

FINCAD® MARKET DATA SUBSCRIPTION AGREEMENT

IMPORTANT NOTICE: THIS FINCAD® MARKET DATA SUBSCRIPTION AGREEMENT GOVERNS THE USE OF THE FINCAD MARKET DATA SERVICE AND RELATED MATERIALS PROVIDED BY FINANCIALCAD® CORPORATION ("**FINCAD**"). THIS AGREEMENT LIMITS AND EXCLUDES WARRANTIES AND REMEDIES REGARDING THE FINCAD MARKET DATA SERVICE AND RELATED MATERIALS, EXEMPTS FINCAD 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 REGISTERING TO USE THE FINCAD MARKET DATA SERVICE, YOU AND THE CUSTOMER SPECIFIED IN THE APPLICABLE REGISTRATION EMAIL OR INVOICE ISSUED BY FINCAD ACKNOWLEDGE AND SIGNIFY 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 THE CUSTOMER. IF YOU OR THE CUSTOMER DO NOT AGREE WITH EACH PROVISION OF THIS AGREEMENT, OR YOU ARE NOT AUTHORIZED TO AGREE TO THIS AGREEMENT ON BEHALF OF THE CUSTOMER, THEN YOU MAY NOT REGISTER FOR OR USE THE FINCAD MARKET DATA SERVICE OR RELATED MATERIALS. UNAUTHORIZED USE OF THE FINCAD MARKET DATA SERVICE IS STRICTLY PROHIBITED.

1. GENERAL

Details of your subscription to the FINCAD Market Data Service are set forth in the FINCAD Market Data Service registration email issued by FINCAD to you (the "**Registration Notice**") and invoices (if applicable) regarding the FINCAD Market Data Service issued by FINCAD to you or the Customer (each, an "**Invoice**"), each of which is governed by and forms part of this Agreement. (Invoices are not issued for trial subscriptions.)

In this Agreement: (a) "**Affiliates**" has the meaning expressly set forth in the FINCAD Software License Agreement (provided that if there is no such definition then all references to Affiliates in this Agreement are deleted); (b) "**Customer**" refers to the company or other person on whose behalf you are using the Services, as specified in the Registration Notice or Invoices; (c) "**FINCAD Market Data Service**" means the provision of online access to Market Data and all related data, online training materials, software (including the Market Data Connector), documentation and technical support provided by FINCAD pursuant to this Agreement; (d) "**FINCAD Software License Agreement**" means a valid and subsisting written license agreement between FINCAD and you or the Customer licensing you to use FINCAD XL; (e) "**FINCAD XL**" means the commercial computer software program licensed by FINCAD and known as FINCAD XL; (f) "**Market Data**" means various kinds of third party data (including financial instrument definition data, quote data and value at risk data) and other restricted data obtained by FINCAD from independent third parties (each, a "**Data Provider**"); (g) "**Market Data Connector**" means the add-on module for FINCAD XL required for use of Market Data through FINCAD XL; (h) "**Optional Services**" means additional services requested by you or the Customer and provided by FINCAD pursuant to this Agreement; (i) "**Parties**" means, collectively, FINCAD, you and the Customer, each of whom is a "**Party**" and (j) "**Services**" means the FINCAD Market Data Service and Optional Services.

2. TERM OF AGREEMENT

2.1 Trial Subscription: If the Registration Notice specifies that you are subscribing to the FINCAD Market Data Service for trial or evaluation purposes (a "**Trial Subscription**"), then the term of this Agreement commences on the date that the Registration Notice is emailed to you and will continue for seven (7) days only, unless FINCAD in its discretion terminates early or extends the term. At the end of the term, this Agreement will immediately and automatically terminate, without any notice or liability to you or the Customer.

2.2 Standard Subscription: Except for Trial Subscriptions, the initial term of this Agreement commences on the date specified in the first Invoice and will continue in full force and effect for the initial term specified in the Invoice, unless terminated earlier by either Party pursuant to this Agreement. Following the initial term, this Agreement will automatically renew for additional, consecutive twelve (12) month periods (each a renewal term), 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. In this Agreement, the initial term and each renewal term are referred to collectively as the "**term**".

