

SOFTWARE AS A SERVICE AGREEMENT (WEB BASED TERMS AND CONDITIONS)

PLEASE READ THIS SOFTWARE AS A SERVICE AGREEMENT ("AGREEMENT") CAREFULLY.

BY CLICKING "I ACCEPT" AND INSTALLING OR USING THE TRAYPORT "JOULE" SOFTWARE ("USER WORKSTATION SOFTWARE") WHICH IS A TOOL FOR (I) PROVIDING PRICES AND TRADING INFORMATION; AND (II) FACILITATING TRADING WITH AN AUTHORISED EXECUTION MARKET (THE "SOFTWARE"), YOU AS AN INDIVIDUAL ARE AGREEING TO THIS AGREEMENT ON BEHALF OF THE ENTITY ON WHOSE BEHALF YOU ARE WORKING (THE "CLIENT"). NOTWITHSTANDING THE PREVIOUS SENTENCE, YOU REPRESENT AND WARRANT THAT (I) YOU HAVE THE AUTHORITY TO BIND THE CLIENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT; (II) YOU ACKNOWLEDGE AND AFFIRM THAT ALL INFORMATION PROVIDED TO TRAYPORT IS ACCURATE AND COMPLETE; (III) YOU ACKNOWLEDGE AND AFFIRM THAT THE INFORMATION YOU HAVE PROVIDED IS ACCURATE AND COMPLETE. YOU ALSO AGREE THAT THE CLIENT CONSENTS TO THIS AGREEMENT BEING ENTERED INTO ELECTRONICALLY;

IF YOU OR THE CLIENT DOES NOT AGREE WITH THE TERMS OF THIS AGREEMENT, YOU OR THE CLIENT SHOULD NOT INSTALL OR USE THE SOFTWARE.

YOUR ATTENTION IS DRAWN TO THE EXCLUSIONS FROM AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT AND IN PARTICULAR TO THE PROVISIONS OF CLAUSES 5, 6, 8, 9, 10 AND 24 OF THIS AGREEMENT.

1. DEFINITIONS

1.1. In this Agreement:

"Affiliate": means, with respect to any entity, any other entity directly or indirectly controlling or controlled by or under direct or indirect common control with such entity and "Affiliated" shall be construed accordingly;

"Agreement": means this Agreement, the Rate Card and the Schedule(s);

"Applicable Laws": means all applicable laws and regulations applicable to the Client or Trayport in each case that are currently in force in the jurisdiction which the Client Uses the Software;

"Authorised Execution Market": means, in respect of a given Intermediary, a Participating Market in respect of which that Intermediary has entered into a separate agreement with the Client for the purposes of allowing the Client to conduct business via a Trayport Account on that Participating Market;

"Business Day": means any day which is not a Saturday, Sunday or public holiday in the UK;

"Business Hours": means the hours of 2:00 a.m. to 10:00 p.m. in London on a Business Day;

"Chained Application": means other than any service, software or system provided by Trayport, any software application, service, data feed, ledger, or any output not produced by the Software that connects directly or indirectly to the Software or the output of the Software (including without limitation the screens showing trading positions, instruments and data) in any form whatsoever, including without limitation via: (i) any application programming interface of the Software; (ii) the User Workstation Software; (iii) any database associated with the Software; (iv) Microsoft Windows messaging; (v) Dynamic Data Exchange ("DDE"); (vi) RealTimeData ("RTD"); and any similar or comparable mechanism (including without limitation via use of a screen scraper or screen image saver);

"Chained Application Questionnaire": means the questionnaire provided by Trayport which details each Chained Application which the Client is intending to Use;

"Client": means the entity entering into this Agreement;

"Commencement Date": means the date upon which the Client has accepted this Agreement either by: (i) clicking the accept button during the installation of the Software; (ii) installing the Software; or (iii) Using the Software in any manner;

"Confidential Information": means methods, know how, processes, designs, new products, development work, marketing requirements, marketing plans, customer names, prospective customer names, the terms of pricing under this Agreement, details and data of any kind in connection with the business, finances, trade secrets, dealings, transactions or affairs of the disclosing party and all information clearly identified in writing as confidential or which the other Party should reasonably understand to be confidential;

"Conformance Testing": means such conformance testing as deemed appropriate by Trayport to ensure the reliability, security, stability and maintainability of the Trayport's infrastructure and Software and licensing;

"Data Feed": means an electronic connection between: (i) the Software Used by the Client; and (ii) the servers operated by a third party;

"Documentation": means any documentation (including online help material) provided by Trayport for use with the Software;

“Emergency Situation”: means a notification from Execution Markets and Intermediaries or an issue identified by Trayport that the actions of a Client’s use of the Software is causing disruption of trading activities and/or where such actions give rise to regulatory breach or technical issue. Disruption of trading activities includes but is not limited to activities of a high frequency of order updates and inserts which may cause the performance of the trading platform to be impaired;

“Intellectual Property”: means (i) patents, pending patent applications, designs, trade marks and trade names (whether registered or unregistered), copyright and related rights, database rights, knowhow, trade secrets and confidential information; (ii) all other intellectual property rights and similar or equivalent rights anywhere in the world which currently exist or are recognised in the future; and (iii) applications, extensions and renewals in relation to any such rights;

“Intermediary”: means a third party such as an exchange, data provider or an inter-dealer broker who provides services within a Participating Market;

“Method of Connection”: means a Trayport approved technical connection to the Software;

“Minimum Monthly Fee”: means the minimum sum specified in the Rate Card which is payable on a monthly basis by the Client for any Use of the Software. For the avoidance of doubt, the User Subscription Fees shall count towards the Minimum Monthly Fee;

“Participating Market”: means those markets which provide prices and information and for which the Software has been designed to interact and for which the Software has been configured from time to time by Trayport to operate in;

“Payment Term”: means thirty (30) days from the date of Trayport’s invoice;

