

Master Agreement

THIS AGREEMENT is made as of the Acceptance Date (as set forth on the signature page hereto), between:

(1) Markit North America Inc.

("Markit")

a company incorporated under the laws of

Delaware, United States of America

having its registered address at:

620 8th Avenue, 35th Floor, New York, NY 10018, United States

and

Great-West Life & Annuity Insurance Company

("Subscriber")

Company incorporated in United States

having its registered address at:

Street: 60 Osborne Street North

City: Winnipeg

State/Province: Manitoba

Zip/Postal Code: R3C 1V3

Country: Canada

ADDRESS FOR NOTICES

Markit Address for Notices. Markit Address for Notices will be the same as the "Registered Address" as set out on page 1 of this Agreement.

Client Address for Notices:

Notices Contact:

Street:

City:

State/Province:

Zip/Postal Code:

Country:

Note: If left blank, Subscriber's address for notices shall be the address set out in paragraph (2) of the parties sections above.

IT IS HEREBY AGREED:

(A) Markit agrees to provide Subscriber with access to and use of the Markit data, software and/or services (the "**Services**") identified in and specifically subscribed for by Subscriber under each executed addendum hereto, as may be amended or supplemented from time to time by mutual agreement of the parties hereto (any executed addendum hereto is referred to herein as an "**Addendum**"). This Agreement provides the general terms and conditions under which those Services are provided to Subscriber or, where expressly permitted, its Affiliates. Accordingly, the terms and conditions set out herein are incorporated by reference into all Addenda and shall, unless an Addendum expressly states

otherwise, apply to all Services.

(B) The parties hereby agree that Subscriber or certain Affiliates of Subscriber may subscribe to the Services and that Markit or certain Affiliates of Markit may provide the Services pursuant to this Agreement by executing an applicable Addendum. In such circumstances, the terms of this Agreement shall apply mutatis mutandis to the Services provided under such Addendum, and references to "Subscriber" or "Markit" in this Agreement shall be read, for the purposes of such Addendum, to mean the Subscriber Affiliate or Markit Affiliate (as applicable) identified in such Addendum. For the purposes of this Agreement only, "**Affiliate**" means, with respect to any person or entity, any other person or entity that directly or indirectly controls, is controlled by, or is under common control with such person or entity, from time to time but only for so long as such control exists.

1. Term

1.1 Term. The initial term and any subsequent renewal term for the Services shall be set out in the Addendum relevant to the Services in question ("**Term**"). This Agreement shall be effective from, and continue in full force and effect as of, the Acceptance Date and the provisions of this Agreement shall, unless expressed to survive termination, continue to apply to each Addendum until the expiry of its Term.

2. Services

2.1 License. Any license(s) granted to Subscriber by Markit shall be detailed in the appropriate Addendum and shall be subject to the terms and conditions of this Agreement and such Addendum. Subscriber expressly acknowledges and agrees that it shall access and use the Services solely and exclusively for the purposes set out in, and in accordance with, the relevant Addendum and this Agreement, and that Subscriber shall not permit the Services to be used by any third party (including its Affiliates) except as expressly permitted in such Addendum.

The consideration to be paid by Subscriber to Markit under this Agreement and each applicable Addendum is based on the type, scope and extent of the Services selected by Subscriber. If Subscriber wishes to obtain a broader license in respect of additional rights or services, it should contact Markit to discuss the various licensing options.

2.2 Provision of Services. In providing the Services, Markit shall use commercially reasonable endeavours to perform its obligations hereunder in accordance with Good Industry Practice (where "**Good Industry Practice**" means, in relation to any particular circumstances, the degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a reasonably skilled and experienced provider of equivalent services and/or data of a similar type to that provided pursuant to this Agreement under the same or similar circumstances and conducted in accordance with all applicable laws, rules and regulations).

2.3 Designated User. Where an Addendum so permits, Subscriber shall be entitled to give its Designated Users access to and use of the Services which are the subject of such Addendum. For the purposes of this Agreement, "**Designated User**" means each officer, employee or agent (each being a natural person) of Subscriber, who in each case is from time to time authorised by Subscriber to access and use a particular Service or Services on behalf of Subscriber from a designated IP address as set out in, or otherwise in accordance with, the relevant Addendum. Subscriber shall (i) maintain an up to date list of all Designated Users and make such list available for inspection at Markit's reasonable request and (ii) ensure that each Designated User is made aware of the provisions of this Agreement and the relevant Addendum, and shall procure that each Designated User complies with all such provisions. For the avoidance of doubt, and without prejudice to the generality of the foregoing, Subscriber shall procure that each Designated User shall only access and use the relevant Service(s) for Subscriber's permitted purpose(s) as set out in the relevant Addendum. Subscriber hereby agrees, without limiting Markit's other rights and remedies, that it is responsible and liable for the Designated Users' access to, and use of, the Services, including any negligent acts or omissions of its Designated Users or their breach of any of the terms of this Agreement or any Addendum.

