



**DATA LICENCE AGREEMENT**  
**for**  
**Trading Members**  
**(TMA)**

**TERMS AND CONDITIONS**

Version  
December 2008

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## TERMS AND CONDITIONS

### WHEREAS:

- A. NYSE Euronext makes available Data Products and licenses the use of Data (as defined below and described in this Agreement).
- B. The Member wishes that the Member, each Member Group Company and their respective Service Facilitators shall receive and use Data in accordance with this Agreement.
- C. NYSE Euronext agrees to allow the Member, each Member Group Company and their respective Service Facilitators to receive and use Data, in accordance with the terms and conditions set out in this Agreement.

### 1. Definitions

- 1.1 The following terms when used in this Agreement shall have the meanings set out below:

**Agreement:** These TMA Terms and Conditions, the Application Form and any Schedules published by NYSE Euronext specifically referring to this Agreement.

**Application Form:** Any TMA Application Form applicable to receipt and use of Data by the Member or any Member Group Company, as completed by the Member and agreed in writing by the Member and NYSE Euronext. The Application Form is part of this Agreement.

**Authorised Distributor:** In respect of any Data, means a Recipient who is authorised by NYSE Euronext, under a written agreement with NYSE Euronext, to act as a Distributor in respect of that Data.

**Commencement Date:** The commencement date specified in the Application Form.

**Confidential Information:** Any and all information which is or at any time comes into the possession of the receiving party and which relates to the general business affairs or Intellectual Property Rights of the disclosing party, including without limitation source codes, object codes, data, databases, know how, formulae, processes, designs, drawings, technical specifications, technical modifications, samples, applications, manuals, methods, finances, lists or details of customers, lists or details of employees, marketing or sales information of any past, present or future product or service, pricing lists and any other material bearing or incorporating any information relating to the general business affairs or Intellectual Property Rights of the disclosing party, whether written in any form or medium or oral and whether furnished by the disclosing party to the receiving party or indirectly learned by the receiving party.

**Control:** In respect of a company, means the ownership of 100% (one hundred per cent) of the voting shares in that company or in any company that Controls that company.

**Data:** Any Data Product or any data forming part or all of any Data Product, consisting of NYSE Euronext data or data licensed to NYSE Euronext by a Data Provider (or both), but not including New Original Works.

**Data Product:** A specific product, made available by NYSE Euronext for use subject to this Agreement, as listed in the Application Form or the relevant Schedules or in notices published by NYSE Euronext from time to time.

**Data Provider:** Any third party source of Data or any other component of any Data Product which NYSE Euronext makes available under this Agreement, whether such Data is disseminated or component provided directly by NYSE Euronext, by its originator or by a third party.

**Distributor:** In respect of any Data, means a Recipient who distributes that Data to any Person other than other members of that Recipient's Group, unless that distribution consists solely of: (a) the communication by the Recipient of Data communicated to it by the Member in accordance with clause 9.6 and/or (b) the Public Display of Data in accordance with the terms of this Agreement (including any applicable Schedules).

**Euronext Market Undertaking:** Has the meaning given in the Trading Platform Agreement.

**Fees and Charges:** The fees and charges specified by NYSE Euronext in the Fees and Charges Schedule and any other Schedules, as amended from time to time in accordance with this Agreement.

**Fees and Charges Schedule:** The Schedule of TMA Fees and Charges as published by NYSE Euronext from time to time and amended in accordance with this Agreement.

**Guidelines and Policies:** The TMA Guidelines and Policies as published by NYSE Euronext from time to time and amended in accordance with this Agreement. These Guidelines and Policies include information on operational and reporting matters and are supplementary to the terms of this Agreement. Guidelines and Policies are published on NYSE Euronext's official website ([www.nyxdata.com](http://www.nyxdata.com)), or such other websites as NYSE Euronext may specify from time to time.

**Index (Indices):** Numerical representation(s) of the value or volatility of a financial market or market sector, calculated from time to time on a standard basis in order to reflect movements in the underlying component data.

**Intellectual Property Rights:** Patents, trademarks, service marks, copyrights, database rights, rights in computer software, topography rights, industrial designs, know-how, trade secrets, trade names, logos, designs, symbols, emblems, insignia, slogans, drawings, plans and other identifying materials, in any form whatsoever, irrespective of whether or not registered or capable of registration and any similar rights in any jurisdiction.

**Market:** Has the meaning given in the Trading Platform Agreement.

**Market Member:** Has the meaning given in the Trading Platform Agreement.

**Member:** The Person set out in Table 1 of the Application Form.

**Member Group Company:** (i) Any company that Controls, is Controlled by or is under common Control with, the Member, together with (ii) any other affiliated company of the Member that NYSE Euronext, in its sole discretion, agrees may be included as a Member Group Company, in each case of (i) and (ii) as listed in the Application Form.

**Member Service:** Any service or functionality provided by the Member or a Member Group Company which includes the provision of or which enables access to or use of Data in any form.

**New Original Work:** Any work or product, created by the Member, any Member Group Company or any Service Facilitator from or using Data, with or without other data, and (i) upon the display of which the Data processed can no longer be identified; and (ii) which cannot be used as a substitute for or facsimile of Data; and (iii) where the Data processed cannot be re-engineered by an automated process. New Original Works may include, for instance, indices, quotes, VWAP's, portfolio evaluation services and analytic reference figures, provided that the requirements of (i) to (iii) above in this definition are all met. The processing of Data by software (e.g. Microsoft Excel) which merely enables calculations and/or individualized displays of Data to be created for use by Users in support of their use of Data shall not constitute creation of a New Original Work. NYSE Euronext reserves the right to determine whether any item of processed Data constitutes a New Original Work.