3. USE OF SERVICES - TRIAL SUBSCRIPTIONS

This Section 3 applies to Trial Subscriptions only.

3.1 Services: Subject to the provisions of this Agreement, FINCAD grants to you a non-exclusive, personal, non-sublicensable, non-transferable, revocable, restricted and limited license (the "**Evaluation License**") during the term of this Agreement to access and use the FINCAD Market Data Service only for the Customer's private, non-productive, internal evaluation of the FINCAD Market Data Service for use by the Customer; and not for any other purpose whatsoever.

4. USE OF SERVICES - STANDARD SUBSCRIPTIONS

This Section 4 applies to all subscriptions for the FINCAD Market Data Service except Trial Subscriptions (which are subject to Section 3).

4.1 The Services: Subject to the provisions of this Agreement, FINCAD grants to you a non-exclusive, personal, non-sublicensable, non-transferable, restricted and limited license (the "**Standard License**") during the term of this Agreement to access and use the Services solely for the internal business purposes of the Customer and its Affiliates in accordance with the details of your subscription as set forth in this Agreement (including the Registration Notice and Invoices).

4.2 Training: The FINCAD Market Data Service includes limited online training materials. Additional training services may be available as Optional Services for additional fees.

4.3 Technical Support: The FINCAD Market Data Service includes limited, remote technical support services. Additional technical support services may be available as Optional Services for additional fees. For the purpose of calculating fees for technical support services, each request for technical support (whether by telephone, email or otherwise) is a separate support incident.

4.4 Optional Services: FINCAD will provide Optional Services as specified in an Invoice. Optional Services will be provided only during the term of this Agreement and subject to the terms and conditions of this Agreement and such additional terms and conditions (including payment of additional fees) as specified in an Invoice or otherwise agreed in writing by FINCAD and either you or the Customer.

4.5 Substitution by the Customer: If the Customer determines that you no longer require access to the Services, the Customer may by written notice (the "**Substitution Notice**") to FINCAD request that the Standard License be transferred to another individual employed by the Customer following procedures prescribed by FINCAD (including the termination of this Agreement and a requirement that the new user register for the Services and agree to the then-current version of this Agreement). Upon receipt of a Substitution Notice, FINCAD may terminate this Agreement without any notice or liability to you or any other person.

5. USE OF SERVICES - GENERAL

This Section 5 applies to all subscriptions for the FINCAD Market Data Service.

5.1 **FINCAD Software License Agreement/Authorized Device:** You may access and use the FINCAD Market Data Service (including the Market Data) only if you are authorized and licensed to use a copy of FINCAD XL pursuant to the FINCAD Software License Agreement, and only using one (1) specified personal computer (the "**Authorized Device**") on which you are authorized and licensed to use FINCAD XL pursuant to the FINCAD Software License Agreement. For greater certainty, unless otherwise expressly authorized in writing by FINCAD, you may not access and use the FINCAD Market Data Service (including the Market Data) from any computer or device other than the specified Authorized Device.

5.2 Market Data:

(a) **Modules:** Market Data is available in one or more discrete modules, each of which is subject to a separate fee. The Market Data modules included in your subscription for the FINCAD Market Data Service are specified in the Registration Notice or Invoices.

(b) **Permitted Use:** You and the Customer will access and use Market Data only as part of the FINCAD Market Data Service, strictly in accordance with this Agreement, and only as a data input to calculations performed using FINCAD XL pursuant to the FINCAD Software License Agreement. You and the Customer will use the calculations resulting from use of the Market Data only as permitted by the FINCAD Software License Agreement. Except as expressly set forth in this Agreement, you and the Customer will not use Market Data in any other manner or for any other purpose whatsoever.

(c) **Downloaded Data:** If you use the FINCAD Market Data Service to download Market Data to the Authorized Device: (i) you may permit the Customer's other personnel who are authorized and licensed to use FINCAD XL on the Authorized Device pursuant to the FINCAD Software License Agreement to use the downloaded Market Data using the copy of FINCAD XL installed and used on the Authorized Device, provided that they comply with all of the restrictions and requirements regarding the use of Market Data set forth in this Agreement; and (ii) the Market Data may not be distributed or transferred to any other computer or device.