2.4 Delivery. The method of access to, or delivery or transmission of the Services to Subscriber (together, "**Delivery**") shall be as set out in the relevant Addendum. Subscriber shall be solely responsible for any and all equipment, facilities and/or connections necessary to enable Delivery to Subscriber's own computer systems. Markit shall have no responsibility for any such equipment, facilities or connections. Where Delivery of a particular Service is specified to be provided by way of login access codes, user names and/or passwords ("**Logins**"), Subscriber acknowledges and agrees:

- that each Login is personal to, and for use only by, the Designated User to whom it is issued;
- to ensure that each Designated User keeps his/her Login confidential and does not disclose or share his/her Login with any other person; and
- to accept full responsibility for the use and protection of the Logins provided to it.



Markit shall administer, designate and permission the Logins in accordance with this Agreement and the relevant Addenda hereto. Without prejudice to Section 2.4(c), Markit reserves the right to cancel without liability to Subscriber one or more Logins and/or assign replacement Logins to Subscriber if Markit (acting reasonably) suspects unauthorised use of any such Login.

2.5 Security. Subscriber will at all times maintain security systems and procedures no less stringent than those which it applies to its own confidential or sensitive data and/or systems to prevent any unauthorized access to, misuse of, or disruption to the Services. These shall include, at a minimum:

- a) establishing and maintaining all reasonable procedures and systems to allow for the proper Delivery of data in accordance with this Agreement and any Addenda hereto, and to ensure that the Services are accessible only by Designated Users using, where applicable, their respective Logins;
- b) establishing and maintaining all reasonable procedures necessary to protect the Services, Markit's systems and Subscriber's systems from unauthorised third-party access, misuse, damage or disruption;
- c) informing Markit (wherever practicable) of any proposed changes to Subscriber's security or information technology systems or policies which might reasonably be expected to adversely affect the receipt or security of any of the Services; and
- d) immediately giving written notice to Markit of any unauthorised access to or misuse of the Services, Markit's systems or Subscriber's systems of which it is aware, setting forth in reasonable detail the nature of the security breach and the measures taken by Subscriber to cure such breach.

2.6 Modification of Services. Each and all of the Services and types of financial instruments to which the Services may be applied are subject to modification (including addition, alteration or deletion) by Markit to reflect (i) statistical, technical, administrative, market-based or other changes that Markit determines in its sole discretion, acting in good faith, are required or desirable or (ii) any legal or regulatory changes that Markit determines in its sole discretion, acting in good faith, may affect such Services.

2.7 No Advice. The Services (and each of them) are intended only for professionals in the financial markets and are not, and should not be construed as financial, investment, legal, tax or other advice of any kind, nor should they be regarded as an offer, recommendation, or as a solicitation of an offer to buy, sell or otherwise deal in any investment or securities. Subscriber may not use the Services to transmit, undertake or encourage any unauthorized investment advice or financial promotions, or to generate any advice, recommendations, guidance, publications or alerts made available to its clients or other third parties. Nothing in the Services constitutes a solicitation by Markit of the purchase or sale of loans, securities or any investment.

2.8 Website Terms. In addition to the terms and conditions of this Agreement, Subscriber's access to and use of the Markit.com website or any website provided by Markit or any of its Affiliates shall be in accordance with any "Terms of Use" contained thereon, as amended or supplemented from time to time; provided, however, that to the extent any terms in such "Terms of Use" are inconsistent with or conflict with the terms and conditions of this Agreement and/or any Addendum with regard to the access and use of Services, the terms and conditions of this Agreement and/or such Addendum shall prevail unless specifically indicated otherwise.

2.9 Prohibited Use. Except as expressly permitted in the Addendum relevant to the Service(s) in question, Subscriber agrees that it shall not (and shall ensure that none of its Designated Users shall) distribute, duplicate, transfer, sub-license, rent, lend, transmit, sell, re-circulate, display, repack, assign, lease, resell, publish or otherwise make available all or any portion of the Service(s) and/or any data, information, analysis or presentation included therein, by whatever means to any other person or entity (including its Affiliates). In addition to and without limiting the foregoing, Subscriber shall not and shall ensure none of its Designated Users shall (except where expressly permitted in an Addendum):

- a) copy, translate, convert, decompile, alter, enhance, disassemble, reverse engineer, modify, change, or create derivative works from all or any part of the Services or the data provided thereunder;
- b) enter into any service, reporting or other agreement or arrangement with any person or entity pursuant to which all or any of the Services are used to produce or distribute information or services to or for such (or any other) person or entity;
- c) use any of the Services and/or the Markit systems for any illegal or unlawful purpose or in a manner which is competitive with or which would create a functional substitute for the Services;
- d) remove, suppress or modify in any way the proprietary markings, including any trademark or copyright notice, used in relation to any of the Services or Markit's intellectual property;
- e) refer to any of the Services or any trademark or copyright notice used in relation thereto, in a way which does or may imply (i) that any Services form part of the services or products offered to Subscriber's clients, or (ii) that Markit is responsible for the accuracy or quality of the services or any other information or data that Subscriber provides to its clients;
- f) violate any applicable local, state, national or international law, statute,

ordinance, rule or regulation, including any of the foregoing relating to competition or antitrust matters; or

- g) infringe, violate, breach or otherwise contravene any rights of Markit, its Affiliates or any third party (including any Data Provider (as defined below)), including any copyright, database right, trademark, patent, right of confidence or any other proprietary or intellectual property right in connection with the Services.