**Non-professional Subscriber:** Any Subscriber who is a natural person and is authorised in accordance with this Agreement to use Data solely for the purpose of managing the Subscriber's own personal investments and not for any business purpose, nor for the purpose of giving any form of advice to any other person.

**Non-Real-Time Data:** Data that is not Real-Time Data.

**NYSE Euronext:** Euronext N.V., a public limited liability company, incorporated under the laws of the Netherlands, having its registered office and principal place of business at Beursplein 5, 1012 JW Amsterdam, the Netherlands.

**NYSE Euronext Group Company:** Any partnership or joint venture of which NYSE Euronext is a part, or any subsidiary, parent, subsidiary of a parent (in each case, direct or indirect) or affiliated corporation of NYSE Euronext, including but not limited to each Euronext Market Undertaking, NYSE Euronext Inc, New York Stock Exchange LLC, Euronext, NYSE Arca, Liffe, NYSE Liffe, NYSE Euronext Advanced Trading Solutions and NYSE Euronext Technology, and any entity carrying on business under any of the foregoing names (or any derivative form of any of those names).

**Operational Controls:** The systems, rules, procedures, authorisations and policies which, taken together and to the satisfaction of NYSE Euronext, are sufficient to:

- 1) record and identify all authorised access to Data;
- 2) identify and record any unauthorised access to or distribution of Data;

- 3) prevent, to the extent technically possible, any unauthorised access to or distribution of Data;
- 4) enable the Member to meet all reporting requirements under this Agreement, including under the Guidelines and Policies; and
- 5) enable NYSE Euronext to bill Fees and Charges.

**Public Display:** Has the meaning given in the 'Public Display of Data' Schedule (and **Publicly Display** shall be construed accordingly).

**Professional Subscriber:** Any Subscriber, other than a Non-professional Subscriber.

**Person:** A natural person, legal entity, or other proprietorship, corporation, partnership or organisation not recognised as a legal entity.

**Real-time Data:** Data that is less than fifteen (15) minutes old (its age being measured from the time of its original dissemination by NYSE Euronext to any Person, irrespective of when it was first accessed or used by the Member or any Member Group Company).

**Recipient:** In respect of any Data, means a Person, other than a Member Group Company or a Service Facilitator, who receives that Data directly or indirectly from the Member or from a Member Group Company (including via a Member Service).

**Recipient's Group:** A Recipient and any company Controlled by that Recipient.

**Rules:** The rules and regulations made from time to time by a Euronext Market Undertaking in respect of a Market operated by the Euronext Market Undertaking, including policies and procedures made under those rules and regulations.

**Schedule:** Any schedule or document identified by NYSE Euronext as applicable to receipt and use of Data by the Member, any Member Group Company or any Service Facilitator, and forming part of this Agreement.

**Service Facilitator:** A Person authorised by NYSE Euronext in accordance with clause 4.1 to receive Data from the Member or any Member Group Company for the sole purpose of facilitating use of Data by the Member or any Member Group Company (as applicable) in accordance with the applicable Schedule(s).

**Subscriber:** In respect of any Data, means a Recipient in respect of that Data, other than:  
(a) a Recipient who receives or uses that Data solely as described in clauses 9.4 to 9.6; or  
(b) a Recipient who acts solely as an Authorised Distributor in respect of that Data.

**Subscriber Agreement:** A legally valid agreement governing a Subscriber's and other members of the Subscriber's Group's use of Data in accordance with this Agreement.

**Subscriber's Group:** A Subscriber and any company Controlled by that Subscriber.

**Technical Specifications:** The technical specifications published by or available from NYSE Euronext in relation to Data Products, as amended from time to time in accordance with this Agreement.

**Trading Platform Agreement:** The Agreement constituted by the two documents entitled “NYSE Euronext Trading Platform Agreement Order Form” and “NYSE Euronext Trading Platform Agreement Terms and Conditions”.

**Unit of Count (Unit):** A unit of count accepted by NYSE Euronext for the purposes of this Agreement, as described in the Application Form or relevant Schedule.

**User:** Has the meaning given in the Reporting Requirements Schedule.

**Website:** A public internet site determined by NYSE Euronext to be a single website for the purposes of this Agreement.

Other capitalised terms shall have the meanings given to them in the TMA Application Form and Schedules forming part of this Agreement.

## 2. Interpretations

- 2.1 In this Agreement (except where the context otherwise requires):
- a) References to the words “includes” or “including” shall be construed without limitation to the generality of preceding words;
  - b) Words or phrases importing the singular include the plural and vice versa; and
  - c) The headings in this Agreement are for convenience of reference only, do not form a part of this Agreement and do not in any way modify, interpret or construe the intentions of the Parties.
  - d) A reference to a day, month or year includes any part of a day, month or year falling within the term of this Agreement.
- 2.2 This Agreement shall be interpreted and its terms shall be applied in accordance with the applicable Schedule(s) and Guidelines and Policies.
- 2.3 In the event of any conflict between these TMA Terms and Conditions and the Schedules, the Schedules shall prevail with respect to the specific conflict.
- 2.4 In the event of any conflict between this Agreement and the Trading Platform Agreement, this Agreement shall prevail with respect to the specific conflict.
- 2.5 Any provision of this Agreement that is expressed to confer an obligation on any Member Group Company, Recipient, Subscriber, Authorised Distributor or Service Facilitator shall be construed as an obligation of the Member to ensure that the Member Group Company, Recipient, Subscriber, Authorised Distributor or Service Facilitator performs that obligation.

## 3. Scope of Agreement

- 3.1 NYSE Euronext grants to the Member a non-exclusive and non-transferable (subject to clause 17.2) licence for the Member, each Member Group Company and their respective Service Facilitators to receive and use Data, subject to the terms and conditions of this Agreement.

