



An MSCI Brand

# IPD Terms & Conditions Market Information Services – US

These Terms and Conditions, together with any Special Terms and your Order, govern your use of the Service(s) covered by the Order.

## 1. DEFINITIONS

1.1. Words and phrases used in this Agreement shall have the following meanings:

‘Agreement’	These Terms and Conditions, any Special Terms and the Order
‘Confidential Information’	Client Data and any other information concerning your or our trade secrets, customer or supplier details and business transactions and any information and/or knowledge concerning the methods or techniques we use to provide the Service(s)
‘Client Data’	Means the data and other information that we receive from you, your agent or representative, during the duration of this Agreement. It includes the information requested by IPD’s Data Requirements Form and/or any other data provided to IPD by you, your agent or representative during the duration of this Agreement
‘Data’	Any of the data and/or databases supplied by IPD to you under this Agreement
‘Data Provider’	Means a third party data provider that provides IPD with data which is incorporated into the Database or into the Data from time to time
‘Database’	The database in which your Data, if any, is processed together with data from other sources
‘Fund’	An entity you control that invests directly in real estate
‘Insubstantial Extracts’	Examples of what constitutes “insubstantial extracts of the Data” are shown on Schedule A hereto
‘IPD’, ‘we’ or ‘us’	Investment Property Databank Limited
‘IPD Group Company’	Any company which is under the Control of, Controlling or under common Control with IPD where “Control” means the ultimate ownership of more than 50% of the issued share capital of such company or the legal right to direct or control the affairs of such company
‘IPRs’	Copyright, trade secrets, patents, registered and unregistered trademarks, design rights and all other industrial, commercial or intellectual property rights existing in any jurisdiction in the world and all the rights to apply for the same

‘CPI’	The Consumer Price Index published by the Bureau of Labor Statistics
‘Losses’	Damages (including reasonable costs and attorney fees) that are awarded to any third party with respect to a claim or action against you
‘Minimum Period’	The minimum period of the supply of any Service(s) as defined in the Order
‘Order’	A written order for Service(s) on our prescribed form and signed by IPD and you
‘Service(s)’	Any service(s) supplied by us to you as specified in the relevant Order
‘Special Terms’	IPD’s terms and conditions which govern your use of a particular Service(s) as expressly provided in the Order
‘Start Date’	The date set out on the Order
‘Subscription Fee’	The sum or fee set out in the Order
‘Substantial Extracts’	Examples of what constitutes “substantial extracts of the Data” are shown on Schedule A hereto
‘Website’	The website currently located at <a href="http://www.ipd.com/us">www.ipd.com/us</a> or any other website through which IPD delivers the Service(s)
‘you’	The organization identified as the Client on the Order

## 2. SCOPE

2.1. In the event of a conflict or inconsistency between or among provisions of the Terms and Conditions and the Order, the Order shall prevail.

## 3. PROVISION OF SERVICE(S) AND VARIATION

- 3.1. For the term of this Agreement, we shall provide you with access to the Service(s) in accordance with this Agreement.
- 3.2. We reserve the right to make improvements, substitutions, modifications and to add or remove elements of the Service(s) for business, market or technical reasons. You acknowledge that IPD shall not be liable to you or any third party for any modification, discontinuance or suspension of the Service(s). In the event of a material modification or of the discontinuance of an index or the removal of a material element, you may terminate this Agreement on 30 days written notice to us.
- 3.3. IPD reserves the right to change these Terms and Conditions by notifying you in writing by mail and by posting revised Terms and Conditions on our Website. If you do not oppose these changes by return email no later than thirty (30) days after receipt of our notification, we consider the changes to



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be accepted by you. Non-material changes of our Terms and Conditions will only be posted on our Website.