2.10 Intellectual Property. The parties agree that:

- a) the Services and all intellectual property rights associated with or comprised in any of the Services (including intellectual property subsisting in any models, feed formats, software, data or materials forming part of the Services), and all enhancements, modifications, improvements or additional services applicable thereto; and
- b) all information, documentation, computer programs, systems, customizations, enhancements and websites created by, or on behalf of, Markit in connection with the Services;

shall in each case be the sole and exclusive property of Markit (or, as the case may be, its Affiliates or Data Providers (as defined below)) and shall not be considered works for hire. Subscriber agrees that, other than the right to access and use the Services in accordance with the terms of this Agreement and any relevant Addendum, it has no right, title or interest in or to any of the Services or any intellectual property subsisting therein. All rights not expressly granted hereunder or under an Addendum are explicitly reserved by Markit and/or its Affiliates.

Subscriber acknowledges that the Services were developed, compiled, prepared, revised, selected and arranged by Markit, its Affiliates and/or certain other information providers (each a "Data Provider") through the application of methods and standards of judgment developed and applied through the expenditure of substantial time, effort and money, and constitute valuable intellectual property and trade secrets of Markit (or its relevant Affiliate or Data Provider as the case may be), the unauthorized disclosure, use or dissemination of which would cause irreparable harm and constitute a free ride on Markit's labor and efforts.

Subscriber agrees to use commercially reasonable efforts to protect the proprietary rights of Markit, its Affiliates and/or the relevant Data Provider in the Services, during and after the Term and agrees to notify Markit promptly upon becoming aware of any infringement or unlawful use of the Services and/or Markit's contractual, statutory, common law and other intellectual property and proprietary rights in the Services. Subscriber shall comply with all reasonable written requests made by Markit to protect and enforce its contractual, statutory and common law and other intellectual property and proprietary rights in the Services. Subscriber agrees to notify Markit in writing promptly upon becoming aware of any claim that any or all of the Services infringes upon or constitutes any unlawful use of any copyright, database right, patent, trade mark, or other proprietary, intellectual property, contractual, statutory or common law right.

Subscriber acknowledges that, as a reasonable protection of the proprietary rights in the Services and to avoid any breach of Markit's obligations to Data Providers, any dissemination or distribution of data or information identical to or derived from the Services shall (other than as permitted expressly under this Agreement or the relevant Addendum) be deemed a material breach of the terms of Sections 2.1, 2.3, 2.9, and 2.10 of this Agreement.

2.11 Third Party Data. Subscriber acknowledges that certain Data Providers may have rights in the data or information forming part of or comprising the Services and agrees to comply with any restriction or condition imposed by Data Providers relating to such data or information as notified by Markit or such Data Providers. As part of such compliance, Subscriber may be required to enter into a separate agreement with Markit or a Data Provider in order to receive or to continue to receive such data. Data Provider restrictions may be provided at www.markit.com/en/about/legal/terms-of-use.page and/or supplied within the Service or directly by the Data Provider.

2.12 Trademarks. Except as expressly permitted in this Agreement or an Addendum hereto, neither party hereto shall use any of the other party's trademarks, trade names or service marks in any manner, without the prior written consent of the other party.

2.13 Internal Use. Where an Addendum grants Subscriber a license for 'internal business purposes' or 'internal use', Subscriber shall be entitled to use the relevant Services granted under the license only in relation to its internal operations and such license shall not permit Subscriber:

- a) to use all or any part of such Services to provide any service or product to any third party (including any of its Affiliates); or
- b) to give or allow access to, or to otherwise disseminate, all or any part of such Services in any manner whatsoever to any third party (including any of its Affiliates).

2.14 Data Protection. Subscriber acknowledges that, pursuant to this Agreement and any applicable Addendum, Markit may receive information from Subscriber about some or all of Subscriber's Designated Users or other individuals. This information may include personal data such as names, company names, titles, work contact information, personal contact information, dates of

birth, passport images and payment information ("**Personal Data**").

Markit will handle all Personal Data in accordance with Markit's Privacy and Cookie Policy which can be found at

<http://www.markit.com/General/Privacy-and-Cookie-Policy>. In order to provide the Services Markit may:

- a) Use, collect, store, disclose and process the Personal Data; and
- b) Transfer the Personal Data inside of, and outside of, the European Economic Area.

Subscriber represents that its Designated Users, and those individuals for which they provide Personal Data to Markit, have consented to the processing and transfer of their Personal Data as set out in this Section 2.14.

