgrading the Equipment or replacing faulty Equipment, the Client shall return to the Supplier any Equipment which was replaced due to such event.

#### **4. SERVICE DATE**

- (a) The Supplier will advise the Client of the date on which the Supplier will seek to commence provision of the Services (the "**Estimated Service Date**"). Except as expressly provided in the Additional Terms Schedule, the Supplier shall not be liable for any damages whatsoever resulting from any failure to meet the Estimated Service Date.
- (b) The Services and the invoicing of monthly recurring Charges will commence on the date that the Supplier actually makes the Services available, whether or not the Client makes use of such Services (the "**Service Date**").

- (c) Unless otherwise agreed upon in writing between the parties, or as otherwise provided in this Agreement, neither party may terminate this Agreement during the Initial Term.

## **5. PAYMENT**

- (a) The amounts payable by the Client to the Supplier for the provision of the Services (the “**Charges**”), and the schedule for payment of the Charges, are as set out in the Order Form and the Additional Terms Schedule.
- (b) The Client is responsible for payment of all Charges, including Charges arising from the unauthorised use of the Services, without set-off, counterclaim or any other deduction. An invoice shall be deemed to be correct and binding upon the Client if written notice of any disputed charges is not received by the Supplier within thirty (30) days of the date of such invoice. The Client’s obligation to make payment of the Charges set out in the invoice in full when due is not affected by any notice of any disputed charges.
- (c) Payment shall be due within thirty (30) days of the Client’s receipt of the Supplier’s invoice. If the Client fails to pay any fees by the date on which they are due for payment, the Client shall pay the Supplier interest on the outstanding amount at the rate of one and one half percent (1.5%) per month (or if less, the maximum amount permitted by applicable law).
- (d) The Supplier may charge the Client a fee if the Client’s cheque, bank draft or electronic funds transfer is returned for insufficient funds, where permitted by law.
- (e) All Charges are exclusive of value added, goods and services, sales, use, consumption, telecommunications, withholding and other taxes, duties, charges, levies, fees or other similar governmental charges (“**Taxes**”) and the Client shall be liable for any such Taxes as may be levied from time to time, in which case the Client shall pay to the Supplier (at the same time as and in addition to the relevant Charge) a sum equal to the amount of such Taxes, save that, where any such Taxes are required to be withheld or deducted from any payment, the Client shall make such withholding or deduction and pay such additional amounts as are necessary so that, after withholding or deducting such Taxes, Supplier receives a net amount equal to the full amount which would otherwise have been receivable had no such deduction or withholding been required.
- (f) In addition to the Charges payable by the Client to the Supplier, the Client acknowledges and agrees that, if applicable, it shall be responsible for the payment of any Third-party Provider fees (as may be adjusted by such Third-party Provider from time to time) that result from the Client’s (and as applicable, its customers’) receipt, access to or use of the Services, together with any related administrative costs of the Supplier.
- (g) The Supplier may, by written notice to the Client from time to time, appoint a third party to collect and receive payment of the Charges. If the Supplier gives notice to the Client under this Clause 5(g), the Client shall pay the Charges to the third party until it receives a further notice under this Clause 5(g) or the Supplier cancels the appointment of the third party by giving written notice to the Client.
- (h) The Client acknowledges and accepts that it shall be solely responsible for any and all costs or expenses associated with its access to and use of the Service. Unless otherwise stated in the Order Form, the Client will, at its own cost and expense, provide any and all equipment, operating platforms, software (including web browser), and connectivity (if applicable) needed to access and use the Service.

## **6. RATE ADJUSTMENT**

Not more than once per calendar year, the Supplier shall be entitled to adjust any of the Charges, individually or in the aggregate, provided that the Supplier gives the Client at least thirty (30) days’ prior written notice of such an adjustment (a “**Rate Adjustment**”). Notwithstanding the preceding sentence and any other provision of this Agreement, the Supplier reserves the right to (i) pass through to the Client any Third-party Provider change in cost at any time as required by such Third-party Provider; and (ii) adjust the Charges at any time if required by legislation or regulation.

## 7. USE

- (a) The Services are provided subject to the condition that they will only be accessed and used by the Client for authorized and lawful purposes. Except as expressly permitted in this Agreement, the Client shall not:
- (i) copy, modify, reverse engineer, reverse assemble or reverse compile or store the Service or any part thereof;
  - (ii) license, sublicense, transfer, sell, resell, publish, reproduce, and/or otherwise distribute or redistribute the Services or any portion or components thereof in any manner (including, but not limited to, via or as part of any Internet site);
  - (iii) use the Services or any portion thereof for constructing, creating or calculating (or assisting in constructing, creating or calculating) the value of any index or indexed products;
  - (iv) use the Services as part of the Client's intranet or other internal network; or
  - (v) create archival or derivative works based on the Services or any portion thereof. The Client shall take all precautions that are reasonably necessary to prevent any unauthorized distribution or redistribution of the Services.
- (b) The Supplier may at any time, for any reason (except where prohibited by applicable law), deny the Client's request for the Services or limit the available facilities of the Services as determined in the Supplier's sole discretion.
- (c) The Client shall maintain adequate security precautions, consistent with then-current industry standards, to avoid all unauthorized access to or distribution of the Services, including, but not limited to, the use of a secure server and protective firewalls, and passwords and user IDs.
- (d) Except as otherwise provided in this Agreement, the Client is responsible for making separate arrangements for use of any services (other than the Services) provided by the Supplier and its Affiliates (including trading platform and market data services) and nothing in this Agreement entitles the Client or any other party to use or receive such services.
- (e) Prior to allowing any of its Affiliates or End Users to use and access the Services, the Client shall enter into separate agreements with applicable Third-party Providers where required, and submit to the Supplier, for the Supplier's approval, notice of such access and use and the identity of the Affiliates or End Users of the Client that would use and access the Services. The Supplier shall promptly notify the Client of its approval or rejection of such use and access by such Affiliates or End Users of the Client. If the Supplier notifies the Client of: (1) the Supplier's approval of such access and use by such Affiliates or End Users of the Client, such Affiliates or End Users shall be permitted to access and use the Services as of the date of the notice of the approval; or (2) the Supplier's rejection of such access and use by such Affiliates or End Users of the Client, the Client shall not permit such Affiliates or End Users to access or use the Services.
- (f) The Client shall ensure the Affiliates' and End Users' compliance with the terms and conditions of this Agreement, and the Client shall remain responsible for such compliance. The Client, the Client's Affiliates and the Client's End Users shall be jointly and severally liable to the Supplier, the Supplier's Affiliates and/or Third-party Providers for any breach of this Agreement and for the Client's indemnity obligations set forth in Clause 14 herein.
- (g) The Client agrees and acknowledges that to the extent the Client is accessing or using any portion of the Services provided by a Third-party Provider, such Third-party Provider may enforce its rights against the Client as an intended third-party beneficiary of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 (as amended) and may likewise proceed against any person that obtains Data other than as permitted herein or in an Order Form, even though such Third-party Provider is not a party to this Agreement. The Client shall, where applicable, and as required to receive certain portions of the Services, be responsible for obtaining and maintaining written approval from each Third-party Provider whose prior approval is required for receipt and use of such Services and/or agree to additional terms

and/or enter into and maintain separate agreements with the Supplier and/or Third-party Providers, as applicable, including, but not limited to, those agreements and additional terms located here: [www.ice.com/icedata/thirdparty](http://www.ice.com/icedata/thirdparty) (“**Additional Agreements**”). The Client shall comply with any conditions, restrictions, or limitations imposed in the Additional Agreements, which are incorporated by reference into this Agreement as if set forth in their entirety herein, and form an integral part of this Agreement, including without limitation the acknowledgments, notices, reporting and audit requirements set forth therein. This Agreement is subject to the requirements and policies of the applicable Third-party Providers which may be imposed and updated by such Third-party Providers from time to time, including, but not limited to, reporting requirements. Failure by the Client to comply with the provisions of this Clause shall constitute a material breach of this Agreement.

