

# MTS DATA

## Terms & Conditions - Vendor

JULY 2021 VERSION



# Foreword and Interpretation

EuroMTS Limited (EuroMTS) is entitled, by virtue of its management of a wholesale screen-based trading system for financial instruments as well as certain licensing agreements, to distribute the data of the MTS Markets (as defined below) to third parties in accordance with the terms of such respective licensing agreements.

These Terms (as defined below) set out the general terms and conditions governing the grant of a Vendor licence to permit the use, display, dissemination and reporting of MTS Data as provided by EuroMTS as Licensor.

Please also refer to the relevant policies and Data Charges applicable to your subscription set out in the Schedules (as amended by EuroMTS from time to time) for further rules and guidance, which together form the Agreement in accordance with these Terms:

- MTS Data Policy Schedule; and
- MTS Data Order Form – Vendor (containing Data Charges).

## 1. Definitions

1.1 In the Agreement, the following words shall have the following meanings:

**Access** means access by a single user, which is a unit of count for the purposes of calculation of certain Data Charges and is denoted by a personal identifier or 'ID' which enables individual users to receive, have available, display or access the Data from a particular Vendor, via any terminal (fixed or portable), Slave Device, display unit or any other piece of apparatus which may receive or display (whether in whole or in part) by any means.

Each Access may only be used by a single user within an End Customer organisation. If several single users share a single Access, then this usage is reported as multiple Accesses for the purposes of the Agreement, as multiple users are accessing the Data. End-Customers requiring shared Accesses may be licensed for the groups sharing the Accesses direct with the Licensor. The same Access shall not be used simultaneously by users, devices or any other mean.

The Access may not be shared, and appropriate controls shall ensure that only the registered End-Customer can use the Access.

**Affiliates** means any of the Vendor group undertakings, as construed in accordance with Sec. 1161 of the Companies Act 2006 and listed in the Order Form.

**Agreement** means these Terms, the Order Form (including Data Charges), and the MTS Data Policy Schedule.

Audit Rights	has the meaning set out in Clause 15.
Commencement Date	means the date agreed by the parties in the executed Order Form, i.e. the date from which the License is granted.
Data	means the information contained in the Products selected by the Vendor and indicated on the Order Form.
Data Charges	means the list of charges payable for Products and Data from the Licensor as set out in the Order Form and amended in accordance with these Terms from time to time.
Derived Data	means data that is the output of calculations or analysis performed by or on behalf of End-Customer using Data or Products as an input, provided that such Data or Product used to calculate the Derived Data does not, in the End Customers or Vendors good faith judgment, remain identifiable in (except by chance or happenstance), and may not be readily extracted or reverse-engineered from, the Derived Data.
Distributor	means a distributor of the Data, who is subject to a distribution agreement with the Licensor and has entered into a Subscription Agreement to supply Data to the Vendor for the purposes of the Agreement.
End Customer	means a customer that receives, uses or has access to the Data via a Vendor, the Vendor Service Facilitator or set of Vendors.
End Customer Order Form	means a validly executed MTS Order Form – End Customer accepted by the Licensor in the form set out as a Schedule the Agreement (as amended by the Licensor from time to time).
Enterprise	where a licence is granted on an Enterprise basis in accordance with the terms of this Agreement, such licence will be for an unlimited number of Customer Sites.
Free Trial	means a period where the Data Charges in respect of specific End Customers shall not apply, in accordance with Clause 6.
Force Majeure Event	means any cause beyond a party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental or regulatory requirement, civil or military authority, act of God, and industrial disputes.
Intellectual Property Rights	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in

