

## ADDITIONAL TERMS RELATING TO EU SUBSCRIBERS

Where Client or Subscriber or one or more of its Affiliates (“**Subscriber**”) is incorporated in any member state of the European Economic Area (“**EEA**”) the following terms in these Additional Terms Relating to EU Subscribers (“**Additional Terms**”) shall be incorporated into and form part of the agreement (“**Agreement**”) under which Intercontinental Exchange Holdings, Inc. or one or more of its affiliates (“**ICE**”) provides services to Subscriber, and, in the event of conflict with any other terms of the Agreement, these Additional Terms shall prevail. ICE and Subscriber agree to be bound by the terms and conditions of this Agreement with respect to the Personal Data that is the subject matter of these Additional Terms. ICE may amend these Additional Terms at any time by providing notice to Subscriber, which may be sent via email, and any such amendments will be binding on Subscriber effective ten (10) days from the date of such notice.

### 1. DATA PROTECTION

- A ICE shall Process any Personal Data provided to it by Subscriber for the purposes of providing the Services (as defined in the Agreement) as a Processor.
- B ICE agrees that it will, acting as a Processor in the provision of the Services:
  - (1) process the Personal Data only for the purpose of providing the Services or as otherwise instructed in writing by Subscriber, and inform Subscriber if any instruction contradicts any legal requirements to which ICE is subject;
  - (2) keep all Personal Data confidential as required under the Agreement;
  - (3) ensure that access to Personal Data shall only be provided to those of its employees, Affiliates or service providers who need access to such data for the performance of the Services, and that they will only access Personal Data in order to provide the Services or in accordance with Subscriber’s instructions;
  - (4) take adequate technical and organizational security measures to safeguard Personal Data against unauthorized access, destruction, disclosure, transfer, or other improper use;
  - (5) provide Subscriber access to the Personal Data which has been provided by Subscriber to enable Subscriber to comply with its obligations to Data Subjects exercising their rights under Data Protection Laws. ICE shall refer such Data Subjects to Subscriber and shall also, at the request of Subscriber, amend, correct, delete, add to, cease using or restrict the use of Personal Data relating to such Data Subjects to ensure that their Personal Data is accurate and complete;
  - (6) promptly notify Subscriber of any accidental or unauthorized access, destruction, disclosure, transfer or other improper use of Personal Data that has been supplied by Subscriber, after ICE becomes aware of any such access, destruction, disclosure, transfer or other improper use, or of any complaints by individuals or third parties that involve or pertain to such Personal Data, and shall, taking into account the nature of the processing and the information available to ICE, provide such assistance to Subscriber as may be reasonable in the circumstances to enable Subscriber to meet its obligations to notify any Supervisory Authority or any other regulatory or governmental authorities or Data Subjects of such event where Subscriber is required to do so by law;