(d) **Additional Terms/Conditions:** From time to time, Data Providers may require additional or amended terms and conditions for certain kinds of Market Data. FINCAD will provide you with notice of any such additional or amended terms and conditions and an opportunity to terminate your access to the Market Data if you do not agree to the additional or amended terms and conditions; and if you elect to terminate your access to the Market Data we will refund the unused portion of any pre-paid Fees that relate specifically to the terminated Market Data.

5.3 **Market Data Connector:** The Market Data Connector is an add-on module for FINCAD XL, and your access to, installation and use of the Market Data Connector is subject to this Agreement and to the FINCAD Software License Agreement (all references to "**Software**" in the FINCAD Software License Agreement are deemed to include the Market Data Connector,

provided that only you may access or use the Market Data Connector), provided that in the event of any inconsistency or conflict between the provisions of this Agreement and the provisions of the FINCAD Software License Agreement, the provisions of this Agreement will take precedence and govern.

5.4 Restrictions: You and the Customer will not, directly or indirectly: (a) use, or provide or permit access to or use of, the Services except as expressly permitted by this Agreement; (b) use the Services in a way that interferes with or disrupts the integrity or performance of the Services or related systems or networks, or to attempt to gain unauthorized access to the Services or related systems or networks; (c) copy, reproduce, translate, modify, enhance, or create derivative works from the Services (including the Market Data or any 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 Services (including Market Data) or their functionality or performance or any results of their use to or for the benefit of any other person, whether as a service bureau or otherwise, and with or without charge; (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 Services; (f) use multiplexing or pooling software or similar technologies in connection with the Services; (g) develop software applications for internal use with the Services; (h) reverse engineer or otherwise access or use the Services 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 Services; or (iii) monitor or assess the availability, performance, or functionality of the Services, or for any other benchmarking or competitive purposes; or (i) permit, assist or encourage any other person to do any of the foregoing.

5.5 Changes: You and the Customer each acknowledge and agree that FINCAD may in its discretion change the Services from time to time without any notice or liability to you, the Customer or any other person.

6. ONLINE ACCESS

6.1 Codes: You will access and use the Services using a valid and subsisting user name and password issued or approved by FINCAD (collectively, "**Codes**"). Codes are specific to you, and may not be shared with or transferred to any other person (including any of the Customer's other personnel). You will keep your Codes secure and confidential at all times, and you will immediately notify FINCAD if you know or suspect that any Code has become known to or used by any other person. You and the Customer are, jointly and severally, fully responsible and liable for the security of your Codes and all use and misuse of your Codes. If FINCAD, in its discretion, considers a Code to be unsecure or to have been used inappropriately, then FINCAD may immediately cancel the Code without any notice to you, the Customer, or any other person. Codes may require renewal from time to time, and FINCAD may in its discretion terminate your Codes if applicable fees have not been paid.

6.2 Monitoring Use/Personal Information: The Services may contain technologies that monitor, record and report to FINCAD information regarding your registration for and use of the Services. FINCAD may use that information and the personal information that you provide to FINCAD for system administration and product development purposes and to provide the Services (including technical support) to you and the Customer; and FINCAD may disclose all such information to the Customer and its personnel.

7. FEES

7.1 **Fees - General:** You and the Customer, jointly and severally, will pay to FINCAD all of the fees and charges for the Services (the "**Fees**") as specified in this Agreement (including Invoices). All Fees and pricing terms are confidential to FINCAD, and you and the Customer will not disclose that information to any other person.

7.2 **Changes in Fees:** FINCAD may in its discretion from time to time change the Fees, provided that FINCAD will give you not less than ninety (90) days prior notice of any such changes and the changed Fees will not be effective until the beginning of the next renewal term (if any).

7.3 **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**"). You and the Customer, jointly and severally, are responsible and liable for, and will pay and remit, all Taxes (other than FINCAD's corporate income taxes) associated with, based on or due as a result of Fees, and all related interest, penalties and expenses.