each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Licence	means the Licence granted in clause 2 and stipulated in the Order Form.
Licensor	EuroMTS Limited, a corporation incorporated under the laws of England and Wales, with company number 03615752, and registered office at 7 <sup>th</sup> Floor, 110 Cannon Street, London, EC4N 6EU, England.
Minimum Term	shall be twelve (12) months from the Commencement Date, unless agreed otherwise in the Order Form.
MTS Markets	means those financial markets operated by the Licensor and its licensors, as listed on the Licensor's website from time to time.
Operational Controls	means the systems operated by the Vendor in line with the Schedules to limit access to the Data and track the Data through the Vendor's products.
Order Form	means a validly executed MTS Data Order Form - Vendor accepted by the Licensor.
Policy Schedule	means the Schedule containing the Licensor's Data policies and the Reporting Schedule (as amended by the Licensor from time to time) and which is incorporated herein by reference.
Product	means a type of Data product or service created and licensed by the Licensor, as further set out in the MTS Data Policy Schedule.
Reporting Schedule	means the section of the Policy Schedule which describes how End Customers and Vendors (as appropriate) report Data usage to the Licensor.
Schedule	means the schedule to these Terms, as published by the Licensor from time to time and includes the MTS Data Policy Schedule.
Service Facilitator	A third party who facilitates from a technical point of view the delivery of the Data to the Vendor's End Customers as set out in the Order Form provided however that the Vendor retains full control, administrative and technical, of each Access.
Site	means a physical location (place of business and address) where the Data may be accessed by an End Customer or its Subsidiaries and as agreed by the Licensor in the End Customer's relevant Order Form.

Slave Device	means any device which, although capable of receiving or displaying the Data, cannot be used to request access to or update a display of Data, whether in whole or in part.
Software Partner	A third party who is authorized by the vendor to provide applications to the Vendor's End Customers allowing them to connect to the Vendor's services and to access the Data, as set out in the Order Form, provided however that the Vendor retains full control, administrative and technical, of each Access and that the third party does not access the Data.
Statement	has the meaning ascribed to it in Clause 14.
Subscription Agreement	means a written agreement between the Vendor and the Distributor for the supply of the Data to the Vendor.
Subsidiaries	means those subsidiaries (as defined in Section 1159 of the Companies Act 2006) of the End Customer as have been notified by the Vendor and accepted by the Licensor (in its absolute discretion) either in the Order Form or from time to time in writing.
Terms	means these MTS Data Terms and Conditions - Vendor.
Terms of Use	means those terms of use of the Data as set out in the Policy Schedule.
Vendor	means the party listed as such in the Order Form.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.



- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 Any words following the Terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## 2. Grant of Licence

- 2.1 Upon acceptance by the Licensor of a validly executed Order Form, the Licensor grants to the Vendor a non-exclusive, non-assignable, limited, worldwide right and Licence, with the right to sublicense to its Affiliates and where applicable, its Service Facilitators, to use, process, reproduce, store, make available and redistribute the Data in accordance with the terms and conditions of the Agreement. End Customers may access the MTS data using the applications developed by the Software Partners as listed in the Order Form.
- 2.2 Where the Vendor has elected to receive the Data via a Distributor, such Licence granted under Clause 2.1 shall be subject to the Vendor having in place a valid and binding agreement for supply with the Distributor, which has not been terminated and/or suspended at any time.
- 2.3 The Vendor shall inter alia, use such Data, to comply with its reporting obligations and pay to the Licensor such Data Charges, in accordance with the terms and conditions of this Agreement, and nothing in the Agreement shall be construed as granting any rights to use, store, reproduce, make available and redistribute the Data or reproduce excerpts of the Data in any way, including to End Customers, other than for the sole purpose of distributing the Data in accordance with the terms and conditions of the Agreement. The Vendor shall obtain the Licensor's express prior written consent for any usage which is not expressly covered in this Agreement.
- 2.4 The Vendor undertakes, inter alia, to:
  - a) prohibit re-distribution, (beyond such limited redistribution in accordance with the Policy Schedule) re-sale or sub-licensing by End Customers;
  - b) procure compliance with the Terms of Use in its contract with End Customers;
  - c) have in place sufficient Operational Controls;
  - d) advise the Licensor as soon as possible if it becomes aware of any breach of such prohibitions by an End Customer;
  - e) to enforce its own agreement with the End Customer as soon as possible, on request by the Licensor, in the event the Licensor becomes aware of re-distribution (beyond such limited redistribution in accordance with the Policy Schedule), re-sale or sublicensing by an End Customer without the Licensor's consent; and

