

## **Terms and Conditions for subscription to, and use of, the On-line ICMA Primary Market Handbook**

### **1. Interpretation**

- 1.1 Capitalised terms and expressions used in this Subscription Agreement shall have the meanings given to them in the section headed Definitions at the end of these Terms and Conditions.

### **2. Subscription Process**

- 2.1 A Subscription Agreement for the On-line ICMA Primary Market Handbook shall be entered into as follows:
- 2.1.1 The Customer shall submit an offer to ICMA to enter into a Subscription Agreement by completing and submitting the Order Form in accordance with the Documentation and these Terms and Conditions (an **"Offer"**). It is the Customer's responsibility to ensure that all of the details it provides to ICMA via the Order Form are correct and complete.
- 2.1.2 In response to an Offer, ICMA may (but shall not be obliged to) accept the Offer. If ICMA wishes to accept the Offer, it shall send an electronic message to the Customer notifying it of its acceptance, at which point the Subscription Agreement is concluded and binding on the terms of the Terms and Conditions and the Order Form and any other documents (in any medium) which are referred to as part of the Terms and Conditions or the Order Form (the **"Acceptance"**). If ICMA does not accept the Offer within 7 (seven) business days of receipt, the Customer shall no longer be bound to its Offer.
- 2.1.3 If ICMA accepts an Offer, ICMA shall send to the Customer an Invoice in accordance with clause 4.4.
- 2.1.4 Upon receipt by ICMA of all payments required by clause 4 in cleared funds in accordance with the terms specified in the Invoice (or such other terms as may be agreed between the parties in writing), ICMA shall issue Customer with a User ID and a Password (by post, facsimile or by electronic means), upon receipt of which the Customer is authorised to use the User ID and the Password to access the On-line ICMA Primary Market Handbook in accordance with the terms and conditions of the Subscription Agreement.
- 2.2 ICMA's records in all matters relating to the conclusion of the Subscription Agreement shall be binding on the Customer and conclusive evidence in respect of any Subscription Agreement, unless otherwise stated by ICMA.

### **3. Access to the On-line ICMA Primary Market Handbook and Intellectual Property**

- 3.1 ICMA provides to the Customer access to the On-line ICMA Primary Market Handbook for the purpose of viewing the contents of the On-line ICMA Primary Market Handbook on the terms of the Subscription Agreement, as supplemented by reasonable instructions issued by ICMA from time to time. ICMA will use its reasonable endeavours to keep the On-line ICMA Primary Market Handbook as up-to-date as the hard copy of the same publication.