7.4 **Payments:** Fees and Taxes are payable in advance. FINCAD will deliver to you Invoices specifying the Fees and Taxes. Each Invoice is due and payable within thirty (30) days after the date of the Invoice, or otherwise agreed to in writing by the Parties. FINCAD may deliver Invoices by email or facsimile to you or the Customer to the addresses specified in your registration for the Service or on record in FINCAD's files. FINCAD may require advance payment of Fees and Taxes before providing the Services. Except as expressly set forth in this Agreement, payment obligations are not cancellable and advance payments are non-refundable under any circumstances, including termination of this Agreement. All Fees and Taxes are payable in the currency specified in the applicable Invoice, provided that if no currency is specified Fees and 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 FINCAD under this Agreement are payable in full without any deduction or withholding. If you or the Customer are prohibited by law from making payments free of deductions or withholdings, you and the Customer will pay such additional amounts to FINCAD as may be necessary to ensure that the actual amount received by FINCAD 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 FINCAD if such deductions or withholdings were not required.

8. OWNERSHIP/PROPRIETARY RIGHTS

8.1 **The Services:** You and the Customer each acknowledge and agree that, as among the Parties, FINCAD 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 Services and all information and data (including the Market Data) and software and technologies (including the Market Data Connector) used to provide the Services. The Services are licensed, not sold, to you; and, except for the Evaluation License or Standard License (as applicable), you and the Customer will not acquire any right, title or interest in, to or associated with the Services or any related information and data (including the Market Data) or software and technologies (including the Market Data Connector). All rights not expressly granted under this Agreement are reserved to FINCAD.

8.2 Submissions: If you or the Customer or its other personnel submit to FINCAD any ideas, suggestions or materials, including any enhancements or improvements to the Services or ideas for any such enhancements or improvements (collectively "**Submissions**"), you, the Customer and its other personnel (as applicable) each automatically grant to FINCAD and its successors, assigns and licensees a perpetual, worldwide, royalty free, transferable and sublicenseable license to use the Submissions as they consider appropriate in their discretion without providing any credit or compensation to you, the Customer or any other person.

9. ADDITIONAL OBLIGATIONS

9.1 Representations/Warranties: You and the Customer each represent and warrant to FINCAD as follows: (a) you and the Customer each have the right, power, capacity and authority to enter into and perform your respective obligations and exercise your respective rights under this Agreement; (b) all information provided by you and the Customer to FINCAD is true, accurate, current and complete; (c) your entering into this Agreement and performance of this Agreement and use of the Services, and the Customer's entering into this Agreement and performance of this Agreement and use of the Services: (i) complies with all applicable local, state, national and foreign laws, treaties and regulations (including those related to data privacy, international communications and the transmission of technical or personal data); (ii) will not conflict with, or result in the breach of, any express or implied obligation or duty (contractual or otherwise) now or in the future owed by you or the Customer to any other person; and (iii) does not and will not violate or infringe the rights of any person.

9.2 Customer Responsibility: The Customer is fully responsible and liable for your access to and use of the Services and all acts and omissions by you or any of the Customer's other personnel. The Customer will ensure that you and its other personnel fully comply with all of the requirements, restrictions and limitations regarding the Services set forth in this Agreement.

9.3 Unauthorized Use: You and the Customer will promptly notify FINCAD if you or the Customer know of or suspect any unauthorized access to or use of the Services (including the Market Data or the Market Data Connector).

9.4 Technical Requirements: You and the Customer are 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 Services and all data used in association with the Services, including maintaining a current and complete backup of all data and information contained on the Authorized Device before accessing or using the FINCAD Market Data Service. You and the Customer are solely responsible and liable for the transmission of Market Data from the systems used by FINCAD to provide the FINCAD Market Data Service to the Authorized Device.

9.5 Audit: Not more than once in any twelve (12) month period, FINCAD may inspect your relevant books, records and facilities (including computer equipment) and the Customer's relevant books, records and facilities (including computer equipment), and interview you and the Customer's other personnel, in order to verify compliance with this Agreement, provided that the inspection and interviews will be conducted on not less than seven (7) days prior notice, during normal business hours, in such a manner as not to interfere unreasonably with the operations of the Customer's business, and subject to reasonable confidentiality and security requirements. If any such audit discloses any unauthorized use of the Services, you and the Customer, jointly and severally, will reimburse to FINCAD all reasonable costs and expenses incurred by FINCAD to conduct the audit.