- f) communicate to End Customers any changes to the Licensor's MTS Data Policy Schedule as soon as reasonably practical after being duly notified of such changes by the Licensor.
- 2.5 For the avoidance of doubt, the Vendor shall not do anything with the Data, and has no rights in respect of the Data other than expressly granted in this Agreement. The Vendor shall obtain the Licensor's express prior written consent for any usage which is not expressly covered in this Agreement. For the avoidance of doubt, the Vendor, its Affiliates, Distributors and End-Customers are entitled to create Derived Data. Rights on the Derived Data are regulated by the Policy Schedule. In addition, End Customers are entitled to redistribute limited amounts of Data in accordance with the Policy Schedule.
- 2.6 The Vendor may provide the Data to its Affiliates and Service Facilitators provided the Vendor's Order Form includes permission by the Licensor for such. For the purposes of the Agreement, the Vendor shall be responsible for the payment of all applicable Data Charges associated with any such use by its Affiliates and shall procure that each of its Affiliates complies fully with Clauses 3, 4, 8.1, 10, 11, 12, 13, 14, 16, 17, 18 and 19 of these Terms as if it were the Vendor, such that the Vendor agrees it shall be liable for any breach by any of its Affiliates as if that breach had been committed by the Vendor itself. No more than once per calendar year the Licensor shall have the right to ask the Vendor to provide a list of its Affiliates receiving the Data. Licensor may then request the Vendor to suspend sublicensing one or more Affiliate.
- 2.7 The Vendor, its Affiliates and End-Customers, shall not use the Data for any illegal purpose or otherwise than in compliance with the applicable laws in the jurisdictions in which the Vendor operates. Further, the Vendor's use and commercialization of the Data shall at all times be subject to the MTS Data Policy Schedule and not do anything which may damage the reputation of the Licensor or the Data.
- 2.8 The Vendor shall take reasonable precautions to avoid that it, and its End Customers, shall not misrepresent any Data supplied to it under the Agreement.
- 2.9 The Licensor requires that the Vendor and/or its Affiliates seek pre-approval in writing (and such writing may include by email) from the Licensor prior to the connection and access to the Data by all End Customers via the Vendor (e.g. Real-Time Data and Reference Prices require Licensor's pre-approval), and/or prior to the inclusion of any Data (in whole or in part) by the Vendor in its suite of products and services offered to its End Customers. For the avoidance of doubt, the Licensor reserves the right to refuse the inclusion of the Data by the Vendor in any product or service including, but not limited to where the Licensor reasonably believes such inclusion would constitute distribution in a manner not in line with the MTS Data Policy Schedule.
- 2.10 In addition to the Licensor's rights under this Agreement, the Vendor further acknowledges that the Licensor has the right to require the Vendor to discontinue the supply of Data to any End Customer at Licensor's sole discretion. In such cases:

- a) the Licensor shall, where practicable to do so, provide ten (10) days' prior notice of any permanent discontinuance or of any temporary suspension of the Data via email to Vendor and to the End Customer concerned; and
  - b) such notice will state the relevant date of disconnection or temporary suspension or any period of discontinuance (if relevant) and any conditions relating to such disconnection, temporary suspension or period of discontinuance.
- 2.11 If any temporary suspension or discontinuance has been affected on an indefinite basis, the Licensor shall inform the Vendor as soon as any such restriction on the supply of the Data is lifted.

### 3. Supply of Data

- 3.1 The Licensor shall make the Data available to the Vendor, at the location advised by the Licensor in the Order Form by virtue of a data feed, unless the Vendor elects to receive the Data via a Distributor, where such supply shall be subject to the terms and conditions of the Subscription Agreement with the Distributor. Notwithstanding the Licensor's reasonable commercial endeavours, the Licensor does not warrant or represent the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Data nor that the supply of Data will be free of interruption and where any interruption occurs without error or omission on behalf of the Vendor, the sole remedy (if any) is provided herein.
- 3.2 Subject to Clause 3.1, where there is interruption to the supply of the Data other than via Distributor, the Licensor shall use reasonable endeavours to;
- a) give the Vendor appropriate notice of any interruption in situations where the Licensor is aware of a scheduled interruption;
  - b) where possible, to give an estimate of the period of time it shall take to remedy the interruption; and
  - c) remedy such interruption as soon as is reasonably practicable after the Licensor has become aware of such interruption.
- 3.3 Licensor reserves any right to determine the form and contents of the Data and, in particular, to modify and supplement from time to time the technical, functional, administrative and operative methods of supply of the Data, wherever necessary for complying with provisions of law or due to a change in the organisation of the MTS Markets or modifications or supplements to the technical specifications. The Licensor shall communicate to the Vendor its decision to proceed with such modifications or supplements with written notice of at least ninety (90) days where possible, unless such modifications or supplements are a consequence of the compliance with provisions of law or regulation. In the event of modifications or supplements pursuant to this article 3.3, the Vendor shall have the right to withdraw from the Agreement by providing written notice to the Licensor within and no later than the thirty (30) days following receipt of any such notice from Licensor.