- 3.2 The Member shall comply with the terms and conditions of this Agreement and the Guidelines and Policies and shall procure the compliance of each Member Group Company and each Service Facilitator with the terms and conditions of this Agreement and the Guidelines and Policies. The Member agrees to pay all applicable Fees and Charges and unconditionally guarantees and accepts full responsibility for compliance or non-compliance with this Agreement by each Member Group Company and each Service Facilitator.
- 3.3 No part of this Agreement will create or be deemed to create a partnership or agency relationship between the Parties.
- 3.4 For the purposes of this Agreement, use by the Member, any Member Group Company or any Service Facilitator will include use by any officer or employee of the Member, Member Group Company or Service Facilitator (as applicable) and may, at NYSE Euronext's discretion, include use by any natural person acting as consultant, contractor or adviser on behalf of, at the premises of and under the control of the Member, Member Group Company or Service Facilitator (as applicable). For the avoidance of doubt, nothing in this clause 3.4 shall represent written approval from NYSE Euronext for any Person to use Data on the premises of the Member or any Member Group Company or any Service Facilitator.

#### **4. Service Facilitators**

- 4.1 A Service Facilitator may be appointed only with the prior written approval of NYSE Euronext and subject to completion of an Application Form identifying the relevant third parties and their function(s). NYSE Euronext reserves the right to provide or withhold permission for any third party to act as a Service Facilitator and to apply such additional terms in respect of any Service Facilitator as NYSE Euronext deems appropriate.
- 4.2 Service Facilitators shall not be entitled under this Agreement to use Data except for the functions specified in the Application Form and shall be required to sign a separate agreement with NYSE Euronext if they wish to use the Data outside the scope of this Agreement or redistribute Data to any third party other than in the course of providing a Member Service. Any reference in this Agreement to a Service Facilitator is to a Service Facilitator acting as such, and not in any other capacity.
- 4.3 NYSE Euronext reserves the right to withdraw its approval of any Service Facilitator and/or to require any Service Facilitator to enter into a separate agreement with NYSE Euronext.
- 4.4 The Member shall keep Service Facilitators informed about the obligations in this Agreement, and the specific obligations that apply to Service Facilitators.

#### **5. Intellectual Property Rights**

- 5.1 The Member acknowledges the Intellectual Property Rights of NYSE Euronext and the Data Providers in the Data and in the formats in which Data is transmitted. The Member acknowledges and agrees that its receipt, use and distribution of Data shall not affect the Intellectual Property Rights of NYSE Euronext or any Data Provider.

- 5.2 No Intellectual Property Rights shall be transferred from NYSE Euronext to the Member, any Member Group Company or any Service Facilitator as a result of this Agreement. No licence or other right in respect of any Intellectual Property Rights is granted under this Agreement to the Member, any Member Group Company or any Service Facilitator except as expressly provided in this Agreement.
- 5.3 The Member shall, and shall procure that each Member Group Company and each Service Facilitator shall, at NYSE Euronext's request and expense, take all reasonable efforts, such as execution of deeds or co-operation in litigation both during and until two (2) years after the term of this Agreement, as are necessary, over and above their obligations under this Agreement, for the protection and enforcement of the Intellectual Property Rights of NYSE Euronext and the Data Providers.
- 5.4 The Member shall not, and shall procure that no Member Group Company and no Service Facilitator shall, use, market or license any trademarks or Indices made available under this Agreement for any commercial purpose, other than display as Data, without the prior written permission of NYSE Euronext, which may be subject to a separate licence agreement. The Member shall not, and shall procure that no Member Group Company and no Service Facilitator shall, use or register any trademark which is identical or similar to any trademark, whether registered or unregistered, of NYSE Euronext, its subsidiaries or affiliates or any Data Provider.

## **6. Changes to Data**

- 6.1 NYSE Euronext or its Data Providers, as the case may be, shall be free to decide what Data is or is not available depending on technical or operational requirements. NYSE Euronext shall use reasonable efforts to provide advance notice of changes to Data in accordance with industry best practice and to give the Member at least one hundred and twenty (120) days' notice before NYSE Euronext makes any material changes in the speed, signal characteristics or operational requirements described in Technical Specifications, unless a malfunction, emergency or regulatory requirement precludes such notice. For the purpose of this clause a material change shall be any change that would normally require the Member or any Member Group Company to replace or significantly modify the systems required to receive, use or distribute the Data. The Member shall bear the responsibility and expense of making any resultant changes to such systems or to any Member Service.
- 6.2 If any addition or deletion of Data or change in the relevant Technical Specifications by NYSE Euronext or any Data Provider significantly alters the nature of the Data or reduces its quality, or requires uneconomic modifications to the systems of the Member or any Member Group Company, the Member may terminate this Agreement without liability by written notice, with respect to the Data affected by the alteration or deletion. Any such termination shall take effect no later than thirty (30) days after the date of the addition, deletion or change.

## **7. Member's Receipt of Data**

- 7.1 The Member is licensed to receive Data directly from NYSE Euronext or any Data Provider as specified by NYSE Euronext in any Schedule or from any third party

supplier(s) of Data authorised by NYSE Euronext to supply that Data to the Member. The Member must notify NYSE Euronext promptly in writing of any changes in the information specified in the Application Form about the supplier(s) of Data to the Member.