- (7) taking into account the nature of the Processing and the information available to ICE, assist Subscriber in relation to any privacy impact assessments or consultations with Supervisory Authorities about the processing of Personal Data in the context of the provision of the Services or any inquiry, complaint or claim in relation to the Processing of Personal Data provided by Subscriber;
  - (8) make available to Subscriber all information necessary to demonstrate that ICE is in compliance with this clause 1.B;
  - (9) audit the adequacy of its security measures used to Process Personal Data on behalf of Subscriber, which will: (i) be performed at least annually; (ii) be in accordance with SSAE 16 standards or such alternative standards that are substantially equivalent to SSAE 16; (iii) be performed by third party professionals at ICE's selection and expense; and (iv) result in the generation of an audit report ("**Audit Report**"), which will be ICE's confidential information;
  - (10) contribute to audits by Subscriber or an auditor designated by Subscriber, including under the Transfer Clauses if applicable, by providing a confidential summary of the Audit Report ("**Summary Report**") so that Subscriber can reasonably verify ICE's compliance with the obligations of this clause 1.B, which will be ICE's confidential information; nothing in this clause 1.B.(10) varies or modifies the Transfer Clauses nor affects any Supervisory Authority's or Data Subject's rights under the Transfer Clauses or Data Protection Law;
  - (11) at the termination of the Agreement or these Additional Terms, at Subscriber's election, delete or return the Personal Data to Subscriber.
- C. Subscriber acknowledges and agrees that ICE may subcontract the provision of the Services to sub-processors and ICE affiliates and ICE will make a list of sub-processors and ICE Affiliates processing Personal Data for the Services available to the Subscriber under the data protection disclosure section of our website ([www.intercontinentalexchange.com](http://www.intercontinentalexchange.com)), which may be updated from time to time by ICE. ICE will ensure that any such transfers of Personal Data to third parties will be subject to contractual requirements to safeguard Personal Data equivalent to those set out in Clause 1.B, and ICE shall remain liable to Subscriber for any breaches caused by third parties or ICE affiliates.
- D. To the extent that ICE Processes Personal Data provided to it by Subscriber for purposes other than for the provision of the Services, ICE acknowledges that it will be a Controller of that Personal Data, and ICE agrees to Process such Personal Data in accordance with Data Protection Laws.
- E. In relation to all Personal Data provided by it to ICE, Subscriber shall ensure that:
- (1) where consent is required, all relevant Data Subjects have consented (in the appropriate manner) to their Personal Data being disclosed to ICE for Processing in accordance with the Agreement and that the processing otherwise complies with Data Protection Laws and these Additional Terms, including any onward transfer to a jurisdiction outside the European Economic Area, as applicable, by either ICE or any relevant third party;

- (2) the disclosure of Personal Data by Subscriber to ICE will be in each case and in all respects lawful;
- (3) notice of the disclosure of their Personal Data to ICE for Processing in accordance with the Agreement and these Additional Terms will be provided to all relevant Data Subjects (including any Authorized Users) prior to any such disclosure, including notice of Processing where ICE is the Controller for the purposes set out in Appendix B to Schedule 1. If requested by ICE, Subscriber shall provide evidence that it has provided such notice;
- (4) Subscriber complies with, and represents and warrants that it has complied with, the Data Protection Laws in relation to the use of the Services by Subscriber and its Authorized Users;
- (5) it shall not, by any act or omission, put ICE or any of its Affiliates or subsidiaries in breach of any of the Data Protection Laws;
- (6) it shall do and execute, or arrange to be done and executed, each act, document and thing necessary or desirable in order to comply with this Clause 1.E.

F. Export of Personal Data and Country/Territory Specific Provisions

- (1) Where Subscriber provides Personal Data to ICE for purposes other than the provision of the Services, ICE is a Controller in respect of that Personal Data and Subscriber and ICE shall comply with the terms of the Standard Contractual Clauses for Controller-to-Controller Transfers approved by EC Commission Decision of 27 December 2004 and reproduced in Schedule 1 to these Additional Terms (the "**C-to-C Transfer Clauses**").
- (2) Where Subscriber provides Personal Data to ICE in order for ICE to provide the Services, ICE shall process the Personal Data on Subscriber's behalf. In this case ICE is a Processor in respect of that Personal Data and Subscriber and ICE shall comply with the terms of the Standard Contractual Clauses for the Transfer of Personal Data to Processors Established in Third Countries approved by EC Commission Decision of 5 February 2010 and reproduced in Schedule 2 to these Additional Terms (the "**C-to-P Transfer Clauses**").
- (3) For the purposes of the Transfer Clauses, the following additional provisions shall apply:
  - (i) Subscriber and ICE agree to observe the terms of the Transfer Clauses without modification;
  - (ii) in case of any conflict between the terms of the Transfer Clauses and any other part of these Additional Terms, the Transfer Clauses shall prevail;
  - (iii) the names and addresses of Subscriber and ICE shall be considered to be incorporated into the Transfer Clauses; and
  - (iv) the parties' signature to these Additional Terms shall be considered as signature to the Transfer Clauses.