- 3.4 Any interruption to the supply of the Real-Time Data will lead to a corresponding reduction in Data Charges only if the interruption lasts for longer than one (1) trading day.

## 4. Term

- 4.1 The Agreement shall come into force on the Commencement Date and shall continue in force for the Minimum Term and will automatically renew thereafter for subsequent terms of twelve (12) months unless terminated in accordance with Clause 5.

## 5. Termination of Agreement

- 5.1 Either party may terminate this Agreement at any time, beyond the Minimum Term, by giving the other party at least three (3) months' written notice prior to the end of the then current twelve (12) month period that it wishes to do so.
- 5.2 Either party may terminate the Agreement forthwith by giving the other party written notice if that other party:
- a) is declared insolvent, or bankrupt or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party;
  - b) makes a UK voluntary arrangement with its creditors or becomes subject to an administration order;
  - c) has a receiver appointed over any of its property or assets, or an encumbrancer takes possession;
  - d) goes into liquidation or is voluntarily wound up; or
  - e) takes or is subject to any action similar to that specified in Clauses 5.2(a) to 5.2(d) in any jurisdiction.
- 5.3 Either party may terminate this Agreement and suspend its performance of all or any obligations under it immediately and without liability for compensation or damages if the other party fails to comply in all material respects with any of its express or implied obligations under this Agreement (including payment of Data Charges to the Licensor) and does not remedy such failure, if capable of remedy, within thirty (30) days of receiving notice from the Licensor requiring it to do so.
- 5.4 In addition to its rights hereunder, if the Vendor is in breach of any of the material terms of the Agreement, the Licensor has the right to suspend, immediately, the provision of any Data in whole or in part without penalty, including the right to require a Distributor to suspend the supply of Data to the Vendor (if the Vendor receives the Data via a Distributor), in accordance with the Subscription Agreement, until such breach or breaches are remedied and if not so remedied until termination of the Agreement. Prior to any suspension of the Data, Licensor will provide a

written notice to the Vendor indicating in good faith a reasonable cure period to be determined by Licensor.

- 5.5 Termination of this Agreement shall not release any party from any liability which at the time of termination has already accrued, nor affect in any way the survival of any other right, duty or obligation of the parties which expressly or by implication survives such termination.

Notwithstanding termination of this Agreement for any reason, the Vendor shall retain the Data for its administrative purposes.

## 6. Data Charges

- 6.1 The Vendor shall pay the applicable Data Charges shown in the Order Form (subject to any Free Trials in accordance with Clause 6.6), which may include annual Data Charges for a Vendor licence, payable monthly in arrears based on the latest report submitted to the Licensor. The amount to be invoiced shall be calculated based on the number of Accesses reported in the latest report and the Data Charges given in the Order Form. Adjustments, if any, will be made in the invoice for the following period.

- 6.2 Subject to Clause 6.3 and Clause 6.4, Data Charges in respect of End Customer usage are payable to the Licensor by the Vendor for Access, and are payable monthly in arrears. Subject to Clause 6.3, Data Charges shall be calculated as at the first business day of each calendar month. Each month MTS will invoice the Vendor the Data Charges based on the monthly reports submitted by the Vendor,

- 6.3 Where Operational Controls:

- a) restrict the number of Accesses which may; or
- b) monitor the number of Accesses which,

receive, or display the Data at any time, then Data Charges are payable in respect of the maximum number of Accesses which may (in the case of (a)), or do, (in the case of (b)), receive or display the Data during the month.

- 6.4 Where Data Charges for a Product are set out in the Order Form as being in respect of the number of Sites subscribed to by an End Customer, the Data Charges are payable by the End Customer for each Site (or on an Enterprise basis), monthly in arrears, and calculated as at the first business day of each calendar month.

- 6.5 All charges are subject to Value Added Tax at the rate prescribed by applicable law from time to time, and any other tax, duty or levy imposed by legislation.