- 7.2 Where the Member, any Member Group Company or any Service Facilitator receives Data directly from NYSE Euronext, the Member shall be responsible, at the Member's own expense, for the installation of telecommunication lines, equipment and software in accordance with specifications published by NYSE Euronext from time to time as necessary to enable the receipt and use of the Data and the Member shall meet the operating and maintenance costs of all such lines, equipment and software. The Member shall comply with any regulations, conditions or restrictions laid down by any of NYSE Euronext's telecommunications providers.
- 7.3 Where the Member, any Member Group Company or any Service Facilitator receives Data from any third party supplier, the Member and the third party shall be responsible for the installation, operation and maintenance of telecommunication lines, equipment and software and other arrangements necessary for the receipt of the Data from the third party and the use of the Data. NYSE Euronext is not responsible for and makes no representations or warranties regarding any services the Member, any Member Group Company or any Service Facilitator obtains from any third party. NYSE Euronext reserves the right to suspend or terminate the distribution rights of any third party supplying the Member, Member Group Company or Service Facilitator without prior notice to the Member, or to any other recipient of Data from the third party.
- 7.4 Each Party shall (and, in the case of the Member, the Member shall procure that each Member Group Company and each Service Facilitator shall) comply with all regulations, conditions or restrictions laid down from time to time by any statute and/or regulatory authority in connection with the access to, use, storage and transmission of and dealing with Data (for example health and safety regulations).
- 7.5 The Member is responsible for making separate arrangements for use of any services, equipment and facilities necessary to enable the Member to receive, use and distribute Data, including without limitation Market Connectivity Services (as that term is defined in the Trading Platform Agreement).

## **8. Use of Data**

- 8.1 The Member, each Member Group Company and their respective Service Facilitators may use Data and allow third parties to use Data only as permitted by this Agreement and in accordance with the Schedules and the applicable Application Form. Any other use is not permitted under this Agreement without the prior permission of NYSE Euronext, which may require an updated Application Form or a separate agreement between NYSE Euronext and the Member.
- 8.2 All changes relating to the use of Data as described in the Application Form and any use of Data not described in the Application Form are subject to the prior approval of NYSE Euronext and may require the submission and approval of an updated Application Form, an additional Schedule and/or a separate agreement with NYSE Euronext.

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- 8.3 The Member, each Member Group Company and their respective Service Facilitators may store, extract, verify, arrange, re-arrange and adapt Data, and create New Original Works from or using Data, subject to the other terms and conditions of this Agreement (including the Schedules).
- 8.4 The Member, each Member Group Company and their respective Service Facilitators may provide Member Services provided that they shall not misrepresent any Data or use, display or distribute any Data or act in any way that, as determined by NYSE Euronext at NYSE Euronext's sole discretion, (i) creates a false or misleading impression as to the origin or value of any item of Data, (ii) misleads investors, (iii) adversely affects the operation of financial markets to which the Data relates, or (iv) results in the association of Data or NYSE Euronext with pornography, racism, religious hatred, incitement to violence or other activities that in NYSE Euronext's view may be damaging to the commercial reputation of NYSE Euronext or of any Data Provider.
- 8.5 In all uses involving display of Data, the Member, each Member Group Company and their respective Service Facilitators shall:
- a) credit, wherever technically feasible, NYSE Euronext and/or any Data Provider specified by NYSE Euronext as the source(s) of the Data;
  - b) display, wherever technically feasible, the trademarks of NYSE Euronext and/or any Data Provider in respect of the Data;
  - c) ensure, wherever technically feasible, that Non-Real-Time Data is clearly labelled as such and that the time of original dissemination, or the period of time that has elapsed since the time of original dissemination, is noted in all Member Services incorporating Non-Real-Time Data; and
  - d) comply with any other reasonable display or dissemination requirements specified by NYSE Euronext from time to time.
- 8.6 The Member and each Member Group Company may use Data to create New Original Works for the purposes of portfolio valuation, funds administration, trade confirmation and settlement, and may distribute such New Original Works to third parties, provided that any such New Original Works cannot be used by the Member, any Member Group Company, any Service Facilitator or any third party for purposes of price discovery or as the basis for trading any tradable instrument.
- 8.7 Where specified in the Application Form, the Member, each Member Group Company and their respective Service Facilitators may create Indices from Data. NYSE Euronext reserves the right to introduce Fees and Charges or require the Member to enter into an additional agreement for the right to create Indices from Data.
- 8.8 Where specified in the Application Form, the Member, each Member Group Company and their respective Service Facilitators may use Data in automated trading applications for the purpose of price discovery or generating orders, or use Data as described in "Other use" as specified in the Application Form. NYSE Euronext reserves the right to approve any use of Data not expressly permitted by this Agreement, to withhold or withdraw such approval and to introduce Fees and Charges or require the Member to enter into additional agreements for any such use of Data.

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- 8.9 The Member shall not, and shall procure that each Member Group Company and each Service Facilitator shall not, use any Data for any illegal purpose.
- 8.10 The Member shall, and shall procure that each Member Group Company and each Service Facilitator shall, cease any use or distribution of Data as soon as possible upon receipt of written direction of NYSE Euronext or on any date specified by a written direction of NYSE Euronext, where NYSE Euronext has reasonable cause to suspect unauthorised distribution or use of any Data. This obligation survives termination of this Agreement.
- 8.11 The Member shall, and shall procure that each Member Group Company and each Service Facilitator shall, take all reasonable precautions, including the maintenance of security systems and data access control procedures, to prevent unauthorised access to or distribution of any Data.
- 8.12 The Member shall, and shall procure that each Member Group Company and each Service Facilitator shall, at all times maintain Operational Controls in relation to Real-Time Data, except as expressly provided otherwise in this Agreement. The Member shall promptly report to NYSE Euronext any unlicensed use or distribution of Data of which the Member is aware.
- 8.13 The Member shall ensure that it is at all times able to demonstrate the effectiveness of the Operational Controls maintained under clause 8.12, and shall demonstrate their effectiveness promptly upon request by NYSE Euronext. The Member shall notify NYSE Euronext immediately if it knows or has reason to suspect any temporary or permanent deficiency in the Operational Controls.
- 8.14 At the request and expense of NYSE Euronext, the Member shall, and shall ensure that each Member Group Company and each Service Facilitator shall, cooperate with and assist NYSE Euronext in any action or proceeding necessary to prevent any unauthorised receipt or use of any Data by any third party.
- 8.15 The Member is responsible for ensuring that all use of Data by the Member, each Member Group Company and each Service Facilitator complies with applicable laws and regulations. The Member shall promptly bring to the attention of NYSE Euronext any condition of this Agreement that may conflict with applicable laws or regulations.
- 8.16 In the event of termination of this Agreement for any reason, the Member, each Member Group Company and each Service Facilitator may keep the Data received during the term of this Agreement and continue using it in its Member Services and databases, subject to the limitations of this Agreement applicable during the term of this Agreement.