9.6 Confidentiality: You and the Customer each acknowledge and agree that all non-public information regarding the Services, including the Market Data and the Market Data Connector

(collectively the "**Confidential Information**") are the trade secrets and confidential, proprietary information of FINCAD and are owned solely by FINCAD and its licensors. The terms of this Agreement are also FINCAD's Confidential Information. You and the Customer will use the Confidential Information only in connection with your use of the Services in accordance with this Agreement. Both during and after the term of this Agreement, you and the Customer will: (a) maintain the strict confidentiality of the Confidential Information using the same degree of care as the Customer affords to its own confidential information of a similar nature which it desires not to be accessed, used, disclosed or disseminated, and in no event less than reasonable care, to prevent the unauthorized access to or use or disclosure of the Confidential Information; (b) not disclose or make the Confidential Information available to any other person in any manner or form without FINCAD's express prior written consent, except for bona fide disclosures required by applicable laws; and (c) ensure that all of the Customer's personnel and other persons to whom you or the Customer disclose the Confidential Information comply with the restrictions and requirements set forth in this Section 9.6. Upon expiration or termination of this Agreement, you and the Customer will each either deliver to FINCAD or permanently delete and destroy all paper and electronic documents and other records (other than copies of this Agreement and Invoices) containing Confidential Information in your or the Customer's possession, power or control; and upon request by FINCAD you and the Customer will deliver to FINCAD a declaration certifying that you and the Customer have complied with this paragraph 9.6.

9.7 Indemnity: During and indefinitely after the term of this Agreement, you and the Customer, jointly and severally, will defend, indemnify and hold harmless FINCAD and its Representatives, jointly and severally, from and against any and all third party Claims and third party Proceedings directly or indirectly arising from, connected with or relating to the use of the Services (including the Market Data) by you or the Customer or the Customer's other personnel or the results obtained therefrom, or any negligence, misconduct, or breach of this Agreement by you or the Customer or any person for whom the Customer is responsible pursuant to this Agreement or at law. FINCAD will: (a) give the Customer prompt notice of the indemnified Claim or Proceeding; (b) grant control of the defence and settlement of the indemnified Claim or Proceeding to the Customer (provided that a Claim or Proceeding will not be settled without the prior written consent of FINCAD, which consent will not be unreasonably withheld or delayed); (c) agree that the same legal counsel may jointly represent FINCAD and its Representatives and the Customer in the Proceeding (if the Customer is a party to the Proceeding); and (d) reasonably co-operate with the Customer regarding the defence and settlement of the indemnified Claim or Proceeding. Notwithstanding anything contained in this Agreement to the contrary, FINCAD and its Representatives retain the right to participate in the defense of and settlement negotiations relating to any indemnified 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; (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; and (iii) "**Representatives**" means partners, directors, officers, employees, personnel, agents, licensors, service providers, data providers, suppliers, and other representatives.

10. LIMITED WARRANTY AND DISCLAIMERS

10.1 Limited Warranty: Subject to paragraphs 10.3, 10.4, and 10.5, FINCAD warrants that the FINCAD Market Data Service will perform substantially in accordance with the applicable online help documentation under normal use and circumstances. If there is a breach by FINCAD of the foregoing warranty, the sole and exclusive remedies to you and the Customer, and FINCAD's sole obligations to you and the Customer, are as follows, at FINCAD's option: (a) FINCAD will

modify the FINCAD Market Data Service so that it performs substantially in accordance with the applicable online help documentation, unless the documentation is in error in which case FINCAD will modify the documentation to accurately reflect the actual operation of the FINCAD Market Data Service; or (b) FINCAD will terminate this Agreement and refund the Fees paid in respect of your use of the FINCAD Market Data Service during the three (3) months prior to the termination date.