- 3.2 ICMA grants the Customer for the duration of this Subscription Agreement a non-transferable, non-exclusive, worldwide licence to access and use ICMA's information, know-how relating thereto, trade marks, patents, copyrights, design rights (whether registered or unregistered), database rights and all other intellectual property rights of ICMA in the On-line ICMA Primary Market Handbook (collectively known as the "**Intellectual Property**") solely to the extent necessary for viewing the contents of the On-line ICMA Primary Market Handbook in accordance with the Subscription Agreement.
- 3.3 The Customer undertakes not to copy, reproduce, publish, distribute, sell, exploit or otherwise part with or make any other use of the Intellectual Property except to the extent required by law, nor to authorise, enable or assist any third party in doing so.
- 3.4 The Customer may not, nor permit others to, decompile, reverse-engineer or disassemble the Website or the On-line ICMA Primary Market Handbook or any part thereof except to the extent required by law.
- 3.5 The Customer acknowledges that all rights in the Intellectual Property are, and shall remain, vested in ICMA and agrees not to infringe, challenge or call into question ICMA's rights in the Intellectual Property nor to do or permit anything to be done which may reflect badly upon or be detrimental to the Intellectual Property or which may be inconsistent with or damage the good name, reputation and image of ICMA. The Customer agrees to inform ICMA immediately if it becomes aware of any third party activity which infringes or threatens the Intellectual Property.
- 3.6 The Customer shall indemnify ICMA from and against any losses, damages, costs, charges, expenses and other liabilities (including, without limitation, reasonable legal fees), incurred or awarded against ICMA as a result of, or in connection with, the Customer's use of the Intellectual Property of the On-line ICMA Primary Market Handbook otherwise than in accordance with the Subscription Agreement.
- 3.7 The Customer consents, and shall ensure that, in case of a Single User Subscription, any individual authorised by the Customer to use the On-line ICMA Primary Market Handbook consents, to ICMA and ICMA Ltd. collecting, storing, processing and, as may in ICMA's reasonable opinion be necessary, disclosing to third parties, all personal data submitted by the Customer to ICMA in entering into the Subscription Agreement and in using the On-line ICMA Primary Market Handbook, including, but not limited to, name, company name, individual contact at the company, company address ("**Personal Data**"), for the purposes of administering the Subscription Agreement and the Customer's access and use of the On-line ICMA Primary Market Handbook, and in order to comply with the order of any court, government agency or other lawful authority in any competent jurisdiction. The Customer acknowledges that the Internet is a worldwide open network which is accessible to the public and on which any transmitted message might be read by third parties at an indefinite number of locations in the world. The Customer may at any time (a) request ICMA to provide information about the Customer's Personal Data stored by ICMA and/or ICMA Ltd., to correct or delete the Customer's Personal Data stored by ICMA and/or ICMA Ltd., or (b) withdraw its consent to ICMA and ICMA Ltd. as set out hereinabove by writing to ICMA at the address stated in the entry on ICMA in the Definitions section at the end of these Terms and Conditions. The Customer acknowledges and agrees that deletions of the Customer's Personal Data stored by ICMA and ICMA Ltd. or a withdrawal of the Customer's consent as set out hereinabove might limit or impede the provision by ICMA to the Customer of access to the On-line ICMA Primary Market Handbook or result in ICMA terminating the Subscription

Agreement at any time by giving the Customer prior written notice (by post, facsimile or by electronic means).

#### **4. Subscription Fee and Billing**

- 4.1 The Customer shall pay to ICMA the Subscription Fee as set out in the "ICMA Subscription Services" area of the Website in exchange for the provision of access to the On-line ICMA Primary Market Handbook. The amount of the Subscription Fee depends on the subscription type selected by the Customer on the Order Form.
- 4.2 The Subscription Fee shall be payable per Subscription Year in advance.
- 4.3 In addition to the Subscription Fee the Customer shall be responsible for and shall bear all sales, use, value added, property, or like taxes and all customs duties or other charges having equivalent effect which may arise from this Subscription Agreement other than taxes based on ICMA's income.
- 4.4 Upon Acceptance of the Customer's Offer and prior to the end of each Subscription Year ICMA will send to the Customer an invoice, confirming the details of the Subscription Agreement (including, but not limited to, the identity of the Customer (including, in case of a Single User Subscription, the name of the individual authorised to access the On-line ICMA Primary Market Handbook), the Subscription Fee and the invoice date) for the successive Subscription Year by post, facsimile, or by electronic means (the "**Invoice**") and the Customer shall pay such Invoice in accordance with the terms specified therein.
- 4.5 The Customer may only have access to the On-line ICMA Primary Market Handbook upon receipt by ICMA of all of the Customer's payments as required and in accordance with this Subscription Agreement. The Customer acknowledges that ICMA may refuse to activate or suspend the Customer's access to the On-line ICMA Primary Market Handbook and/or terminate this Subscription Agreement in accordance with Clause 9.2 if ICMA has not received the Customer's payment on the relevant due dates.