## **9. Distribution of Data outside Member's Group**

- 9.1 Where specified in the Application Form, the Member and each Member Group Company may distribute Data, subject to the terms and conditions of this Agreement. The Member shall be liable for any unauthorised use or distribution of Data by any Recipient.

- 9.2 The Member shall not allow any Recipient or prospective Recipient to act as a Distributor in respect of any Data unless NYSE Euronext has confirmed, in writing, that that Recipient or prospective Recipient is an Authorised Distributor in respect of that Data.
- 9.3 The Member shall procure the compliance of each Recipient with the Guidelines and Policies and unconditionally guarantees and accepts full responsibility for compliance or non-compliance with the Guidelines and Policies by each Recipient.
- 9.4 Where specified in the Application Form, the Member, each Member Group Company and their respective Service Facilitators may distribute Non-Real-Time Data (including via a publicly accessible Website), and may Publicly Display Data, without requiring the Recipient to apply Operational Controls, provided that each Recipient of such Data is notified that:
- (a) NYSE Euronext and/or Data Providers reserve all Intellectual Property Rights in the Data;
  - (b) NYSE Euronext and/or Data Providers accept no liability for the display of the Data or any losses or claims arising from use of the Data;
  - (c) the Data is for the personal non-commercial use of the Recipient;
  - (d) the Data may not be redistributed by the Recipient to any third party without the prior written permission of NYSE Euronext, unless the Data consists solely of Data communicated to the Recipient in accordance with clause 9.6;
  - (e) the Recipient has no right to process the Data, with or without other data, for the purpose of creating any Index, or to license any third party to create any Index, without the prior written permission of NYSE Euronext; and
  - (f) NYSE Euronext may suspend or terminate receipt of Data by the Recipient if NYSE Euronext has reason to believe the Data is being misused or misrepresented.
- 9.5 The Member, each Member Group Company and their respective Service Facilitators shall, on any publicly accessible Website page on which they display Non-Real-Time Data or Publicly Display Data, incorporate or include a prominent link to a statement that access to Data is subject to the conditions specified in clause 9.4 (which conditions shall be reproduced, in full, within that statement).
- 9.6 Subject to clause 9.7, the Member, each Member Group Company and their respective Service Facilitators are permitted to provide incidental limited extracts of Data on an occasional basis in written or oral communications with third parties, provided that these communications do not involve the regular or systematic distribution, display or processing of Data.
- 9.7 NYSE Euronext shall be entitled to determine, in its sole discretion, whether any provision of Data satisfies the requirements set out in clause 9.6. The requirements of clause 8.12 in relation to Operational Controls shall not apply to the provision of Data in accordance with clause 9.6 only.

## **10. Subscriber Use of Data**

- 10.1 The Member is responsible for ensuring that all Subscribers execute Subscriber Agreements. The use of Data by any such Subscriber without a Subscriber Agreement, or

under a Subscriber Agreement that is void or unenforceable for any reason, shall constitute unauthorised use of Data.

- 10.2 Nothing in this Agreement shall prevent the Member from entering into an agreement with any Recipient who is not a Subscriber for the provision of Data to that Recipient, provided that NYSE Euronext shall not be a party to any such agreement and no such agreement shall impose any liability or obligation of any kind on NYSE Euronext.
- 10.3 A Non-professional Subscriber may not:
- a) contract for, receive or use Data on behalf of any other Person;
  - b) be a securities broker-dealer, investment advisor, futures commission merchant, commodities introducing broker or commodity trading advisor, member of a securities exchange or association or futures contract market, or an owner, partner, or associated person of any of the foregoing; or
  - c) contract for, receive or use Data in its capacity as an employee or contractor of a bank or an insurance company or an affiliate of either to perform functions related to securities or commodity futures investment or trading activity.
- 10.4 The Member is required to obtain confirmation from each Non-professional Subscriber that the Subscriber's status and use of Data remains in compliance with this Agreement and to take reasonable steps to ensure that the Member is informed of any change in the status of Non-professional Subscribers.
- 10.5 NYSE Euronext reserves the right, with immediate and/or retroactive effect, to apply the Fees and Charges that are applicable to Professional Subscribers, in respect of Non-professional Subscribers who are not in compliance with the terms of their Subscriber Agreement or where the Member has not received confirmation of the status of Non-professional Subscribers in the previous twelve (12) months.
- 10.6 Where specified in the Application Form, Subscribers may use Data in automated trading applications for the purpose of price discovery or generating orders, or use Data as described in "Other use" as specified in the Application Form. NYSE Euronext reserves the right to approve any use of Data not expressly permitted by this Agreement, to withhold or withdraw such approval and to introduce Fees and Charges or require the Member or any Subscriber to enter into additional agreements for any such use of Data.
- 10.7 Where a Professional Subscriber enters into a Subscriber Agreement on behalf of other members of the Subscriber's Group, the Member is required to ensure that all members of the Subscriber's Group with access to Data are bound by the Subscriber Agreement.
- 10.8 Each Subscriber Agreement must provide (using substantially similar terms to those set out in this Agreement) that:
- a) the Subscriber may not distribute, transfer or publish Data to any Person other than a member of the Subscriber's Group unless: (i) the Subscriber is also an Authorised Distributor in respect of that Data, (ii) that Data consists solely of Data communicated to the Subscriber under clause 9.6, and/or (iii) the distribution, transfer or publication consists solely of the Public Display of Data in accordance with the terms of this Agreement (including any applicable Schedules);