- (4) Subscriber and ICE shall also comply with the provisions of the Transfer Clauses in all cases where Personal Data which was originally exported in the circumstances described in sub-paragraphs (1) and (2) above are subsequently re-exported to another country.
  - (5) If so required by the laws or regulatory procedures of any jurisdiction, the Parties shall execute or re-execute the Transfer Clauses as separate documents setting out the proposed transfers of Personal Data in such manner as may be required.
  - (6) In the event that the Transfer Clauses are amended, replaced or otherwise invalidated by the European Commission or under the Data Protection Laws, the parties shall work together in good faith to enter into any updated version of the Transfer Clauses or negotiate in good faith a solution to enable a transfer of the personal Data to meet the requirements of Article 44 of the GDPR.
- G. For the purposes of Clauses 1.A, B, D, E, F, F and G only, and for Schedule 1 and Schedule 2 of these Additional Terms:
- (1) "**Data Exporter**" means Subscriber;
  - (2) "**Data Importer**" means ICE;
  - (3) the terms "**Controller**" "**Processor**", "**Process(ing)**", and "**Personal Data**" each have the meaning given to such terms in the GDPR;
  - (4) the term "**Data Protection Laws**" means the GDPR (as implemented in the relevant European Union Member State) and all applicable data protection legislation and regulations;
  - (5) the term "**Data Subject**" shall mean an individual who is the subject of Personal Data;
  - (6) "**Services**" shall have the meaning described in the Agreement;
  - (7) the term "**Supervisory Authority**" shall mean the data protection authority in the applicable European state;
  - (8) the term "**GDPR**" shall mean European Union Regulation 2016/679 and includes any relevant implementing measure in each relevant European state, or any successor legislation thereto; and
  - (9) the term "**Transfer Clauses**" shall mean the standard contractual clauses set out in Schedule 1 and Schedule 2 to these Additional Terms.
  - (10) Any capitalized terms not defined in this Clause 1.G shall be defined as they are under the Agreement.

## 2. **GOVERNING LAW**

These Additional Terms and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed in all respects by, and construed in accordance with the laws of England and Wales.

## SCHEDULE 1 to Additional Terms

### C-to-C Transfer Clauses

#### DEFINITIONS

For the purposes of the clauses:

- (a) The terms "Personal Data", "Special Categories of Data/Sensitive Data", "Process/Processing", "Controller", "Processor", "Data Subject" and "Supervisory Authority" shall have the same meaning as in Directive 95/46/EC of 24 October 1995 (whereby "the Authority" shall mean the competent data protection authority in the territory in which the Data Exporter is established)
- (b) the "**Data Exporter**" shall mean the Controller who transfers the Personal Data;
- (c) the "**Data Importer**" shall mean the Controller who agrees to receive from the Data Exporter Personal Data for further processing in accordance with the terms of these clauses and who is not subject to a third country's system ensuring adequate protection;
- (d) "**clauses**" shall mean these contractual clauses which are a free standing document that does not incorporate commercial business terms established by the Parties under separate commercial arrangements.

The details of the transfer (as well as the Personal Data covered) are specified in Annex B, which forms an integral part of the clauses.

#### 1. OBLIGATIONS OF THE DATA EXPORTER

The Data Exporter warrants and undertakes that:

- (a) the Personal Data have been collected, processed and transferred in accordance with the laws applicable to the Data Exporter;
- (b) it has used reasonable efforts to determine that the Data Importer is able to satisfy its legal obligations under these clauses;
- (c) it will provide the Data Importer, when so requested, with copies of relevant data protection laws or references to them (where relevant, and not including legal advice) of the country in which the Data Exporter is established;
- (d) it will respond to enquiries from Data Subjects and the Authority concerning processing of the Personal Data by the Data Importer, unless the parties have agreed that the Data Importer will so respond, in which case the Data Exporter will still respond to the extent reasonably possible and with the information reasonably available to it if the Data Importer is unwilling or unable to respond. Responses will be made within a reasonable time.
- (e) it will make available, upon request, a copy of the clauses to Data Subjects who are third party beneficiaries under clause III, unless the clauses contain confidential information, in which case it may remove such information. Where information is removed, the Data Exporter shall inform Data Subjects in writing of the reason for removal and of their right to draw the removal to the attention of the Authority. However, the Data Exporter shall

abide by a decision of the Authority regarding access to the full text of the clauses by Data Subjects, as long as Data Subjects have agreed to respect the confidentiality of the confidential information removed. The Data Exporter shall also provide a copy of the clauses to the Authority where required.