3. Fees and Charges

3.1 Fees. In consideration of the rights granted to Subscriber in this Agreement and the applicable Addendum, Subscriber agrees to pay Markit the fees indicated in each applicable Addendum(s) ("**Fees**") (as amended from time to time to reflect additional services or changes in pricing as provided). The Fees shall be paid in US\$ (unless parties agree otherwise), in advance as described in the applicable Addendum(s), and are due and payable within thirty (30) days of the date of the relevant invoice from Markit. Subscriber will, in addition, pay interest on any undisputed overdue sum at a rate of 2% above LIBOR, compounded daily until payment is made in full (including of any such interest).

3.2 Tax. In addition to the Fees, Subscriber will pay to Markit or to the relevant taxing authority, as appropriate, any applicable sales, use, goods and services, value added, withholding or similar taxes payable (including any penalties, interest or similar charges in lieu of failure to timely pay) under this Agreement or an Addendum so that after payment of such taxes the amount Markit receives is not less than the Fees.

3.3 No Withholding. In all cases, any undisputed amounts due under this Agreement and any Addendum will be paid by Subscriber in full without any withholding, set-off, counterclaim or deduction provided that Subscriber shall notify Markit within ten (10) days of any event that may give rise to a dispute of such amount.

3.4 Changes to Fees. Markit may increase or decrease all or any portion of the Fees due in respect of any Addendum by giving Subscriber no less than ninety (90) days prior written notice before the beginning of any subsequent renewal term.

3.5 Termination. Promptly upon any termination of an Addendum, Subscriber shall pay all Fees, taxes and other sums owed under such Addendum in respect of the period up to the date of such termination.

3.6 Refund. In the event of any termination of an Addendum pursuant to Sections 8.1(c) or 8.1(d) there will be no refund under any circumstances of any Fees paid by Subscriber prior to the date of such termination. In the event of a termination pursuant to 8.1(a), 8.1(b) or 8.2, Markit shall refund Subscriber on a pro-rata basis such element of Fees received by Markit in respect of any Services which are the subject of the terminated Addendum which relate to the period after the date of such termination.

3.7 Reimbursable Expenses. Where relevant to an applicable Service, Subscriber shall pay Markit for any reimbursable expenses incurred by Markit (which have been agreed to in advance between the parties) within thirty (30) days of the date of the relevant invoice from Markit.

4. Warranties

4.1 Mutual Representation and Warranties. Each party hereby represents and warrants to the other party that:

- a) it has the full right, power and authority to execute, deliver and perform this Agreement and any Addendum in accordance with its terms;
- b) this Agreement and each Addendum has been duly executed and delivered by or on behalf of such party and constitutes a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms; and
- c) no consent, approval, authorisation or order of any person or entity is required for the execution delivery or performance of this Agreement or any Addendum by such party, and neither the execution, delivery nor performance of this Agreement or any Addendum by such party will (i) conflict with, or result in a breach of, or constitute a default under, or result in a violation of, any organisational document of such party or any agreement or instrument to which such party is subject or by which it is bound, or (ii) result in the violation of any applicable law, rule or regulation to which such party is subject, including without limitation OFAC and any equivalent exclusions of a similar body.

Each of the parties hereto agrees that the representations and warranties set forth in this Section 4.1 shall survive the execution, delivery and termination of this Agreement.

4.2 Disclaimer of Warranties. SUBSCRIBER AGREES THAT THE SERVICES PROVIDED TO SUBSCRIBER BY MARKIT SHALL BE ON AN "AS IS" BASIS AND THAT, TO THE MAXIMUM EXTENT ALLOWED BY LAW, EXCEPT AS UNAMBIGUOUSLY AND EXPRESSLY SET FORTH IN THIS AGREEMENT OR ANY ADDENDUM, NEITHER MARKIT, ITS AFFILIATES OR ANY DATA PROVIDER MAKES ANY REPRESENTATION, WARRANTY, CONDITION, UNDERTAKING OR TERM, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING OR RELATING TO THE SERVICES (INCLUDING THEIR MAINTENANCE AND SUPPORT) OR ANY OF THE DATA, DOCUMENTATION, OR MATERIALS PROVIDED OR MADE AVAILABLE TO SUBSCRIBER UNDER THIS AGREEMENT OR AN ADDENDUM, INCLUDING:

- A) OF MERCHANTABILITY OR THAT ANY OF THE SERVICES ARE FIT FOR ANY PARTICULAR PURPOSE; OR
- B) AS TO THE CONTINUITY, ACCURACY, TIMELINESS OR COMPLETENESS OF ALL OR ANY OF THE SERVICES OR ANY OF THE RESULTS TO BE ATTAINED BY SUBSCRIBER OR OTHERS FROM THE USE OF THE SERVICES,

and Subscriber acknowledges that it has not relied upon any warranty, guaranty or representation (express or implied) made by Markit, its Affiliates or any Data Provider, except the representations made by Markit specifically set forth in this Agreement.