10.2 GENERAL DISCLAIMER: THE WARRANTY SET FORTH IN PARAGRAPH 10.1 IS IN LIEU OF ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS AND GUARANTEES BY FINCAD. EXCEPT FOR THE WARRANTY SET FORTH IN PARAGRAPH 10.1, THE SERVICES ARE 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 FINCAD TO THE FULLEST EXTENT PERMITTED BY LAW. YOU AND THE CUSTOMER ARE SOLELY RESPONSIBLE AND LIABLE FOR THE SELECTION AND USE OF THE SERVICES TO ACHIEVE INTENDED RESULTS. YOU AND THE CUSTOMER USE THE SERVICES AT YOUR OWN RISK, AND ARE SOLELY RESPONSIBLE AND LIABLE FOR VERIFYING ALL RESULTS FROM THE USE OF THE SERVICES.

10.3 Market Data Disclaimer: NEITHER FINCAD 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 FINCAD AND THE DATA PROVIDERS DISCLAIM ANY AND ALL RESPONSIBILITY AND LIABILITY FOR MARKET DATA TO THE FULLEST EXTENT PERMITTED BY LAW.

10.4 SECURITY DISCLAIMER: THE SECURITY AND PRIVACY PROVIDED BY CODES ARE NOT COMPLETE, AND CAN BE CIRCUMVENTED. CODES MAY NOT PREVENT UNAUTHORIZED ACCESS TO INFORMATION YOU OR THE CUSTOMER MAY USE IN CONNECTION WITH THE SERVICES. FINCAD IS NOT RESPONSIBLE OR LIABLE FOR ANY UNAUTHORIZED ACCESS TO, OR USE, ALTERATION, THEFT OR DESTRUCTION OF, ANY DATA, WHETHER THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD. FINCAD 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, FINCAD MAY IN ITS DISCRETION AT ANY TIME REQUIRE PROOF 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.

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

11. LIABILITY EXCLUSIONS/LIMITATIONS/RELEASE

11.1 **NO LIABILITY FOR MARKET DATA:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT: (A) YOU AND THE CUSTOMER ASSUME ALL RISK OF DAMAGE AND LOSS RESULTING FROM THE USE OF MARKET DATA; AND (B) TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND IN NO EVENT WILL FINCAD OR DATA PROVIDERS OR ANY OF THEIR RESPECTIVE REPRESENTATIVES BE LIABLE TO YOU, THE CUSTOMER, OR ANY OTHER PERSON FOR ANY DIRECT OR INDIRECT DAMAGE OR LOSS ARISING FROM, CONNECTED WITH, OR RELATING TO MARKET DATA (INCLUDING THE ACCURACY, COMPLETENESS OR TIMELINESS OF MARKET DATA OR ANY DELAYS, INTERRUPTIONS OR OMISSIONS IN MARKET DATA).

11.2 **EXCLUSIONS/LIMITATIONS/RELEASE:** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OTHER THAN PARAGRAPH 11.1, AND SUBJECT TO PARAGRAPH 11.3:

(a) **EXCLUSIONS:** THE FINCAD GROUP'S LIABILITY (IF ANY) TO THE CUSTOMER GROUP ARISING FROM, CONNECTED WITH OR RELATING TO THIS AGREEMENT OR THE SERVICES OR OTHERWISE IS LIMITED TO DIRECT DAMAGES SUFFERED BY THE CUSTOMER, AND IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL THE FINCAD GROUP BE LIABLE TO THE CUSTOMER GROUP OR ANY OTHER PERSON FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY LOSS OR DAMAGE, ARISING FROM, CONNECTED WITH, OR RELATING TO THE SERVICES OR USE OF THE SERVICES OR THIS AGREEMENT (INCLUDING THE TERMINATION OF THIS AGREEMENT) OR OTHERWISE, INCLUDING BUT NOT LIMITED TO 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:** IN NO EVENT AND UNDER NO CIRCUMSTANCES WILL THE FINCAD GROUP'S TOTAL AGGREGATE LIABILITY TO THE CUSTOMER GROUP ARISING FROM, CONNECTED WITH OR RELATING TO THE SERVICES OR USE OF THE SERVICES OR THIS AGREEMENT (INCLUDING THE TERMINATION OF THIS AGREEMENT) OR OTHERWISE, EXCEED THE FEES ACTUALLY PAID BY THE CUSTOMER GROUP FOR THE SERVICES PURSUANT TO THIS AGREEMENT DURING THE THREE (3) MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE;

