

**SUBSCRIPTION AGREEMENT FOR VIP® Fair Value Insight™**

**IMPORTANT NOTICE:** THIS AGREEMENT IS BETWEEN VALUATION INSIGHT PARTNERS (“VIP”) AND THE CUSTOMER REFERENCED IN THE SUBSCRIPTION DOCUMENTS, AND GOVERNS CUSTOMER’S USE OF THE FAIR VALUE INSIGHT SERVICE. THIS AGREEMENT LIMITS AND EXCLUDES WARRANTIES AND REMEDIES REGARDING THE SERVICE, EXEMPTS VIP AND OTHER PERSONS FROM LIABILITY OR LIMITS THEIR LIABILITY, SPECIFIES THE JURISDICTION FOR RESOLUTION OF DISPUTES, AND CONTAINS OTHER IMPORTANT PROVISIONS THAT YOU SHOULD READ.

BY SUBSCRIBING FOR OR USING THE SERVICE, YOU ACKNOWLEDGE AND SIGNIFY CUSTOMER’S ACCEPTANCE AND AGREEMENT, WITHOUT LIMITATION OR QUALIFICATION, TO BE BOUND BY THIS AGREEMENT, AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE LEGAL AUTHORITY TO ACCEPT AND AGREE TO THIS AGREEMENT ON BEHALF OF CUSTOMER. IF CUSTOMER DOES NOT AGREE WITH EACH PROVISION OF THIS AGREEMENT, OR YOU ARE NOT AUTHORIZED TO AGREE TO THIS AGREEMENT ON BEHALF OF CUSTOMER, THEN NEITHER YOU NOR ANY OTHER PERSON ON BEHALF OF CUSTOMER MAY USE THE SERVICE. UNAUTHORIZED USE OF THE SERVICE IS STRICTLY PROHIBITED.

---

**INTRODUCTION**

This Agreement is between Valuation Insight Partners (“VIP”) and the Customer referenced in the Subscription Documents (collectively, the “Parties” and each a “Party”), and governs Customer’s use of the service known as *Fair Value Insight™*, which is a proprietary suite of online tools to perform valuations and related data (including Market Data), online training materials, documentation and technical support services provided by VIP pursuant to this Agreement (collectively, the “Service”).

This Agreement is comprised of: (a) the online download forms, registration notices, and invoices provided by VIP or its authorized reseller to Customer relating to Customer’s use of the Service (collectively, the “Subscription Documents”); (b) the Service Terms and Conditions set forth below; and (c) the General Terms and Conditions set forth below.

**SERVICE TERMS AND CONDITIONS FOR FAIR VALUE INSIGHT™**

1. **Definitions:** In these Service Terms and Conditions: (a) “Position” means a Customer’s holding of units in a single financial instrument; and (b) “Valuation” means a valuation of one (1) Position, either individually or within a portfolio of Positions, as of a specific date and time, which is created by a User using the Service. Other capitalized terms have the meaning ascribed elsewhere in this Agreement.
2. **Permitted Use of Service:** Customer and Users may access and use the Service only for the purpose of creating Valuations for Customer’s own use in accordance with the number of User Licenses purchased by Customer and Customer’s subscription for the Service, as set forth in this Agreement and the Subscription Documents.
3. **Qualified Users:** To qualify as a User, an individual must be employed or engaged by Customer and located in the country in which Customer’s office is located, as specified in the Subscription Documents.
4. **Market Data:** Market Data provided as part of the Service may be accessed and used only as reasonably necessary for Users to create Valuations.
5. **Positions:** Each Position will subsist until a User deletes the Position. Any User may create or delete a Position at any time using the controls provided by the Service.
6. **Valuations:** Unless expressly authorized under a separate addendum to this Agreement signed by the Parties, Customer and Users will use Valuations for Customer’s internal operations only, and will not directly or indirectly distribute, disclose, publish, or otherwise provide or permit any persons other than Users to access or use, any Valuations or other data, analyses, calculations, results or reports created using the Service or Market Data, except to the extent that disclosure is required by applicable law.
7. **Fees:** Fees for the Service are based upon the number of User Licenses and Positions or Valuations purchased by Customer, as set forth in this Agreement and the Subscription Documents.

Unless otherwise agreed to in writing by the Parties, Fees are based upon VIP's standard, non-discounted fee schedule in effect as of the date the User License or Position is purchased by Customer.

**8. Customer Data:**

- (a) **Storage and Use of Customer Data:** During the Term, Users may use the Service to access and use Customer Data (which may include Customer Data provided by other Users). VIP is not responsible for the privacy, security, or integrity of Customer Data that is transmitted outside VIP's systems used to provide the Service.
- (b) **VIP Use of Customer Data:** Customer hereby consents to VIP accessing and using Customer Data during the Term as may be reasonably required to provide the Service and perform VIP's obligations under this Agreement.
- (c) **Expiration/Termination of Agreement:**
  - (i) **Trial Subscriptions:** If Customer is subscribing to the Service for a trial subscription, then after the Term VIP will permanently delete and destroy all Customer Data, except that during and indefinitely after the Term VIP may in its discretion retain copies of Customer Data in confidential backup systems created only for system administration purposes.
  - (ii) **Standard Subscriptions:** Except for trial subscriptions: (1) upon request by Customer within thirty (30) days after the end of the Term, and subject to Customer's payment of all outstanding Fees and Taxes, VIP will make available to Customer an electronic file containing all Customer Data that was stored by Customer using the Service existing at the time of termination or expiration of this Agreement; and (2) after that thirty (30) day period, VIP will permanently delete and destroy all Customer Data that was stored by Customer using the Service, except that during and indefinitely after the Term VIP may in its discretion retain copies of Customer Data in confidential backup systems created only for system administration purposes.

9. **Survival:** Sections 4, 6, 8 and 9 of these Service Terms and Conditions will survive the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the Parties as applicable.

**GENERAL TERMS AND CONDITIONS**

**1. DEFINITIONS:**

1.1 In this Agreement, the following terms have the following meanings, and all other capitalized terms have the meaning ascribed elsewhere in this Agreement: (a) "**Customer Data**" means data provided by Customer and Users to VIP or created by Users using the Service; (b) "**Market Data**" means various kinds of third party data (including certain financial instrument definition data, quote data and value at risk data) and other restricted data obtained by VIP from independent third parties (each, a "**Data Provider**"); (c) "**Representatives**" means a Party's partners, directors, officers, employees, agents, licensors, service providers, suppliers, and other representatives; Customer's Representatives include all Users; and VIP's Representatives include all Data Providers; (d) "**Contract Year**" means the 12-month period commencing on the effective date specified in the first Subscription Document issued under this Agreement or an anniversary of that effective date; (e) "**Term**" means the initial term and all renewal terms of this Agreement; (f) "**User**" means a qualified individual who is authorized by Customer to use the Service on Customer's behalf pursuant to a User License; and (g) "**User License**" means a non-exclusive, personal, non-sublicensable, non-transferable, restricted and limited license for Customer to authorize one (1) User to use the Service on Customer's behalf in accordance with this Agreement.

**2. TERM OF AGREEMENT AND USER LICENSES**

2.1 **Trial Subscription:** If Customer is subscribing to the Service for a trial subscription, then: (a) the Term of this Agreement commences on the date specified in the Subscription Document issued for the trial subscription and will continue for seven (7) days only, unless VIP in its discretion terminates early or extends the term; and (b) all User Licenses will terminate upon expiration or termination of this Agreement.