#### **5. Security Provisions**

- 5.1 The Customer shall comply with the terms set out in the Documentation and the Subscription Agreement as amended, supplemented and/or updated and as notified to the Customer from time to time by ICMA. Acceptance by the Customer of any change to the Documentation or this Subscription Agreement, whether on-line or otherwise, shall be by any method of acceptance specified in the notice of such change, or shall be implied by the Customer's continued use of the On-line ICMA Primary Market Handbook after it has been notified of the change.
- 5.2 The Customer shall ensure that at all times the security measures within the Customer's control are such as to ensure the security, safekeeping and confidentiality of all information (including but not limited to the Password) relating to the Customer's usage of and access to the On-line ICMA Primary Market Handbook.
- 5.3 The Customer shall not disclose the Password to any person who is not authorised to gain access to the On-line ICMA Primary Market Handbook in accordance with the Subscription Agreement. Customers who have obtained a Single User Subscription may disclose the Password to the individual specified by name on the

Invoice (but to no other person) to enable only that individual to gain access to the On-line ICMA Primary Market Handbook on behalf of the Customer. The Customer shall not disclose the Password to any other person.

- 5.4 The Customer shall be responsible for checking and monitoring the integrity of its security measures and whether Unauthorised Access to the On-line ICMA Primary Market Handbook is being gained, and the Customer shall inform ICMA immediately if the security measures are compromised in any way or if Unauthorised Access is being gained and shall use its best endeavours to ensure that any such Unauthorised Access to the On-line ICMA Primary Market Handbook is stopped and adequate security measures are reinstated.
- 5.5 The Customer shall be liable to ICMA and shall indemnify ICMA for any loss or damage to ICMA resulting from any security measures being compromised or from the disclosure of any Password to a third party which is not in accordance with the Subscription Agreement and/or a failure by the Customer to keep any Password secure and safe, whether such compromise, disclosure or failure was committed by an employee of the Customer or otherwise.
- 5.6 ICMA shall have the right upon reasonable notice to verify that the Customer is complying with its obligations under this Subscription Agreement (including but not limited to Customer's obligations regarding non-disclosure of the Password to unauthorised persons and limiting access to the On-line ICMA Primary Market Handbook in accordance with the Subscription Agreement). The Customer shall make appropriate documentation, facilities and personnel available to ICMA for this purpose and shall provide all reasonable co-operation to ICMA for this purpose.

## **6. Representations**

- 6.1 The Customer acknowledges that software and hardware in general is not error-free and that the provision of any on-line service may be subject to interruption and/or delay and that the existence of such errors or interruption in the On-line ICMA Primary Market Handbook shall not constitute a breach by ICMA of the Subscription Agreement.
- 6.2 **Except as set out in the Subscription Agreement and to the fullest extent permitted by the laws applicable to the Subscription Agreement, ICMA disclaims all warranties, representations and statements with respect to the On-line ICMA Primary Market Handbook, either express or implied, whether by statute or otherwise, including, but not limited to, any implied warranties of satisfactory quality or fitness for a particular purpose.**
- 6.3 ICMA makes no representation that the On-line ICMA Primary Market Handbook shall be free from all known viruses and the Customer shall, at its own expense, employ such virus scanning software and take such precautions in respect of its use of the On-line ICMA Primary Market Handbook as the Customer shall consider necessary.
- 6.4 **ICMA does not warrant the accuracy, completeness or applicability of the information contained on the Website or the On-line ICMA Primary Market Handbook, and the Customer hereby agrees and undertakes that it shall not rely on any information on the Website or the On-line ICMA Primary Market Handbook.**