- 6.6 The Licensor shall have the right to require that the Vendor provides a Free Trial in respect of any individual End Customer for any duration, provided such free trial does not result in Vendor incurring any costs or Data Charges. Should Vendor wish to offer a Free Trial to its potential End Customers, Vendor will require the prior written authorisation of Licensor, and such authorisation shall not be unreasonably withheld or delayed and if granted, shall not be longer than thirty (30) days.

- 6.7 All Data Charges are payable by the Vendor within 30 days of the date of the Licensor's invoice, and time of payment shall be of the essence. The Licensor may add interest on overdue payments at HSBC Bank plc base rate (as applicable from time to time) plus 3% (three per cent), calculated on a daily basis, such interest to be compounded at the end of each calendar month.
- 6.8 The Vendor shall indemnify the Licensor against any claims, actions or proceedings, brought by its Affiliates against the Licensor and any liability, costs or expenses (including any reasonable legal costs and any other reasonable expenses) included therewith.
- 6.9 The Vendor hereby agrees and acknowledges that nothing in this Agreement shall limit the right of the Distributor to receive fees in respect of the Subscription Agreement between the Vendor and the Distributor.
- 6.10 If an End Customer has an agreement with Licensor governing access to and/or use of Data, the End Customer shall be entitled to report and pay Licensor in accordance with such agreement. The Vendor and its Affiliates shall, for End Customers that do not submit reports or remit payments directly to Licensor, (i) report to Licensor the number of such End Customer's Accesses receiving Real Time Data based on declarations received from such End Customer and (ii) forward such End Customer's payments of Licensor's fees received by the Vendor to MTS.
- 6.11 Notwithstanding Clause 9, the Licensor reserves the right to adjust the basis of calculation of the Data Charges once every calendar year by giving to the Vendor not less than ninety (90) days' prior written notice, provided, however, that any such adjustment shall only take effect from the first subsequent month following the expiry of such notice period. If as a result of such adjustment, the Data Charges are to be increased by more than fifteen percent (15%), the Vendor may terminate this Agreement by giving the Licensor written notice within thirty (30) days of the date of the Licensor's notice referred to in this Clause 6.11. If such notice is received, this Agreement will terminate from the date such increase would have come into effect.
- 6.12 The Vendor shall be obliged to as soon as reasonably possible inform its End Customers of any changes under 6.11 that will have an impact on the amount the Vendor collects from its End Customers.

## 7. Notices

- 7.1 Any termination, adjustment, modification or amendment notices under these Terms shall be in writing and may be delivered by hand with receipt acknowledged, or by registered post or courier with signed evidence of receipt, or by email. Notices shall be deemed duly given upon the date of sending, unless such deemed receipt would occur on a Saturday or Sunday or on a public holiday within the country of the recipient party, in which case, deemed receipt shall occur on the next business day when banks are open for business in the country of the recipient party.

## 8. Assignment

- 8.1 Neither party may transfer any right or obligation under this Agreement without the other party's prior written consent, which should not be unreasonably withheld except that Licensor may upon written notice to the other party, transfer this Agreement or any rights granted hereunder, in whole or in part, to any of its affiliates or in connection with the reorganization, or the sale of a division, product or service or any other business transaction of a similar nature, in each case without the prior consent of the other party.

## 9. Variations

- 9.1 The Licensor may amend either:
- a) these Terms at any time on a minimum of sixty (60) days written notice; or
  - b) save for 6.11, any Schedule that forms part of this Agreement at any time on a minimum of thirty (30) days' written notice.

Subject to Clause 6.11, in the event that the Vendor considers any such amendment to be unfavorable, it may terminate this Agreement on the date the amendment comes into effect, provided it gives the Licensor notice in writing, such termination to be effective on the date the amendment in question is to come into effect.

- 9.2 Except as provided in Clause 9.1, this Agreement may only be amended in writing by duly authorised representatives of the parties.

## 10. Waiver and Entire Agreement

- 10.1 Failure by a party to exercise any right or remedy under this Agreement will not constitute a waiver of that party's rights or remedies.
- 10.2 This Agreement is the parties' entire understanding of the contract between them with respect to the subject matter and supersedes all prior agreements, representations and proposals, oral or written.
- 10.3 Each party confirms that:
- a) in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, no party shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement; and
  - b) in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement, or any document referred to in it.