2.2 **Standard Subscription:**

(a) **Term of Agreement:** Except for trial subscriptions, the initial term of this Agreement commences on the date specified in the first Subscription Document issued under this Agreement and will continue in full force and effect for the duration specified in that Subscription Document, unless

terminated earlier pursuant to this Agreement. Following the initial term, this Agreement will automatically renew for additional, consecutive twelve (12) month renewal terms, unless terminated earlier pursuant to this Agreement or unless either Party gives notice of non-renewal to the other Party by no later than sixty (60) days before the end of the initial term or the then-current renewal term.

### 2.3 Term of User Licenses:

- (a) **Pre-Purchased User Licenses:** The following provisions apply to each User License that is purchased in advance by Customer as set forth in a Subscription Document: (i) the initial term of the User License will commence on the date specified in the Subscription Document and will continue for the initial term specified in the Subscription Document unless terminated earlier pursuant to this Agreement, provided that if the initial term of the User License is not specified in the Subscription Document the initial term will expire at the end of the initial, or then current, Contract Year; and (ii) the User License will automatically renew for consecutive additional twelve (12) month periods, unless: (1) the User License is terminated earlier pursuant to this Agreement; (2) either Party gives notice of non-renewal to the other Party by no later than sixty (60) days before the end of the then-current term of the User License; or (3) the Subscription Documents expressly specify that the User License will not automatically renew.
- (b) **Online Purchases:** If a User License is not purchased in advance by Customer as set forth in a Subscription Document: (i) the User License will commence when it is subscribed for using the online process provided by the Service; and (ii) the User License will automatically renew for consecutive additional twelve (12) month periods, unless: (1) the User License is terminated earlier pursuant to this Agreement; or (2) either Party gives notice of non-renewal to the other Party by no later than sixty (60) days before the end of the then-current term of the User License.

## 3. USE OF SERVICE

3.1 **Trial Subscription:** If Customer is subscribing to the Service for a trial subscription, then subject to the provisions of this Agreement VIP grants to Customer a non-exclusive, personal, non-sublicensable, non-transferable, restricted and limited license during the Term to use the Service (including all Market Data and reports created using the Service) only for Customer's private, non-productive, internal evaluation of the Service for use by Customer, and not for any other purpose whatsoever, notwithstanding any other provision of this Agreement that may authorize use for any other purposes; and Customer will not distribute or disclose any of the reports created using the Service to any other person.

3.2 **Standard Subscription:** Subject to the provisions of this Agreement and Customer's prompt payment of all applicable fees, and except for trial subscriptions, VIP grants to Customer a non-exclusive, personal, non-sublicensable, non-transferable, revocable, restricted and limited license during the Term to access and use the Service only for Customer's internal business purposes in accordance with the details of Customer's subscription to the Service (as set forth in the Subscription Documents) and the restrictions and requirements set forth in this Agreement.

3.3 **Additional Services:** VIP (directly or through subcontractors) may provide additional services to Customer as agreed to by the Parties from time to time. Unless otherwise agreed in writing by the Parties, additional services will be provided only during the Term and subject to this Agreement and such additional terms and conditions (including payment of additional fees) as agreed in writing by the Parties.

3.4 **Restrictions:** Customer and Users will use the Service in accordance with the applicable documentation provided by VIP. Customer and Users will not: (a) use, or provide or permit access to or use of, the Service except as expressly permitted by this Agreement; (b) use the Service in a way that interferes with or disrupts the integrity or performance of the Service or related systems or networks, or to attempt to gain unauthorized access to the Service or related systems or networks; (c) copy, reproduce, translate, modify, enhance, or create derivative works from the Service (including training and technical support materials) or any part of them; (d) license, sublicense, grant, sell, resell, lend, lease, loan, share, transfer, assign, pledge, publish, transmit, publicly display or perform, distribute, rent, create any interest in, commercially exploit, or otherwise give or make available or permit the use of the Service (including Market Data) or its functionality or performance or any results of its use to or for the benefit of any other person, whether as a service bureau or otherwise, and with or without charge, except as expressly permitted by this Agreement; (e) alter, attempt to circumvent, destroy, obscure, or remove any notices (including trademark and copyright notices), proprietary codes or locks, means of identification, digital rights tools or management information, security or control measures, or agreements on, in or in relation to the Service; (f) use multiplexing or pooling software or similar technologies in connection with the Service; (g) develop software

applications for internal use with the Service; (h) reverse engineer or otherwise access or use the Service in order to: (i) create a competitive product or service, or a product or service using similar ideas, features, functions or graphics; (ii) copy any ideas, features, functions or graphics of the Service; (iii) monitor or assess the availability, performance, or functionality of the Service, or for any other benchmarking or competitive purposes; or (iv) permit, assist or encourage any other person to do any of the foregoing.

**3.5 Market Data:** Market Data may be accessed and used only as part of the Service, only for the purposes specified in this Agreement, and in accordance with the restrictions and requirements set forth in this Agreement (including the Additional Terms and Conditions for Market Data set forth at the end of this Agreement). Customer and Users will not use or disclose Market Data in any other manner or for any other purpose whatsoever. Access to and use of Market Data may be subject to additional terms and conditions specified or referenced in a Subscription Document. From time to time, Data Providers may require additional or amended terms and conditions for certain kinds of Market Data. VIP will provide Customer with notice of any such additional or amended terms and conditions and an opportunity to terminate access to the Market Data if Customer does not agree to the additional or amended terms and conditions; and if Customer elects to terminate access to the Market Data VIP will refund the unused portion of any pre-paid Fees that relate specifically to the terminated Market Data.

**3.6 Training:** The Service may include limited online training materials for use by Users. Additional training services may be available for additional fees.

**3.7 Technical Support:** The Service may include limited, remote technical support for Users. Additional technical support may be available for additional fees. For the purpose of calculating fees for technical support, each request for technical support (whether by telephone, email or otherwise) is a separate support incident.

**3.8 Changes:** Customer acknowledges and agrees that VIP may in its discretion change the Service from time to time without any notice or liability to Customer or any other person.

#### **4. AUTHORIZED USERS**

**4.1 Users:** Customer will access and use the Service only through Users for whom Customer has purchased User Licenses. User Licenses may be purchased in advance or acquired from time to time by adding the User to Customer's account using the online controls provided by the Service. There may be different kinds of Users and User Licenses, each with access to different functionalities of the Service. Customer will ensure that Users use the Service only on behalf of Customer and strictly in accordance with the restrictions and requirements set forth in this Agreement.

**4.2 Customer Responsibility:** Customer is fully responsible and liable for all acts and omissions by or on behalf of all Users and their access to and use of the Service and the results obtained therefrom. Customer will ensure that all Users fully comply with all of Customer's obligations under this Agreement, and all of the requirements, restrictions and limitations regarding the Service and the results obtained therefrom set forth in this Agreement.

**4.3 Administrators:** Customer will appoint and authorize one or more Users (each an "Administrator") to administer Customer's use of the Service, including the appointment and termination of other Users.

**4.4 Registration/Changes/Termination:** The Service may permit an Administrator to authorize and terminate other Users' permission to use the Service at any time using online controls. Customer may by written notice request that VIP terminate an Administrator's permission to use the Service. VIP, acting reasonably, may refuse to register any individual as a User, and may restrict, suspend or terminate (in whole or in part) the permission granted to any User to access and use the Service. Each User will be considered to be an active User unless and until his or her permission to use the Service is terminated by an Administrator, Customer, or VIP in accordance with this Agreement.