- (h) Where any Third-party Provider requires the Client to enter into such a separate agreement with the Third-party Provider, the Client shall, upon written request of Supplier, supply a copy of such agreement to Supplier, and the Supplier shall not be obligated to provide the Services until it receives the applicable agreement or confirmation from the relevant Third-party Provider that the Client is duly licensed. In addition, in the event of any termination of the Client’s agreement with the Third-party Provider, the Client shall notify the Supplier immediately and the Supplier may suspend or terminate access to the relevant Services.
- (i) If any business (whether or not incorporated) not covered by this Agreement becomes, as a result of a merger, acquisition or reorganization with the Client, a Client Affiliate, division, group or business of the Client during the term of this Agreement, such business may not use any Services prior to the execution of an Order Form (or amendment of an existing Order Form) to cover its use of the Services, including the payment of fees. If no reasonable agreement can be reached, such business shall have no right to use the Services delivered to the Client.
- (j) If the Client divests itself of a company or business unit, in whole or in part, and that business unit used and/or distributed the Services pursuant to the terms of an Order Form, the Client may not provide the Services to the divested business unit or use any of the Services to service the divested business unit (for example, by providing transition services) prior to the execution of an Order Form (or amendment of an existing Order Form) between the Supplier and the Client to cover use of the Services by the Client for the benefit of such divested business unit, including the payment of fees. The Client shall provide the Supplier written notice within thirty (30) days of the completion date of such divestiture. The Client’s notice shall also specify the nature and extent of the divested business unit’s use and/or distribution of the Services. As of the completion date of such divestiture, the divested business unit shall no longer be entitled to access or use any part of the Services unless it has entered into an appropriate agreement directly with the Supplier.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- (a) The Client agrees that all Intellectual Property Rights in the Services, and any derivative works thereof, are and shall remain exclusively the property of the Supplier, its Affiliates and/or the Third-party Providers. The Services are compiled, prepared, revised, selected and arranged by the Supplier or its Affiliates and their Third-party Providers through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort, creativity and financial resources, and as such the Services constitute valuable intellectual property of the Supplier, its Affiliates and/or the Third-party Providers. The Client will, at the Supplier’s direction and at the Client’s own cost, cease to do all such actions and cease to make all such omissions as are or may be prejudicial or harmful to the Supplier’s, the Supplier’s Affiliates’ or Third-party Providers’ rights, title and interest in such Intellectual Property Rights.
- (b) Copying of, use of, access to or distribution of the Services or any information, data or software contained therein in breach of this Agreement is strictly forbidden and shall cause the Supplier, its Affiliates and/or the Third-party Providers irreparable injury that cannot be adequately compensated for by means of monetary damages. Any breach of this Agreement by the Client may be enforced by the Supplier, its Affiliates or their Third-party Providers by means of equitable relief (including, but not limited to, injunctive relief) in addition to any other rights and remedies that may be available.

- (c) The Client shall provide the Supplier with such attribution as the source of the Services, including without limitation to any Data, as the Supplier may reasonably require from time to time.

## **9. WARRANTIES**

- (a) TO THE EXTENT PERMITTED BY LAW, THE SUPPLIER, ITS AFFILIATES AND THEIR RESPECTIVE THIRD-PARTY PROVIDERS HEREBY EXPRESSLY DISCLAIM ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SERVICES, PERFORMANCE THEREOF OR ANY MATERIALS PROVIDED UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, COMPLETENESS OR FITNESS FOR A PARTICULAR PURPOSE, THE INFORMATION, DATA, SOFTWARE, APPLICATIONS OR PRODUCTS CONTAINED THEREIN OR THE RESULTS OBTAINED BY THEIR USE, COMPLIANCE WITH RULES OR REGULATIONS, NON-INFRINGEMENT AND TITLE, SEQUENCING, TIMELINESS, ACCURACY OR COMPLETENESS OF INFORMATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- (b) ALL SERVICES, INCLUDING DATA AND OTHER MATERIALS, PROVIDED UNDER THIS AGREEMENT ARE PROVIDED ON AN "AS IS" BASIS AND THE CLIENT'S USE OF, OR ANY DECISIONS MADE IN RELIANCE OF THE SERVICES ARE AT THE CLIENT'S OWN RISK. FURTHERMORE, NO GUARANTEE IS MADE AS TO THE EFFICACY OR VALUE OF ANY SERVICES PERFORMED OR SOFTWARE, DATA, CODE OR OTHER MATERIALS DEVELOPED.
- (c) THE CLIENT ACKNOWLEDGES AND AGREES THAT NEITHER THE SERVICES NOR ANY OF THE INFORMATION OBTAINED BY OR THROUGH THE SERVICES ARE INTENDED TO SUPPLY INVESTMENT, FINANCIAL, ACCOUNTING, TAX, COMMODITY TRADING, OR LEGAL ADVICE. THE CLIENT ACKNOWLEDGES AND AGREES THAT IT WILL CONSULT ITS OWN INVESTMENT, FINANCIAL, TAX, AND LEGAL ADVISORS TO THE EXTENT IT REQUIRES ANY SUCH ADVICE. A REFERENCE TO A PARTICULAR INVESTMENT OR SECURITY, A CREDIT RATING, OR ANY OBSERVATION CONCERNING A SECURITY OR INVESTMENT PROVIDED IN THE SERVICES IS NOT A RECOMMENDATION TO BUY, SELL OR HOLD SUCH INVESTMENT OR SECURITY OR TO MAKE ANY OTHER INVESTMENT DECISIONS. THE SUPPLIER OFFERS NO ADVICE REGARDING THE NATURE, POTENTIAL FUTURE VALUE, OR SUITABILITY OF ANY PARTICULAR SECURITY, COMMODITY INTEREST, TRANSACTION, INVESTMENT OR INVESTMENT STRATEGY. THE CLIENT ACKNOWLEDGES AND AGREES THAT THE USE OF THE SERVICES AND DATA, AND ANY DECISIONS MADE IN RELIANCE UPON THE SERVICES AND DATA, ARE MADE AT THE CLIENT'S OWN RISK. THE CLIENT FURTHER ACKNOWLEDGES AND AGREES THAT NEITHER THE SERVICES NOR ANY INFORMATION OR DATA OBTAINED BY OR THROUGH THE SERVICES CONSTITUTE AN OFFER TO PURCHASE OR A SOLICITATION OF AN OFFER TO SELL SECURITIES.

