

## MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

THIS MUTUAL CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT ("Non-Disclosure Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012 by and between Morningstar Real-Time Data Limited, a company registered in England with English company number 03135892 and whose registered office is 1 Oliver's Yard, 55-71 City Road, London EC1Y 1HQ ("Morningstar"), and, \_\_\_\_\_, having a place of business at \_\_\_\_\_ ("Company").

WHEREAS, in order to further advance and facilitate discussions and negotiations relating to the new business opportunities (the "Project"), it may be necessary or desirable for each party to disclose to the other party certain confidential and proprietary material, information, data and other communications concerning that party's past, current, future and proposed or potential customers, products, services, operations, business forecasts, procurement requirements, plans, strategies and/or technologies; and

WHEREAS, Morningstar and Company wish to define the agreed upon terms and conditions governing the confidentiality of material, information and data furnished and to be furnished by one party to the other in connection with the Project.

NOW, THEREFORE, Morningstar and Company, in consideration of the mutual covenants and undertakings expressed herein, hereby agree as follows:

1. For the purposes of this Agreement, the term "Confidential Information" shall mean material, information, data and other communications disclosed in any form in connection with the Project by either party and/or one or more of its parent, subsidiary or affiliated corporations, to the other party and/or one or more of its parent, subsidiary or affiliated corporations.
2. All Confidential Information of the originating party:
  - (a) is hereby acknowledged by the receiving party to be of a proprietary nature to, and to constitute trade secrets of the originating party;
  - (b) shall not be copied, used, distributed, disclosed, disseminated or communicated in any way or form by the receiving party whether or not for its own benefit, to anyone outside of or within its organisation, except to employees, agents or representatives of the receiving party on a "need-to-know" basis to the extent necessary in connection with the Project in: (i) negotiations, discussions and consultations with personnel or authorised representatives of the originating party; (ii) supplying the originating party with products or services at its order; (iii) preparing estimates and proposals for submission to the originating party; and (iv) any other purposes which the originating party may authorised in writing;
  - (c) shall not be used by the receiving party for any purposes other than those set forth herein, without the express written permission of the originating party;
  - (d) shall be held by the receiving party in the strictest confidence, and shall be treated by it with the same degree of care to avoid disclosure to any third party as is used with respect to the receiving party's own information of like importance, but, at a minimum, shall be treated with a reasonable degree of care to avoid such disclosure. The receiving party shall be liable for the disclosure of Confidential Information of the originating party if such care is

not used. The burden shall be on the receiving party to show that such care in fact was used; and

- (e) is hereby acknowledged by the receiving party to be the sole property of the originating party (including any copyrights, trade secrets or other intellectual property rights therein) and shall be returned to the originating party (including, without limitation, all materials, documents, drawings, models, apparatus, sketches, designs, specifications and lists, encompassing or evidencing same or related thereto, and all copies/formats thereof) or destroyed (with written confirmation of destruction), within ten (10) days after receipt by the receiving party of a written request from the other party. Upon receipt of such request, the receiving party shall also erase or destroy any such Confidential Information in any computer memory or data storage apparatus. Immediately following the receiving party's compliance with such request, the receiving party agrees, and shall certify in writing to the other party, that it shall then retain absolutely no Confidential Information of the other party in any form whatsoever. Notwithstanding the foregoing return/destruction obligation but without limiting any other of its obligations hereunder, the receiving party shall not be required to return/destroy any of the disclosing party's Confidential Information that is stored in the receiving party's permanent electronic archives. The rights and obligations of each party with respect to the disclosure of Confidential Information shall survive the return and/or destruction of Confidential Information pursuant to this Paragraph 2(e).

- 3. The obligations set forth in Paragraph 2 shall not apply, or shall terminate, with respect to any particular portion of Confidential Information of the originating party which the receiving party proves:

- (a) was in the receiving party's possession free of any obligation of confidence, prior to receipt from the originating party;
- (b) is already in the public domain at the time the originating party communicates it to the receiving party, or become available to the public through no breach of this Non-Disclosure Agreement by the receiving party;
- (c) is received independently from a third party that the receiving party reasonably believes to be free to disclose such information to the receiving party;
- (d) is developed by the receiving party independently of, and without reference to, any Confidential Information of the originating party or any other information that the originating party has disclosed to any third party;
- (e) is disclosed by the receiving party to a third party, with the express prior written permission of the originating party;
- (f) is disclosed by the receiving party in order to satisfy any subpoena or other validly issued administrative or judicial order of any competent government body; provided, however, that promptly upon receiving party's receipt of any such order, receiving party shall notify the originating party of the order to allow the originating party the opportunity to limit, quash or extent such order. If so requested, receiving party shall reasonably cooperate at originating party's expense in defending against any such administrative or judicial order;
- (g) is disclosed more than three (3) years after the date of receipt pursuant to this Non-Disclosure Agreement.