**4.5 Codes:** Each User will access and use the Service using a valid and subsisting user name and password issued or approved by VIP (collectively, "Codes"). Codes are specific to the User for whom they are issued, and may not be shared with or transferred to any other person. Customer will ensure that all Users keep their Codes secure and confidential at all times, not permit any other person to use their Codes, and immediately notify VIP if they know or suspect that any Code has become known to or used by any other person. Customer is fully responsible and liable for the security of all Codes and all use and misuse of Codes. If VIP, in its discretion, considers a Code to be insecure or to have been used inappropriately, then VIP may immediately cancel the Code without any notice to Customer, the affected User, or any other

person. Codes may require renewal from time to time, and VIP may in its discretion terminate a User's Codes if applicable fees have not been paid.

4.6 **Monitoring Use/Personal Information:** Customer acknowledges and agrees that the Service may contain technologies that monitor, record and report to VIP information regarding Users' registration for and use of the Service; and VIP may use that information for system administration and product development purposes and to provide the Service (including technical support) to Customer, and may disclose that information to Customer and its personnel. The personal information that Users provide to the Service may be disclosed to Customer and its personnel. Customer will obtain from each User his or her informed consent to the collection, retention, use and disclosure of their personal information as set forth above.

## 5. FEES

5.1 **Fees:** Customer will pay to VIP the fees and charges for the Service (collectively, the "Fees") as specified in the Subscription Documents and as otherwise set forth in this Agreement. All Fees and pricing terms are confidential to VIP, and Customer will not disclose that information to any other person. VIP may in its discretion change the Fees from time to time, provided that VIP will give Customer not less than ninety (90) days notice before a change comes into effect. All Fees and pricing terms are confidential to VIP, and Customer will not disclose that information to any other person.

5.2 **Taxes:** Fees are exclusive of all applicable federal, state, provincial, and municipal sales, use, value-added, property, excise, import, foreign, withholding and other governmental taxes, duties, charges, levies, fees, excises, tariffs and assessments, of any nature whatsoever now or hereafter imposed (collectively, "Taxes"). Customer is solely responsible and liable for, and will pay and remit, all Taxes (other than corporate income taxes payable by VIP) associated with, based on or due as a result of Fees, and all related interest, penalties and expenses.

5.3 **Payments:** Each invoice issued by VIP will be due and payable in accordance with the payment terms and method specified in the invoice or otherwise expressly agreed to in writing by the Parties. VIP may deliver invoices to Customer by email or facsimile. VIP may require advance payment before providing the Service. Payment obligations are not cancellable and advance payments are non-refundable. All Fees and applicable Taxes are payable in the currency specified in the applicable invoice, provided that if no currency is specified Fees and applicable Taxes are payable in U.S. currency. Overdue payments will be subject to interest at a rate of 1½% for each month (18% per annum) or fraction thereof that the payment is overdue, or the highest rate permitted by applicable law, whichever is lower. Except to the extent required by law, all amounts payable to VIP under this Agreement are payable in full without any deduction or withholding. If Customer is prohibited by law from making payments free of deductions or withholdings, Customer will pay such additional amounts to VIP as may be necessary to ensure that the actual amount received by VIP after deduction or withholding and after payment of any additional Taxes or other charges due as a consequence of the payment of such additional amounts will equal the amount that would have been received by VIP if such deductions or withholdings were not required.

## 6. OWNERSHIP/PROPRIETARY RIGHTS

6.1 **The Service:** Customer acknowledges and agrees that, as between the Parties, VIP and its licensors will at all times own and retain all rights, title and interests (including all intellectual property rights) throughout the world in, to and associated with the Service and all information and data (including the financial models, math algorithms, discount factor curves, yield curves, and Market Data) and software and technologies used to provide the Service. The Service is licensed, not sold, to Customer; and, except for the limited licenses expressly set forth in this Agreement, Customer and its personnel will not acquire any right, title or interest in, to or associated with the Service or any related information and data (including the financial models, math algorithms, discount factor curves, yield curves, and market data) or software and technologies. All rights not expressly granted under this Agreement are reserved to VIP.

6.2 **Customer's Data:** VIP acknowledges and agrees that, as between the Parties, Customer owns and retains all rights, title and interests (including intellectual property and other proprietary rights) throughout the world in, to and associated with all data provided by Customer and Users to VIP using the Service. Except for the limited licenses expressly set forth in this Agreement, VIP will not acquire any right, title or interest in, to or associated with any of the data provided by Customer and Users to VIP using the Service.

6.3 **Feedback:** If Customer or its personnel (including Users) give feedback about the Service (including any ideas or suggestions for enhancements or improvements) to VIP (collectively the "Feedback"), VIP and its suppliers and their respective successors, assigns and licensees may use and

commercialize the Feedback in any way and for any purpose without providing any compensation to Customer or any other person.

**6.4 Trademarks/Reputation:** VALUATION INSIGHT PARTNERS, VIP, FAIR VALUE INSIGHT, FINCAD, and related logos and marks, are registered or unregistered trademarks of VIP and its licensors. Customer does not have any license or right to use any of those trademarks. Both during and after the term of this Agreement, Customer will not make any false, misleading, critical or disparaging statements regarding VIP or its suppliers or their respective software or services, or that might diminish or otherwise damage the reputation and goodwill of VIP or its suppliers or their respective software or services.

## **7. CUSTOMER'S OBLIGATIONS**

**7.1 Representations/Warranties of Customer:** Customer represents and warrants to VIP that Customer has the right, power, capacity and authority to enter into and perform its obligations and exercise its rights under this Agreement, and all information provided by or on behalf of Customer to VIP regarding Customer's use of the Service is true, accurate, current and complete.

**7.2 Unauthorized Use:** Customer will promptly notify VIP if Customer knows of or suspects any unauthorized access to or use of the Service.

**7.3 Technical Requirements:** Customer is solely responsible and liable for obtaining, provisioning, configuring, maintaining, paying for, and protecting from loss and damage, all equipment, software and services necessary for the use of the Service and all data used in association with the Service, including maintaining a current and complete backup of all Customer Data and all data and information contained on Customer's computer systems before accessing or using the Service. Customer is solely responsible and liable for the transmission of Customer Data to and from the systems used by VIP to provide the Service.

**7.4 Audit/Compliance Certificate:** Not more than once in any twelve (12) month period, VIP may inspect Customer's relevant books, records and facilities (including computer equipment) and interview Customer's personnel, in order to verify Customer's compliance with this Agreement, provided that the inspection and interviews will be conducted on not less than seven (7) days prior notice to Customer, during normal business hours, in such a manner as not to interfere unreasonably with the operations of Customer's business, and subject to reasonable confidentiality and security requirements. If any such inspection discloses any unauthorized use of the Service, Customer will reimburse to VIP all reasonable costs and expenses incurred by VIP to conduct the inspection. Upon request by VIP not more than once in any twelve (12) month period, Customer will deliver to VIP a compliance certificate signed by a senior officer of Customer providing details of Customer's use of the Service and certifying that Customer and Users have fully and faithfully complied with all of the provisions of this Agreement.