## **10. CONFIDENTIAL INFORMATION**

- (a) "**Confidential Information**" means any and all non-public information in any form obtained by either party or its Affiliates pursuant to, or concerning this Agreement or the Services, including any matters relating to the business of each party and, to the extent applicable, the Affiliates of each party and Third-party Providers, and, including but not limited to, all trade secrets, processes, computer software, information or documentation related thereto.
- (b) Confidential Information does not include, and the obligations of this Clause 10 do not apply to, information that is: (i) already previously known to the party that receives or acquires Confidential Information (the "**Receiving Party**") without an obligation of confidentiality; (ii) publicly known or becomes publicly known through no wrongful act of the Receiving Party; (iii) lawfully received from a third party having, to the knowledge of the Receiving Party, no obligation of confidentiality; (iv) approved for release by written authorization of the party disclosing the Confidential Information (the "**Disclosing Party**"); or (v) developed, now or later, independently by the Receiving Party without reference to the information acquired from the Disclosing Party.
- (c) Each party shall maintain in confidence all Confidential Information received from the other, both orally and in writing, and shall not disclose or otherwise make available the Confidential Information to any

third party without the prior written consent of the Disclosing Party; provided, however, that each party may disclose the other party's Confidential Information to the Receiving Party's officers, employees, consultants and legal advisors who need access to the Confidential Information to effect the intent of this Agreement. Confidential Information may be disclosed as required by law, regulation, court order or request of a governmental or regulatory authority having jurisdiction over the Receiving Party, provided that the Receiving Party promptly notifies (to the extent legally permissible) the Disclosing Party of the requirement and discloses only that portion of the Confidential Information that is required to be disclosed by law, regulation, court order or request. Each party agrees to use the Confidential Information only for the purposes of carrying out their respective obligations pursuant to this Agreement. The Receiving Party's obligation of confidentiality survives this Agreement for a period of two (2) years from the date of its termination, except in the case of trade secret information, in which event this obligation survives perpetually.

- (d) The Receiving Party acknowledges that the Disclosing Party may be subject to internal policies, laws and regulations that govern and restrict the collection, storage, processing, disclosure or use of any information that identifies or can be used to identify, contact or precisely locate the person or legal entity to whom such information pertains or from which identification or contact information of an individual person or legal entity can be derived ("**Personal Information**"), including, but not limited to, any Personal Information relating to the Disclosing Party, the Disclosing Party's Affiliates and each of their respective customers, suppliers and personnel. The Supplier's Privacy Policy is located here: <https://www.intercontinentalexchange.com/privacy-policy>.
- (e) Where the Client is subject to the data protection laws and regulations of the European Union ("**EU**"), the European Economic Area ("**EEA**") and/or any Member State thereof, the United Kingdom, Switzerland and/or Singapore, the Client acknowledges and agrees that certain additional terms and conditions set out in the Supplier's Privacy Policy and other documents in connection with the collection, storage, processing, disclosure, access, review and/or use of such Personal Information may apply. Where the Client provides Personal Information to the Supplier for purposes of providing the Services ("**Client's Personal Information**"), Supplier shall act as a service provider with respect to such Client's Personal Information. The Supplier shall process the Client's Personal Information consistent with Supplier's Privacy Policy and unless the Client provides prior written approval, the Supplier shall not collect, retain, use, disclose or sell the Client's Personal Information for any purpose other than performing the Services pursuant to this Agreement, enabling the Supplier to meet its legal and regulatory requirements, marketing the Supplier's products and services, or product improvement and development. Specifically with respect to Client or one or more of its Affiliates which provide Personal Information to the Supplier that is subject to European Data Protection Laws (as defined in the Additional Terms), the Additional Terms located here: [https://www.ice.com/publicdocs/Additional\\_Terms\\_EU\\_Subscribers.pdf](https://www.ice.com/publicdocs/Additional_Terms_EU_Subscribers.pdf) shall be incorporated into and form part of this Agreement and, in the event of conflict with any other terms of this Agreement, shall prevail over such terms.

## **11. POLICIES AND SPECIFICATIONS**

The Supplier and its Third-party Providers reserve the right to make policies governing the use of the Service, including without limitation the policies available at <https://www.ice.com/data-services/global-network/documents>, as updated from time to time (the "**Policies**") and specifications concerning connection of systems to the Services (the "**Specifications**") and to amend the Policies and the Specifications from time to time. The Client agrees to comply with the Policies and Specifications and the rules and regulations of the Supplier as are notified by the Supplier to the Client from time to time. Clause 12 (Amendment) applies to any new Policy or Specification made by the Supplier or its Third-party Providers in the same way as it applies to any amendment to a Policy or Specification.

## **12. AMENDMENT**

- (a) The Supplier may amend this Agreement, the Policies and the Specifications from time to time upon giving notice of any such amendment to the Client by posting amendments on the Supplier's website at



<https://www.ice.com/data-services/global-network/documents> or sending email notice to the Client, and any such amendments, including Rate Adjustments (subject to Clause 6), will be prospectively binding on the Client effective ten (10) days from the date of such posting. Notwithstanding the foregoing, the Supplier will provide thirty (30) days' prior notice, by email to the Client or by other direct communication with the Client, of any such amendments that are likely to materially and adversely affect the Client or its rights or obligations under an Order Form. The Client's use of the applicable Services after the effective date of any such amendment shall constitute the Client's ratification of, and agreement to, any such amendment.

- (b) If any amendment to this Agreement, the Policies or the Specifications under this Clause 12 has a material adverse impact on the Client or its rights or obligations under an Order Form, the Client may, within thirty (30) days from the date of the notification of such amendment, provide the Supplier with no more than three (3) months' written notice of the Client's termination of this Agreement. If the Client terminates this Agreement under this Clause 12(b), it is agreed and acknowledged that (i) the amendment shall not apply for the remainder of the term of this Agreement except where amendments are implemented due to Third-party Provider requirements or as a result of legislation or regulation); and (ii) notwithstanding such termination, the Client will remain liable for Third-Party Provider fees due for remainder of the applicable term of the Order Form. The Client's use of the Services following the expiry of the thirty (30) days' notice period referred to in this Clause 12(b) shall constitute acceptance of the relevant amendment.

### **13. LIMITATIONS OF LIABILITY**

- (a) The liability of the Supplier, its Affiliates and their Third-party Providers to the Client under or in connection with this Agreement whether arising in contract, misrepresentation, tort (including, without limitation, negligence) or otherwise is as set out in this Clause 13.
- (b) Nothing in this Clause 13 limits the Supplier's liability to the Client for: (1) death or personal injury caused by the negligence of that party; and (2) fraud or wilful misconduct.
- (c) The Supplier, its Affiliates and their Third-party Providers shall not be liable for any damage whatsoever to property at the Client's premises resulting from the installation, repair, maintenance, inspection or removal of Services, Equipment and facilities unless such damage is caused by the Supplier's wilful misconduct or negligence.
- (d) The Supplier, its Affiliates and their Third-party Providers shall not be liable for any damages whatsoever associated with services, equipment or facilities that it does not furnish or for any act or omission of any entity furnishing to the Client services, equipment or facilities used for or in connection with the Services.
- (e) The Supplier, its Affiliates and their Third-party Providers exercise no control over, and accept no responsibility for, the content of any information transmitted using the Services. Use of such information is at the Client's own risk. The Client is solely responsible for maintaining the accuracy and integrity of its own data.
- (f) The Supplier, its Affiliates and their Third-party Providers shall not be liable for any damages whatsoever due to the acts or omissions of the Client, nor for any damages or liability for any errors, omissions, interruptions, malfunctions or delays in the Services.
- (g) To the fullest extent permitted by law and subject to Clause 14 (Indemnification), in the event that the Supplier is determined to be liable to the Client for any cause of action arising out of or related to any Services provided under this Agreement, the Client expressly agrees that the Supplier's aggregate liability, for any claims, damages or losses under all causes of action ("**Claims**"), will not exceed the greater of: (i) forty thousand pounds sterling (£40,000); or (ii) the fees paid and payable by the Client to the Supplier for the Services in question in the three (3) month period prior to the date such Claim arose, less all payments made of other Claims, subject to this limitation, under such Order Form. The foregoing limitations shall apply even if the Client's remedies under this Agreement fail of their essential purpose.