## 2. OBLIGATIONS OF THE DATA IMPORTER

The Data Importer warrants and undertakes that:

- (a) it will have in place appropriate technical and organisational measures to protect the Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, and which provide a level of security appropriate to the risk represented by the processing and the nature of the data to be protected;
- (b) it will have in place procedures so that any third party it authorises to have access to the Personal Data, including Processors, will respect and maintain the confidentiality and security of the Personal Data. Any person acting under the authority of the Data Importer, including a Data Processor, shall be obligated to process the Personal Data only on instructions from the Data Importer. This provision does not apply to persons authorised or required by law or regulation to have access to the Personal Data;
- (c) it has no reason to believe, at the time of entering into these clauses, in the existence of any local laws that would have a substantial adverse effect on the guarantees provided under these clauses, and it will inform the Data Exporter (which will pass such notification on to the Authority where required) if it becomes aware of any such laws;
- (d) it will process the Personal Data for purposes described in Annex B, and has the legal authority to give the warranties and fulfil the undertakings set out in these clauses;
- (e) it will identify to the Data Exporter a contact point within its organization authorised to respond to enquiries concerning processing of the Personal Data, and will cooperate in good faith with the Data Exporter, the Data Subject and the Authority concerning all such enquiries within a reasonable time. In case of legal dissolution of the Data Exporter, or if the parties have so agreed, the Data Importer will assume responsibility for compliance with the provisions of clause 1.e;
- (f) at the request of the Data Exporter, it will provide the Data Exporter with evidence of financial resources sufficient to fulfil its responsibilities under clause **Error! Reference source not found.** (which may include insurance coverage);
- (g) upon reasonable request of the Data Exporter, it will submit its data processing facilities, data files and documentation needed for processing to reviewing, auditing and/or certifying by the Data Exporter (or any independent or impartial inspection agents or auditors, selected by the Data Exporter and not reasonably objected to by the Data Importer) to ascertain compliance with the warranties and undertakings in these clauses, with reasonable notice and during regular business hours. The request will be subject to any necessary consent or approval from a regulatory or supervisory authority within the country of the Data Importer, which consent or approval the Data Importer will attempt to obtain in a timely fashion;
- (h) it will process the Personal Data in accordance with the data processing principles set forth in Annex A;

- (i) It will not disclose or transfer the Personal Data to a third party data controller located outside the EEA unless it notifies the Data Exporter about the transfer and:
  - (i) the third party data controller processes the Personal Data in accordance with a Commission decision finding that a third country provides adequate protection, or
  - (ii) the third party data controller becomes a signatory to these clauses or another data transfer agreement approved by a competent authority in the EU, or
  - (iii) Data Subjects have been given the opportunity to object, after having been informed of the purposes of the transfer, the categories of recipients and the fact that the countries to which data is exported may have different data protection standards, or
  - (iv) with regard to onward transfers of Sensitive Data, Data Subjects have given their unambiguous consent to the onward transfer.

### 3. **LIABILITY AND THIRD PARTY RIGHTS**

- (a) Each party shall be liable to the other parties for damages it causes by any breach of these clauses. Liability as between the parties is limited to actual damage suffered. Punitive damages (i.e. damages intended to punish a party for its outrageous conduct) are specifically excluded. Each party shall be liable to Data Subjects for damages it causes by any breach of third party rights under these clauses. This does not affect the liability of the Data Exporter under its data protection law.
- (b) The Parties agree that a Data Subject shall have the right to enforce as a third party beneficiary this clause and clauses 1(b), 1(d), 1(e), 2(a), 2(c), 2(d), 2(e), 2(h), 2(i), 3(a), 5, 6(d) and 7 against the Data Importer or the Data Exporter, for their respective breach of their contractual obligations, with regard to his Personal Data, and accept jurisdiction for this purpose in the Data Exporter's country of establishment. In cases involving allegations of breach by the Data Importer, the Data Subject must first request the Data Exporter to take appropriate action to enforce his rights against the Data Importer; if the Data Exporter does not take such action within a reasonable period (which under normal circumstances would be one month), the Data Subject may then enforce his rights against the Data Importer directly. A Data Subject is entitled to proceed directly against a Data Exporter that has failed to use reasonable efforts to determine that the Data Importer is able to satisfy its legal obligations under these clauses (the Data Exporter shall have the burden to prove that it took reasonable efforts).