(c) **APPLICATION:** THIS PARAGRAPH 11.2 APPLIES TO LIABILITY UNDER ANY THEORY OF LAW OR EQUITY (INCLUDING CONTRACT, TORT, STRICT LIABILITY), REGARDLESS OF ANY NEGLIGENCE OR OTHER FAULT OR WRONGDOING (INCLUDING FUNDAMENTAL BREACH OR GROSS NEGLIGENCE) BY THE FINCAD GROUP OR ANY PERSON FOR WHOM FINCAD IS RESPONSIBLE, AND EVEN IF FINCAD HAS BEEN ADVISED OF THE POSSIBILITY OF THE POTENTIAL LOSS OR DAMAGE BEING INCURRED; AND

(d) **DEFINITIONS:** IN THIS PARAGRAPH 11.2, THE "**FINCAD GROUP**" MEANS FINCAD AND ALL DATA PROVIDERS AND THEIR RESPECTIVE PAST, PRESENT AND FUTURE REPRESENTATIVES, JOINTLY AND SEVERALLY; AND "**CUSTOMER GROUP**" MEANS YOU AND THE CUSTOMER AND YOUR RESPECTIVE PAST, PRESENT AND FUTURE REPRESENTATIVES, JOINTLY AND SEVERALLY.

11.3 **EXCEPTIONS:** THE EXCLUSIONS AND LIMITATIONS SET FORTH IN PARAGRAPH 11.2 DO NOT APPLY TO LIABILITY FOR DEATH OR BODILY INJURY CAUSED BY THE

NEGLIGENCE OR WILFUL MISCONDUCT OF FINCAD, OR ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED AS A MATTER OF APPLICABLE LAW.

11.4 FAIR ALLOCATION OF LIABILITY: YOU AND THE CUSTOMER EACH ACKNOWLEDGE AND AGREE THAT THIS AGREEMENT PRESENTS A FAIR ALLOCATION OF RISK AND LIABILITY, AND THAT SECTIONS 10 AND 11 AND PARAGRAPH 9.7 ARE AN ESSENTIAL PART OF THE BARGAIN BETWEEN THE PARTIES, A CONTROLLING FACTOR IN SETTING THE FEES PAYABLE FOR THE SERVICES, AND AN INDUCEMENT TO FINCAD TO ENTER INTO THIS AGREEMENT.

12. TERM AND TERMINATION

12.1 Termination for Cause: Notwithstanding any other provision of this Agreement: (a) you or the Customer may terminate this Agreement for cause effective immediately upon delivery of notice of termination to FINCAD if FINCAD breaches this Agreement and has not remedied the breach within thirty (30) days after receipt of a default notice from you or the Customer identifying the breach and stating an intention to terminate this Agreement if the breach is not remedied within thirty (30) days; (b) FINCAD may terminate this Agreement for cause effective immediately upon delivery of notice of termination to you or the Customer if you or the Customer breaches this Agreement (including failure to make a required payment on time) and have not remedied the breach within thirty (30) days after receipt of a default notice from FINCAD identifying the breach and stating FINCAD's intention to terminate this Agreement if the breach is not remedied within thirty (30) days; (c) FINCAD may in its discretion terminate this Agreement effective immediately upon delivery of notice of termination to you or the Customer if you or the Customer become insolvent, cease to conduct business in the ordinary course, take any step or proceeding available for the benefit of insolvent debtors, or are 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 the Customer's business and undertaking.

12.2 Related Agreement Termination: FINCAD may in its discretion terminate this Agreement for cause effective immediately upon delivery of a termination notice to you or the Customer if the FINCAD Software License Agreement expires or is terminated for any reason whatsoever.