- (h) Notwithstanding anything to the contrary in this Agreement, in no event shall either party be liable for:
  - (1) any special, consequential, incidental, indirect, exemplary, or punitive loss or damage of any kind; or
  - (2) for loss of profits, loss of goodwill, loss of revenue, business interruption or loss of programs, information or data, whether or not that party has been advised of the possibility of such loss or damage.
- (i) Subject to Clause 14 (Indemnification), the Client must bring a Claim within one (1) year following the date on which the cause of action or Claim has accrued; provided, however, that this Clause 13(i) shall not in any way limit or restrict the Supplier's ability to issue invoices for Charges relating to the delivery of the Services.

#### **14. INDEMNIFICATION**

- (a) To the fullest extent permitted by law, the Client shall indemnify, defend and hold harmless the Supplier Indemnitees on demand from and against all Claims: (1) arising out of, resulting from or related to the Client's resale or attempted resale of the Services; (2) in connection with the use of the Services; (3) for damage to any of the Supplier's property, assets or equipment arising in connection with the use of the Services; (4) for unauthorised use of any trademark, trade name or service mark by the Client, its Affiliates or End Users; and (5) arising out of or in connection with any misuse of the Services, excepting only those Claims that directly result from the gross negligence, wilful misconduct or fraud of the Supplier. The Client agrees to defend the Supplier Indemnitees against any such Claims and to pay, without limitation, all litigation costs, reasonable attorneys' fees and court costs, settlement payments, and any damages awarded or resulting from any such Claims. Notwithstanding the foregoing, the Client shall not, without the prior written consent of the Supplier Indemnitees, which shall not be unreasonably withheld, accept any settlement or compromise or consent to any entry of judgment, with respect to any Claim that: (i) subjects the Supplier Indemnitees to liability of any kind, including, but not limited to, injunctive or other equitable actions or orders of any kind; or (ii) does not include as an unconditional term thereof, the delivery by the claimant or plaintiff of a written release that releases the Supplier Indemnitees from all liability in respect of such Claim.
- (b) The Client shall immediately notify the Supplier of any Claim known or suspected by the Client and shall honour all reasonable requests by the Supplier to perfect and protect at the Supplier's expense any rights of the Supplier in the Services.
- (c) If a third party brings a claim or other legal action against the Client alleging that any Data, information and content (including, but not limited to, bids, offers, prices, rates and other trading and informative data) included in the Services that are proprietary to the Supplier and specifically excluding any Third-party Provider content, as and in the manner provided to the Client by the Supplier, infringes upon a copyright or trademark, of such third party ("**Covered Claim**"), the Supplier shall defend the Client, at the Supplier's expense, from such Covered Claim, and will pay all amounts payable to third parties in connection with any settlement or compromise of a Covered Claim approved by the Supplier, and pay all damages awarded to third parties relating to a Covered Claim, including court costs and attorneys' fees awarded. The foregoing obligations of the Supplier are conditioned upon and shall remain subject to the Client: (i) providing the Supplier with prompt written notice of any Covered Claim, with the Supplier's obligation to defend and indemnify the Client with respect to a Covered Claim being reduced only to the extent that a delay by the Client in notifying the Supplier of the Claim adversely affects the Supplier's ability to defend, compromise, settle or appeal such Claim; (ii) giving the Supplier sole control of the defense of the Covered Claim and any related settlement negotiations; and (iii) cooperating and assisting (as reasonably requested by the Supplier and at the Supplier's expense) with the Supplier's efforts to defend or settle the Covered Claim. In the event that a third-party claim or other legal action is made or brought against Subscriber alleging that a Third-party Provider data or service as provided to the Client by the Supplier infringes such third party's intellectual property rights (including, but not limited to, patents, copyrights, trade secrets, database rights, design rights, goodwill and trademark rights), whether registered or not, and including applications for registration thereof, rights in know-how and moral rights, the Supplier shall indemnify the Client to the same extent the Supplier is indemnified by the Third-party Provider in question, or shall assign to the benefit of the Client the indemnification right afforded to the Supplier, if applicable. The Supplier will have no obligation under

this Clause 14(c) or otherwise for any infringement or misappropriation claim based on or arising out of: (i) any modification of the Services made by someone other than the Supplier or its authorized agents; (ii) any combination or use of the Services with any other software, hardware, data, or other materials or information not furnished by the Supplier; and/or (iii) any failure of the Client, or others acting under the Client's authority or control, to comply with the Client's obligations under this Agreement. If the Services become, or the Supplier believes are likely to become, subject to an infringement claim, the Supplier may, at its sole option and expense: (x) replace or modify the Service, or any portion thereof, so that they become non-infringing; (y) obtain for the Client the right to continue using the infringing part of the Service, or (z) terminate this Agreement as to the infringing part of the Service. The foregoing states the Supplier's entire liability and the Client's sole and exclusive remedies for infringement or misappropriation claims and actions of any kind. Notwithstanding anything to the contrary herein, the Supplier's maximum cumulative liability to the Client under this Clause 14(c) shall not exceed two hundred thousand pounds sterling (£200,000) in the aggregate, regardless of the number of indemnification claims that may be made hereunder.

## **15. RECORD KEEPING; AUDIT**

The Client shall at all times during the Term of any Services and for not less than a period of twenty-four (24) months thereafter, maintain complete and accurate records (including applicable data in electronic format) with respect to the Client's (and its customers') access to, usage and distribution of the Services for the most recent thirty-six (36) months. During the Term of any Services and for a twenty-four (24) month period thereafter, the Supplier shall have the right, during normal business hours and upon reasonable notice to the Client, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of such Services, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. The Client agrees and acknowledges that to the extent the Client is accessing or using any portion of any Services provided by a Third-party Provider, such Third-party Provider may require the Client to comply with additional record keeping and audit requirements. The Client shall, where applicable, and as required to receive certain portions of the Services, comply with such additional record keeping and audit requirements. To the extent required by a Third-party Provider, such Third-party Provider shall have the right, during the Term of a Services and following termination or expiration of the applicable Agreement, during normal business hours and upon reasonable notice to the Client, to (a) audit and review relevant portions of those records; and (b) audit the manner of access to and usage of such Services under such Agreement, in each case to confirm that fees and charges have been accurately determined and that restrictions on use and access have been observed. The Supplier's or Third-party Provider's failure to conduct an audit pursuant to this Clause 15 shall not relieve the Client from its responsibilities to comply fully with the terms and conditions of this Agreement. The Client agrees to permit the Supplier or its representatives and the Third-party Providers or their representatives to periodically inspect, at the Client's premises and during reasonable hours and at reasonable intervals, the network on or by which any portion of the Services are accessed for purposes of evaluating compliance with the terms of this Agreement. In the event of such an onsite audit undertaken by the Supplier at the Client's premises, the Supplier shall liaise with the Client to outline an implementation plan to ensure the Client's security protocols and mandatory and/or contractual data security obligations are met in relation to the right of inspection and audit. Notwithstanding the foregoing, the Supplier may share the information obtained as part of any audit undertaken in accordance with this Clause 15, with its Third-party Providers and their agents where required. The Supplier acknowledges that the Client can redact all personal information for purposes of any audit or inspection under this Clause 15. The costs of any such audit and/or inspection shall be borne by the Supplier; provided, however, if such audit and/or inspection reveal an underpayment to the Supplier of five percent (5%) or more, the Client shall reimburse the Supplier for its reasonable costs and expenses in conducting such audit and/or inspection.