### 4. **LAW APPLICABLE TO THE CLAUSES**

These clauses shall be governed by the law of the country in which the Data Exporter is established, with the exception of the laws and regulations relating to processing of the Personal Data by the Data Importer under clause 2(h), which shall apply only if so selected by the Data Importer under that clause.

### 5. **RESOLUTION OF DISPUTES WITH DATA SUBJECTS OR THE AUTHORITY**

- (a) In the event of a dispute or claim brought by a Data Subject or the Authority concerning the processing of the Personal Data against either or both of the parties, the parties will inform each other about any such disputes or claims, and will cooperate with a view to settling them amicably in a timely fashion.

- (b) The parties agree to respond to any generally available non-binding mediation procedure initiated by a Data Subject or by the Authority. If they do participate in the proceedings, the Parties may elect to do so remotely (such as by telephone or other electronic means). The Parties also agree to consider participating in any other arbitration, mediation or other dispute resolution proceedings developed for data protection disputes.
- (c) Each Party shall abide by a decision of a competent court of the Data Exporter's country of establishment or of the Authority which is final and against which no further appeal is possible.

## 6. TERMINATION

- (a) In the event that the Data Importer is in breach of its obligations under these clauses, then the Data Exporter may temporarily suspend the transfer of Personal Data to the Data Importer until the breach is repaired or the contract is terminated.
- (b) In the event that:
  - (i) the transfer of Personal Data to the Data Importer has been temporarily suspended by the Data Exporter for longer than one month pursuant to paragraph (a);
  - (ii) compliance by the Data Importer with these clauses would put it in breach of its legal or regulatory obligations in the country of import;
  - (iii) the Data Importer is in substantial or persistent breach of any warranties or undertakings given by it under these clauses;
  - (iv) a final decision against which no further appeal is possible of a competent court of the Data Exporter's country of establishment or of the Authority rules that there has been a breach of the clauses by the Data Importer or the Data Exporter; or
  - (v) a petition is presented for the administration or winding up of the Data Importer, whether in its personal or business capacity, which petition is not dismissed within the applicable period for such dismissal under applicable law; a winding up order is made; a receiver is appointed over any of its assets; a trustee in bankruptcy is appointed, if the Data Importer is an individual; a company voluntary arrangement is commenced by it; or any equivalent event in any jurisdiction occurs,

then the Data Exporter, without prejudice to any other rights which it may have against the Data Importer, shall be entitled to terminate these clauses, in which case the Authority shall be informed where required. In cases covered by (i), (ii) or (iv) above the Data Importer may also terminate these clauses.

- (c) Either party may terminate these clauses if (i) any Commission positive adequacy decision under Article 25(6) of Directive 95/46/EC (or any superseding text) is issued in relation to the country (or a sector thereof) to which the data is transferred and processed by the Data Importer, or (ii) Directive 95/46/EC (or any superseding text) becomes directly applicable in such country.
- (d) The parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason (except for termination under clause (c) above) does not exempt



them from the obligations and/or conditions under the clauses as regards the processing of the Personal Data transferred.

**7. VARIATION OF THESE CLAUSES**

The parties may not modify these clauses except to update any information in Annex B, in which case they will inform the Authority where required. This does not preclude the parties from adding additional commercial clauses where required.

**8. DESCRIPTION OF THE TRANSFER**

The details of the transfer and of the Personal Data are specified in Annex B. The Parties agree that Annex B may contain confidential business information which they will not disclose to third parties, except as required by law or in response to a competent regulatory or government agency, or as required under clause 1(e). The Parties may execute additional annexes to cover additional transfers, which will be submitted to the Authority where required. Annex B may, in the alternative, be drafted to cover multiple transfers.