“Party”: means either Trayport or the Client and accordingly Parties shall refer to both Trayport and the Client;

“Rate Card”: means the rate card which may be amended from time to time indicating the monies payable for the access and/or Use of Trayport (or its licensors) services or Software by the User(s), the current version of which is initially provided to the User as part of the online process for registering Use of the Software;

“Regulatory Authority”: means the Financial Conduct Authority (or any successor authority) or any other authority anywhere in the world that regulates a Participating Market;

“Schedule(s)”: means the Schedule(s) to this Agreement;

“Software”: means (i) Trayport’s (or its licensors) software and/or services to assist trading in certain markets including but not limited to the software described in the Documentation, including the User Workstation Software, programs, data files, databases, database content, instrument mappings, data, Trade Information and other related information stored on the computer media or otherwise, together with any subsequent versions, corrections, additions, improvements, developments, programming fixes, updates, upgrades and/or modifications made and supplied by Trayport to the Client, and (ii) subscription services, Use of the servers, Mapping Data and/or the data generated by Trayport’s software provided by Trayport to the Client under this Agreement and as more particularly described in the Documentation;

“Subscription Term”: means the period from the Commencement Date until termination;

“Supported Version”: means in respect of the Software, the current version of the Software or the immediately preceding version of the Software;

“Trade Information”: means all data relating to the Users activity in relation to the Software, service or entered into the Software and/or service via a Chained Application directly or indirectly;

“Trayport Account”: means an account setup by Trayport providing (following Trayport receiving the technical permission and credentials of the relevant Intermediary) the Client the ability to view Trade Information, submit and execute trades for the contracts listed by the relevant Authorised Execution Market via the Software;

“Trayport”: means Trayport Limited (Company No.2769279) whose registered office address is at 7th Floor, 9 Appold Street, London, England, EC2A 2AP. Where referred to in this Agreement Trayport may act through a Trayport Affiliate;

“Trayport Affiliates”: means Trayport, Trayport Pte Limited and any other company Affiliated with any of those companies;

“Use”: means with respect to a User of the Software, to load, execute, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display) or otherwise utilise the Software for the purpose of processing the instructions or statements (and “Using” shall be construed accordingly);

“User”: means any CPU, instance of a virtualised environment or individual that connects to the Software either indirectly in order to be able to receive the data contained within the Software or directly through a screen or through a Chained Application. For the avoidance of doubt any recipient of data that is updated at any interval during the day which originates from the Software shall be classified as a User whether or not using a unique login identifier in order to obtain such data;

“User Subscription Fee(s)”: means the sum specified in the then current Rate Card, which sum is payable on a monthly basis for each of the Client’s Users. Where the software or service has been provided without charge then such fees (if any) from the Date that fees are applicable for the relevant software or service; and

“User Workstation Software”: means that part of the Software which resides on a desktop computer, workstation, personal computer, tablet or similar device.

- 1.2. In this Agreement, references to the singular include the plural and vice versa, and references to one gender include the other gender.
- 1.3. A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment or consolidation thereof.
- 1.4. In this Agreement, any words or phrase introduced by the expressions “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding the expression.
- 1.5. Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement. References to Clauses, Schedules and Appendices are, unless otherwise provided, references to clauses, schedules and appendices to this Agreement. The Schedules and appendices to this Agreement shall be deemed to form part of this Agreement.

2. GRANT OF LICENCE

- 2.1. Subject to the Client’s acceptance of the terms and conditions of this Agreement and payment of any monies due pursuant to Clause 3 below, Trayport hereby grants the Client a non-exclusive, non-transferable, non-sublicensable revocable licence to download, install and Use the Software during the continuance of this Agreement for the Client’s internal business operations. Trayport reserves all rights in the Software not expressly granted to the Client in this Agreement.
- 2.2. The Client shall only permit its employees who are Users and in respect of whom it pays a User Subscription Fee to exercise the above licence. The licence to a User or named Chained Application are non-transferable. Accordingly, the Client may not transfer a User Subscription Fee from one User to another or from one Chained Application to another. However the Client may terminate the licence of a User at will and commence the User licence of another User as permitted pursuant to Clause 12.2 and in accordance with the provisions of this Agreement.
- 2.3. The Client shall ensure that all Users Using the Software by virtue of the copy of the Software downloaded pursuant to this Agreement, do so only within the provisions of the above licence.
- 2.4. The Client shall not Use the Software or permit the Client’s employees the Use of the Software except as expressly permitted by this Clause 2 and in accordance with all the provisions of this Agreement.
- 2.5. The Client may not and the Client agrees not to:
 - 2.5.1. except as may be allowed by Applicable Law which is incapable of exclusion by agreement between the Client and Trayport:
 - 2.5.1.1. copy, modify, duplicate, create derivative works from, frame, mirror, reverse engineer, republish, download, display, transmit, or distribute data received from the Service or any portion of the Software, Trade Information, or Documentation (as applicable) in any form or media or by any means or attempt to do any of the foregoing; or
 - 2.5.1.2. decompile, disassemble, reverse engineer, decrypt, or otherwise discover the source code or algorithms for the Software or any part or features thereof or attempt to do any of the foregoing.
 - 2.5.2. Use the Software or the Documentation or Trade Information as part of an outsourcing service, computer bureau, facilities management business, as part of a distributed ledger or otherwise for the provisions of a service to third parties; or
 - 2.5.3. Use the Software to trade on or engage in a Participating Market with whom the Client does not have necessary agreements in place with; or
 - 2.5.4. Use the Software in conjunction with any activity analogous to screen-scraping, the programmatic collection of visual data or the automated reading of text data from a computer display; or
 - 2.5.5. attempt to obtain, or assist third parties in obtaining, access to the Software, Service, data, Trade Information or Trade Accounts; or
 - 2.5.6. permit their login or other credentials to be used by any other person; or
 - 2.5.7. allow access to the Software or Use of the Software by a person who is not an employee and only where such employee has agreed to be bound by the terms and conditions of this Agreement; or
 - 2.5.8. sub-licence, sell, assign, reframe, rent, lease, export, import, distribute or transfer or otherwise grant rights to any third party in the Software or purport to do any of the foregoing; and
 - 2.5.9. remove, obscure or alter any copyright notices or other proprietary notices included in the Software or which appear when the Software is being used;