4.3 Virus Protection. Each party shall use commercially reasonable efforts in the form of antivirus software protection to prevent the Services from being infected with any virus, worm or disabling devices.

5. Limitation of Liability

5.1 No Liability. Subject to Section 5.5, neither Markit, its Affiliates nor any Data Provider shall in any way be liable to Subscriber, whether in contract (including under an indemnity), in tort (including negligence), under a warranty (express or implied), under statute or otherwise, in respect of any loss or damage suffered by Subscriber or any Affiliate or client of Subscriber arising in respect of, or in connection with (i) any inaccuracy, error or omission, regardless of cause, in any of the Services (including in any data forming part of the Services) or (ii) any advice, opinion, recommendation, guidance, forecast, judgment, publication, conclusion or any course of action (or inaction) of Subscriber or any Affiliate or client of Subscriber, made or taken in reliance of, or based on, any of the Services (including in any data forming part of the Services).

5.2 Aggregate Liability. Subject to Section 5.5, each party's entire liability to the other (including any liability for the acts and omissions of their Affiliates, employees or, in Markit's case, any Data Provider) in respect of any breach of its contractual obligations arising under this Agreement or an Addendum or (save in the case of fraud or fraudulent concealment) any representation, statement or tortious act or omission, including negligence, arising under or in connection with this Agreement or an Addendum shall be limited to financial compensation up to a sum not to exceed the aggregate of the Fees actually paid (or in Subscriber's case, payable) to Markit or its Affiliates in respect of the Services and/or Addendum to which the liability relates in the twelve (12) months immediately preceding such claim.

5.3 Consequential Damages. Under no circumstances will a party have any liability arising from contract (including under any indemnity), in tort (including negligence), under any warranty (express or implied) under statute or otherwise in each case for any indirect, incidental, exemplary, special or consequential punitive losses or damages arising under this Agreement or an Addendum, including loss of profits, regardless of whether such damages could have been foreseen or prevented (together, "**Consequential Damages**"). Notwithstanding the foregoing, a party may seek injunctive relief and/or any Consequential Damages arising as a result of any breaches referred to in Sections 6.1(b) and 6.2(b) respectively.

5.4 Force Majeure. Neither party will be liable for any failure to perform any obligation hereunder, or for any delay in the performance thereof, due to causes beyond its reasonable control, including industrial disputes of whatever nature, acts of God, act of the public enemy or war, sabotage or terrorism, acts of government, failure of a third party telecommunications or electricity provider, fire, flood or other casualty (each, a "**Force Majeure Event**"). The party prevented from performance by a Force Majeure Event shall give the other party written notice of the Force Majeure Event promptly upon discovery thereof, and shall use reasonable efforts to recommence performance of the affected obligations or provide an acceptable alternative.

5.5 Exclusions. Nothing in this Agreement or any Addendum will or purports to exclude or limit any liability of either party (or their Affiliates) for death or personal injury resulting from negligence, or for fraud or fraudulent misrepresentation. The limits on liability set out in Section 5.2 shall not apply in respect of:

- a) any liability arising as a result of gross negligence or willful misconduct;
- b) a breach of the intellectual property rights of either party by the other party or its Affiliates;
- c) each party's obligations under Sections 6 and 9 below; and
- d) Subscriber's liability under Sections 3.1 and 3.2.

5.6 Essential Element. The Fees payable in respect of the Services reflect the limitations on liability contained in this Section 5 and accordingly form an essential

element of the commercial bargain agreed between the parties. As such, the parties hereby agree and acknowledge that the limitations of liability in this Section 5 are reasonable.

6. Indemnification

6.1 Subscriber Indemnity. Subscriber hereby indemnifies, and agrees to hold harmless Markit, its Affiliates and each of their respective directors, officers, agents, employees, successors, assigns and all Data Providers, and each of their respective Affiliates, directors, officers, agents, employees, members, partners, successors and assigns (together "**Markit Indemnitees**") from and against any and all losses, liabilities, damages, costs (including reasonable attorneys' fees) and expenses arising as a result of:

- a) any claim, suit or proceeding (collectively, "**Claims**") brought by any third party against any Markit Indemnitee in connection with any third party's access or use of any of the Services (or any data forming part of the Services) permitted or suffered by Subscriber or its Affiliates; or
- b) any use of a Service in breach of the terms of this Agreement or an Addendum or a breach of Section 9 (Confidentiality) below.

6.2 Markit Indemnity. Markit hereby indemnifies, and agrees to hold harmless Subscriber, its Affiliates receiving the affected Service(s) and their respective directors, officers, employees, successors and assigns (together "**Subscriber Indemnitees**") from and against any and all losses, liabilities, damages, costs (including reasonable attorneys' fees) and expenses arising as a result of:

- a) any and all Claims brought by any third party against any Subscriber Indemnitee arising from a claim that the provision of the Services by Markit, when used by Subscriber in accordance with the terms of this Agreement and the relevant Addendum, infringes any patent, trade secret, copyright or other proprietary rights of such third party; or
- b) a breach by Markit of its obligations under Section 9 (Confidentiality) below.