**7.5 Indemnity:** During and indefinitely after the Term, Customer will defend, indemnify and hold harmless VIP and its Representatives, jointly and severally, from and against any and all third party Claims and third party Proceedings arising from, connected with or relating to: (a) the use of the Service (including Market Data, if applicable) by or on behalf of Customer or the results obtained therefrom (including all reports created using the Service); (b) any negligence, misconduct, or breach of this Agreement by Customer or any person for whom Customer is responsible pursuant to this Agreement or at law, provided that the foregoing does not apply to any IP Infringement Proceeding or IP Infringement Judgment for which VIP is obligated to defend or indemnify Customer pursuant to Section 9. VIP will: (a) give Customer prompt notice of the indemnified Claim or Proceeding; (b) grant control of the defence and settlement of the indemnified Claim or Proceeding to Customer (provided that a Claim or Proceeding will not be settled without the prior written consent of VIP, which consent will not be unreasonably withheld or delayed); (c) agree that the same legal counsel may jointly represent VIP and its Representatives and Customer in the Proceeding (if Customer is a party to the Proceeding); and (d) reasonably co-operate with Customer regarding the defence and settlement of the indemnified Claim or Proceeding. Notwithstanding anything contained in this Agreement to the contrary, VIP and its Representatives retain the right to participate in the defense of and settlement negotiations relating to any Claim or Proceeding with counsel of their own selection at their sole cost and expense. In this Agreement: (i) "**Claims**" means claims, counterclaims, complaints, demands, causes of action, liabilities, obligations, damages, legal fees, costs, expenses, and disbursements, including reasonable attorneys' fees and court costs, of any nature or kind, whatsoever and howsoever arising, whether known or unknown, whether in law or in equity or pursuant to contract or statute, and whether in any court of law or equity or before any arbitrator or other body, board or tribunal; and (ii) "**Proceedings**" means actions, suits, proceedings, and hearings of any nature and kind in any court of law or equity or before any arbitrator or other body, board or tribunal.

**8. LIMITED WARRANTY AND DISCLAIMERS**

**8.1 Limited Warranty:** Subject to the other provisions in this Section 8, VIP warrants that the Service will substantially conform to the applicable online documentation under normal use and circumstances. If there is a breach by VIP of the foregoing warranty, Customer's sole and exclusive remedies, and VIP's sole obligations to Customer, are as follows, at VIP's option: (i) VIP will modify the Service so that it substantially conforms with the applicable online documentation, unless the documentation is in error in which case VIP will modify the documentation to accurately reflect the actual operation of the Service; or (ii) VIP will terminate this Agreement and refund to Customer the Fees (if any) paid by Customer in respect of the Service during the three (3) months prior to the termination date.

**8.2 GENERAL DISCLAIMER:** THE WARRANTY SET FORTH IN PARAGRAPH 8.1 IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES. EXCEPT FOR THE WARRANTY SET FORTH IN PARAGRAPH 8.1, THE SERVICE IS PROVIDED "AS IS", "AS AVAILABLE" AND "WITH ALL FAULTS", AND WITHOUT ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING ANY REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES OF OR RELATING TO DURABILITY; FITNESS FOR A PARTICULAR PURPOSE; MERCHANTABILITY; NON-INFRINGEMENT; PERFORMANCE; QUALITY; RESULTS; SUITABILITY; TIMELINESS; TITLE; OR WORKMANLIKE EFFORT; ALL OF WHICH ARE HEREBY DISCLAIMED BY VIP TO THE FULLEST EXTENT PERMITTED BY LAW. CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR THE SELECTION AND USE OF THE SERVICE TO ACHIEVE INTENDED RESULTS. CUSTOMER USES THE SERVICE AT CUSTOMER'S OWN RISK, AND IS SOLELY RESPONSIBLE AND LIABLE FOR ENSURING THE ACCURACY OF ALL INPUT DATA AND VERIFYING ALL CALCULATIONS, DATA AND OTHER RESULTS FROM THE USE OF THE SERVICE. THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES IS PROHIBITED BY LEGISLATION IN SOME JURISDICTIONS; SUCH LEGISLATIVE LIMITATIONS MAY APPLY TO CUSTOMER.

**8.3 Customer Data Disclaimer:** USE OF CUSTOMER DATA IS AT CUSTOMER'S OWN RISK. CUSTOMER IS SOLELY RESPONSIBLE AND LIABLE FOR, AND BEARS ALL RISKS AND LIABILITIES ASSOCIATED WITH, CUSTOMER DATA, INCLUDING THE ACCURACY, QUALITY, INTEGRITY, LEGALITY, RELIABILITY, APPROPRIATENESS, AND INTELLECTUAL PROPERTY OWNERSHIP OR RIGHT TO USE OF CUSTOMER DATA. VIP IS NOT RESPONSIBLE OR LIABLE FOR THE STORAGE OF CUSTOMER DATA OR THE DELETION, CORRECTION, DESTRUCTION, DAMAGE, LOSS OF OR FAILURE TO STORE ANY CUSTOMER DATA. VIP MAKES NO REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, REGARDING CUSTOMER DATA, AND DISCLAIMS ANY AND ALL RESPONSIBILITY AND LIABILITY FOR CUSTOMER DATA TO THE FULLEST EXTENT PERMITTED BY LAW.

**8.4 Market Data Disclaimer:** CERTAIN ASPECTS OF THE SERVICE MAY INCLUDE MARKET DATA OR MAY BE BASED UPON OR DERIVED FROM MARKET DATA. NEITHER VIP NOR ANY DATA PROVIDER MAKE ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, REGARDING MARKET DATA (INCLUDING REPRESENTATIONS, WARRANTIES, AND CONDITIONS AS TO ACCURACY, COMPLETENESS OR TIMELINESS), AND EACH OF VIP AND ALL DATA PROVIDERS DISCLAIM ANY AND ALL RESPONSIBILITY AND LIABILITY FOR MARKET DATA TO THE FULLEST EXTENT PERMITTED BY LAW.

**8.5 SECURITY DISCLAIMER:** THE SECURITY AND PRIVACY PROVIDED BY CODES ARE NOT COMPLETE, AND CAN BE CIRCUMVENTED. CODES MAY NOT PREVENT UNAUTHORIZED ACCESS TO CUSTOMER DATA OR OTHER INFORMATION CUSTOMER OR USERS MAY USE IN CONNECTION WITH THE SERVICE. VIP IS NOT RESPONSIBLE OR LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR USE, ALTERATION, THEFT OR DESTRUCTION OF, CUSTOMER DATA, WHETHER THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. VIP IS NOT REQUIRED TO VERIFY THE ACTUAL IDENTITY OR AUTHORITY OF ANY PERSON USING ANY CODES, AND MAY ACT UPON ANY COMMUNICATION THAT IS GIVEN WITH THE USE OF CODES. HOWEVER, VIP MAY IN ITS DISCRETION REQUIRE PROOF AT ANY TIME OF THE IDENTITY AND AUTHORITY OF ANY PERSON USING CODES, AND MAY REFUSE TO ACCEPT OR ACT UPON ANY COMMUNICATION IF IT IS NOT SATISFIED WITH SUCH PROOF.