- 2.6. The Client shall prevent any unauthorised access to, or unauthorised Use of the Software, data, Trade Information and, in the event of any such unauthorised access or Use of the whole or any part of the Software, the Client shall promptly notify Trayport.
- 2.7. The rights provided under this Clause 2 are granted to the Client, and shall not be considered granted to any Affiliate of the Client.
- 2.8. The Client will Use the Software solely for lawful purposes. In this respect the Client shall not, (and the Client shall ensure that the Client's Users shall not) without limitation (a) intercept or monitor, damage or modify any communication which is not intended for the Client; (b) use any type of spider, virus, worm, trojan-horse, time bomb or any other codes or instructions that are designed to distort, delete, damage or disassemble the Software; (c) Use the Software for the purposes of phishing or pharming or impersonating another person; or (d) impact or attempt to impact the availability of the Software for example, with a denial of service (DOS) or distributed denial of service (DDoS) attack.

USE OF CHAINED APPLICATIONS

- 2.9. To ensure the reliability, security and stability of the Software each Chained Application that the Client wishes to Use shall be required enter into further terms, to pass reasonable Conformance Testing prior to connecting to the relevant Trayport infrastructure via an approved Method of Connection.
- 2.10. Use of any Chained Application must be in accordance with the terms of this Agreement and any licence granted shall be in relation to the Client's express Use which is declared and explicitly permissioned in the relevant Chained Application Questionnaire or Chained Application License.
- 2.11. It is an express condition of this Agreement and the license granted in respect of a Chained Application, that any Use that is undeclared in the Chained Application Questionnaire (including undeclared redistribution from the Chained Application) is not licenced and Trayport may stop the Use of the Chained Application immediately until this has been rectified to Trayport's satisfaction.
- 2.12. The rights provided under this Clause 2 are granted to the Client only, and shall not be considered granted to any Affiliate of the Client.

3. PAYMENT

- 3.1. The Client shall pay to Trayport, in respect of each month separately, the fees as set forth in the applicable Rate Card. The Rate Card will be emailed to the Client when the Client has entered into this Agreement and completed the process of subscription to the Software. The Rate Card is also available at any time from Trayport on request from the Client.
- 3.2. All amounts payable by the Client to Trayport pursuant to this Agreement shall be:
 - 3.2.1. invoiced by Trayport monthly in arrears;
 - 3.2.2. exclusive of value added tax (including any similar additional or replacement tax), which Trayport shall add to the invoice (and which the Client shall be liable to pay for) at the appropriate prevailing applicable rate from time to time;
 - 3.2.3. paid in full without deduction of any other taxes, charges, customs fees and other duties that may be imposed, in such a manner that where there is such a deduction the Client shall pay such further monies so that after making any such deduction the net amount payable to and received by Trayport is equal to the full amount due to Trayport as indicated in the Rate Card; and
 - 3.2.4. paid by the Client within the Payment Term.
- 3.3. Where a Client Uses the Software part way through a calendar month, Trayport may include the relevant User Subscription Fee for the whole of the relevant month that the new User is added.
- 3.4. Where Trayport has not received payment by the due date, Trayport shall be entitled to charge the Client interest on any sums paid late pursuant to this Agreement in the manner and in accordance with the rate from time to time provided for pursuant to the Late Payment of Commercial Debts (Interest) Act 1998.
- 3.5. Trayport may, without liability to the Client, disable the Client's Users password, account and access to all or part of the Software and Trayport shall be under no obligation to provide any or all of the Software while the invoice(s) concerned remain unpaid.
- 3.6. Trayport shall be entitled to increase all fees payable by issuing a new Rate Card under this Agreement upon giving not less than sixty (60) days' notice to the Client. Notwithstanding clause 12.1 of this Agreement, should the Client not wish to pay the increased fees under a new Rate Card, the Client shall be entitled to terminate this Agreement by giving Trayport not less than five (5) days written notice prior to the new Rate Card taking effect. Should the Client continue to have the ability to access to the Service (whether the Client accesses and Uses the Service or not) from the date that

the new Rate Card takes effect, then the Client shall be liable for the new rates as set out in the relevant Rate Card. For the avoidance of doubt after the new Rate Card takes effect the notice period will revert back to the period set forth in clause 12.1 of this Agreement.

- 3.7 Trayport shall be entitled to introduce new software and/or services for the Client to subscribe, in addition to or in conjunction with the Software. The Client (acting through its personnel Users) shall be able to subscribe for such other Trayport software and services which will be subject to relevant terms for the additional software or services and/or Rate Card for the software or service and such additional terms, which upon first Use by the Client or its Users will become subject to the additional terms for the relevant services and Terms of this Agreement and shall be subject to the applicable fees in the Rate Card.