- b) the Subscriber may not use Data to create any Index except where allowed to do so with the prior written permission of NYSE Euronext;
- c) if the Subscriber is a Non-professional Subscriber, the Subscriber may use Data only in compliance with clause 10.3 and for the Subscriber's own personal use relating to the management of the Subscriber's own personal investments and not for any business purpose;
- d) the Subscriber recognises the Intellectual Property Rights and the right to legal remedy of NYSE Euronext and Data Providers in respect of Data; and
- e) the Subscriber agrees:
  - not to allow other Persons to gain unauthorised access to the Data;
  - not to make the Subscriber's User ID(s) available to any other Person;
  - not to use Data for any illegal purpose;
  - to maintain all records and provide all information required by the Member to meet the Member's record-keeping, reporting and payment obligations to NYSE Euronext;
  - to allow NYSE Euronext and its authorised representatives to audit Subscriber's, and other members of the Subscriber's Group's, records and use of Data;
  - to obtain and provide any consents needed for NYSE Euronext and its authorised representatives to review and receive personal data, where necessary for the purposes of verifying or ensuring compliance with the Member's obligations to NYSE Euronext;
  - to maintain Operational Controls in respect of any Real-Time Data received by the Subscriber (other than any Real-Time Data communicated to the Subscriber solely under clause 9.6); and
  - to comply with any other conditions or restrictions regarding use of Data that NYSE Euronext may specify from time to time.

10.9 In any display application, printed document or other form of written communication created by the Subscriber that incorporates Data, the Subscriber shall:

- a) credit NYSE Euronext and/or, where applicable, any Data Provider or other source(s) of Data specified by NYSE Euronext as the source(s) of Data;
- b) not misrepresent Data or deface or remove any trademarks in respect of the Data; and
- c) ensure that Non-Real-Time Data is clearly labelled and the time of original dissemination, or the period of time that has elapsed since the time of original dissemination, of Data is noted in all displays of Non-Real-Time Data.

10.10 The Member, each Member Group Company and each Service Facilitator shall make all reasonable efforts to prevent or detect unlicensed use or redistribution by Subscribers of Data received via a Member Service, applying at least the same level of diligence and care as the Member, Member Group Company or Service Facilitator (as applicable) applies with respect to the unlicensed use or redistribution by Subscribers of any other element of the Member Service.

10.11 If the Member becomes aware that any Subscriber is failing to comply with the provisions of a Subscriber Agreement, the Member must promptly notify NYSE Euronext and comply promptly with any request by NYSE Euronext to terminate the delivery of

Data to the Subscriber. Failure to comply with this clause 10.11 shall constitute a material breach of this Agreement.

## **11. Fees, Reporting and Payment**

- 11.1 In consideration of the right to receive and use Data in accordance with this Agreement, the Member shall pay all Fees and Charges and other sums due to NYSE Euronext in accordance with the payment requirements specified in the Fees and Charges Schedule and other Schedules. The Member is responsible for payment of all Fees and Charges in respect of the use and distribution of Data by the Member, each Member Group Company, each Service Facilitator and each Recipient, including as part of a Member Service. Where Fees and Charges are specified in this Agreement they apply to authorised and unauthorised use of Data.
- 11.2 The Fees and Charges must be paid within thirty (30) days of the date of each invoice, in Euros, to the bank account specified by NYSE Euronext in this Agreement or otherwise communicated to the Member. The Member's ID number must be included on all transfers to NYSE Euronext's bank account. All Fees and Charges shall be exclusive of any value added or sales tax or any local taxes arising from this Agreement, for which the Member shall be liable.
- 11.3 NYSE Euronext may add to or change the Fees and Charges upon no less than one hundred and twenty (120) days' written notice, with changes to be effective on the first day of a calendar quarter. NYSE Euronext may propose changes to the Fees and Charges on shorter notice, for example to reduce fees or introduce alternative fee structures. In respect of any such change: (i) the change will apply equally to any other Market Member who has selected the same type of Data; and (ii) the Member shall be under no obligation to accept such proposed change until the first day of the calendar quarter following one hundred and twenty (120) days from the date of the notice of change, but must continue to pay Fees and Charges at existing rates during the intervening period.
- 11.4 The Member shall report to NYSE Euronext on the use and distribution of Data and the Fees and Charges due to NYSE Euronext in accordance with the requirements of the applicable Schedules. NYSE Euronext shall keep confidential all report information provided by the Member unless required to provide this data for regulatory purposes.
- 11.5 Where applicable, the Member, Member Group Companies and their respective Service Facilitators shall be free to establish and amend any prices charged to third parties for any supply of Data and/or of their Member Service(s), provided that these prices do not misrepresent the Fees and Charges specified by NYSE Euronext in accordance with this Agreement.
- 11.6 For the avoidance of doubt, the Commencement Date may differ from the date on which Fees and Charges become payable.
- 11.7 Any unpaid amounts due from the Member to NYSE Euronext remain payable following termination of this Agreement for any reason.
- 11.8 The Member shall pay Fees and Charges as invoiced, before deduction of any applicable withholding tax. In addition, the Member shall pay any applicable sales and use taxes,

levies, imposts, duties, assessments or other similar charges imposed by any governmental authority in respect of the Data.