6.3 Defense of Claim. A party ("**Indemnitee**") shall provide timely notice of any claim for which it may seek indemnification under this Section 6 and shall cooperate with the other party ("**Indemnitor**") in the defense thereof (save that either party's failure to provide such notice will not excuse the indemnifying party from its indemnification obligations and duties to defend, except to the extent that the indemnifying party's ability to defend or settle the relevant Claim is actually prejudiced by such failure). The Indemnitor shall have the right to control the defense of any such claim, provided that the Indemnitee may participate in the proceedings at its own expense. The Indemnitor shall not enter into any settlement or compromise of any such claim, or make any attribution of fault or wrongdoing to, or admission on behalf of, the Indemnitee that would impose any liability or obligation upon the Indemnitee without the Indemnitee's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

6.4 Exemption from Indemnity. The Indemnitor shall not be obliged to indemnify the Indemnitee with respect to any loss to the extent such loss arises from the fraud, fraudulent misrepresentation, gross negligence or willful misconduct of the Indemnitee or an Affiliate thereof. The indemnity in Section 6.2(a) shall not apply (and Markit shall have no liability to Subscriber Indemnitees thereunder) to the extent that the infringement referred to in Section 6.2(a) results from any unauthorised use or distribution by Subscriber of the Services (or any data forming part of the Services) or any alteration or modification of the Services or such data (including the combination of any of the same with any other services or data) not authorized in writing by Markit or made in accordance with any specifications or instructions provided by Subscriber.

7. Remedies

7.1 Cumulative Remedies. In the event of a breach or threatened breach of any of the provisions of this Agreement or an Addendum by either party to this Agreement or any of its Designated Users, officers, employees, agents or Affiliates, the other party shall be entitled to seek injunctive relief to enforce the provisions of this Agreement or the relevant Addendum, but nothing herein shall preclude such party from pursuing any action or other remedy for any breach or threatened breach of this Agreement or the Addendum, all of which shall be cumulative.

7.2 Suspension. Markit is entitled to suspend with immediate effect the Services or any part thereof if in its reasonable opinion: (i), Subscriber is in breach of the terms of this Agreement or any Addendum or any license granted therein; (ii) Subscriber fails to cooperate with any reasonable investigation of such breach; or (iii) it is necessary to do so in order to comply with any applicable law, regulation or decision of any applicable regulatory body.

8. Termination

8.1 Termination by Markit. Markit may terminate any specific Addendum and cancel or withdraw all or any part of the Service(s) provided pursuant to such Addendum:

- a) upon written notice to Subscriber at such time as it reasonably considers that the data used to provide such Service(s) is not commercially satisfactory in terms of legality, quality, volume or significance provided that any termination by Markit pursuant to this Section 8.1(a) shall be effective only if Markit terminates all licenses and agreements for such Service(s) with all of its clients and ceases providing such Service(s) generally at such

time;

- b) upon written notice to Subscriber at any time (i) that the provision of such Service(s) has, in Markit's good faith determination, become unlawful or (ii) that such Service(s) has become subject to a claim that it infringes the rights of any third party; provided that any termination by Markit pursuant to this Section 8.1(b) shall be effective only if Markit terminates all licenses for any such affected Service(s), and ceases providing such affected Service(s) generally at such time;
- c) in the event of a material breach by Subscriber of any of the provisions of this Agreement or the applicable Addendum and (where the breach is capable of being remedied) that breach has not been remedied within thirty (30) days' after its receipt of written notice thereof;
- d) upon the occurrence of Subscriber having a receiver, administrative receiver or an administrator appointed, passing a resolution for winding up or a court of competent jurisdiction making an order to that effect, becoming subject to an administration order, entering into a voluntary arrangement with its creditors or anything equivalent to the foregoing occurring under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganization; or
- e) upon any change of control of Subscriber or its relevant Affiliates (whether by merger, stock transfer or otherwise) or any sale, lease or other transfer of all or substantially all of the assets of Subscriber or its relevant Affiliates.

8.2 Termination by Subscriber. Subscriber may terminate any specific Addendum and cancel its access to the Service(s) provided pursuant to such Addendum:

- a) (unless otherwise provided in the applicable Addendum) in the event of a material breach by Markit of any of the provisions of the applicable Addendum and (where the breach is capable of being remedied) that breach has not been remedied within thirty (30) days after its receipt of written notice thereof;
- b) upon written notice to Markit at any time that (i) the use of such Service(s) (as permitted under this Agreement and the applicable Addendum) has, pursuant to the judgment of a court of competent jurisdiction or a regulatory agency, become unlawful; or (ii) Subscriber has been named party to a claim that the Service infringes the right of any third party and Markit has materially breached its indemnification obligations pursuant to Section 6 of this Agreement with respect to such claim; or
- c) upon the occurrence of Markit having a receiver, administrative receiver or an administrator appointed, passing a resolution for winding up or a court of competent jurisdiction making an order to that effect, becoming subject to an administration order, entering into a voluntary arrangement with its creditors or anything equivalent to the foregoing occurring under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganisation.