4. AUDIT

- 4.1. The Client will maintain accurate records with respect to the information underlying the reports required in respect of the Client's Use of Chained Applications. The Client shall furthermore maintain accurate records of its Use of the Software and any Chained Applications and shall provide copies of such records to Trayport within three (3) Business Days on request. Such records shall also include any non-Trayport software components connecting to the Software and/or to any Chained Applications.
- 4.2. The Client shall permit Trayport or its duly authorised agent or representative to audit the Use of the Software and any Chained Applications by the Client, including without limitation any servers or work stations used by the Client on which the Software or any Chained Application may reside in whole or in part. Subject to 4.3 such audit may be conducted no more than once per calendar year, at Trayport's expense, and this right shall be exercised with reasonable prior notice. Trayport shall, in carrying out such an audit, use its reasonable efforts to not substantially interfere with the Client's normal conduct of business.
- 4.3. Where any of the audits referred to in Clause 4.2 above reveals any unreported or unlicensed Use of the Software or a Chained Application, then without prejudice to Trayport's other rights:
- 4.3.1. the Client will immediately be liable to pay Trayport an amount equal to the charges which Trayport would have levied in accordance with the Rate Card from the beginning of unreported or unlicensed Use together with interest at the rate provided for in Clause 3.4 above from the date of such unauthorised use to the date of payment;
 - 4.3.2. where the monies payable pursuant to clause 4.3.1 are more than three thousand pounds (£3,000), the Client will immediately be liable to pay Trayport the expenses incurred by Trayport in performing the audit (including without limitation the cost of using any agent or representative engaged by Trayport to perform the audit). Trayport shall issue appropriate invoices to the Client for any amount payable to Trayport pursuant to this Clause 4.3.; and
 - 4.3.3. Trayport's right to Audit the Client shall be increased to once every quarter.
- 4.4. The right to Audit the Client under this clause 4 shall continue for twelve (12) months after the termination of this Agreement.
- 4.5. Trayport may include routines within the Software designed (i) to prevent Use of the Software in an unlicensed manner and (ii) to detect the use of Chained Applications.

5. OWNERSHIP AND OPERATION

- 5.1. The Client acknowledges and agrees that Trayport and/or its licensors own and/or have all rights in all Intellectual Property in the Software, data, Trade Information and the Documentation. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licenses in respect of the Software or the Documentation and save to the extent required for operation or Use of the software in accordance with this Agreement the Software, all copies and extracts of the Software, and the structure, sequence, organisation and screen presentation of the Software are all confidential to Trayport.
- 5.2. **Ownership.** The Client shall not (and shall ensure that the Client's Users shall not) delete or in any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing in the Software. All Intellectual Property in and any third party content that is contained within or accessed through Use of the Software, is the property of the respective owner of the Intellectual Property and may be protected by applicable copyright or other intellectual property laws and treaties.
- 5.3. The Client's participation in a Participating Market is subject to the continuous technical permissions of an Intermediary and the Client for the purposes of accessing the relevant Participating Market. That agreement may be withdrawn by

the relevant Intermediary at any time. Where that agreement is withdrawn the Client shall immediately cease its participation in that Participating Market. Trayport shall have no liability to the Client for facilitating and/or undertaking the deactivation of the Client's Trayport Account or deactivating the Use of the Software in relation to the relevant Participating Market in any such circumstances.

- 5.4. Trayport may at its absolute discretion suspend or terminate access to the Software or Use of a Trayport Account in relation to any or all Authorised Execution Market and/or Participating Markets (without prejudice to any other right or remedy available to Trayport) where:
 - 5.4.1. Trayport acting reasonably, believes that the Client is acting (without Trayport's written consent) as a competitor of Trayport in providing similar software which (i) provides Trade Information; or (ii) facilitates trading; or (iii) aggregates Trade Information from multiple Participating Markets; or (iv) establishes a bureau service; or
 - 5.4.2. a Regulatory Authority or by order of a Court of competent jurisdiction requests Trayport to do so; or
 - 5.4.3. an Intermediary and/or Authorised Execution Market requests Trayport to do so;
 - 5.4.4. the Client fails to pay any monies on the due date or does not comply with an obligation imposed upon Client under this Agreement.
- 5.5. In such circumstances set out in Clause 5.4 above:
 - 5.5.1. the performance of any obligation owed by Trayport under this Agreement will also be suspended until any relevant condition or obligation is fulfilled;
 - 5.5.2. Trayport shall have no liability to the Client; and
 - 5.5.3. Trayport will provide a prompt notification to the Client where practicable.
- 5.6. For the avoidance of doubt, where a Trayport Account has been suspended or terminated the Client shall still be responsible for the management of its trading activities with any relevant intermediaries and Authorised Execution Markets.
- 5.7. In consideration of using the Software, the Client acknowledges that Trayport is the sole and exclusive owner of all right, title and interest in and to the Software, browsing history, usage and Trade Information entered into Software by Users and/or Trayport's systems. Accordingly, any information (and other ancillary information) may be redistributed, used to create indices or derivative works or resold by Trayport at Trayport's absolute discretion provided that such information is anonymised.
- 5.8. The Client shall test the Software within thirty (30) days of downloading the Software. Should the Client be dissatisfied with the Software for any reason during the first thirty (30) days then the Client may terminate this Agreement with immediate effect by notifying Trayport in writing (including by e-mail sent to commercial&legal@trayport.com or relevant Trayport client manager) and in which event the Client shall remove the Software from the Client's systems and return any copies of the Software to Trayport.

6. OBLIGATIONS OF THE CLIENT

- 6.1. The Client hereby undertakes that the maximum number of Users that it permits to access and Use the Software and the Documentation shall not exceed the number of User Subscription Fees it pays from time to time (if any).
- 6.2. The Client agrees that the Client shall:
 - 6.2.1. comply with all Applicable Laws and all applicable regulations with respect to its activities in connection with its Use of the Software, an Authorised Execution Market or the Participating Market;
 - 6.2.2. ensure that the Use of the Software and the Documentation by the Client and its employees is in accordance with the terms and conditions of this Agreement;
 - 6.2.3. obtain and shall maintain all necessary licences, consents, and permissions as required under this Agreement including, without limitation, rights to Trade Information and relevant permissions to conduct business with Execution Markets and Intermediaries and to execute all agreements (such as subscriber agreements) and other documents required by applicable exchanges for receipt of market data ;
 - 6.2.4. be solely responsible for procuring and maintaining the Client's network connections and telecommunications links to enable proper and efficient Use of the Software;
 - 6.2.5. perform all necessary training, checks and tests before performing any trading functionality to satisfy itself that Users are adequately competent in the operation of the Software; and
 - 6.2.6. acknowledge and understand that in Emergency Situations Trayport may be required to change, modify, enhance, replace, suspend or terminate the Use of the Software that is provided to the Client under this Agreement at any time without prior notification to the Client. In such an instance, Trayport will give notice to the Client where it is commercially practicable to do so and suspend the Use of the Software. The Client will

comply with any Trayport request to stop the Use of any automated systems or function of the Software that give rise to an Emergency Situation or to prevent an Emergency Situation until Trayport gives further notice or permissions the continued Use of the Software. In such instances, Trayport will work with the Client to attempt to understand and resolve the cause of the Emergency Situation.