#### 4. USE OF DATA

- 4.1. We grant you for the term of this Agreement a non-exclusive, non-transferable license to use the Data only for the following internal business purposes:
  - 4.1.1. to save and import copies of the Data into electronic files for your own reference;
  - 4.1.2. to print extracts from the Data for your own reference;
  - 4.1.3. to incorporate parts of the Data into internal research documents written by you for distribution and use within your organization;
  - 4.1.4. to e-mail any such reports within your organization for reference purposes by recipients of such e-mails;
  - 4.1.5. to incorporate and make Insubstantial Extracts of the Data available via any corporate intranet you may operate;
  - 4.1.6. to incorporate Insubstantial Extracts of the Data in (a) public statements that illustrate trends in the market for the purpose of context only and not for the internal or external comparison or benchmarking of any aspect of fund or vehicle performance; and (b) marketing materials to be provided to potential clients for promotional or illustrative purposes on an ad hoc but not regular basis, provided that the Data may not be accessed electronically (except as a PDF attachment to an e-mail), manipulated or distributed by the recipients of the Data; and
  - 4.1.7. to make available the Data to your consultants for the sole purpose of their providing you with advice based on the Data.
- 4.2. You shall ensure that any reproduction of all or part of the Data includes the following notice: “© and database right Investment Property Databank Limited and its licensors 201[.]. All rights reserved. IPD has no liability to any person for any losses, damages, costs or expenses suffered as a result of any reliance on any of the information which may be attributed to it”.
- 4.3. You shall not use the Data in any way which is not expressly permitted in clause 4.1. In particular, but without limitation:
  - 4.3.1. no sale, transfer, sub-license, distribution or commercial exploitation, nor other making of the Data available to, or for the benefit of, any third party of the Data is permitted; and
  - 4.3.2. none of the Data may be distributed (whether for commercial or non-commercial use) on any email sent outside of your organization (other than in accordance with this Agreement) or corporate

extranet or other web-based product or Service(s) operated by or for you.

- 4.4. During the term of this Agreement, and for a period of three (3) months afterwards, in the event that we have reason to believe that you have used the Data in violation of this Agreement, you will allow us access to the office(s) at which you have access to the Service(s) and provide us with reasonable assistance for us verify that your access to and use of the Service(s) is in compliance with this Agreement.

#### 5. FEES

- 5.1. You shall pay the Subscription Fee in advance and within thirty (30) days of the date of the invoice from IPD to you. Payment must be made to the following bank account or such other bank account as IPD may notify you of in writing:  
U.S. Bank N.A.1420 5th Avenue, 9th Floor  
Seattle, WA 98101 U.S.A ABA No.:125000105  
SWIFT No.:USBKUS44IMT  
Account No.:1535 9196 7424
- 5.2. All sums payable under this Agreement are exclusive of any state or local sales and/or use taxes chargeable at the then current rate in the relevant currency.
- 5.3. If you do not pay any charges due on time, we are entitled to charge interest on the outstanding balance from the due date until the date of actual payment at an annual rate of 2% above the base rate of Barclays Bank plc in effect during such period.
- 5.4. No refund of fees will be due in the event of termination of this Agreement unless it is terminated pursuant to clause 13.2.
- 5.5. In the event that you owe payment or are in material breach of this Agreement until such time as the Fees are paid or the breach is remedied.
- 5.6. We may automatically increase the Fee, annually, in line with the rate of inflation. The rate of inflation shall be determined in accordance with the percentage increase in the CPI applicable for that year.
- 5.7. We may also change the fees after the Minimum Period on ninety (90) days written notice to you. In the event of a change in fees under this clause 5.7, you may terminate this Agreement with written notice no later than 30 days after receiving notice of the change in fees.

#### 6. DURATION OF AGREEMENT

- 6.1. This Agreement will begin on the Start Date and will continue for the Minimum Period. If there is no Minimum Period stated, this Agreement will continue for an initial period of twelve (12) months.
- 6.2. This Agreement shall be automatically renewed for consecutive periods of twelve (12) months unless either of us gives to the other not less than ninety (90) days written notice of termination to the other effective on the first or any subsequent anniversary of the Start Date.



### 7. INTELLECTUAL PROPERTY

- 7.1. You consent to us and any IPD Group Company, processing your Client Data and Confidential Information, incorporating it into the Data and the Database and making it available in an anonymous and aggregated form as part of any product or Service(s) of any kind that we may provide both for the term of this Agreement and afterwards.
- 7.2. You acknowledge that any and all IPRs in the Data, the Database or in any products or Service(s) that are created from the Data are our property or that of our licensors.
- 7.3. We may terminate this Agreement immediately on notice if you challenge the validity of any of our rights or those of our licensors as set out above.

### 8. SECURITY

- 8.1. You will comply with any rules and guidelines that we reasonably prescribe in relation to the manner in which we provide the Service(s). Such guidelines are posted on our Website.