**8.6 TECHNOLOGY DISCLAIMER:** THE SERVICE MAY BE AFFECTED BY NUMEROUS FACTORS BEYOND VIP'S CONTROL, AND MAY NOT BE CONTINUOUS, UNINTERRUPTED OR SECURE. CUSTOMER ACKNOWLEDGES THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS, AND VIP IS NOT RESPONSIBLE OR LIABLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

**9. IP INDEMNITY BY VIP**

9.1 **Definitions:** In this Agreement, (a) “**IP Infringement Proceeding**” means an action brought against Customer by an unaffiliated third party in a court of competent jurisdiction in Canada, the United States of America, or the European Union that is based solely upon an allegation that Customer’s use of the Service in accordance with this Agreement infringes or misappropriates a patent, copyright, or trademark under the laws of Canada, the United States of America, or the European Union that is owned by that unaffiliated third party; and (b) “**IP Infringement Judgment**” means a final judgment in favour of an unaffiliated third party issued in an IP Infringement Proceeding to the extent that the judgment is based upon a finding that Customer’s use of the Service in accordance with this Agreement infringes or misappropriates a patent, copyright, or trademark under the laws of Canada, the United States of America, or the European Union that is owned by that unaffiliated third party.

9.2 **Defence and Indemnity:** Subject to paragraphs 9.3 and 9.4, VIP will defend Customer against all IP Infringement Proceedings and indemnify Customer against all IP Infringement Judgments, provided that Customer: (a) promptly gives notice to VIP of each IP Infringement Proceeding; (b) gives VIP sole control of the defence and settlement of each IP Infringement Proceeding (provided that an IP Infringement Proceeding will not be settled in a way that requires Customer to take any affirmative action without Customer’s prior written consent, which consent will not be unreasonably withheld or delayed); (c) agrees that the same legal counsel may jointly represent both Customer and VIP in each IP Infringement Proceeding (if VIP is a party); and (d) upon request by VIP, fully cooperates with and assists VIP regarding the defence of each IP Infringement Proceeding and negotiations for settlement or compromise. Customer retains the right to participate in the defense of and settlement negotiations relating to any IP Infringement Proceeding with counsel of its own selection at its sole cost and expense.

9.3 **Remedies:** Subject to paragraph 9.4, if an IP Infringement Judgment prohibits Customer from continued use of the Service in accordance with this Agreement, or if at any time the Service is, or in VIP’s opinion is likely to become, the subject of an IP Infringement Proceeding or any other claim or allegation of infringement or misappropriation of third party intellectual property rights, VIP will in its discretion either: (a) obtain for Customer the right to use the Service in accordance with this Agreement; (b) modify the Service to make it non-infringing; or (c) terminate this Agreement and refund to Customer the unused portion of any pre-paid Fees.

9.4 **Exclusions/Limitations:** Paragraphs 9.2 and 9.3 do not apply to an IP Infringement Proceeding or an IP Infringement Judgment based upon any actual or alleged infringement or misappropriation arising from, connected with, or relating to: (a) the use of the Service with any services, technology, software, hardware, data or other materials not provided by VIP or expressly authorized by this Agreement; (b) any use of the Service in breach of this Agreement; or (c) any wrongful act or omission by Customer or any person for whom Customer is responsible or any breach of this Agreement by Customer. Notwithstanding any other provision of this Agreement, in no event and under no circumstances will the total aggregate amount of VIP’s obligations and liabilities pursuant to this Section 9 (including all legal fees paid by VIP to defend against IP Infringement Proceedings and all amounts paid by VIP to settle IP Infringement Proceedings or to satisfy any obligations or liabilities resulting from any IP Infringement Judgments) ever exceed the total amount of fees actually paid by Customer to VIP pursuant to this Agreement during the twelve (12) months immediately preceding the date on which either Party first receives written notice of an actual or reasonably anticipated IP Infringement Proceeding.

9.5 **EXCLUSIVITY:** THIS SECTION 9 STATES CUSTOMER’S SOLE AND EXCLUSIVE REMEDIES, AND VIP’S ENTIRE RESPONSIBILITY AND LIABILITY, FOR ANY CLAIMS OR PROCEEDINGS ARISING FROM, CONNECTED WITH, OR RELATING TO ANY ACTUAL OR ALLEGED INFRINGEMENT OR MISAPPROPRIATION OF ANY RIGHTS (INCLUDING ANY INTELLECTUAL PROPERTY RIGHT) OF ANY THIRD PARTY.

**10. LIABILITY EXCLUSIONS/LIMITATIONS/RELEASE**

10.1 **EXCLUSIONS/LIMITATIONS/RELEASE:** NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OTHER THAN PARAGRAPH 10.2:

(a) **EXCLUSIONS:** THE LIABILITY (IF ANY) OF EACH PARTY AND ITS REPRESENTATIVES, JOINTLY AND SEVERALLY, TO THE OTHER PARTY AND ITS REPRESENTATIVES OR ANY OTHER PERSON UNDER THIS AGREEMENT OR OTHERWISE, ARISING FROM, CONNECTED WITH OR RELATING TO THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE SERVICE), THE TERMINATION OF THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES, OR ANY RELATED MATTER, IS LIMITED TO DIRECT DAMAGES SUFFERED BY THE OTHER PARTY ONLY, AND IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS REPRESENTATIVES, JOINTLY AND SEVERALLY, BE LIABLE TO THE OTHER PARTY OR ITS REPRESENTATIVES OR OTHER PERSON UNDER

## Part323\_VIP\_FVI(Websystems)\_SubscriptionAgreement\_02022010

THIS AGREEMENT OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE OF ANY NATURE OR KIND WHATSOEVER, INCLUDING LOSS OF DATA, INFORMATION, BUSINESS, MARKETS, SAVINGS, INCOME, PROFITS, USE, PRODUCTION, OR GOODWILL, ANTICIPATED OR OTHERWISE (INCLUDING BY REASON OF ANY EXPENDITURES, INVESTMENTS, LEASES OR COMMITMENTS MADE IN ANTICIPATION OF THE CONTINUANCE OR PERFORMANCE OF THIS AGREEMENT), OR ECONOMIC LOSS;

(b) **LIMITATIONS:** WITHOUT LIMITING THE GENERALITY OF PARAGRAPH 10.1(A), IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY AND ITS REPRESENTATIVES, JOINTLY AND SEVERALLY, TO THE OTHER PARTY AND ITS REPRESENTATIVES OR ANY OTHER PERSON, JOINTLY AND SEVERALLY, UNDER THIS AGREEMENT OR OTHERWISE, ARISING FROM, CONNECTED WITH OR RELATING TO THIS AGREEMENT, THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE SERVICE), THE TERMINATION OF THIS AGREEMENT, THE RELATIONSHIP BETWEEN THE PARTIES, OR ANY RELATED MATTER, EVER EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE BY CUSTOMER TO VIP FOR THE SERVICE DURING THE THREE (3) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE;

(c) **APPLICATION:** THIS PARAGRAPH 10.1 APPLIES TO LIABILITY UNDER ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY OR UNDER ANY STATUTE OR REGULATION), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY THE LIABLE PARTY OR ITS REPRESENTATIVES, AND EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE BEING INCURRED.