- 6.5 The Customer acknowledges that ICMA has not given the Customer any advice including but not limited to any financial advice. The On-line ICMA Primary Market Handbook is not a financial communication. Neither the On-line ICMA Primary Market Handbook nor any other communication from ICMA made in relation to the On-line ICMA Primary Market Handbook is intended to be, or should be construed as, an invitation or inducement (direct or indirect) to any person (including the Customer) to engage in investment activity.
- 6.6 The Customer acknowledges that ICMA provides access to the On-line ICMA Primary Market Handbook to Non-Consumers only. By submitting an Offer the Customer warrants that it is a Non-Consumer and that, therefore, it shall use the provision by ICMA of access to the On-line ICMA Primary Market Handbook in connection with its professional or commercial activities and not for its or its family's personal use.
- 6.7 The Customer warrants that it is duly authorised to make the Offer and to enter into the Subscription Agreement and that such action by the Customer does not breach any applicable laws. ICMA has no obligation to check that entry into the Subscription Agreement, or use of the On-line ICMA Primary Market Handbook, by the Customer, is not in breach of any applicable law.
- 6.8 Without prejudice to clause 8.6, if any term in this Subscription Agreement is not valid or is not enforceable by ICMA under any applicable law, the Customer shall indemnify ICMA for any and all loss and damages ICMA incurs arising out of and in connection with such invalidity or unenforceability, including, but not limited to, restoring ICMA to the position it would have been in had it not entered into this Subscription Agreement.
- 6.9 The individual who clicks the "submit" icon on the Order Form has the requisite authority to bind the Customer to the terms of this Subscription Agreement. The Customer agrees that payment by it of the Invoice in accordance with clause 2.1.3 confirms the authority of that individual to bind the Customer to the Subscription Agreement.
- 6.10 Each party represents and warrants to the other that:
- 6.10.1 it has the capacity and authority to enter into and perform this Subscription Agreement;
- 6.10.2 the making of and performance of this Subscription Agreement does not conflict with any existing obligations of that party; and
- 6.10.3 once duly entered into, this Subscription Agreement will constitute its legal, valid and binding obligations on it.

## **7. Limitation of ICMA's Liability**

- 7.1 The Customer agrees that, **to the fullest extent permitted by the laws applicable to this Subscription Agreement, ICMA expressly excludes under any title (such as, but not limited to, liability for breach of contract or tort) any liability**, such as, but not limited to, liability for loss of profit, loss of revenue, loss of anticipated savings, loss or corruption of data, loss of goodwill (whether direct, indirect or consequential) or indirect or consequential losses or damages of whatever nature and whether or not reasonably foreseeable, reasonably contemplatable or actually contemplated by the parties at the date of this Subscription Agreement, incurred by the Customer or any third party directly

or indirectly by gaining access to or making use of the On-line ICMA Primary Market Handbook or by inability to gain access to or make use of the On-line ICMA Primary Market Handbook.

- 7.2 In any event, the maximum aggregate liability of ICMA for any losses or damages in connection with this Subscription Agreement shall not exceed the amount paid by the Customer in settlement of the Subscription Fee for the Subscription Year in which the Customer has incurred such losses or damages.
- 7.3 The Customer agrees that to the fullest extent permitted by the laws applicable to this Subscription Agreement, the disclaimer of warranties and the exclusion of liability in accordance with this Subscription Agreement shall apply to acts and omissions of ICMA, its affiliates and their directors, officers, employees, contractors, agents and third party suppliers.
- 7.4 The Customer shall take all reasonable steps to mitigate its loss arising in relation to any claim or action (whether for negligence, breach of contract or otherwise) which it may have against ICMA.
- 7.5 ICMA shall not be liable to the Customer for any loss or damage arising due to failure or omission to perform or a delay in performing its obligations under this Subscription Agreement due to any event or cause beyond ICMA's reasonable control including, without limitation, acts of God, acts or regulations of government or other authorities, war, fire, flood, explosions, civil commotion, strikes or other industrial disputes, power failure, failure of telecommunication lines, connection or equipment, or failure or defects in any hardware or software owned or supplied by third parties including, without limitation, any failure of or defect in the On-line ICMA Primary Market Handbook.
- 7.6 The Customer is responsible for establishing and maintaining its access to the On-line ICMA Primary Market Handbook. ICMA shall not be responsible for the services to be rendered by the third party network provider.