7. SOFTWARE AND SUPPORT

- 7.1. Trayport reserves the right, as Trayport shall in its absolute discretion determine, to make improvements, substitutions, upgrades and modifications to the Software (as used in this paragraph "Features") provided that the Features are intended to not substantially worsen the overall performance of the Software. Trayport from time to time may provide Features to the Software which are for the purposes of correcting substantial errors in the Software of which Trayport becomes aware. Trayport will release all such Features to the Software by issuing subsequent versions or releases of the Software for the Client to download and install from Trayport. Some new releases of the Software may download automatically, and the Client hereby consents to such automatic downloading. The Client may have to enter into a renewed version of this Agreement, in the event the Client wishes to download, install or Use a new version or release of the Software.
- 7.2. Trayport shall, for the term of this Agreement, provide the Software and make available the Documentation to the Client on and subject to the terms of this Agreement.
- 7.3. Trayport shall use commercially reasonable endeavours to make the Software available during Business Hours of Business Days except for upgrades and emergency maintenance performed, provided that Trayport has used reasonable endeavours to give the Client notice in advance.
- 7.4. **Maintenance.** From time to time Trayport may make repairs, improvements or upgrades to the Software or technology used by Trayport in association with the Software. Trayport will use its reasonable endeavours to perform such repairs, improvements or upgrades outside of Business Hours and to provide notice (which may be provided via Trayport's website) of such scheduled repairs, improvements or upgrades. Without limitation to the previous sentence, Trayport reserves the right to carry out urgent repairs, improvements or upgrades at any time and without notice.
- 7.5. Any support which is chargeable will be notified to the Client prior to undertaking such work.

8. WARRANTY

- 8.1. The Client represents and warrants that (i) the Client is authorised to enter into the provisions of this Agreement and (ii) the Client shall comply with the Client's obligations under this Agreement. The Client guarantees as principal the compliance with the provisions of this Agreement by its employees, contractors and agents which are Users.
- 8.2. **TRAYPORT DOES NOT WARRANT THAT THE CLIENT'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE; NOR THAT THE SOFTWARE, DOCUMENTATION AND/OR THE INFORMATION OBTAINED BY THE CLIENT THROUGH THE SOFTWARE WILL MEET THE CLIENT'S REQUIREMENTS AND AGREES THAT THE EXISTENCE OF ERRORS OR INTERRUPTIONS IN THE SOFTWARE SHALL NOT CONSTITUTE A BREACH OF THIS AGREEMENT.**
- 8.3. **THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED TO THE CLIENT ON AN "AS IS" BASIS.**
- 8.4. Trayport undertakes that the Software will perform substantially in accordance with the Documentation and with reasonable skill and care.
- 8.5. The undertaking at clause 8.4 shall not apply to the extent of any non-conformance which is caused by Use of the Software contrary to Trayport's instructions, or modification or alteration of the Software by any party other than Trayport or Trayport's duly authorised contractors or agents.
- 8.6. If the Software does not conform to the foregoing undertaking, Trayport will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Client's sole and exclusive remedy for any breach of the undertaking set out in clause 8.4.
- 8.7. **NOTWITHSTANDING THE FOREGOING, TRAYPORT IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR ANY OTHER LOSS OR DAMAGE RESULTING FROM THE TRANSFER OF DATA OVER COMMUNICATIONS NETWORKS AND FACILITIES, INCLUDING THE INTERNET, AND THE CLIENT ACKNOWLEDGES THAT THE SOFTWARE AND DOCUMENTATION MAY BE SUBJECT TO LIMITATIONS, DELAYS AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES.**
- 8.8. Trayport warrants that it has and will maintain all necessary licenses, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 8.9. Trayport further represents and warrants to the Client that:

- 8.9.1. It has full right and power to enter into and perform its obligations under this agreement according to the terms contained herein, and that the provision of the service and Trayport's performance of activities pursuant to this Agreement will not violate any agreement or obligation between it and a third party;
 - 8.9.2. It owns all right, title and interest in and to the Software (or is otherwise authorised to license it as set forth in this Agreement), and has full power and authority to license any third party software incorporated into or provided in conjunction with the Software pursuant to the terms of this Agreement.
- 8.10. **EXCEPT AS STATED IN THIS CLAUSE 8 AND TO THE MAXIMUM EXTENT PERMISSIBLE IN LAW ALL CONDITIONS AND WARRANTIES WHICH ARE TO BE IMPLIED BY STATUTE OR OTHERWISE BY GENERAL LAW INTO THIS AGREEMENT OR RELATING TO THE SOFTWARE ARE HEREBY EXCLUDED AND DISCLAIMED BY TRAYPORT INCLUDING WITHOUT LIMITATION ANY IMPLIED OR OTHER WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE CLIENT ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY TRAYPORT EXCEPT AS EXPRESSLY STATED HEREIN.**