## **16. TERMINATION**

- (a) The Supplier may terminate this Agreement, in whole or in part, immediately on written notice to the Client if: (1) the Supplier determines, in its sole discretion, that continued provision of the Services or

any equipment or facilities will contravene any law, regulation or major carrier use policies; (2) the Supplier determines, in its sole discretion, that such action is necessary to prevent or protect against fraud, or otherwise protect the Services, equipment or facilities from abuse or degradation or to protect its personnel or other clients; (3) the Supplier is unable to secure the necessary services, equipment or facilities to continue to provide the Services to the Client, or the Supplier's right or licenses to receive and use those portions of the Services pursuant to licenses granted to the Supplier by Third-party Providers are terminated for any reason; (4) the Supplier determines, in its sole discretion, to generally discontinue offering or providing the Services or any portion thereof; (5) any amounts remain unpaid thirty (30) days after the Client's receipt of the relevant invoice; (6) the Client is in material breach of this Agreement and that material breach is not remedied within thirty (30) days from receipt of written notice of the breach; or (7) subject to Clause 20(h) (Governing Law and Jurisdiction), the Client is unable to pay its debts as they fall due, a petition is presented for the winding up of the Client, there is an application for the appointment of a liquidator or receiver in respect of the Client or insolvency or bankruptcy proceedings in respect of the Client are instituted.

- (b) Order Forms remain in effect for the initial term and renewal terms specified therein, until terminated in accordance with the provisions specified in the applicable Order Form. If no renewal terms are set forth in the applicable Order Form, subsequent to the Initial Term specified in the Order Form, the Order Form may be terminated by either party by providing the other party 60 days' advance written notice of termination.
- (c) The Client may terminate this Agreement: (1) immediately upon written notice to the Supplier if the Supplier is in material breach of this Agreement and that material breach is not remedied within thirty (30) days from receipt of written notice of the breach; (2) in the circumstances specified in Clauses 2 (Initial Term), 3 (Provision of Services) and 12(b) (Amendment); or (3) subject to Clause 20(h) (Governing Law and Jurisdiction), the Supplier is unable to pay its debts as they fall due, a petition is presented for the winding up of the Supplier, there is an application for the appointment of a liquidator or receiver in respect of the Supplier or insolvency or bankruptcy proceedings in respect of the Supplier are instituted. The Client may not terminate this Agreement in any other circumstances.
- (d) Upon termination of an Order Form or of the Client's license to use the Services, the Client will cease all use of the Services and promptly delete or destroy all copies it may have of the Data and any software or security keys the Client may have received from the Supplier, except to the extent the Client is required to retain portions of the Data for regulatory document retention and archival purposes provided no commercial use can be made of the Data. Upon the Supplier's request, the Client shall provide written certification that the Data and software have been purged from the Client's computer systems, and that all copies or portions thereof, along with any security keys, have been destroyed.
- (e) The following provisions of this Agreement shall survive the expiration or termination of this Agreement: Clauses 5 (Payment), 8 (Intellectual Property Rights), 9 (Warranties), 10 (Confidential Information), 13 (Limitations of Liability), 14 (Indemnification), 15 (Record Keeping; Audit), 16 (Termination), 18 (Notification), 20(g) (Entire Agreement), 20(h) (Governing Law and Jurisdiction), and Sections 3(d) and 6 of Exhibit A. Any provisions of the Additional Terms Schedule that are stated to survive the expiration or termination of this Agreement shall also survive the expiration or termination of this Agreement. It is further acknowledged and agreed that if the Client continues to receive the applicable Services after the expiration or other termination of this Agreement or an applicable Order Form, including during a renewal negotiation, the Client's continued access to and use of such Services shall remain subject to the terms and conditions of this Agreement. For the avoidance of doubt, the preceding acknowledgement in no way serves to grant the Client an extension to its license under the applicable Order Form or this Agreement or any post-termination rights to use the Services.

## **17. FORCE MAJEURE**

Neither party shall be deemed in default of any of its obligations under this Agreement (except the Client's payment obligations) to the extent that performance is prevented or delayed by any act of God or public enemy, war, insurrection or riot, fire, flood, explosion, earthquake, labour dispute causing cessation, slowdown or interruption of work, national emergency, act or omission of any governing

authority or agency thereof, inability after reasonable endeavours to procure equipment, data or materials from suppliers or any other circumstances beyond the affected party's reasonable control.

## 18. NOTIFICATION

Except as otherwise provided in this Agreement, all notices to the parties shall be sent to:

(a) In the case of the Supplier, unless otherwise notified in writing, in this Agreement or in an applicable Order Form to the Client from time to time,

(i) for notice of termination,

\*\*Sales - ICE Data Services - EMEA Service Cancellations <[Sales-ICEDataServices-EMEAServiceCancellations@TheIce.com](mailto:Sales-ICEDataServices-EMEAServiceCancellations@TheIce.com)> where the Services are provided in EMEA;

\*\*Sales - ICE Data Services - APAC Service Cancellations <[Sales-ICEDataServices-APACServiceCancellations@TheIce.com](mailto:Sales-ICEDataServices-APACServiceCancellations@TheIce.com)> where the Services are provided in Asia Pac;

\*\*Sales - ICE Data Services - NA Service Cancellations <[Sales-ICEDataServices-NAServiceCancellations@TheIce.com](mailto:Sales-ICEDataServices-NAServiceCancellations@TheIce.com)> where the Services are provided in all other jurisdictions, including the US;

(ii) for all other notices, the Sales Executive for the Client designated on the Order Form, and

(iii) **for all notices (including for termination), a copy to Legal-FIData-ConnectivityandDesktop@ice.com**;

(b) In the case of the Client, unless otherwise stated, the Business Contact and corresponding address set out on the Order Form, by email or by regular mail, postage prepaid. Any such notice shall be deemed to be given or received at the time of delivery if delivered by hand or by e-mail or received the third (3<sup>rd</sup>) business day following the date of sending it by post.