## 11. Intellectual Property Rights

- 11.1 Pursuant to Clause 11.5 below, the Vendor agrees that the copyright, database rights or other Intellectual Property Rights of whatever nature contained or subsisting in the Products and the Data shall remain the property of the Licensor (and/or any of its licensors, as applicable).
- 11.2 Where the Vendor reproduces excerpts from the Data (strictly in accordance with Clause 2), it shall use all reasonable efforts to attribute the source of the Data to the Licensor where technically feasible. Any reference to any trade or service mark of the Licensor by the Vendor in documents shall acknowledge the rights of the Licensor as applicable.
- 11.3 Nothing in this Agreement shall be construed as transferring, granting or conferring (either directly or indirectly, other than as explicitly transferred, granted or conferred hereunder), to the Vendor or any End Customer any right, title or agreement of use in respect of any Intellectual Property Rights contained or subsisting in the Data.
- 11.4 The Vendor shall use all reasonable efforts to ensure, when re-distributing the Data, that the Data is always identified as being from the Licensor where technically feasible and commercially reasonable.
- 11.5 The Licensor represents and warrants that:
- a) it owns or has the right to licence the Intellectual Property Rights contained or subsisting in any Data;
  - b) it has the legal right and full power and authority to execute and perform its obligations under this Agreement including the right to supply the Data to the Vendor for the purposes specified in this Agreement;
  - c) this Agreement constitutes a valid and binding Agreement enforceable against the Licensor in accordance with its terms; and
  - d) the Data and its use by the Vendor as specified in this Agreement shall not infringe any Intellectual Property Rights of any third party.
- 11.6 This Clause 11 survives termination of the Agreement.

## 12. Liability

- 12.1 Subject to Clause 12.4 below, Licensor shall not be liable to Vendor for any:
- a) indirect, special or consequential loss or incidental damage;
  - b) loss of profit;
  - c) loss of business or business opportunity;
  - d) loss of revenue;
  - e) loss of anticipated savings;

- f) wasted expenditure;
  - g) loss of good will; or
  - h) loss or corruption of data.
- 12.2 Subject to Clause 12.4 below, the total liability of the Licensor under or in connection with this Agreement whether arising in contract, tort (including negligence), breach of statutory duty or misrepresentation, shall, in respect of any one claim or series of incidents attributable to the same claim, be limited to the Data Charges paid by the Vendor to the Licensor in the twelve (12) months prior to the event giving rise claim.
- 12.3 The Vendor acknowledges that in using the Data it relies solely on its own skill, knowledge and judgment.
- 12.4 Nothing herein shall be deemed to limit or exclude either party's liability for (i) death or personal injury caused by negligence, (ii) fraud or fraudulent misrepresentation, or (iii) any other liability that cannot be excluded or limited under applicable law.

## 13. Force Majeure

- 13.1 Neither party shall be liable to the other for any delay or failure to fulfill any obligation under this Agreement (except for Vendor's payment obligations) to the extent such delay or failure was due to a Force Majeure Event.
- 13.2 Either party may terminate this Agreement on notice in writing to the other if due to a Force Majeure Event a party is unable to fulfil its obligations, under this Agreement for more than ninety (90) calendar days. Neither party shall have any liability to the other in respect of termination of this Agreement as a result of such a Force Majeure Event.

## 14. Reporting Statements

- 14.1 Vendors shall provide the Licensor with a consolidated statement (the "**Statement**") in accordance with the Reporting Schedule, within thirty (30) days of the end of each calendar month.
- 14.2 The Vendor shall be under an obligation to notify the Licensor if it has evidence or reasonable cause to believe that any declarations made by an End Customer in relation to the Data Charges pursuant to Clause 6.2 are incomplete, inaccurate or out of date. Any such notification shall be made to the Licensor at the same time that any Statement is provided by the Vendor to the Licensor.
- 14.3 For the purposes of this Clause 14, the Vendor shall ensure that, in respect of each End Customer who receives the Data, the End Customer:
- a) provides, where relevant, to the Vendor a complete and accurate declaration in the form of an honesty statement or similar as to the number of Accesses

that receive the Data at each or any of the locations designated by it to receive such Data (for example if receiving Data via a data-feed),