## ANNEX A TO SCHEDULE 1

### DATA PROCESSING PRINCIPLES

1. Purpose limitation: Personal Data may be processed and subsequently used or further communicated only for purposes described in Annex B or subsequently authorised by the Data Subject.
2. Data quality and proportionality: Personal Data must be accurate and, where necessary, kept up to date. The Personal Data must be adequate, relevant and not excessive in relation to the purposes for which they are transferred and further processed.
3. Transparency: Data Subjects must be provided with information necessary to ensure fair processing (such as information about the purposes of processing and about the transfer), unless such information has already been given by the Data Exporter.
4. Security and confidentiality: Technical and organisational security measures must be taken by the Data Controller that are appropriate to the risks, such as against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, presented by the Processing. Any person acting under the authority of the Data Controller, including a Processor, must not Process the data except on instructions from the Data Controller.
5. Rights of access, rectification, deletion and objection: As provided in Article 12 of Directive 95/46/EC, Data Subjects must, whether directly or via a third party, be provided with the personal information about them that an organisation holds, except for requests which are manifestly abusive, based on unreasonable intervals or their number or repetitive or systematic nature, or for which access need not be granted under the law of the country of the Data Exporter. Provided that the Authority has given its prior approval, access need also not be granted when doing so would be likely to seriously harm the interests of the Data Importer or other organisations dealing with the Data Importer and such interests are not overridden by the interests for fundamental rights and freedoms of the Data Subject. The sources of the Personal Data need not be identified when this is not possible by reasonable efforts, or where the rights of persons other than the individual would be violated. Data Subjects must be able to have the personal information about them rectified, amended, or deleted where it is inaccurate or processed against these principles. If there are compelling grounds to doubt the legitimacy of the request, the organisation may require further justifications before proceeding to rectification, amendment or deletion. Notification of any rectification, amendment or deletion to third parties to whom the data have been disclosed need not be made when this involves a disproportionate effort. A Data Subject must also be able to object to the processing of the Personal Data relating to him if there are compelling legitimate grounds relating to his particular situation. The burden of proof for any refusal rests on the Data Importer, and the Data Subject may always challenge a refusal before the Authority.
6. Sensitive Data: The Data Importer shall take such additional measures (e.g. relating to security) as are necessary to protect such Sensitive Data in accordance with its obligations under clause 2.
7. Data used for marketing purposes: Where data are processed for the purposes of direct marketing, effective procedures should exist allowing the Data Subject at any time to "opt out" from having his data used for such purposes.
8. Automated decisions: For purposes hereof "automated decision" shall mean a decision by the Data Exporter or the Data Importer which produces legal effects concerning a Data Subject or

significantly affects a Data Subject and which is based solely on automated processing of Personal Data intended to evaluate certain personal aspects relating to him, such as his performance at work, creditworthiness, reliability, conduct etc. The Data Importer shall not make any automated decisions concerning Data Subjects, except when:

- (a)
  - (i) such decisions are made by the Data Importer in entering into or performing a contract with the Data Subject, and
  - (ii) the Data Subject is given an opportunity to discuss the results of a relevant automated decision with a representative of the parties making such decision or otherwise to make representations to those parties,

or

- (b) where otherwise provided by the law of the Data Exporter.

## ANNEX B TO SCHEDULE 1

### DESCRIPTION OF THE TRANSFERS (CONTROLLER TO CONTROLLER)

#### Data subjects

The Personal Data transferred concern the following categories of Data Subjects:

Past, potential, present and future staff of the Data Exporter (including candidates, volunteers, agents, interns, contractors, temporary and casual workers) ("employees").

#### Purposes of the transfer(s)

The transfer is made for the following purposes:

- marketing of the Data Importer's products and services;
- to enable the Data Importer to meet legal and regulatory requirements;
- product improvement and development.

#### Categories of data

The Personal Data transferred concern the following categories of data:

*The Personal Data transferred relating to employees includes (without limitation):*

- Employee name, log-in credentials, business contact details, IP address, information generated by employees in relation to their use of the services.

#### Recipients

The Personal Data transferred may be disclosed only to the following recipients or categories of recipients:

- (a) Data processors and service providers appointed by the Data Importer;
- (b) Any person (natural or legal) or organisation to whom the Data Importer may be required by applicable law or regulation to disclose Personal Data, including law enforcement authorities, financial institutions, central and local government.