8.3 Post Termination. Upon any termination or expiration of the Term under an Addendum:

- a) all licenses granted under such terminated or expired Addendum shall terminate automatically and immediately;
- b) Subscriber shall immediately cease using the Service(s) provided under the expired or terminated Addendum; and
- c) Subscriber shall (i) destroy all hard copies of data or information forming part of such Service(s) ("**Data**") in its possession or control and (ii) expunge permanently all electronic Data from its systems, in each case, within thirty (30) days of termination or expiration of such Term, except that Subscriber may retain a copy of any Data to the extent necessary for the purpose of satisfying regulatory requirements or to comply with its internal audit, provided that such retained Data is no longer readily accessible and shall not be used for any other purpose.

Subscriber shall cooperate with Markit in connection with any reasonable request to verify its (and where applicable its Affiliates') compliance with Sections 8.3(b) and 8.3(c).

9. Confidentiality

9.1 Subject to Section 9.3 and except as otherwise set forth in this Agreement and any Addendum hereto, or any other agreement between the parties, each party (a "**Recipient**") shall keep the Confidential Information of the other party (the "**Discloser**") secret and confidential and shall use such Confidential Information only in accordance with the terms of this Agreement, and shall not (without the prior written consent of the Discloser) disclose any part of that Confidential Information to any person other than a) where the Recipient is Subscriber, its Designated Users or other employees; and b) where the Recipient is Markit, its Affiliates and their respective employees, who, in each case, require access to such Confidential Information in order for the Recipient to perform its obligations and/or receive the benefit of its rights under this Agreement or an Addendum (collectively, "**Representatives**"). For the purposes of this Agreement or an Addendum, "**Confidential Information**" means in relation to either party (i) the terms of this Agreement and each Addendum and (ii) all confidential and proprietary information (whether such information is in oral or written form or is recorded in any other medium) about or pertaining to: (A) the Services or any



evaluation of any future services; or (B) the business of that party or its customers, which in each case is disclosed to the other party or its Representatives, or which is acquired by or otherwise comes to the knowledge of the other party or its Representatives in connection with this Agreement or an Addendum or any future exchange of information between the parties or their Representatives. Without limiting the generality of the foregoing, Confidential Information shall:

- a) in respect of Markit, include details of the Services including any confidential information or data forming part thereof, any business methods and models, feed formats, software (including all source code source documentation and object codes), documentation, customizations, upgrades and updates, inventions, know-how, programs or apparatus programs related to or connected with the Services; and
- b) in respect of Subscriber, includes confidential business information relating to Subscriber but excludes the content of any or all of the Services or any aggregated data received from Markit's Data Providers and any information made available to Markit or its Affiliates in accordance with any other agreements in place between the parties.

9.2 Subject to Section 9.3, Recipient shall not, and shall procure that its Representatives shall not (without the prior written consent of the Discloser) use the Confidential Information except for the purpose of performing its obligations and/or receiving the benefit of its rights under this Agreement or an Addendum. Each party shall be responsible for the acts and omissions of its Representatives with respect to such Confidential Information.

Sections 9.1 and 9.2 shall not apply to:

- a) any Confidential Information shown by the written record to be in or which passes into the public domain, other than directly or indirectly as a result of or in connection with any act or default of the Recipient or any of its Representatives in breach of this Agreement or an Addendum;
- b) any Confidential Information which the Recipient can demonstrate was lawfully in its possession prior to disclosure of such Confidential Information by the Discloser;
- c) the use or disclosure of Confidential Information in accordance with rights lawfully granted by a third party;
- d) information that was independently developed by Recipient or its Representatives without use of or reference to the Confidential Information of Discloser; or
- e) the disclosure of Confidential Information to the extent required by any applicable legislation or subordinate legislation or any court or judicial or administrative authority of competent authority; provided however, that prior to making any such disclosure, the Recipient promptly notifies the Discloser of such requirement or request (where allowed by law to do so), and allows the Discloser the reasonable opportunity to exhaust all reasonable legal and equitable channels for maintaining such information in confidence.

9.3 Markit is entitled to refer to Subscriber as a customer in its public relations, marketing and sales efforts.

10. Audit

Subscriber shall permit Markit (or a representative of Markit), on reasonable notice, and at all reasonable times, to attend the offices of Subscriber and/or to inspect the relevant books, records and equipment of the Subscriber to verify Subscriber's compliance with the terms of this Agreement and/or any relevant Addendum. In conducting any such audit Markit shall use its reasonable endeavours to limit, as far as practicable, material disruption to the normal business activities of Subscriber.

11. General

11.1 **Notices.** Whenever any notice or other communication is given by one party to the other under this Agreement or an Addendum ("**Notice**"), such Notice shall be in writing and shall be delivered by facsimile (with confirmation of receipt duly obtained by the sending party), reputable courier service or registered or certified mail, return receipt requested, addressed as set forth on the signature page hereto. Notices properly given in accordance with this Section 11.1 shall be deemed received on the second business day after being sent (or, if sent by facsimile, on the next business day after being sent).