## **12. Maintenance of Records and Audit**

- 12.1 The Member shall, and shall procure that each Member Group Company and each Service Facilitator shall, keep complete, accurate and up-to-date records relating to the use and distribution of Data and to any associated Operational Controls sufficient to demonstrate compliance with this Agreement and to identify all sums payable to NYSE Euronext in accordance with this Agreement. All records required to be maintained under this Agreement shall be maintained for five (5) years from the date on which they are required to be created, and made available to NYSE Euronext on request for audit inspection.
- 12.2 NYSE Euronext, its regulators and any auditors acting on behalf of and/or together with NYSE Euronext, shall have the right, during the term of this Agreement and for a period of two (2) years afterwards, to visit the premises of the Member, each Member Group Company and each Service Facilitator, and third parties receiving Data from the Member, any Member Group Company or any Service Facilitator, and to obtain access to and inspect systems, controls, books and records, insofar as they relate to the receipt, use or distribution of Data, the related Operational Controls and any sums payable to NYSE Euronext. NYSE Euronext shall provide notice of audits and conduct all audits in accordance with the applicable Schedules, TMA Terms and Conditions and Guidelines and Policies. NYSE Euronext and its auditors shall treat all information obtained during the audit as Confidential Information and use it only for the purpose of the audit.
- 12.3 The Member shall co-operate fully, and shall ensure full co-operation by each Member Group Company and each Service Facilitator, with the preparation and completion of any audit permitted under this Agreement. Failure to co-operate with any audit carried out in accordance with this Agreement shall constitute a material breach of this Agreement.
- 12.4 Any underpayment or overpayment of Fees and Charges identified in the course of an audit and any other applicable charges or expenses arising from the audit shall be determined and settled in accordance with the applicable TMA Terms and Conditions and Guidelines and Policies.
- 12.5 Without limitation to clause 12.4 above, if an audit report reveals a lack of records, failure of Operational Controls or any error or omission in reporting, but the amount of under-reported or over-reported Fees and Charges cannot be established with reasonable certainty or agreed between the Parties, NYSE Euronext shall have the right at NYSE Euronext's sole discretion to appoint an independent professional auditor to resolve the dispute in accordance with this Agreement. Both Parties undertake to accept the determination of an independent professional auditor appointed in accordance with this clause 12.5.
- 12.6 If an independent professional auditor appointed under clause 12.5 determines that there has been an underpayment of Fees and Charges by the Member but is unable to determine the period of that underpayment, NYSE Euronext shall be entitled to assume that the underpayment has applied for the elapsed term of this Agreement and the Member shall be liable to pay NYSE Euronext an amount equal to that assumed underpayment. If the

Member is able to provide evidence reasonably satisfactory to NYSE Euronext that the underpayment did not apply to any part or parts of the elapsed term of this Agreement, the Member's liability to NYSE Euronext under this clause 12.6 shall be reduced accordingly.

12.7 The provisions of this clause 12 shall apply to records required to be created and maintained by the Member under any agreement with NYSE Euronext or any third party, and in force as at the Commencement Date, in respect of the use or distribution of Data, irrespective of whether any such agreement is subsequently terminated or expires.

### **13. Confidentiality**

13.1 The Parties acknowledge that Confidential Information, including material of a confidential nature relating to this Agreement, the business of the other Party or of third parties (including, where NYSE Euronext is the receiving party, the business of Member Group Companies), may be disclosed to each other in the course of activities covered by this Agreement. The Parties undertake to hold such information in confidence and not, without the consent of the other, disclose it to any third party nor use it for any purpose other than in the performance of this Agreement.

13.2 The Parties' obligations under clause 13.1 do not apply to Confidential Information which:

- a) at the time of disclosure is already, through no fault of the receiving Party, in the public domain;
- b) has not been identified as confidential and which no reasonable Person would assume is confidential;
- c) after disclosure becomes generally available to third parties through no fault of the receiving Party;
- d) is or becomes rightfully known to either Party without restriction from another source; or
- e) is required to be disclosed by order of legal or regulatory authorities or any court of competent jurisdiction.

13.3 NYSE Euronext shall be entitled to disclose the Confidential Information of the Member and Member Group Companies to any other NYSE Euronext Group Company.

13.4 No public announcement, press release, communication or circular (other than to the extent required by law or regulation) concerning the content of this Agreement will be made or sent by either Party without the prior consent of the other. This consent will not be unreasonably withheld.

### **14. Term and Termination**

14.1 This Agreement shall come into effect on the Commencement Date and shall remain in force until it is terminated in accordance with this Agreement.

14.2 This Agreement may be terminated by either Party upon not less than one hundred and twenty (120) days' written notice to the other Party, to expire at the end of a calendar month.

- 14.3 NYSE Euronext reserves the right to terminate this Agreement immediately by written notice if the Member ceases to be a Market Member.
- 14.4 NYSE Euronext may terminate the provision of any Data Product under this Agreement by giving the Member not less than one hundred and twenty (120) days' written notice.
- 14.5 This Agreement may be terminated immediately or on the date specified in written notice by the terminating Party if any of the following events occurs:
- a) the other Party commits a material breach of this Agreement which is incapable of remedy;
  - b) the other Party commits a material breach of this Agreement and fails to remedy that breach within thirty (30) days after receiving written notice requiring it to do so;
  - c) the other Party commits a persistent series of material breaches of this Agreement, whether or not those breaches are of the same obligation or of different obligations, and whether or not any or all of those breaches are remedied; or
  - d) the other Party presents a petition or has a petition presented by a creditor for its winding up, or enters into compulsory or voluntary liquidation (other than for the purpose of a bona fide reconstruction or amalgamation), or has an administrator or a receiver (including an administrative receiver) of all or any of its undertakings or assets appointed, or ceases to carry on business, or anything similar to any of the foregoing occurs in respect of the other Party in any jurisdiction.
- 14.6 If NYSE Euronext notifies the Member of any addition to or amendment to this Agreement under clause 15.6, the Member may terminate this Agreement immediately or on a date specified in written notice by the Member, provided that the effective date of termination (whether effective immediately or on a specified date) shall be no later than the date on which the addition or amendment becomes effective.
- 14.7 If the Member commits a material breach of this Agreement and, having been given a reasonable opportunity to rectify such breach, has not done so, NYSE Euronext may immediately suspend the provision of Data in whole or in part without penalty until the breach is remedied. Any such suspension shall be without prejudice to NYSE Euronext's other rights and remedies in respect of such breach, including without limitation any right to terminate this Agreement.