- b) provides a complete and accurate declaration of each Site that receives the Data in case the Data usage is charged per Site; and
  - c) provides, without any delay, any and all relevant information required to meet the requirements of the Licensor in respect of the provision by it of the Data under the terms of the Agreement.
- 14.4 Without prejudice of Section 15 below and in accordance with 14.3(a) above, the Vendor, except in situations where the Vendor has reasons to believe there are inaccuracies or omissions, may for the purposes of submitting the report to Licensor, rely on the declarations received from the End Customers.
- 14.5 Any request by the Vendor for repayment of overpaid Data Charges based on an inaccurate Statement provided by the Vendor must be made within six (6) months of the end of the month to which the inaccurate Statement relates. The Vendor shall not be entitled to repayment of any such overpaid Data Charges requested after this period.
- 14.6 The Vendor shall not have any reporting or payment obligations in respect of (i) Data used internally by the Vendor and its Affiliates for the following purposes: quality control, monitoring, testing, development, demonstration, marketing, customer service, creation and updating of corporate events or other descriptive databases, or reference to the Data and reporting on the Data as part of its print, broadcasting, and multimedia newsgathering operations (not to include broadcast of the Data and only to include infrequent, small and ad hoc amount of Real Time Data), (ii) Data used by existing End Customers for a limited period of time during seminars or conferences in which such End Customer participate and (iii) Data used by Vendor third parties strictly for development purposes.

## 15. Verification

- 15.1 The Vendor shall allow the Licensor and their agents and employees once per calendar year at all reasonable times during normal business hours, on reasonable advance notice to have access to, and to audit its Operational Controls, products and services, its accounts, records and other documents relating to, among others, the calculation of the number of Accesses (or Sites where relevant) and resultant Data Charges for the preceding thirty six (36) month period (in both hard copy and machine readable form), and permit the Licensor to take copies or extracts and on reasonable demand to supply copies to the Licensor all for the purpose of that Licensor verifying the accuracy of the Statements (such rights for the Licensor, "Audit Rights"). Further, the Vendor shall procure from End Customers, substantially similar Audits Rights in favour of the Licensor.
- 15.2 If the Licensor's investigation in terms of Clause 15.1 discloses that the Data Charges paid by the Vendor over the period being investigated were more than 10% inaccurate, the reasonable cost of the Licensor's investigation shall be reimbursed by the Vendor. In any case where the Licensor's investigation discloses

that any of the Vendor's Statements were inaccurate by understatement the Vendor shall pay an amount equal to the difference between the amount which should have been previously paid to the Licensor if such Statement had been accurate and the amount actually paid to the Licensor plus interest at a like rate and in a like manner to that specified in Clause 6.7. Interest shall run from a date 30 days after the day on which each relevant Statement was due. The Licensor shall repay any overpayments by the Vendor by way of off-setting against future invoices.

- 15.3 Notwithstanding Clause 15.2, the Licensor reserves the right to charge the Vendor reasonable costs in conducting a verification visit or exercising Audit Rights if either (i) a previous verification visit has revealed defects in the Operational Controls or failure by the Vendor to correctly report under Clause 14 or any other failure to comply with this agreement or (ii) the Licensor on reasonable grounds suspects that such defects are occurring or have occurred.
- 15.4 The Licensor's Audit Rights (whether exercised at the site of the Vendor or End Customer) shall at all times be exercised in accordance with the information industry best practices. In particular, they shall represent minimum disruption of Vendor or End Customer's business operations and shall comply with the Vendor's (or End Customer's, as appropriate) security, health & safety and confidentiality requirements.

## 16. Severability

- 16.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

## 17. Confidentiality

- 17.1 The parties shall keep confidential all information relating to this Agreement unless such information has become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or disclosure is made in confidence to their professional advisers. This Clause 17.1 survives termination of this Agreement.

## 18. Rights of Third Parties

- 18.1 With the exception of the rights of the Affiliates to enforce the terms contained in Clause 2 of this Agreement, no term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.
- 18.2 The parties to this Agreement may by written agreement rescind or vary any term of this Agreement without the consent of any third party (which, for the avoidance of doubt, includes the Affiliates).



## 19. Choice of Law

19.1 This Agreement shall be governed by, and construed in all respects in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

## 20. Order of Precedence

Where there is a conflict between any of: i) these Terms; ii) the Schedules; and iii) the Order Form, the prevailing terms shall be those contained in the following documents in prevailing order:

- a) The Order Form;
- b) The Terms;
- c) The Schedules.



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