9. LIABILITY

- 9.1. **THE FOLLOWING PROVISIONS IN THIS CLAUSE 9 SET OUT TRAYPORT'S ENTIRE LIABILITY (INCLUDING ANY LIABILITY FOR THE ACTS AND OMISSIONS OF ITS EMPLOYEES, AGENTS OR SUB-CONTRACTORS) TO THE CLIENT IN RESPECT OF:**
- 9.1.1. **A BREACH OF TRAYPORT'S CONTRACTUAL OBLIGATIONS;**
 - 9.1.2. **A TORTIOUS ACT OR OMISSION FOR WHICH TRAYPORT IS LIABLE;**
 - 9.1.3. **AN ACTION ARISING OUT OF A MISREPRESENTATION BY OR ON BEHALF OF TRAYPORT;**
 - 9.1.4. **LIABILITY ARISING IN CONNECTION WITH THE PERFORMANCE OR CONTEMPLATED PERFORMANCE OF THIS AGREEMENT; AND**
 - 9.1.5. **BREACH OF STATUTORY DUTY.**
- 9.2. **TRAYPORT'S TOTAL LIABILITY TO THE CLIENT AND IN RESPECT OF ALL CLAIMS HOWSOEVER ARISING PURSUANT TO THIS AGREEMENT SHALL NOT EXCEED IN AGGREGATE ONE HUNDRED TWENTY FIVE PER CENT (125%) OF THE TOTAL FEES (EXCLUDING ANY VAT, DUTY, SALES OR SIMILAR TAXES) PAID OR PAYABLE BY THE CLIENT TO TRAYPORT DURING THE PRECEDING TWELVE (12) MONTH PERIOD OR, IF THE DURATION OF THE AGREEMENT HAS BEEN LESS THAN TWELVE (12) MONTHS AND THE CLIENT HAS PAID ANY FEE UNDER THIS AGREEMENT, HUNDRED POUNDS (£100) OR THE FEES PAYABLE DURING THE SHORTER PERIOD WHICHEVER IS GREATER.**
- 9.3. **TRAYPORT SHALL IN NO CIRCUMSTANCES BE LIABLE TO THE CLIENT FOR:**
- 9.3.1. **ANY PURE ECONOMIC LOSS, LOSS OF PROFIT, LOSS OF GOODWILL, LOSS OF BUSINESS OR LIKE LOSS;**
 - 9.3.2. **ANY TRADING LOSS OR OTHER LOSS OF REVENUE HOWSOEVER ARISING FROM FAILURES IN THE SOFTWARE OR TRAYPORT'S ASSOCIATED SYSTEMS;**
 - 9.3.3. **INDIRECT LOSS; AND**
 - 9.3.4. **(WHETHER BEFORE OR AFTER TERMINATION OF THIS AGREEMENT) ANY LOSS OF OR CORRUPTION TO DATA OR PROGRAMS HELD OR USED BY OR ON BEHALF OF THE CLIENT.**
- 9.4. **EXCEPT AS EXPRESSLY AND SPECIFICALLY PROVIDED IN THIS AGREEMENT THE CLIENT ASSUMES SOLE RESPONSIBILITY FOR RESULTS OBTAINED FROM THE USE OF THE SOFTWARE AND THE DOCUMENTATION BY THE CLIENT, AND FOR CONCLUSIONS DRAWN FROM SUCH USE. TRAYPORT SHALL HAVE NO LIABILITY FOR ANY DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO TRAYPORT BY THE CLIENT IN CONNECTION WITH THE SOFTWARE, OR ANY ACTIONS TAKEN BY TRAYPORT AT THE CLIENT'S DIRECTION.**
- 9.5. **THE CLIENT SHALL ONLY BE ENTITLED TO BRING A CLAIM AGAINST TRAYPORT WHERE CLIENT ISSUES LEGAL PROCEEDINGS AGAINST TRAYPORT WITHIN THE PERIOD OF TWENTY FOUR (24) MONTHS COMMENCING ON THE DATE UPON WHICH THE CLIENT OUGHT REASONABLY TO HAVE KNOWN OF ITS ENTITLEMENT TO BRING SUCH A CLAIM.**
- 9.6. **TRAYPORT DOES NOT EXCLUDE OR LIMIT ITS LIABILITY TO THE CLIENT FOR FRAUD OR FRAUDULENT MISREPRESENTATION, DEATH OR PERSONAL INJURY CAUSED BY ANY NEGLIGENT ACT OR OMISSION OR WILFUL MISCONDUCT OF TRAYPORT IN CONNECTION WITH THE PROVISION OF THE SOFTWARE OR ANY OTHER RELEVANT LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.**
- 9.7. **EACH OF THE EXCLUSIONS FROM AND LIMITATIONS OF LIABILITY SET OUT IN THIS CLAUSE 9 (INCLUDING SUB-CLAUSES) SHALL BE CONSIDERED SEPARATELY SEVERABLE. THE VALIDITY OR UNENFORCEABILITY OF ANY PART OF THIS CLAUSE 9 SHALL NOT AFFECT THE VALIDITY OR ENFORCEABILITY OF ANY OTHER PART OF THIS CLAUSE 9.**
- 9.8. **TRAYPORT'S CHARGES TO THE CLIENT ARE DETERMINED ON THE BASIS OF THE EXCLUSIONS FROM AND LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT. THE CLIENT EXPRESSLY AGREES THAT THESE EXCLUSIONS AND**

LIMITATIONS ARE REASONABLE BECAUSE OF (AMONGST OTHER MATTERS) THE POSSIBILITY THAT OTHERWISE THE AMOUNT OF DAMAGES AWARDBLE TO THE CLIENT FOR A BREACH BY TRAYPORT OF THIS AGREEMENT MAY BE DISPROPORTIONATELY GREATER THAN THE PRICE OF THE SOFTWARE. TRAYPORT MAY ARRANGE FOR ADDITIONAL COVER TO ENABLE TRAYPORT TO TAKE ON THE BURDEN OF ADDITIONAL LIABILITY TO THE CLIENT PROVIDED THAT THE CLIENT PAYS TRAYPORT A COMMENSURATELY HIGHER PRICE FOR USE OF THE SOFTWARE.