10.2 **EXCEPTIONS:** THE EXCLUSIONS AND LIMITATIONS SET FORTH IN PARAGRAPH 10.1 DO NOT APPLY TO: (A) THE NON-PAYMENT OF FEES AND TAXES UNDER THIS AGREEMENT; (B) LIABILITY FOR PERSONAL INJURY TO OR THE DEATH OF AN INDIVIDUAL; (C) THE OBLIGATIONS SET FORTH IN PARAGRAPH 7.5 OR SECTION 9; (D) LIABILITY FOR BREACH OF ANY OF THE OBLIGATIONS SET FORTH IN SECTION 11 AND PARAGRAPH 3.4; (E) INFRINGEMENT OR MISAPPROPRIATION OF ANY OF THE PROPRIETARY RIGHTS REFERENCED IN SECTION 6; OR (F) CUSTOMER'S LIABILITY FOR BREACH OF ANY OF THE ADDITIONAL TERMS AND CONDITIONS FOR MARKET DATA SET FORTH BELOW.

10.3 **NO LIABILITY FOR MARKET DATA/REPORTS:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (A) CUSTOMER AND ITS CLIENTS (IF APPLICABLE) ASSUME ALL RISK OF DAMAGE AND LOSS RESULTING FROM THE USE OF MARKET DATA OR ANY REPORTS CREATED USING THE SERVICE; AND (B) TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND IN NO EVENT WILL VIP OR DATA PROVIDERS OR ANY OF THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO CUSTOMER OR ANY OTHER PERSON (INCLUDING CUSTOMER'S CLIENTS) FOR ANY DIRECT OR INDIRECT DAMAGE OR LOSS ARISING FROM, CONNECTED WITH, OR RELATING TO MARKET DATA OR ANY REPORTS CREATED USING THE SERVICE.

10.4 **FAIR ALLOCATION OF LIABILITY:** THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT PRESENTS A FAIR ALLOCATION OF RISK AND LIABILITY, AND THAT SECTIONS 8, 9 AND 10 AND PARAGRAPH 7.5 ARE ESSENTIAL PARTS OF THE BARGAIN BETWEEN THE PARTIES, CONTROLLING FACTORS IN SETTING THE FEES PAYABLE BY CUSTOMER FOR THE SERVICE, AND AN INDUCEMENT TO VIP TO ENTER INTO THIS AGREEMENT.

## 11. CONFIDENTIALITY

11.1 **Definition:** In this Agreement, "**Confidential Information**" means all non-public information, in any form and on any medium, identified by a Party (the "**Disclosing Party**") as confidential and disclosed by the Disclosing Party to the other Party (the "**Receiving Party**") under this Agreement or pursuant to the negotiations relating to this Agreement, regardless of the form of disclosure, and includes without the need to identify as confidential all information relating to the Disclosing Party's finances, markets, businesses, technologies, ideas, customers, and marketing plans. For greater certainty: (a) all non-public Customer Data is the Confidential Information of Customer; and (b) all non-public information concerning the Service and all related information and data (including financial models, math algorithms, discount factor curves, yield curves, and Market Data) and software and technologies, and the terms of this Agreement are the Confidential Information of VIP. Information will not be considered to be Confidential Information to the extent, but only to the extent, that the information is: (a) already known to the Receiving Party free of any restriction at the time it is obtained from the Disclosing Party; (b) subsequently learned by the Receiving Party from an independent third party free of any restriction and without breach of this Agreement, any agreement with such third party or any other confidentiality obligation; (c) or becomes publicly available through no wrongful act of the Receiving Party; or (d) independently developed by the Receiving Party without reference to any of the Disclosing Party's Confidential Information.

11.2 **Duty to Protect:** Subject to paragraph 11.3, the Receiving Party will: (a) use the Disclosing Party's Confidential Information only during the Term and only to the extent necessary to perform the Receiving Party's obligations and exercise the Receiving Party's rights under this Agreement; (b) disclose the

Disclosing Party's Confidential Information only to the Receiving Party's personnel, and only to the extent that such disclosure is necessary to perform the Receiving Party's obligations or exercise the Receiving Party's rights under this Agreement; (c) both during and indefinitely after the Term maintain the strict confidentiality of the Disclosing Party's Confidential Information using the same degree of care as the Receiving Party affords to its own confidential information of a similar nature which it desires not to be published or disseminated, and in no event less than reasonable care, to prevent the unauthorized use or disclosure of the Disclosing Party's Confidential Information; and (d) ensure that its personnel and other persons to whom the Receiving Party discloses the Disclosing Party's Confidential Information strictly comply with the requirements and restrictions set forth in items (a), (b) and (c) above.

**11.3 Permitted Disclosures:** Notwithstanding the restrictions set forth in paragraph 11.2, the Receiving Party may disclose the Disclosing Party's Confidential Information: (a) to the extent the disclosure is required by a valid order of a court or governmental body of competent jurisdiction and authority or by applicable law, provided that before making the disclosure the Receiving Party gives reasonable notice to the Disclosing Party of the potential disclosure and reasonably assists the Disclosing Party in seeking a protective order preventing or limiting the potential disclosure or use of the Disclosing Party's Confidential Information, unless prior notice is prohibited by the order or applicable law; and (b) to its legal, accounting and tax advisors to the extent that the disclosure is required for a bona fide legal, accounting or tax purpose.

**11.4 Return and Destruction of Confidential Information:** Upon expiration or termination of this Agreement or at any time upon request by the Disclosing Party, the Receiving Party will: (a) promptly deliver to the Disclosing Party all originals and copies, in whatever form or medium, of all the Disclosing Party's Confidential Information and all documents, records, data and materials, in whatever form or medium, containing such Confidential Information in the Receiving Party's possession, power or control, and the Receiving Party will delete all the Disclosing Party's Confidential Information from all of the Receiving Party's computer systems, retrieval systems and databases, unless this Agreement expressly authorizes the Receiving Party to retain the Confidential Information; and (b) request that all persons to whom it has provided any of the Disclosing Party's Confidential Information comply with this paragraph 11.4; and if requested by the Disclosing Party the Receiving Party will deliver to the Disclosing Party a declaration signed by a senior officer of the Receiving Party certifying that the Receiving Party and its personnel have complied with this paragraph 11.4.

## **12. TERMINATION**

**12.1 Automatic Termination:** This Agreement will immediately and automatically terminate, without any notice or liability to Customer, upon expiration or termination of all User Licenses.

**12.2 Termination for Cause:** Notwithstanding any other provision of this Agreement, either Party may terminate this Agreement for cause effective immediately upon delivery of notice of termination to the other Party if the other Party breaches this Agreement (including failure to make a required payment on time) and has not remedied the breach within thirty (30) days after receipt of a default notice from the non-breaching Party identifying the breach and stating the non-breaching Party's intention to terminate this Agreement if the breach is not remedied within thirty (30) days. VIP may in its discretion terminate this Agreement effective immediately upon delivery of notice of termination to Customer if Customer becomes insolvent, ceases to conduct business in the ordinary course, takes any step or proceeding available to Customer for the benefit of insolvent debtors, or is subject to a proceeding for liquidation, dissolution or winding up, or a receiver, receiver-manager, liquidator or trustee in bankruptcy is appointed in respect of all or substantially all of Customer's business and undertaking.

**12.3 Discontinuation of Service:** Notwithstanding any other provision of this Agreement, VIP may in its discretion terminate the Service at any time upon 180 days prior written notice to Customer if VIP determines in its discretion to cease making the Service generally commercially available; and upon such termination VIP will refund to Customer the unused portion of any pre-paid Fees.