## 19. OFAC/EAR/ANTI-SOCIAL FORCES

(a) The Client acknowledges that the Services and related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations (EAR) and the requirements of the U.S. Department of the Treasury's Office of Foreign Assets Controls' (OFAC) sanctions programs, including the Specially Designated Nationals List (collectively the "**Controls**"). With respect to the Services and related technical information, documents and materials provided to the Client pursuant to this Agreement, the Client will: (i) comply with all legal requirements established under the Controls; (ii) cooperate fully with the Supplier in any official or unofficial audit or inspection that relates to the Controls; and (iii) not export, re-export, divert or transfer, directly or indirectly, any such item or direct products thereof to, or otherwise enter into any transaction or engage in any other activities with, any country, territory or person restricted or targeted by the Controls, unless such export, re-export, diversion, transfer, transaction, or activity is authorized under the Controls. The Client further represents and warrants that as of the date of this Agreement, (x) neither the Client, the Client's Affiliates nor any of their respective affiliates, subsidiaries, or any director or corporate officer of any of the foregoing entities, is the subject of any OFAC sanctions, and (y) the Client is not 50% or more owned or controlled, directly or indirectly, by any person or entity that is the subject of any OFAC sanctions, and (z) to the best of the Client's knowledge, no entity or entities own or control either directly or indirectly more than 50% of the Client are the subject of OFAC sanctions. For so long as this Agreement is in effect, the Client will notify the Supplier as soon as is practicable, but in any event no later than forty-eight (48) hours after it determines that any of these circumstances change. Notwithstanding anything to the contrary herein, the Supplier reserves the right to immediately terminate this Agreement to the extent that the Client's access to or use of the Services would violate the Controls.

(b) No Client organized or doing business in Japan shall be a part of Anti-Social Forces as defined below:

(i) "**Anti-Social Forces**" means:

- an organized crime group, a member of an organized crime group, a related company or association of an organized crime group, and any other equivalent person of above; or

- a person who themselves or through the use of third parties conducts a demand with violence, an unreasonable demand beyond its legal entitlement, use of intimidating words or actions, damages the credit or obstructs the business of the other party by spreading false rumors or by the use of fraudulent, or any other equivalent actions of above.
- (ii) Each party to this Agreement represents and warrants that it does not fall under any of the following items and covenants that it shall not fall under any of the following items:
- It has a relationship where Anti-Social Forces are considered to be controlling its management.
  - It has a relationship where Anti-Social Forces are considered to be substantially involved in its management.
  - It has a relationship where it is considered to be using Anti-Social Forces in an improper manner (e.g., for the purpose of pursuing illicit profits for itself or a third party or for the purpose of causing damage to a third party).
  - It has a relationship where it is considered to be involved with Anti-Social Forces (e.g., providing funds or the like or furnishing benefits).
  - Its officer or a person substantially involved in its management has a relationship with Anti-Social Forces that should be the subject of social criticism.
- (iii) In the event of a breach of the preceding paragraph by a party, each party shall have the right to suspend its transactions with the breaching party or terminate this Agreement immediately by a written notice without any cure period and claim for damages incurred arising out of such breach, and all obligations of the breaching party shall become due and payable immediately. The non-breaching party shall not be held liable for any damages incurred by the breaching party as a result of such suspension or termination.

## **20. GENERAL PROVISIONS**

- (a) Amendment. Subject to Clause 3 (Provision of Services), Clause 6 (Rate Adjustment) and Clause 12 (Amendment), this Agreement may be modified, waived or amended only by a written instrument signed by the parties and shall be binding upon the parties' respective successors and assigns.
- (b) Waiver. The failure of a party to exercise or enforce any right or remedy conferred on it by this Agreement shall not be deemed to be a waiver in part or in full of any such right or remedy, nor shall it preclude the further exercise in part or in full of that or any other right or remedy .
- (c) Severability. If any provision of this Agreement is or becomes invalid, illegal or unenforceable, that shall not affect the validity and enforceability of the remainder of this Agreement.
- (d) Relationship. Nothing in this Agreement shall create a partnership, agency or employment relationship between the parties, nor authorise either party to incur any liabilities or obligations on behalf of or in the name of the other party.
- (e) Assignment and Subcontracting. The Supplier may, without obtaining the consent of the Client, assign any of its rights, privileges, or obligations under this Agreement and may subcontract any of its obligations under this Agreement to any of its Affiliates or to any other third party. The Client shall not, without the prior written consent of the Supplier (such consent shall not be unreasonably withheld), assign, transfer, or in any other manner dispose of, any of its rights, privileges, or obligations under this Agreement.
- (f) Authority and Binding Effect. The Parties represent and warrant that they have all necessary power and authority to execute and perform the Agreement, and the Agreement is a legal, valid and binding agreement, enforceable against each party in accordance with its terms.
- (g) Entire Agreement. This Agreement, and any other documents expressly incorporated into this Agreement, constitutes the entire agreement of the parties and supersedes any previous agreement of the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not

relied on or been induced to enter into this Agreement its Affiliates or to by a representation other than those expressly set out in this Agreement. This does not affect a party's liability in respect of a fraudulent misrepresentation.

- (h) Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with English law. The parties agree that the courts of England shall have exclusive jurisdiction to hear and settle any action, suit, proceeding or dispute in connection with this Agreement notwithstanding the presence of multiple defendants or the introduction of third parties, even for urgent proceedings, appraisals or conservation measures by expedited procedure or by filing a petition, and, for such purposes irrevocably submits to the jurisdiction of the English courts.

## **EXHIBIT A: ADDITIONAL TERMS AND CONDITIONS FOR FEEDS SERVICES**

Unless otherwise expressly stated hereunder, for the purposes of this Exhibit A, any reference to Services shall mean, and the terms and conditions in this Exhibit A shall only apply to, the particular delivery, internal or external distribution of Data included in the Feeds Services, if any, pursuant to the respective Order Form.

Therefore, the parties hereto agree as follows:

### **1. DEFINITIONS**

As used in these Additional Terms and Conditions and in any applicable Order Forms, terms set forth below shall have the meanings ascribed to them below:

- (a) **“Approved Internal Application”** means the specific Client application described in the respective Order Form(s) in which Data is authorised hereunder for use internally by the Client.
- (b) **“Approved Redistribution Product”** means the product of the Client specified in the Order Form (if any) in which the Client is hereby authorised to incorporate the Data and redistribute it to Customers (if applicable as specified in the Order Form(s)).
- (c) **“Customer”** means any person who has entered into a binding agreement with the Client for the use of the Approved Redistribution Product. For the avoidance of doubt, reference to **“Customers”** herein shall include End Users as per the General Terms and Conditions.
- (d) **“Customer Agreement”** means a click-through or written agreement between the Client and the Customer which governs the use of the Approved Redistribution Product.
- (e) **“Delivery Address”** means the geographical site specified in the Order Form to which the Services are delivered by the Supplier and where the Data is authorised hereunder for use by the Client.
- (f) **“Derived Data”** means data created by the Client, in connection with the Client’s use of the Data as permitted under the terms of any applicable Order Form, as a result of combining, processing, changing, converting or calculating the Data or any portion thereof with other data where the resultant data (i) does not bear resemblance to the underlying Data; (ii) cannot be readily reverse engineered, disassembled or decompiled such that a third-party may access the Data via the Derived Data; (iii) cannot be used in a manner which could be a source of, or a substitute for Data provided by the Supplier or its Affiliates; (iv) cannot be used in whole or in part in a manner which competes with the Supplier or its Affiliates; or (v) cannot be used for constructing, creating or calculating the value of any index or indexed products.
- (g) **“Outsourcing”** means the practice whereby the Client or anyone acting by, through or on behalf of the Client provides certain infrastructure and/or operational processes, including, without limitation, software systems or platforms, to a third party in lieu of such third party providing such infrastructure or processes itself.
- (h) **“Royalties”** means any applicable amounts payable by the Client to the Supplier in respect of each Customer's use of the Approved Redistribution Product, i.e., any “per Customer” fees.
- (i) **“Technical Specification”** means the Supplier's standard technical specification document current at the date it is provided (if applicable to the Services) to the Client in which the data format and other technical characteristics of the Services are defined, as specified in the Order Form.
- (j) **“Territory”** means the region specified in an Order Form.
- (k) **“Test Data”** means sample data, information or software.