- 9.9. THE PARTIES AGREE THIS AGREEMENT REFLECTS A REASONABLE ALLOCATION OF RISK AND LIMITATION OF LIABILITY. IF SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CERTAIN DAMAGES, IN SUCH JURISDICTIONS, THE LIABILITY LIMITS IN THIS PARAGRAPH SHALL BE LIMITED IN ACCORDANCE WITH THIS AGREEMENT TO THE EXTENT PERMITTED BY LAW.

10. INDEMNITY

- 10.1. The Client acknowledges that the Software is only a tool for (i) providing prices and trading information; (ii) analytics tools; and (iii) facilitating trading. The Client agrees to indemnify, defend and hold Trayport and Trayport Affiliates harmless from and against any and all liability and costs, including reasonable legal fees, in connection with or directly or indirectly arising out of (i) any breach by the Client of this Agreement; (ii) the use of the Software in conjunction with software, products and services provided by third parties; and (iii) use of the Software for connecting to or trading on any Authorised Execution Market and/or Participating Market using a Trayport Account or (iv) the Client's use of data provided through the Software.
- 10.2. Trayport agrees to indemnify, defend and hold the Client harmless from and against any and all liability and costs, including reasonable legal fees, in connection with or directly or indirectly arising out of any claim that Trayport does not have the authority to licence the Software to the Client in the manner undertaken by Trayport under this Agreement. The Client shall at all times mitigate all such liability, costs and fees.
- 10.3. Trayport's obligations under clause 10.2 shall be effective provided that: (i) the Client notifies Trayport promptly of each such claim or suit; (ii) Trayport is given sole control of the defence and/or settlement; (iii) the Client fully co-operates and provides all reasonable assistance to Trayport in the defence or settlement.
- 10.4. In no event shall Trayport, its employees, agents and sub-contractors be liable to the client to the extent that the alleged infringement is based on: (i) a modification of the Software or documentation by anyone other than Trayport; or (ii) the Client's Use of the Software or Documentation after notice of the alleged or actual infringement from Trayport or any appropriate authority.
- 10.5. The foregoing states the Client's sole and exclusive rights and remedies, and Trayport's (including Trayport's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11. CONFIDENTIALITY

- 11.1. All Confidential Information shall be deemed proprietary to the Party disclosing such information hereunder. Each Party may use the Confidential Information of the other party during the term of this Agreement only as permitted or required for the receiving Party's performance hereunder. Without the consent of the other Party, the receiving Party shall not disclose or provide any Confidential Information to any third party unless such disclosure is necessary for the performance of that third party's duties with respect to this Agreement and shall take reasonable measures to prevent any unauthorised disclosure by its employees, agents, contractors or consultants during the term hereof including where appropriate the receiving party's use of individual nondisclosure agreements.
- 11.2. Exclusions. The following shall not be considered Confidential Information: (i) information which is or enters into the public domain through no fault or act of the receiving Party; (ii) information which was independently developed by the receiving Party without the use of or reliance on the disclosing Party's confidential information as may be demonstrated by the receiving Party's written records; (iii) information which was provided to the receiving Party by a third party under no duty of confidentiality to the disclosing Party; and (iv) information which is required to be disclosed by law, provided, however, where legally permissible prompt prior notice thereof shall be given to the Party whose Confidential Information is involved.
- 11.3. The Client acknowledges that details of the Software, and the results of any performance tests of the Software, constitute Trayport's Confidential Information.

12. TERM AND TERMINATION

- 12.1. This Agreement will be effective as of the Commencement Date and will remain effective until the earlier of (i) the effective date this Agreement is terminated by either Party as set out below or (ii) the end of the Subscription Term.

- 12.2. Either Party may terminate this Agreement by giving not less than ninety (90) days' notice to the other Party so to do. Such notice may be given at any time.
- 12.3. Trayport may terminate this Agreement with immediate effect if the Client is (i) in breach of this Agreement or (ii) goes into liquidation or has an administrator or administrative receiver appointed over the whole or any part of its assets or (iii) failed to make a payment in accordance with Clause 3 or (iv) is in breach of Clause 20.1.
- 12.4. Both Parties shall be entitled to terminate this Agreement at any time without notice if Trayport is prohibited, under the laws of England or otherwise, from providing the Software.
- 12.5. Consequences of termination:
 - 12.5.1. In respect of the Client, upon any termination of this Agreement all licences and rights to Use the Software, or to access or use the Trade Information stored by Trayport and the trading accounts shall immediately terminate.
 - 12.5.2. Trayport shall use reasonable commercial endeavours to deliver a copy (in csv format) of the Trade Information relating to the Client's trading activities using the Software if the Client makes a request within ten (10) days from the date of termination of this Agreement, for the purposes of regulatory and historic trade management. Trayport shall deliver to the Client such copy of the Trading Information within thirty (30) days of its receipt of such written request, provided that the Client has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Client shall pay all reasonable expenses incurred by Trayport.
- 12.6. If at any time after the effective date of termination of this Agreement, the Client finds any Confidential Information or copies of the Software on any of its systems that should have been deleted, the Client shall at that time promptly delete such Confidential Information or Software.
- 12.7. Forthwith upon completion of the activities set out in Clause 12.5 above, both Parties shall certify in writing within ten (10) days of termination on this Agreement to the other Party that it has fully complied with the requirements of Clause 12.5. Trayport may audit the Client up to one (1) year following the termination of this Agreement to ensure compliance with Clauses 12.5.
- 12.8. Upon any termination, Trayport may prevent any continuing access or Use by the Client of the Software.
- 12.9. The provisions of Clauses 1, 3.4, 4, 5.1, 5.5- 5.7, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 21, 22, 23, and 24 of this Agreement shall survive the termination or expiry of this Agreement in any event.

13. ASSIGNMENT

- 13.1. This Agreement may not be assigned, novated or otherwise transferred by the Client in whole or in part without the prior written consent of Trayport. The Client may not sub-license this Agreement in any event.