#### Sensitive data (if appropriate)

Not applicable

#### Data protection registration information of Data Exporter (where applicable)

#### Additional useful information (storage limits and other relevant information)

**Contact points for data protection enquiries**

**Data Importer**

Intercontinental Exchange Holdings, Inc.:  
5660 New Northside Drive  
Atlanta, GA 30328 USA

**Data Exporter  
SUBSCRIBER**

[Regulatory-DataProtection@theice.com](mailto:Regulatory-DataProtection@theice.com)

## SCHEDULE 2 to the additional terms

### C-to-P Transfer Clauses

#### 1. DEFINITIONS

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the sub-processor'* means any processor engaged by the data importer or by any other sub-processor of the data importer who agrees to receive from the data importer or from any other sub-processor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

#### 2. DETAILS OF THE TRANSFER

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

#### 3. THIRD-PARTY BENEFICIARY CLAUSE

3.1 The data subject can enforce against the data exporter this Clause, Clause 4(b) to 4(i), Clause 5(a) to 5(e), and 5(g) to 5(j), Clause 6.1 and 6.2, Clause 7, Clause 8.2, and Clauses 9 to 12 as third-party beneficiary.

3.2 The data subject can enforce against the data importer this Clause, Clause 5(a) to 5(e) and 5(g), Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where the data exporter has

factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

- 3.3 The data subject can enforce against the sub-processor this Clause, Clause 5(a) to 5(e) and 5(g), Clause 6, Clause 7, Clause 8.2, and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.
- 3.4 The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

#### 4. **OBLIGATIONS OF THE DATA EXPORTER**

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any sub-processor pursuant to Clause 5(b) and Clause 8.3 to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for sub-processing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of sub-processing, the processing activity is carried out in accordance with Clause 11 by a sub-processor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause (a) to (i).

## 5. OBLIGATIONS OF THE DATA IMPORTER

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
  - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
  - (ii) any accidental or unauthorised access, and
  - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;



- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for sub-processing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of sub-processing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the sub-processor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any sub-processor agreement it concludes under the Clauses to the data exporter.

## 6. **LIABILITY**

- 6.1 The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or sub-processor is entitled to receive compensation from the data exporter for the damage suffered.
- 6.2 If a data subject is not able to bring a claim for compensation in accordance with paragraph 6.1 against the data exporter, arising out of a breach by the data importer or his sub-processor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The data importer may not rely on a breach by a sub-processor of its obligations in order to avoid its own liabilities.
- 6.3 If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 6.1 and 6.2, arising out of a breach by the sub-processor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the sub-processor agrees that the data subject may issue a claim against the data sub-processor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the sub-processor shall be limited to its own processing operations under the Clauses.

## 7. **MEDIATION AND JURISDICTION**

- 7.1 The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
  - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;

(b) to refer the dispute to the courts in the Member State in which the data exporter is established.

7.2 The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

## 8. COOPERATION WITH SUPERVISORY AUTHORITIES

8.1 The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

8.2 The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any sub-processor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.

8.3 The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any sub-processor preventing the conduct of an audit of the data importer, or any sub-processor, pursuant to paragraph 8.2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5(b).

## 9. GOVERNING LAW

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

## 10. VARIATION OF THE CONTRACT

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clauses.

## 11. SUB-PROCESSING

11.1 The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the sub-processor which imposes the same obligations on the sub-processor as are imposed on the data importer under the Clauses. Where the sub-processor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the sub-processor's obligations under such agreement.

11.2 The prior written contract between the data importer and the sub-processor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in Clause 6.1 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the sub-processor shall be limited to its own processing operations under the Clauses.

- 11.3 The provisions relating to data protection aspects for sub-processing of the contract referred to in paragraph 11.1 shall be governed by the law of the Member State in which the data exporter is established.
- 11.4 The data exporter shall keep a list of sub-processing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5(j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.
12. **OBLIGATION AFTER THE TERMINATION OF PERSONAL DATA PROCESSING SERVICES**
- 12.1 The parties agree that on the termination of the provision of data processing services, the data importer and the sub-processor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
- 12.2 The data importer and the sub-processor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 12.1.