### **2. SUPPLY OF SERVICES**

- (a) The Supplier will supply the Services to the Client at the Delivery Address subject to the terms and conditions of the Agreement. Unless otherwise agreed, it shall be the Client's responsibility to arrange



at its own expense for distribution of the Services to any authorised additional site within the Territory as set forth in the Order Form.

- (b) The Supplier may recommend Equipment or minimum bandwidth to the Client from time to time. The Client acknowledges that failure to act on such recommendation may result in delays in delivery, or loss, of data.
- (c) Unless otherwise set forth in an Order Form, the Client shall not use any part of the Data in conjunction with any third party application, system or model where such application, system or model already utilizes the Supplier's Data, and such Data is provided to the Client from a third party that receives it from the Supplier or an Affiliate of the Supplier.
- (d) Subject to applicable Third-party Provider rules and payment of any applicable Third-party Provider fees, the Client may, for no additional consideration, make the Data available to potential Customers for a period of not more than thirty (30) days to permit potential Customers to evaluate the Data and the Approved Redistribution Product; provided, however, that prior to making the Data available to any potential Customer, the potential Customer must enter into a nondisclosure or similar agreement with the Client which (a) protects the Supplier and the Third-party Providers to substantially the same degree as the General Terms and Conditions and the Customer Agreement, and which restricts the potential Customer's use of the Data to internal evaluation for purposes of determining whether the potential Customer desires to enter into agreements with the Client for ongoing access to the Data via the Approved Redistribution Product; (b) contains a covenant on the part of the potential Customer to the effect that the Data shall not be used by the potential Customer for commercial gain; and (c) provides that neither the Supplier nor any of its suppliers and their respective affiliates and Third-party Providers shall (i) have any liability for errors, omissions, malfunctions or faults in the Data delivered via the Approved Redistribution Product or (ii) be liable for any loss, cost, damage, injury or expense which any potential Customer sustains or suffers, directly or indirectly, arising from or relating to its use of the Data and/or Approved Redistribution Product.
- (e) The Client shall provide to the Supplier such IDs, passwords, login or sign-on credentials as may be necessary to enable the Supplier to access the Data via the Approved Redistribution Product. Such access shall be provided without charge for the duration of the applicable Order Form (including all renewals thereof) and shall be used only by authorized employees of the Supplier for purposes of ensuring the integrity of the Data, to diagnose and evaluate the manner in which the Data is distributed over the Approved Redistribution Product, to confirm that the presentation of the Data is in compliance with the terms of the Agreement, and for testing and troubleshooting purposes.

### **3. LICENCE**

- (a) Subject to the General Terms and Conditions, the Supplier hereby grants the Client a limited, non-exclusive, non-transferable licence to use Services as set forth in the applicable Order Form, solely within the Approved Internal Application(s) and/or the Approved Redistribution Product (as the case may be) and Territory identified in the applicable Order Form(s). The Client acknowledges that certain Services and/or Data may be provided by an Affiliate of the Supplier. In other circumstances, an Affiliate of the Supplier may provide Data to the Supplier which is incorporated by the Supplier into the Services and in such cases such Affiliate shall be deemed to be a Third-party Provider for such Services.
- (b) Any rights not expressly granted herein are reserved by the Supplier. In the event that a redistribution licence is granted in the respective Order Form, the provisions set forth in this Exhibit A shall apply, in particular Sections 3(e) and 3(f), which pertain to granting redistribution rights.
- (c) Subject to clause 7(a) of the General Terms and Conditions, the Services and the Data may be used by the Client and its employees or agents solely for the purpose of supporting the Approved Internal Application(s).
- (d) Unless otherwise expressly set forth in an Order Form, the Client shall not:
  - (i) provide the Data to, or use the Data on behalf of, any Affiliate of the Client;

- (ii) provide any Data to any third party for use in any litigation, arbitration, mediation or similar purpose;
  - (iii) use the Data to provide Outsourcing services to any third party;
  - (iv) use the Data to calculate or create Derived Data;
  - (v) use the Data to compile a historical database;
  - (vi) make any editorial, formatting or other changes in the Services and the Data unless expressly authorized in advance in writing by the Supplier. Notwithstanding the foregoing, the Client may, for formatting purposes only, include such codes, tags, instructions and other technical applications as may be necessary or desirable to make the Services compatible with the database structure, search logic, or other formatting arrangement of the Client's service;
  - (vii) provide the Data to a third party performing services for the Client on an outsourced basis, without the prior written approval from Supplier or the applicable Affiliate of the Supplier in each case, which approval may be subject to additional terms and conditions and additional fees;
  - (viii) use the Services, in whole or in part, in any manner that competes with the Supplier or its Affiliates;
  - (ix) use the Services or the Data in any way that may infringe any proprietary interest of Supplier in the Services; or
  - (x) knowingly use, or knowingly permit anyone to use, the Services or the Data for any unlawful or unauthorised purpose.
- (e) If the nature of the Approved Redistribution Product materially changes, including if the service merges or is combined with or linked to another service or product, the Client shall provide the Supplier with at least ninety (90) days' prior written notice and the Supplier shall have the right to terminate the applicable Order Form or to prohibit distribution of the Data via such modified product or service.
- (f) *LICENCE TO REDISTRIBUTE:*

Where the Client is granted a redistribution licence under the applicable Order Form, the Client is permitted to redistribute such Data (but not in the format of the Services) via the Approved Redistribution Product(s) to Customers within the Territory and to use the Data internally for maintenance, development and testing of the Approved Redistribution Product, subject to the terms and conditions set out below:

- (i) Where agreed in an Order Form, the Client may redistribute to a Customer via the Approved Redistribution Product(s) those parts of the Data that relate to that particular Customer's portfolio provided always that such Customer has entered into a binding Customer Agreement with the Client which:
  1. acknowledges the Supplier's and its Affiliates' and Third-party Providers' Intellectual Property Rights in the Data;
  2. prohibits the Customer from communicating or disseminating any part of the Data or any information obtained or derived therefrom to any third party;
  3. includes provisions substantially similar to those set forth on Annex A to Exhibit A hereto.
- (ii) The Client acknowledges and accepts the obligation to monitor Customers' on-going compliance with the specific terms of Customer Agreements. In the event that it should come to the attention of the Client, or if the Supplier should notify the Client, that any Customer is using any Data other than as permitted under the terms of the respective Customer Agreement, the Client shall, upon becoming so aware, or upon receipt of notice, take prompt corrective action. Unless such breach is cured within a thirty day period by the Customer after notice by the Client, the Client shall so notify the Supplier, and upon receiving appropriate written instructions from the Supplier, the Client shall discontinue providing the Data to such Customer and shall take such further action on

behalf of the Supplier as is reasonably requested by the Supplier to protect the Supplier's Intellectual Property Rights in the Data.