### 9. WARRANTIES

- 9.1. We warrant and undertake that:
  - 9.1.1. we have full right and authority to enter into this Agreement and to perform our obligations; and
  - 9.1.2. the Data will not in any way infringe any rights of any third party.
- 9.2. You warrant and undertake that:
  - 9.2.1. you have full right and authority to enter into this Agreement and to perform your obligations; and
  - 9.2.2. you shall not make any misleading statements about any information that you derive from the Data.

### 10. DISCLAIMER OF WARRANTIES AND LIABILITY

- 10.1. Subject to clause 10.9, the warranties contained in clause 9.1 are in place of all warranties or conditions implied by law.
- 10.2. As the Data include data that are provided by third parties or are otherwise publicly available, we are not able to control or verify the accuracy or completeness of such data. Accordingly, while we agree to exercise good faith and fair dealing in the collation of the Data, we:
  - 10.2.1. make no warranty or express or implied representations about the accuracy or fitness for any particular purpose of the Data or that the provision of Service(s) will be uninterrupted, timely or secure; and
  - 10.2.2. we accept no liability for any inaccuracy, incompleteness or other error in the Data which arises as a result of data input provided by you or any third party.
- 10.3. You acknowledge that:
  - 10.3.1. systems which use empirical data and/or statistical data and/or data modeling techniques to provide

indicative and/or predictive data cannot be taken as a guarantee of any particular outcome; and

- 10.3.2. in the ordinary course of events and by its very nature, the accuracy and utility of the Data will deteriorate rapidly following its delivery to you.
- 10.4. We do not make any warranty or representation that the use by you of the Service(s) will achieve any particular result.
- 10.5. You agree and acknowledge that the Service(s) are not intended to be used as the sole basis for any business decision, that you use the Data at your own risk and on an “as is” basis and that you will not use the Data as the sole basis for any business decision.
- 10.6. IPD makes a strict distinction between its published market asset level indices (which show stabilized asset market trends only) and its portfolio benchmarks used in its PAS (which are based on aggregate portfolio performances, including active asset management). Stabilized asset indices are not an appropriate substitute for actively managed portfolios. You acknowledge that market indices published by IPD are not authorized by IPD for use as a benchmark for portfolio or manager performance of any kind and you agree that you shall not use them for such or similar purposes.
- 10.7. Except as provided in 10.9, our total liability to you with respect to claims arising out of or in connection with this Agreement, whether in contract or tort (including negligence) or otherwise, shall, during the first year of this Agreement, in no circumstances exceed the total fees payable by you to us under this Agreement in that calendar year. In subsequent years, our total liability shall be limited to the amount payable by you for the Service(s) provided in the previous year.
- 10.8. We shall not have any liability to you for: any loss of profits, loss of business, loss of anticipated savings, loss of sales or turnover, loss of or damage to reputation, loss of contract, loss of customers, nor loss of use or of any software or data, wasted management or any staff time, losses or liabilities in relation to or under any other contract, nor any indirect or consequential losses, any type of anticipated or incidental losses, or any type of financial loss, even if we had notice of possibility of you incurring such losses.
- 10.9. Clause 10.7 does not limit our liability for:
  - 10.9.1. death or personal injury caused by our negligence or omission;
  - 10.9.2. fraudulent misrepresentation.
- 11. **THIRD PARTY CLAIMS**
  - 11.1. We shall indemnify you and hold you harmless against all and any Losses suffered or incurred by you as a result of your use of the Data, in accordance with this Agreement, which infringes upon the IPRs of a third party.
  - 11.2. You shall indemnify and hold harmless us and our licensors against any and all losses, suffered or incurred by us and/or our licensors, including reasonable legal expenses, arising out



of or connected with any breach of clauses 4.1 and 9.2 of this Agreement.

- 11.3. You shall indemnify and hold us harmless against any losses suffered or incurred by us as a result of:
- 11.3.1. you rendering the Data inaccurate or incomplete (by act or omission) or modifying the Data by data input or manipulation; or
  - 11.3.2. your use of the Service(s).
- 11.4. The indemnities given in this clause 11 are given on condition that the indemnified party will promptly notify the indemnifying party of any and all such claims and will allow the indemnifying party at the indemnifying party's sole cost and expense to defend any proceedings with respect to any such claim in the indemnifying party's name (including the right to settle any such other proceedings after prior consultation with the indemnified party).
- 11.5. If any claims are made, or in our reasonable opinion are likely to be made, by any third party alleging that its rights are infringed by your use of the Data as permitted by the terms of this Agreement, we may at our sole option and expense:
- 11.5.1. procure for you the right to continue using the relevant Data (or any part of it) in accordance with the terms of this Agreement; or
  - 11.5.2. modify the relevant Data to avoid the infringement or replace the relevant Data with non-infringing materials, while still providing the same, or substantially similar, functionality to the infringing materials.
- 11.6. If we exercise one of the options set out in clause 11.5, we shall have no further liability to you with respect to a claim relating to the subject matter of clause 11.1 from the date we complete such option.