14. DATA PROTECTION

- 14.1. In this Clause 14, "Information" means information transmitted to Trayport by or on behalf of the Client. The Information may include information about the Client's activity on the Software or on a trading account including the time, date, duration, screen usage, software usage and trading activity.
- 14.2. Trayport may pass the Information excluding any personal data to Trayport Affiliates and any member of an Authorised Execution Market, regulator, interdealer broker or Intermediary of a Participating Market whether or not they are outside of the European Economic Area. The Client confirms that it has obtained all rights and necessary consents allowing Trayport to do so.
- 14.3. Trayport is committed to respecting the privacy and confidentiality of the personal data of Client. Trayport's Privacy Policy set out at <https://www.trayport.com/uk/privacy-policy> which indicates how Trayport uses personal data collected on its website also applies to personal data sent to Trayport by Clients using Software.
- 14.4. If the Client objects to personal data sent by the Client to Trayport being used in this way, the Client should not Use the Software.
- 14.5. Both parties shall be at all times compliant with the General Data Protection Regulation as amended.

15. VARIATION

- 15.1. Trayport reserves the right to amend and revise this Agreement at any time by sending to the Client the revised Agreement or a weblink to the revised Agreement by post or email. The revised Agreement shall become effective within thirty (30) days from the date on which Trayport notifies the Client of the revised Agreement, or earlier where the Client expressly accepts the revised Agreement by clicking on the "accept" button. The Client's express acceptance or the Client's continued Use of the Software after expiry of the said period of thirty (30) days, shall constitute the Client's acceptance to be bound by the terms and conditions of the revised Agreement.

- 15.2. Where Trayport makes material/ substantial changes to the operation or pricing and if the Client does not wish to accept the revised Agreement, the Client may terminate this Agreement by giving notice to do so pursuant to the provisions of Clause 12.2 above.

16. WAIVER

- 16.1. A waiver of any right under this Agreement is only effective if it is in writing and it applies only to the Party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2. No omission or delay on the part of any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this Agreement.

17. ENTIRE AGREEMENT

- 17.1. Subject to the content of the websites referred to in Clauses 14.3 and 15.1 of this Agreement:
- 17.1.1. this Agreement constitutes the entire agreement between the Client and Trayport with respect to the subject matter hereof and supersedes and replaces all prior understandings and agreements, in whatever form, regarding the subject matter;
- 17.1.2. each Party unconditionally waives any rights it may have to claim damages against the other on the basis of any statement made by the other (whether made carelessly or not) not set out or referred to in this Agreement (or for breach of any warranty given by the other not so set out or referred to) unless such statement or warranty was made or given fraudulently.
- 17.2. These terms shall not be superseded by any terms contained in any purchase order issued by the Client under this Agreement.
- 17.3. The Parties acknowledge that in entering into this Agreement they have not relied upon any representations other than those reduced to writing in this Agreement. The provisions of this Clause 17.3 shall not apply to any fraudulent misrepresentation.

18. SEVERABILITY

If any court of competent jurisdiction holds any provision of this Agreement invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated. In the event of a holding of invalidity so fundamental so as to prevent the accomplishment of the purposes of this Agreement, Trayport and the Client shall immediately commence good faith negotiations to remedy such invalidity.

19. NOTICES

- 19.1. Any notice pursuant to this Agreement shall be in writing, in the English language, and may be served, and if so served shall be deemed to be duly served:
- 19.1.1. if delivered by hand, when left at the proper address for service;
- 19.1.2. if given or made by prepaid first class post, 48 hours after being posted (excluding days that are not Business Days);
- 19.1.3. if given or made by express air mail post, five (5) days after being posted (excluding days that are not Business Days);
- 19.1.4. if given or made by e-mail, at the time of error-free transmission to the e-mail addresses indicated during online registration. ;
- 19.2. Where in the case of delivery by hand or transmission by e-mail such delivery or transmission occurs either after 5:00 pm on a Business Day or on a day other than a Business Day, service shall be deemed to occur at 9:00 am on the next following Business Day.
- 19.3. Any notice given or made by e-mail shall be delivered to the address or e-mail address set out in this Agreement, or such other address as may have been notified or provided by a Party for such purposes (or such other address or e-mail address as may be notified in writing from time to time).

20. PUBLICITY AND PROMOTION

- 20.1. Except where expressly authorised in writing by Trayport the existence and content of this Agreement and of any relationship between the Parties concerning this Agreement is confidential and neither Party will disclose the same to any third party, unless that information has first been approved by the other Party.
- 20.2. Notwithstanding clause 20.1 above and anything else to the contrary in this Agreement, Trayport (i) may freely disclose that the Client is a customer of Trayport and (ii) Trayport may refer to the Client and the Client's logo in identification of the Client as a customer of Trayport in its public relations, marketing and sales efforts.

21. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to or shall operate to create a partnership between the Parties, or authorise either Party to act as agent for the other, and neither Party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way without that Party's prior express written consent (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. THIRD PARTY RIGHTS

This Agreement does not confer any rights on any person or party (other than the Parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. FORCE MAJEURE

- 23.1. Subject to clause 23.2, either Party shall have no liability to the other Party under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Trayport or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors ("**Force Majeure Event**").
- 23.2. The Party seeking to take advantage of this Clause 23 shall:
- 23.2.1. give the other Party notice as soon as reasonably practicable of the said Force Majeure Event and of its expected duration; and
 - 23.2.2. use and continue to use its reasonable endeavours to overcome the said Force Majeure Event and to minimise the effect of the Force Majeure Event.

24. LAW AND JURISDICTION

This Agreement (including non-contractual disputes) shall be considered as a contract made in England and according to English law.

25. DISPUTE RESOLUTION

Other than for immediate injunctive or declaratory relief which shall be subject to the exclusive jurisdiction of the English courts, to which both Parties hereby submit, in the event of any controversy or claim arising out of or relating to this contract, or the breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration in accordance with the International Arbitration Rules of the International Centre for Dispute Resolution. The parties agree that the binding decision of the arbitrator shall be final.