- (iii) To the extent applicable, the Client shall, at no cost to the Supplier, display/include such copyright, disclaimer and other notices as the Supplier may reasonably require on each screen display/display page of the Approved Redistribution Product that includes any of the Services, and in all user manuals supplied with the service (if any), and display such other notices as the Supplier may reasonably require in connection with the dissemination of the Data. The Client shall not alter, modify, remove or otherwise revise any part of the copyright, disclaimer or other required notices.
- (iv) In addition to paragraph (iii) above, any publicity material and other documentation prepared by or at the request of the Client which refers to the trademark 'Supplier', ICE Data Services or any other name or mark owned by the Supplier shall first be submitted to the Supplier for approval, and approval shall be obtained, before publication. Where accreditation is permitted by the Supplier, the Client will clearly display the Supplier official logo and accredit the Supplier as the source of Data on its website and promotional materials. It will also include a hyperlink from its web site to the Supplier web site. The exact format of this display will be mutually agreed between the parties however the Supplier reserves the right to modify at any time its official logo and the Client agrees to change the Supplier logo from its website accordingly within ninety (90) days of notice given by the Supplier to the Client regarding such variation.

(g) *COMPLIANCE WITH ANTI-CORRUPTION LAWS:*

- (i) The Client agrees that it will comply with all applicable anti-corruption laws or regulations of any jurisdiction ("**Anti-Corruption Laws**"). In addition, irrespective of whether it is legally subject to the United States Foreign Corrupt Practices Act ("**FCPA**") or the UK Bribery Act, the Client will comply with both the FCPA and the UK Bribery Act as though it is legally subject to such acts.
- (ii) In connection with the activities conducted on behalf of or involving the Supplier, the Client will take no action and make no payment or receive any payment in violation of, or which might cause the Client or the Supplier to be in violation of the FCPA, the UK Bribery Act or any applicable Anti-Corruption Laws. More specifically and without limiting any of the foregoing:
  - 1. The Client represents and warrants that it is not a government official or employee of a foreign government official or foreign political party or affiliated with any government official.
  - 2. The Client will not pay, offer, promise, or authorize the payment or transfer of anything of value, directly or indirectly, to any government official or employee (including employees of government owned or controlled companies or public international organizations) or to any political party, party official, or candidate for public office or any other person or entity for the purpose of obtaining or retaining business or an improper advantage for the Supplier or for any other purpose prohibited by the FCPA, the UK Bribery Act or any applicable Anti-Corruption Law.
  - 3. The Client will not make facilitation or "grease" payments.
  - 4. The Client will neither receive nor make any payments or transfers of value which have the purpose or effect of public or commercial bribery or acceptance of or acquiescence in extortion, kickbacks, or other unlawful or improper means of obtaining business.
- (iii) The Client is not authorized to and will not act as an agent of the Supplier with any foreign government official as that term is defined in the FCPA or with any foreign public official as that term is defined in the UK Bribery Act.
- (iv) The Client represents and warrants that to its knowledge, it has not violated the FCPA or any applicable Anti-Corruption Law and that it is not being investigated for and has not been accused of possible violations of the FCPA or any applicable Anti-Corruption Law. The Client will notify the Supplier's Legal Department if it has been found to have violated, or has been accused of possible violations of, the FCPA, the UK Bribery Act or any Anti-Corruption Law.

#### **4. TESTING OF ADDITIONAL SERVICES**

- (a) From time to time the Client may desire to test and evaluate certain additional Services and/or expand the scope of a Service to which the Client already subscribes (e.g., increasing the frequency of delivery or receiving a new Service). The Supplier is willing to provide the Test Data to the Client at no charge for a limited period of time (in no event to exceed thirty (30) days), in a mutually satisfactory form and frequency, provided that:
- (i) the Client will use the Test Data solely for the purpose of evaluating the Test Data and the Services within the Client's own organization and not for redistribution to any third party, or for any commercial purpose. The Supplier may, in its sole discretion, discontinue providing such Test Data at any time without notice;
  - (ii) the Test Data, and the results of any test using the Test Data, constitute Intellectual Property Rights hereunder, and the provisions of Clauses 2 (Initial Term), 3b (Provision of Services), 7(h) (Use), 9 (Warranties), 10 (Confidential Information), 13 (Limitation of Liability), 14 (Indemnity) and 15 (Record Keeping; Audit) shall apply to the use of the Test Data. Upon the Supplier's request, and in any event after the expiration or termination of the test, the Client shall cease all use of the Test Data and purge the Test Data and any copies thereof from its computer system. If the Test Data is delivered in a fixed medium, the Client shall return the Test Data to the Supplier or supply a certificate of destruction thereof, upon the Supplier's request; and
  - (iii) the Client acknowledges and accepts that in certain instances, it may be necessary for the parties to execute a Supplier-provided test agreement with additional terms and conditions applicable to the Test Data.

#### **5. CHARGES**

- (a) The Deposit is a one-time refundable fee (subject to Clause 6 (Rate Adjustment) above) due and payable after the installation of the Equipment at the Client's site.
- (b) The Client reserves the right to charge its Customers such fees for access to the Approved Redistribution Product as the Client may consider it to be appropriate.
- (c) The Client's obligation to pay Royalties hereunder shall arise upon delivery of the Services by the Supplier to the Client. The Client shall remit with each report, the frequency of which is set forth in the Order Form, the Royalties payable hereunder. Unless agreed otherwise, the Client shall raise self-billing invoices in respect of such remittances.

## **ANNEX A to EXHIBIT A**

### **Required Customer Agreement Provisions**

1. [SUPPLIER] AND ITS SUPPLIERS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS OR ANY OTHER MATTER AND SHALL HAVE NO LIABILITY TO [CUSTOMER OF CLIENT] OR ANY THIRD PARTY FOR ANY ERRORS, OMISSIONS OR MALFUNCTIONS IN THE SERVICES.
2. [Customer of Client] acknowledges that the Services are intended for use by institutional investors, registered brokers, professionals and others of similar sophistication and experience.
3. [Customer of Client] accepts responsibility for, and acknowledges it exercises its own independent judgment in, its selection of any of the Services, its selection of the use or intended use of such, and any results obtained. Nothing contained herein shall be deemed to be a waiver of any rights existing under applicable securities law.
4. [Customer of Client] shall indemnify [Supplier] and its suppliers against and hold [Supplier] harmless from any and all losses, damages, liability, costs, including attorney's fees, resulting directly or indirectly from any claim or demand against [Supplier] or its suppliers by a third party arising out of or related to any Services received by [Customer of Client], or any data, information, service, report, analysis or publication derived therefrom. Neither [Supplier] nor its suppliers shall be liable for any claim or demand against [Customer of Client] by a third party.
5. [Supplier] and its Third-party Providers shall constitute third party beneficiaries hereunder.

Unless otherwise agreed to in writing, the Data may be used by [Customer of Client] solely for their internal use and benefit and solely within the Approved Redistribution Product(s). Use of the Data expressly excludes further dissemination in any form to any other third party or use of the Data for a joint venture to which [Customer of Client] is a party.