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

12.4 Termination of Market Data: Notwithstanding any other provision of this Agreement, you and the Customer acknowledge and agree that: (a) Data Providers may immediately terminate the availability of all or portions of the Market Data without any notice or liability to you or the Customer or any other person; and (b) FINCAD 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 you or the Customer or any other person, provided that upon such termination FINCAD 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) the Evaluation License, the Standard License, and your license to use the Market Data Connector will terminate immediately and automatically, without any notice to you or the Customer; (b) you will immediately cease using the Services; (c) each Party will remain responsible and liable for all obligations and liabilities arising prior to the termination or expiration of this Agreement; (d) you and the Customer will promptly pay all outstanding Fees and Taxes;

and (e) you and the Customer will promptly permanently remove and delete the Market Data and the Market Data Connector from the Authorized Device, unless the installation and use of the Market Data and the Market Data Connector on the Authorized Device is expressly authorized by FINCAD pursuant to a valid and subsisting license granted by FINCAD pursuant to a separate written agreement. You and the Customer each acknowledge that you and the Customer expect no anticipated amount of profits by virtue of this Agreement, and agree that expiration or termination of this Agreement will not render FINCAD liable to you or the Customer for any damages, costs or anticipated profits.

12.6 Suspension of Services: FINCAD may in its discretion immediately suspend the provision of any or all the Services if you or the Customer fail to make any payment when due or otherwise breach this Agreement; and such suspension will not be a breach of this Agreement by FINCAD, entitle you or the Customer to a refund or suspension of Fees, or give rise to any liability by FINCAD to you or the 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 this Agreement, 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 7, 8, 11, 13 and paragraphs 5.3, 5.4, 6.2, 9.2, 9.3, 9.4, 9.5, 9.6, 9.7, 10.2, 10.3, 10.4, 10.5, 12.5, and 12.7.

13. GENERAL

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

13.2 Notices: FINCAD may deliver notices under this Agreement to you and the Customer by email, facsimile, or delivery to the addresses specified in your registration for the Services or on record in FINCAD's files. You and the Customer will give all notices under this Agreement to FINCAD in writing delivered by courier to FINCAD (Attention Legal Department) at FINCAD's corporate headquarters specified on FINCAD's website (www.fincad.com).

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 you or the Customer wish to bring legal proceedings against FINCAD regarding this Agreement, the relationship of the Parties, or any related matters, you and the Customer will do so only before either (as determined by you and the Customer) 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 FINCAD irrevocably submits and attorns to the exclusive jurisdiction of those courts over those matters. If FINCAD wishes to bring legal proceedings against you or the Customer regarding this Agreement, the relationship of the Parties, or any related matters, FINCAD will do so only before either (as determined by FINCAD) the courts of the Province of Ontario sitting in the City of Toronto, Canada, or the courts of the jurisdiction of the Customer's office specified in the Registration Notice or an Invoice, and you and the Customer each irrevocably submit and attorn to the exclusive jurisdiction of those courts over those matters. Each Party irrevocably waives all rights to trial by jury.

13.4 Assignment: You and the Customer may not assign this Agreement without FINCAD's prior written consent, which consent may be withheld in FINCAD's discretion. FINCAD may assign this Agreement in any merger, consolidation, or reorganization, or any acquisition or sale of all or substantially all of its assets relating to the Market Data Service business, 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, no 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 contractors, 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 FINCAD (on the one hand) and you or the Customer (on the other hand). 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 any other Party of its obligations under this Agreement will be effective unless in writing and signed by all 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. In this Agreement: (a) a reference to "**this Agreement**" and other similar terms refers to this Agreement (including all Registration Notices and Invoices) 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 or year means a calendar day, month or year, unless the context indicates otherwise. The parties have expressly requested and required that this Agreement and all related documents be drawn up in the English language.

13.7 Entire Agreement: This Agreement sets forth the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all previous communications, representations, negotiations, discussions, agreements or understandings, whether oral or written, between them with respect to the subject matter of this Agreement. 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. This Agreement may be modified only by a written instrument signed by FINCAD and either you or the Customer, or their successors or permitted assigns. PURCHASE ORDERS AND OTHER DOCUMENTS ISSUED BY YOU OR THE CUSTOMER IN CONNECTION WITH THIS AGREEMENT ARE FOR ADMINISTRATIVE CONVENIENCE ONLY, AND THE TERMS AND CONDITIONS CONTAINED IN THOSE DOCUMENTS ARE OF NO FORCE OR EFFECT AND DO NOT IN ANY WAY AMEND THE TERMS AND CONDITIONS OF THIS AGREEMENT.