- 4. Nothing contained in this Non-Disclosure Agreement shall be construed as obligating either party to disclose any particular information to the other party. The originating party makes no representation or warranty as to the accuracy or completeness of the Confidential Information provided by it.

Except as otherwise provided in the definitive, signed Project agreement, neither the originating party nor any of its employees, agents or representatives will have any liability resulting from the use of its Confidential Information by the receiving party.

5. Nothing contained in this Non-Disclosure Agreement shall be construed to prohibit or restrict the receiving party's right to develop, use or market products or services of its own or of third parties that are similar to, and/or competitive with, those of the originating party as long as the receiving party has not used the originating party's Confidential Information to develop, use or market such similar or competitive products or services. Each party acknowledges that the other party may already possess or have developed products and/or services similar to, or competitive with, those of the first party.
6. Except as provided by the Project or as otherwise provided in Section 2, nothing contained in this Non-Disclosure Agreement shall be construed as granting to or conferring on the receiving party, expressly or impliedly, any rights, title or interest, by licence or otherwise, to the Confidential Information of the originating party or any of its other material, information or data, or any invention, discovery, improvement or product or any other intellectual property of the originating party conceived, made or acquired prior to, on or after the date of this Non-Disclosure Agreement.
7. The receiving party acknowledges that the Confidential Information of the originating party provided pursuant to this Non-Disclosure Agreement constitutes unique, valuable and special business of the originating party, and the unauthorised disclosure thereof may cause irreparable injury to the originating party. Accordingly, the receiving party acknowledges and agrees that the remedy at law for any breach of the covenants contained in this Non-Disclosure Agreement may be inadequate, and in recognition thereof, agrees that the originating party shall, in addition thereto, be entitled to seek injunctive relief without bond, upon the finding of a court of competent jurisdiction of a breach of any of the provisions of this Non-Disclosure Agreement, which relief shall be in addition to, and not in derogation of, any other remedies which may be available to the originating party as a result of such breach.
8. The receiving party acknowledges and agrees that it will advise all of its employees, agents and representatives to whom the receiving party discloses any Confidential Information of the originating party of the terms of this Non-Disclosure Agreement and it further acknowledges and agrees that it is liable for any breach of this Non-Disclosure Agreement by any such employees, agents or representatives.
9. This Non-Disclosure Agreement shall become effective upon the date first above written, and shall remain in effect until terminated in writing by either party. Notwithstanding any such termination, the rights and obligations with respect to the disclosure of Confidential Information set forth herein shall survive the termination of this Non-Disclosure Agreement for a period of one (1) year.
10. No term or provision of this Non-Disclosure Agreement shall be deemed waived, and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of a breach by the other, whether express or implied, shall not constitute a consent to, waiver of, or excuse for, any other, different or subsequent breach.

11. If any term, condition or covenant of this Non-Disclosure Agreement or the application of such term, condition or covenant to any party or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Non-Disclosure Agreement or the application of such term, condition or covenant to any parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant or condition of this Non-Disclosure Agreement shall be valid and enforced to the fullest extent permitted by law.
12. This Non-Disclosure Agreement sets forth and constitutes the entire agreement between the parties with respect to the subject matter hereof. All prior agreements, representations, statements, negotiations and undertakings, whether oral or written, between, or allegedly between, the parties with respect to the subject matter of this Non-Disclosure Agreement, are superseded by this Non-Disclosure Agreement.
13. Neither party may assign this Non-Disclosure Agreement, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld.
14. No amendment to this Non-Disclosure Agreement shall be effective unless it is in writing and signed by a duly authorised representative of each of the parties hereto.
15. This Non-Disclosure Agreement, and the performance hereof, shall be governed by, and construed in accordance with, the laws of England and Wales.
16. Nothing in this Agreement shall be deemed or construed to create a joint venture, partnership or agency relationship between the parties hereto for any purpose.
17. Neither party may use the name of the other in connection with any advertising or publicity materials or activities without the prior written consent of the first party, which consent may be withheld at its sole discretion.
18. Each party acknowledges that it has full power and authority to enter into and perform this Non-Disclosure Agreement, and that the individual executing this Non-Disclosure Agreement on behalf of each party has been properly authorised and empowered to enter into this Non-Disclosure Agreement. EACH PARTY FURTHER ACKNOWLEDGES THAT IT HAS READ THIS NON-DISCLOSURE AGREEMENT, UNDERSTANDS IT AND AGREES TO BE BOUND BY ITS TERMS.

IN WITNESS WHEREOF, the parties have caused their authorised representatives to execute this Non-Disclosure Agreement on the date first above written.

**[insert company name]**\_\_\_\_\_

**Morningstar Real-Time Data Ltd**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_