## **8. General**

- 8.1 The Subscription Agreement and the Documentation (as each may be amended by ICMA from time to time) shall constitute the entire agreement between the parties relating to the use of the On-line ICMA Primary Market Handbook.
- 8.2 If there is any conflict or inconsistency between the provisions of this Subscription Agreement, the Documentation (except where such Documentation is an amendment, supplement or update to this Subscription Agreement) and any area of the Website excluding the Subscription Agreement and/or the Documentation, this Subscription Agreement prevails.
- 8.3 Without prejudice to clauses 5.1 or 8.1, ICMA reserves the right to amend the terms and conditions in this Subscription Agreement from time to time by giving the Customer not less than 15 (fifteen) days written notice (by post, facsimile or by electronic means), which, in the case of a variation of the Subscription Fee only, shall expire on an anniversary of the Subscription Date. Acceptance by the Customer of any amendments to this Subscription Agreement shall be by any method of acceptance specified in the notice of such amendments, or shall be implied by the Customer's continued use of the On-line ICMA Primary Market Handbook after it has been notified of the amendments. Notwithstanding this, the Customer may, within the notice period pursuant to the first sentence of this clause 8.3, terminate this Subscription Agreement by giving written notice to

ICMA (by post, facsimile or by electronic means) if it does not agree with the amendments to the terms and conditions in this Subscription Agreement.

- 8.4 Neither party may, without the prior written consent of the other, assign or transfer this Subscription Agreement or any rights under this Subscription Agreement to any third party. Notwithstanding this, ICMA may, without the Customer's consent, assign or transfer this Subscription Agreement or any rights under this Subscription Agreement to an affiliate, an acquirer of assets, or a successor by merger.
- 8.5 If any provision of this Subscription Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid, illegal or unenforceable provision(s), with all other provisions remaining in full force and effect.
- 8.6 **This Subscription Agreement shall be governed by Swiss law, the choice or conflicts of law provisions of any jurisdiction and the Vienna Convention on the International Sale of Goods being excluded.**
- 8.7 **The ordinary state courts at the domicile of ICMA, i.e. Zurich-City, shall have exclusive jurisdiction to settle all disputes arising out of or in connection with this Subscription Agreement, including disputes on its conclusion, binding effect, amendment and termination, subject to appeal. ICMA shall, however, be free to bring any action against the Customer in any other court of competent jurisdiction.**
- 8.8 The headings in this Subscription Agreement are for convenience only and shall not limit or affect the interpretation of this Subscription Agreement.

## **9. Duration, Termination and Effects of Termination**

- 9.1 This Subscription Agreement takes effect in accordance with clause 2.1.2 and the Customer's access to the On-line ICMA Primary Market Handbook shall be provided from the date ICMA issues the User ID and the Password to the Customer in accordance with clause 2.1.4 (the "**Subscription Date**") for an initial period of 1 (one) Subscription Year and thereafter unless or until this Subscription Agreement is terminated by either party giving to the other party not less than 30 (thirty) days prior written notice (by post, facsimile or by electronic means) of termination expiring on an anniversary of the Subscription Date.
- 9.2 Notwithstanding the generality of clause 9.1,
- 9.2.1 ICMA may suspend immediately the Customer's access to the On-line ICMA Primary Market Handbook whenever it deems such action necessary in its absolute discretion;
- 9.2.2 ICMA may terminate the Subscription Agreement with immediate effect by giving the Customer written notice (by post, facsimile or by electronic means) if the Customer is in breach of any of its obligations under the Subscription Agreement and such breach (a) is not capable of remedy, or (b) is capable of remedy but has not been remedied within 15 (fifteen) days of the date of ICMA's notice to the Customer requiring such remedy;

9.2.3 the Customer may terminate the Subscription Agreement in the events and as provided for in clauses 3.7, last sentence, and 8.3, last sentence.

9.3 In the event

9.3.1 ICMA suspends the Customer's access to the On-line ICMA Primary Market Handbook for more than 7 (seven) days without reasonable cause; or

9.3.2 the Customer terminates the Subscription Agreement pursuant to clause 8.3, last sentence,

the Customer shall have the right to request a pro rata refund of the Subscription Fee paid in advance for the period during which the Customer did not have access to the On-line ICMA Primary Market Handbook in the relevant Subscription Year; for the avoidance of any doubt the Customer shall not be entitled to request any refund of the Subscription Fee paid in advance other than as set forth in this clause 9.3.