### 12. CONFIDENTIALITY

- 12.1. You and we and our respective officers, employees and agents shall maintain in strictest confidence any Client Data and Confidential Information relating to the other except as permitted by this Agreement. The obligations of clause 12.1 shall not apply to information which:
- 12.1.1. is already public knowledge;
  - 12.1.2. either of us is required to divulge by a Court, tribunal or governmental authority with competent jurisdiction;
  - 12.1.3. was known to the recipient before the date of disclosure (as evidenced by written evidence) without obligation of confidentiality; or
  - 12.1.4. was subsequently obtained by the recipient from someone else without that person breaching any obligations of confidentiality that they have to either you or us;

12.1.5. is provided to the professional advisers of either of us for our internal business purposes.

### 13. TERMINATION

- 13.1. Either of us may terminate this Agreement in accordance with clause 6.
- 13.2. We may terminate this Agreement immediately on written notice if we cease to provide the Service(s). In this event, we shall refund you the pro-rated amount of any Subscription Fee you paid in advance.
- 13.3. Either of us may terminate this Agreement immediately by written notice if:
- 13.3.1. the other party has committed a material or persistent breach of any of its obligations under this Agreement and fails to remedy that breach, within fourteen (14) days of receiving written notice from the other party specifying the breach; or
  - 13.3.2. if the other party files a voluntary petition for bankruptcy or has an involuntary petition for bankruptcy filed against it, enters into liquidation or has a receiver, manager, administrative receiver or administrator appointed over the whole or a substantial part of its assets or undertaking, makes an assignment for the benefit of creditors or otherwise ceases to carry on its business.

### 14. EFFECT OF TERMINATION

- 14.1. Upon termination of this Agreement, your rights to use the Service(s) will immediately cease. Termination will not affect:
- 14.1.1. any rights that either you or we have acquired before termination; or
  - 14.1.2. any part of this Agreement intended to survive termination;
  - 14.1.3. the provisions of clauses 4.4, 5.3, 7, 9, 10, 11.2, 11.3, 12 and 17 shall survive termination of this Agreement and shall remain in full force and effect.

### 15. FORCE MAJEURE

- 15.1. Neither of us shall be liable for any failure or delay in performing any or all of its obligations under this Agreement resulting from any act of God, governmental act, terrorism, war, fire, flood, strike, explosion or civil commotion, any failure of telecommunications service(s) or equipment which is used by us to provide Service(s) which is due to the default of someone else or other act beyond the control of the party affected.
- 15.2. If either of us fails or delays in performing any or all of its obligations under this Agreement for any reason given in the previous sub-clause, it shall notify the other as soon as practical and shall resume its obligations when the event comes to an end.



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### **16. ASSIGNMENT**

- 16.1. You may not assign any of your rights under this Agreement without our prior written consent, which will not be unreasonably withheld.
- 16.2. We may assign our rights under this Agreement in connection with a sale or restructuring of our business upon written notice to you.

### **17. PUBLICITY**

Unless you instruct us in writing to the contrary, we may include your name as our client in any client lists we may publish for promotional purposes.

### **18. TECHNOLOGY DISCLOSURE**

Our webpages and emails may contain web beacons. We may use web beacons for our internal purposes, including, but not limited to, data and website usage analytics and reporting.

### **19. GENERAL**

- 19.1. Any failure or delay in exercising any right or remedy available under this Agreement does not constitute a waiver or bar to the exercise of that right or remedy.
- 19.2. Any provision of this Agreement found by a court of competent jurisdiction to be void or unenforceable shall be deemed to be deleted from this Agreement, and the remaining provisions of this Agreement shall continue in full force and effect.
- 19.3. This Agreement shall not be enforceable by any person who is not a party to this Agreement.
- 19.4. You are entering into this Agreement in the course of your business and not as a consumer.
- 19.5. This Agreement shall be governed by and construed in accordance with the laws of Illinois, without giving regard to its conflict of laws provisions.