**12.4 Termination of Market Data:** Notwithstanding any other provision of this Agreement, Customer acknowledges and agrees that: (a) Data Providers may immediately terminate the availability of all or portions of the Market Data without any notice or liability to Customer or any other person; and (b) VIP may in its discretion and for its sole convenience immediately terminate the availability of all or portions of the Market Data without any notice or liability to Customer or any other person, provided that upon such termination VIP will refund the unused portion of any pre-paid Fees (if any) that relate specifically to the terminated Market Data.

**12.5 Consequences of Expiration/Termination:** If this Agreement expires or terminates for any reason: (a) all licenses granted by VIP under this Agreement will terminate immediately and automatically,

without any notice to Customer; (b) Customer and all Users will immediately cease using the Service; (c) each Party will remain responsible and liable for all obligations and liabilities arising prior to the termination or expiration of this Agreement; and (d) Customer will promptly pay all outstanding Fees and Taxes. Customer acknowledges that it expects no anticipated amount of profits by virtue of this Agreement, and agrees that expiration or termination of this Agreement will not render VIP liable for Customer's damages, costs or anticipated profits.

**12.6 Suspension of Service:** VIP may in its discretion immediately suspend the provision of the Service if Customer fails to make any payment when due or otherwise breaches this Agreement; and such suspension will not be a breach of this Agreement by VIP, entitle Customer to a refund or suspension of Fees, or give rise to any liability by VIP to Customer or any other person.

**12.7 Survival:** Notwithstanding any other provision of this Agreement, if this Agreement expires or is terminated for any reason, the following provisions of these General Terms and Conditions, and all other provisions necessary to their interpretation or enforcement, will survive the expiration or termination of this Agreement and will remain in full force and effect and be binding upon the Parties as applicable: Sections 5, 6, 9, 10, 11, 13 and paragraphs 3.4, 4.2, 4.6, 4.2, 7.5, 8.2, 8.3, 8.4, 8.5, 8.6, 12.5, and 12.7.

### **13. GENERAL**

**13.1 Publicity:** VIP may reference Customer in any published list or directory of VIP's customers. Upon request by VIP, Customer will provide VIP with Customer's trademark or logos for use in those lists and directories, subject to a reasonable, royalty-free trademark license agreement.

**13.2 Notices:** VIP may deliver Subscription Documents, Codes, and other notices to Customer by email, facsimile, or delivery to Customer's addresses specified in the most current Subscription Document or otherwise on record in Customer's file with VIP. Customer will give all notices to VIP under this Agreement in writing delivered by courier to VIP (Attention Legal Department) at VIP's head office address at Central City, Suite 1750, 13450 102nd Avenue, Surrey, B.C., Canada, V3T 5X3 or such other address for notice as specified by VIP from time to time.

**13.3 Governing Law/Disputes:** This Agreement, the relationship of the Parties, and all related matters will be governed, construed and interpreted solely in accordance with the laws of the Province of Ontario, Canada and applicable federal laws of Canada, excluding any rules of private international law or the conflict of laws which would lead to the application of any other laws and excluding the United Nations Convention on Contracts for the International Sale of Goods. If Customer wishes to bring legal proceedings against VIP regarding this Agreement, the relationship of the Parties, or any related matters, Customer will do so only before either (as determined by Customer in its discretion) the courts of the Province of Ontario sitting in the City of Toronto, Canada, or the courts of the Province of British Columbia sitting in the City of Vancouver, Canada, and VIP irrevocably submits and attorns to the exclusive jurisdiction of those courts over those matters. If VIP wishes to bring legal proceedings against Customer regarding this Agreement, the relationship of the Parties, or any related matters, VIP will do so only before either (as determined by VIP in its discretion) the courts of the Province of Ontario sitting in the City of Toronto, Canada, or the courts of the jurisdiction of Customer's office specified in Subscription Documents, and Customer irrevocably submits and attorns to the exclusive jurisdiction of those courts over those matters. Each Party irrevocably waives all rights to trial by jury.

**13.4 Assignment:** Customer may not assign this Agreement without VIP's prior written consent, which consent may be withheld in VIP's discretion. VIP may assign this Agreement, provided that the surviving or acquiring person agrees to be bound by this Agreement. This Agreement is binding upon and will enure to the benefit of the Parties and their respective successors and permitted assigns.

**13.5 Force Majeure:** Notwithstanding any other provision of this Agreement, and except for the payment of money, neither Party will be liable for any delay in performing, or failure to perform, any of its obligations under this Agreement to the extent performance is delayed or prevented due to any cause or causes that are beyond that Party's reasonable control. Any delay or failure of this kind will not be deemed to be a breach of this Agreement by the defaulting Party, and the time for the defaulting Party's performance of the affected obligation will be extended by a period that is reasonable in the circumstances.

**13.6 Miscellaneous:** The Parties are non-exclusive independent contracting parties, and nothing in this Agreement or done pursuant to this Agreement will create or be construed to create a partnership, joint venture, agency, employment, or other similar relationship between the Parties. If any provision of this Agreement is held to be invalid or unenforceable for any reason, then the provision will be deemed to be severed from this Agreement and the remaining provisions will continue in full force and effect without being

impaired or invalidated in any way, unless as a result of any such severance this Agreement would fail in its essential purpose. No consent or waiver by a Party to or of any breach by the other Party of its obligations under this Agreement will be effective unless in writing and signed by both Parties. Except as expressly set forth in this Agreement, the Parties' respective rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies to which they may be entitled under this Agreement or at law or equity. The Parties have expressly requested and required that this Agreement and all related documents be drawn up in the English language.

**13.7 Interpretation:** In this Agreement: (a) a reference to "this Agreement" and other similar terms refers to this Agreement as a whole, and not just to the particular provision in which those words appear; (b) "including" means including without limitation; (c) headings in this Agreement are for reference only and do not define, limit or enlarge the scope or meaning of this Agreement or any of its provisions; (d) words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, societies and corporations; (e) words importing the singular number only include the plural and vice versa; (f) words importing either gender include both genders; and (g) reference to a day, month, quarter, or year means a calendar day, month, quarter, or year, unless the context indicates otherwise. Unless expressly stated otherwise in this Agreement, in the event of any inconsistency or conflict between the documents that comprise this Agreement, the provisions of those documents will take precedence and govern in the following order of priority: (1) Subscription Documents; (2) the Service Terms and Conditions; and (3) these General Terms and Conditions.

**13.8 Amendments:** This Agreement may be amended or supplemented only by a written instrument signed by both Parties or their successors or permitted assigns. PURCHASE ORDERS OR OTHER DOCUMENTS ISSUED BY CUSTOMER, AND WHETHER OR NOT ACCEPTED BY VIP, ARE FOR ADMINISTRATIVE CONVENIENCE ONLY, AND ANY TERMS AND CONDITIONS CONTAINED IN THOSE DOCUMENTS ARE OF NO FORCE OR EFFECT AND WILL NOT IN ANY WAY AMEND OR SUPPLEMENT THIS AGREEMENT.

**13.9 Entire Agreement:** This Agreement is the complete agreement between VIP and Customer with respect to the subject matter of this Agreement, and supersedes any and all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written. There are no representations, warranties, terms, conditions, undertakings or collateral agreements, express, implied or statutory, between the Parties other than as expressly set forth in this Agreement.