11.2 **Entire Agreement.** This Agreement and each Addendum hereto constitute the entire agreement between the parties with respect to its subject matter and (to the extent permissible by law) supersedes all prior representations, writings, negotiations or understandings with respect to that subject matter. All terms, conditions and warranties not stated expressly in this Agreement or in an Addendum, and which would in the absence of this provision be implied into this Agreement by statute, common law, equity, trade, custom or usage or otherwise, are excluded to the maximum extent permitted by law.

11.3 **Assignment.** This Agreement and any Addendum shall be binding upon and inure to the benefit of the parties thereto and their successors and assigns; provided that Subscriber may not assign or otherwise transfer any of its rights or delegate any of its duties under this Agreement or an Addendum (be it as a result of a merger, by operation of law or otherwise) without the prior written consent of Markit which, in the case of an assignment by Subscriber to one of its wholly

owned Affiliates, will not be unreasonably withheld (subject to Subscriber remaining fully liable for the performance of such Affiliate of any of its duties under this Agreement or an Addendum). Markit shall be entitled to assign, delegate, transfer or novate this Agreement or any part thereto to its Affiliates, provided there is no material adverse effect on the Services.

11.4 **Counterparts.** This Agreement and any Addendum may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original but all of which together constitute one and the same instrument.

11.5 **Waiver.** No failure to exercise nor any delay in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

11.6 **Amendment and Variation.** Except as otherwise expressly permitted by this Agreement or an Addendum, no variation of this Agreement (or of any of the documents referred to in this Agreement or an Addendum) shall be valid unless it is in writing and signed by or on behalf of each of the parties to it. The expression "variation" shall include any amendment, variation, supplement, deletion or replacement however effected.

11.7 **Severance.** If any provision or any part of this Agreement or an Addendum is or becomes (whether or not pursuant to any judgment or otherwise) invalid, illegal or unenforceable in any respect under the law of any jurisdiction:

- a) the validity, legality and enforceability under the law of that jurisdiction of any other provision; and
- b) the validity, legality and enforceability under the law of any other jurisdiction of that or any other provision,

shall not be affected or impaired in any way thereby. If any provision of this Agreement or any Addendum shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this Agreement or such Addendum and shall be deemed to be deleted therefrom and the validity, legality and enforceability of the remaining provisions of this Agreement and/or the Addendum shall not be affected.

11.8 **Survival.** Any provision of this Agreement or an Addendum which contemplates performance or observance subsequent to any termination or expiration of this Agreement or an Addendum will survive, in respect of such termination or expiration and continue in full force and effect, including, but not limited to, Sections 2.8 (Website Terms), 2.10 (Intellectual Property), 3 (Fees and Charges), 4 (Warranties), 5 (Limitation of Liability), 6 (Indemnification), 7 (Remedies), 8.3 (Post-Termination), 9 (Confidentiality) and 11 (General). In the event of a discrepancy between the Section numbers and titles above, the titles shall control.

11.9 **Independent Contractors.** The relationship of Markit and Subscriber established by this Agreement is that of independent contractors, and nothing contained in the Agreement or an Addendum shall be construed or implied to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) constitute the parties as partners, joint venture partners, co-owners or otherwise as participants in a joint or common undertaking or (iii) give rise to any agency relationship or fiduciary duty by one party to the other or any other special or implied duties not expressly stated herein.

11.10 **Interpretation.** Section and Schedule headings are for ease of reference only and do not form part of the Agreement. Where used in this Agreement or an Addendum, the words "include" and "including" will be deemed to be followed by the phrase "without limitation".

11.11 **Third Party Rights.** Markit's Affiliates shall be entitled to enforce and/or rely on rights or benefits under this Agreement or an Addendum (i) as an intended third party beneficiary or (ii) if applicable, in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**1999 Act**") or equivalent legislation in any relevant jurisdiction. Save for the foregoing, the operation of the 1999 Act is hereby excluded.

11.12 **Governing Law and Disputes.** The construction, validity and performance of this Agreement and each Addendum and the transactions contemplated by them (including non-contractual disputes or claims) shall be governed by the State of New York without regards to its conflict of laws principles. Each party submits to the exclusive jurisdiction of the state and Federal courts residing in New York, New York for the purposes of determining any dispute arising out of this Agreement, any Addendum or the transactions contemplated by them.



This Agreement has been executed and accepted as of the Acceptance Date.

SIGNED for and on behalf of

Markit North America Inc.

by:

Sign

Print Name Adam Kansler

Title

Acceptance Date

SIGNED for and on behalf of

Great-West Life & Annuity Insurance Company

by:

Sign:

Print Name Nolly Dorman

Title

Date

Checked and approved by Markit Contract Recipient:

Markit Contract Reference: 00073329