9.4 All rights and obligations of the parties shall cease to have effect immediately upon termination of this Subscription Agreement except that termination shall not affect the accrued rights and obligations of the parties at the date of termination and the continued existence and validity of the rights and obligations of the parties under those clauses in this Subscription Agreement which are expressly or by implication intended to survive termination.

## Definitions

**"Acceptance"** has the meaning given in clause 2.1.2;

**"Consumer"** means any natural person using a product or service for his or her and/or his or her family's personal use;

**"Customer"** means the natural or legal person who is entering into this Subscription Agreement with ICMA;

**"Documentation"** means any on-line help facilities, user guide, security protocol or measures to be followed by the Customer in using the On-line ICMA Primary Market Handbook, and any other materials delivered to the Customer by ICMA or made available to the Customer via the On-line ICMA Primary Market Handbook or otherwise for the purposes of using the On-line ICMA Primary Market Handbook from time to time;

**"Intellectual Property"** has the meaning given in clause 3.2;

**"Invoice"** has the meaning given in clause 4.4;

**"ICMA"** means the International Capital Market Association, an association domiciled in Zurich, Switzerland (with offices currently at Talacker 29, 8001 Zurich, Switzerland);

**"ICMA Ltd."** means International Capital Market Association Limited, a private limited company domiciled in London, United Kingdom (with offices currently at 23 College Hill, London EC4R 2RP, United Kingdom) which is a subsidiary of ICMA;

**"Non-Consumer"** means any natural or legal person not being a Consumer, i.e. a natural or legal person using a product or service in connection with his or her or its professional or commercial activities only;



**“Offer”** has the meaning given in clause 2.1.1;

**“On-line ICMA Primary Market Handbook”** means the electronic version of the ICMA Primary Market Handbook from time to time published by ICMA and containing recommendations, guidance notes and standard documentation, which is accessed via the Website;

**“Order Form”** means the relevant form posted on the Website (currently located at the following URL: [http://www.icmagroup.org/legal1/ordering/Ordering-the-ICMA-Primary-Market-\(IPMA\)-Online-Han.aspx](http://www.icmagroup.org/legal1/ordering/Ordering-the-ICMA-Primary-Market-(IPMA)-Online-Han.aspx) );

**“Password”** means any confidential password or passphrase, including any electronic signature, code or number, issued to the Customer by ICMA for the purposes of accessing the On-line ICMA Primary Market Handbook;

**“Personal Data”** has the meaning given in clause 3.7;

**“Single User Subscription”** means a subscription under which only the individual representative of the Customer named on the Invoice may access the On-line ICMA Primary Market Handbook on behalf of the Customer;

**“Subscription Agreement”** means these Terms and Conditions, the Order Form and any other documents (in any medium) which are referred to as part of the Terms and Conditions or the Order Form;

**“Subscription Date”** has the meaning given in clause 9.1;

**“Subscription Fee”** means the fee payable by the Customer for being provided access to the On-line ICMA Primary Market Handbook;

**“Subscription Year”** means the period of one year calculated from the Subscription Date and thereafter from each anniversary of such date;

**“Unauthorised Access”** means the gaining of access to the On-line ICMA Primary Market Handbook by any person associated with the Customer (including any employee, agent, sub-contractor or any other person using the Customer's premises or computer terminals) who is not authorised to do so by the Subscription Agreement;

**“User ID”** means any user identification code issued by ICMA to the Customer which identifies the Customer to ICMA and is to be entered by the Customer together with the Password for the purposes of and when accessing the On-line ICMA Primary Market Handbook; and

**“Website”** means the homepage of ICMA at the Internet address/domain: <http://www.icmagroup.org> and any relating webpages under such domain, including, but not limited to, any information, design and graphics displayed thereon.