#### **ADDITIONAL TERMS AND CONDITIONS FOR MARKET DATA**

**Important Notice:** Certain services provided by VIP to Customer (the "**VIP Services**") permit Customer to receive and use certain market data (the "**Market Data**") provided by third party suppliers (each a "**Data Provider**"). Customer's receipt and use of the Market Data is subject to the applicable agreement between Customer and VIP regarding the VIP Services (the "**VIP Agreement**") and these Terms and Conditions (which are an agreement between Customer and each Data Provider). By receiving and using the Market Data, Customer acknowledges and agrees with each Data Provider that Customer has read, understood and agreed to these Terms and Conditions. If Customer does not unconditionally accept and agree to these Terms and Conditions, Customer may not receive or use any Market Data.

1. **Restrictions re Market Data:** Customer will receive and use the Market Data only in connection with Customer's lawful use of the VIP Services in accordance with the VIP Agreement, and subject to these Terms and Conditions. Customer will use the Market Data solely for the purposes for which Customer may use the VIP Services, as expressly set forth in the VIP Agreement. Customer will not receive, use or disclose Market Data in any other manner or for any other purpose whatsoever.

2. **Termination/Changes to Market Data:** Customer acknowledges and agrees that Data Providers may in their discretion and for their sole convenience terminate the availability of Market Data or change the format or content of the Market Data from time to time without any prior notice or liability to Customer or any other person, and regardless of whether or not the termination or changes require Customer to make changes to its mode of operation or render its computer or telecommunications equipment or software unsatisfactory or inoperative.

3. **Proprietary Rights:** Customer acknowledges and agrees as follows: (a) the Market Data consists of factual information gathered, selected and arranged by the Data Providers at considerable expense and by application of methods of selection and judgment unique to the Data Providers; (b) the Market Data is and will remain at all times the sole property of the Data Providers, and is licensed (not sold) for limited purposes to Customer; (c) Customer's receipt or use of the Market Data does not transfer to Customer any ownership of the Market Data or any related intellectual property rights; (d) all rights in,

to and associated with Market Data not expressly granted under these Terms and Conditions are reserved to the Data Providers; and (e) Customer will not use the name or trademarks of any Data Provider, whether alone or in connection with any other words or marks, without the Data Provider's express, prior written consent.

4. **Authorized Users:** Customer will receive and use Market Data only through individuals (each a "User") who are authorized to use the Market Data as part of the VIP Services as set forth in the VIP Agreement. Customer is fully responsible and liable for all acts and omissions by or on behalf of all Users and their receipt and use of Market Data. Customer will ensure that all Users fully comply with all of Customer's obligations under the VIP Agreement and these Terms and Conditions, including all restrictions and requirements regarding receipt and use of Market Data.

5. **Exclusion of Warranties for Market Data:** MARKET DATA IS PROVIDED "As Is", WITHOUT ANY REPRESENTATION, WARRANTY, CONDITION OR GUARANTEE OF ANY NATURE OR KIND WHATSOEVER, WHETHER EXPRESS, IMPLIED OR STATUTORY, OR ARISING FROM CUSTOM OR TRADE USAGE OR BY ANY COURSE OF DEALING OR COURSE OF PERFORMANCE, INCLUDING REPRESENTATIONS, WARRANTIES, AND CONDITIONS AS TO ACCURACY, COMPLETENESS, TIMELINESS, SEQUENCE, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

6. **Exclusions and Limitations of Liability:**

(A) **EXCLUSIONS:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND IN NO EVENT WILL ANY DATA PROVIDER BE LIABLE TO CUSTOMER OR ANY OTHER PERSON, REGARDLESS OF THE CAUSE, FOR ANY DIRECT OR INDIRECT DAMAGE OR LOSS (INCLUDING SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES) ARISING FROM, CONNECTED WITH, OR RELATING TO MARKET DATA (INCLUDING THE ACCURACY, COMPLETENESS, TIMELINESS OR SEQUENCE OF MARKET DATA OR ANY DELAYS, INACCURACIES, ERRORS, INTERRUPTIONS OR OMISSIONS IN MARKET DATA).

(B) **LIMITATION:** IF THE EXCLUSIONS IN PARAGRAPH 6(A) ABOVE ARE FOUND BY A COURT OF COMPETENT JURISDICTION TO BE INEFFECTIVE OR INAPPLICABLE FOR ANY REASON, THEN IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL A DATA PROVIDER'S TOTAL AGGREGATE LIABILITY, UNDER THIS AGREEMENT OR OTHERWISE, ARISING FROM, CONNECTED WITH OR RELATING TO THE MARKET DATA EVER EXCEED THE SUM OF FIFTY DOLLARS (\$50.00).

(C) **APPLICATION:** THIS SECTION 6 APPLIES TO LIABILITY UNDER ANY THEORY OF LIABILITY (INCLUDING CONTRACT, TORT, STRICT LIABILITY, STATUTORY LIABILITY, OR ANY OTHER THEORY OF LAW OR EQUITY OR UNDER ANY STATUTE OR REGULATION), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY THE DATA PROVIDERS OR ANY OTHER PERSON FOR WHOM THEY ARE RESPONSIBLE, AND EVEN IF A DATA PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE BEING INCURRED.

7. **Indemnity:** Customer will defend, indemnify and hold harmless each of the Data Providers and their respective directors, officers, employees, agents and shareholders, jointly and severally, from and against any and all losses, damages, liabilities, claims, complaints, demands, actions, suits, and proceedings (including reasonable lawyer's fees) directly or indirectly arising from, connected with or relating to: (a) any negligence, misconduct, or breach of these Terms and Conditions or the VIP Agreement by Customer or any person for whom Customer is responsible pursuant to these Terms and Conditions, the VIP Agreement, or at law; or (b) any third party claims, complaints, demands, actions, suits or proceedings relating to Customer's receipt or use of the Market Data, whether authorized or not authorized under these Terms and Conditions.

8. **Confidentiality:** Except as expressly set forth in these Terms and Conditions or the VIP Agreement, Customer will not disclose, directly or indirectly, in whole or in part, to any other person any of the Market Data (including historical market data) or any other information or data received by Customer from a Data Provider directly or through the VIP Services (collectively, the "DP Confidential Information"), provided that this provision does not apply to information that is: (1) in the public domain (other than as a result of a disclosure directly or indirectly by Customer); (2) otherwise already known by Customer; or (3) independently developed by Customer without reliance upon any DP Confidential Information.

9. **Termination:** These Terms and Conditions, including Customer's permission to license to receive and use the Market Data, will terminate immediately and automatically upon the expiration or termination of the VIP Agreement or Customer's permission to use the VIP Services. In addition, and without limiting any other rights or remedies of VIP or the Data Providers, the Data Providers may terminate Customer's license to receive and use the Market Data effective immediately upon notice to Customer if Customer breaches these Terms and Conditions.

10. **Enforcement/Survival:** These Terms and Conditions are an agreement between Customer and the Data Providers, each of whom are entitled to independently enforce these Terms and Conditions for their own benefit. Sections 2, 6, 7, and 8 will survive the expiration or termination of these Terms and Conditions.

11. **No Amendment by VIP:** VIP does not have any authority to vary, alter, or amend these Terms and Conditions.

12. **Interpretation/Definitions:** These Terms and Conditions are in addition to, and supplement, the VIP Agreement. Capitalized terms used in these Terms and Conditions have the meaning set forth in these Terms and Conditions and the VIP Agreement.

Copyright © 2010 Valuation Insight Partners. All rights reserved.