## APPENDIX 1 TO SCHEDULE 2

### DESCRIPTION OF THE TRANSFERS (CONTROLLER TO PROCESSOR)

This Appendix forms part of the Transfer Clauses and must be completed and signed by the Parties.

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix.

#### **Data exporter** [*Briefly specify data exporter's activities relevant to the transfer*]

The Data Exporter is a customer of the Data Importer, which it has engaged to provide certain data and software services. In the course of receiving these services and related support, the Data Exporter will transfer Personal Data to the Data Importer for processing, the nature of which and the purposes for which are specified in this Appendix 1.

#### **Data importer** [*Briefly specify data importer's activities relevant to the transfer*]

The Data Importer is a provider of information and content, software and technology, including but not limited to bids, offers, prices, rates and other trading and informative data, trading platforms, and interfaces and messaging services to enable the use of such information, content and platforms.

#### **Data subjects**

The personal data transferred concern the following categories of data subjects (please specify):

Past, potential, present and future staff of the Data Exporter (including candidates, volunteers, agents, interns, contractors, temporary and casual workers) ("**employees**") who use the services provided by the Data Importer);

#### **Categories of data**

The personal data transferred concern the following categories of data (please specify):

*The personal data transferred relating to employees includes (without limitation):*

- Employee name, login credentials, business contact details, IP address, information generated by employees in relation to their use of the services.

#### **Special categories of data**

The personal data transferred concern the following special categories of data (please specify):

- Not applicable.

#### **Processing operations**

The personal data transferred will be subject to the following basic processing activities (please specify):

The Data Importer will process the Personal Data in order to provide the contracted services to the Data Exporter.

## APPENDIX 2 TO SCHEDULE 2

This Appendix 2 forms part of the Transfer Clauses and must be completed and signed by the Parties.

Description of the technical and organisational security measures implemented by the Data Importer in accordance with Clauses 4(d) and 5(c):

A summary of the technical, organisational and physical security measures implemented by the data importer and sub-processor is set out below.

This will be in accordance with the Data Importer's "Corporate Information Security Policy". The Data Importer provides electronic services to the global commodities trading marketplace. The engineering and operations of these services involve the creation, transfer and storage of commercially sensitive data. The Data Importer recognises this responsibility and dedicates significant resources to information security. Policies are used to ensure Data Importer employees have standardised, accountable, documented, and secure guidelines for conducting business. This document summarizes the policies in place at the Data Importer and documents the structure and strategy of these policies.

### **Network Connectivity**

Data transfer will be operated only through the Data Importer's network, a secure VPN connection to the Data Importer's network and the secure connection to the Data Exporter's network.

### **Procedural Controls**

#### Logical Security

In addition, privileged and non-privileged access to systems and network devices are based upon a documented, approved request. Only authorised users can request logical access to the Data Exporter's environments. A periodic verification is performed in accordance with instructions to determine that the owner of a user ID is still employed and assigned to provide services for the entity issuing the user ID in the service delivery centre. Exceptions identified during the verification process are remediated. An annual business need revalidation is performed to determine that access is commensurate with the user's job function. Exceptions identified during the revalidation process are remediated.

User access to the Data Importer's internal network infrastructure is revoked within 24 hours of termination of employment.

#### Computer Operations

Job scheduling change requests are tracked and approved in accordance with the agreed process.

#### Change Management

Changes to the Data Exporter's systems and network devices which are implemented by the Data Importer adhere to the agreed change management process and procedures for handling routine, expedited, emergency, and business as usual changes. Change controls to the production environment may include categorisation of the change risk and applicable back out plans. All approvals must be obtained prior to implementation

#### Problem Management

The Data Importer documents and tracks problems implementing the agreed problem management process, procedures and tools. Problem tickets may be populated with problem severity, customer information, date and time problem was identified, reported, symptom description and type of problem; and actions taken to resolve the problem, including date and time action was taken.

### **Confidentiality Agreement**

All employees sign a confidentiality agreement at the start of their employment.