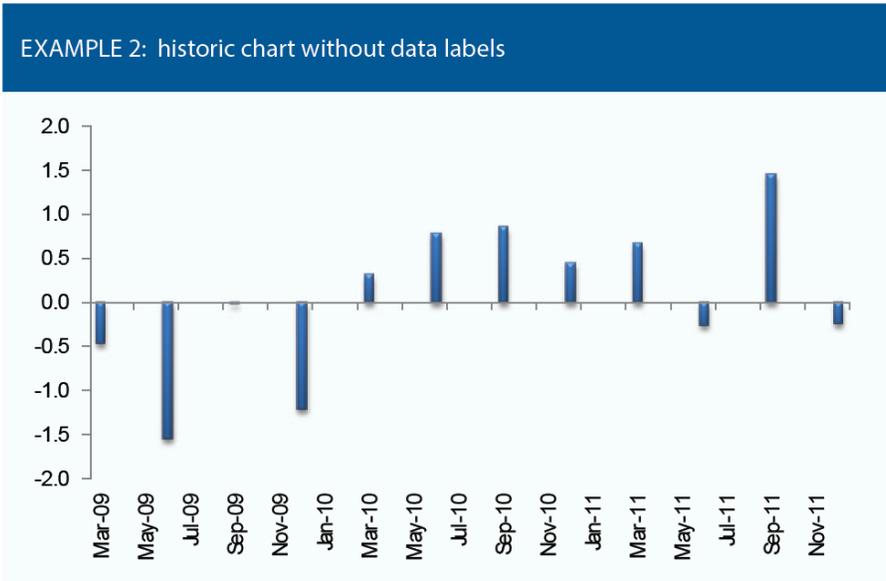


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## Schedule A

### Insubstantial Extracts

EXAMPLE 1: comparison of current vs historic period	
Dec-09	Dec-11
-1.2	-0.2



EXAMPLE 3: annualized performance measures		
1 year	3 year	5 year
5.8	6.7	6.2
-1.1	-2.6	0.5

EXAMPLE 4: data on 5 or less sub-markets shown
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New York	5.0
Los Angeles	-9.0
Chicago	-5.0
San Francisco	-3.0
Dallas	-9.0



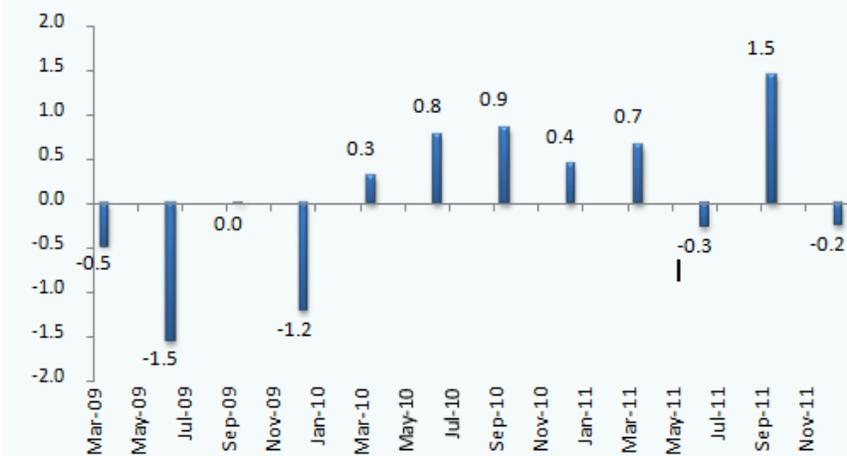
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## Schedule A

### Substantial Extracts

EXAMPLE 1: reproducing long time series of performance measures											
Mar-09	Jun-09	Sep-09	Dec-09	Mar-10	Jun-10	Sep-10	Dec-10	Mar-11	Jun-11	Sep-11	Dec-11
-0.5	-1.5	0.0	-1.2	0.3	0.8	0.9	0.4	0.7	-0.3	1.5	-0.2

EXAMPLE 2: historic chart without data labels





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<b>EXAMPLE 3: greater than 5 sub-markets shown</b>	
New York	5.0
Los Angeles	-9.0
Chicago	-5.0
San Francisco	-3.0
Dallas	-9.0
Houston	8.0
Boston	-4.0
Washington D.C.	-7.0
Atlanta	-4.0