## **15. Agreement Variations**

- 15.1 Unless otherwise provided in this Agreement, no variation of the terms and conditions of this Agreement shall be effective unless provided for in this Agreement or expressly agreed in writing by both Parties.
- 15.2 The Member may change its contact details set out in the Application Form on submission of written notification to NYSE Euronext.
- 15.3 The Member may propose additions and changes to its and Member Group Companies' receipt and usage of Data, and other details in the Application Form (other than as described in clause 15.2), on submission of written notification to NYSE Euronext. Where use of Data by Service Facilitators is allowed under this Agreement, the Member

may propose changes to Service Facilitators specified in the Application Form by submission of a revised Application Form. All such changes are subject to approval by NYSE Euronext of the revised Application Form in accordance with the approval or signature requirements specified on the applicable Application Form.

- 15.4 NYSE Euronext may from time to time and at any time introduce additional Data Products to be provided under the terms of this Agreement, and may introduce additional Schedules containing terms applicable to those Data Products.
- 15.5 NYSE Euronext may from time to time and at any time amend the structure and content of the Application Form, for example to:
  - a) add Data Products introduced under clause 15.4,
  - b) remove Data Products the provision of which is terminated under clause 14.4, or
  - c) include new types of licensed usage and distribution methods.
- 15.6 NYSE Euronext may add to or amend the terms of this Agreement. Except as provided elsewhere in this Agreement, NYSE Euronext shall notify the Member in writing at least one hundred and twenty (120) days in advance of any change to this Agreement.
- 15.7 NYSE Euronext may issue, add to or amend Guidelines and Policies from time to time in order to clarify or assist in the interpretation of this Agreement.
- 15.8 All changes by NYSE Euronext under clauses 15.5 to 15.7 shall apply and be available equally to all Market Members and, where applicable, to their Subscribers, where applicable to their receipt and use of Data.
- 15.9 The Member shall, on its own behalf and on behalf of each Member Group Company and each Service Facilitator, be deemed to have accepted any change notified by NYSE Euronext in accordance with this Agreement if the Member has not terminated this Agreement in accordance with clause 14.6 on the latest date on which it would be possible to terminate this Agreement under that clause.

## **16. Entire Agreement**

- 16.1 Subject to clause 16.5, this Agreement, and any other documents incorporated into this Agreement, constitutes the entire agreement and supersedes any previous agreements between the Parties relating to the subject matter of this Agreement.
- 16.2 Each Party acknowledges that it has not relied on or been induced to enter into this Agreement by a representation other than those expressly set out in this Agreement and the agreements and other documents incorporated into this Agreement.
- 16.3 A Party is not liable to another Party for a representation that is not set out in this Agreement or the agreements and other documents incorporated into this Agreement.
- 16.4 Clauses 16.1 to 16.3 do not affect a Party's liability in respect of a fraudulent misrepresentation.
- 16.5 Except as provided in clause 2.4, this Agreement shall not affect the Parties' rights and obligations under the Trading Platform Agreement.

## **17. Assignment**

- 17.1 NYSE Euronext may assign this Agreement or any rights or obligations arising from it to (i) any NYSE Euronext Group Company, (ii) an entity that is the surviving entity of a merger with NYSE Euronext, or (iii) an entity which succeeds to all or substantially all of NYSE Euronext's assets and business.
- 17.2 The Member may assign all (but not only part) of its rights and obligations under this Agreement to (i) a Member Group Company, (ii) an entity that is the surviving entity of a merger with the Member, or (iii) an entity which succeeds to all or substantially all of the Member's assets and business, provided in each case that the assignee is a Market Member. The Member may not otherwise assign this Agreement or any rights arising from this Agreement, without the prior written consent of NYSE Euronext.
- 17.3 Each of NYSE Euronext and the Member shall give the other prior written notice of any assignment by it under this clause 17.

## **18. Warranties and Indemnities/Limitation of Liability**

- 18.1 While NYSE Euronext will use reasonable endeavours to ensure the accuracy, reliability, completeness and continuity of Data and to correct any errors or omissions as soon as reasonably practicable, to the extent it is within its reasonable control and ability to do so, NYSE Euronext does not warrant that the Data is accurate, reliable or complete nor that the supply of the Data will be without interruptions. Other than as expressly provided in this Agreement, neither NYSE Euronext nor any Data Provider shall be liable whatsoever for any delay, inaccuracy, error or omission of any kind in the Data nor for any resulting loss or damage. In addition, neither NYSE Euronext nor any Data Provider shall be liable for any losses arising from unauthorised access to or any other misuse of Data.
- 18.2 NYSE Euronext will indemnify, hold harmless and defend the Member against all direct losses, claims, damages, expenses or costs, arising from any claim made by any third party against the Member alleging that the Member's receipt of the Data in accordance with this Agreement infringes that third party's Intellectual Property Rights.
- 18.3 The indemnity in clause 18.2 shall not apply to any claims that arise from:
- a) any modification of any Data by or on behalf of the Member,
  - b) any combination of the Data with any other works or materials, or
  - c) any use or distribution of the Data in any manner or for any purpose not contemplated under this Agreement.
- 18.4 The indemnity in clause 18.2 shall apply only if NYSE Euronext is notified promptly in writing of such claim and is given the opportunity to have sole control of the defence of any action on such claim and all negotiations for its settlement. The Member shall ensure that each Member Group Company and each Service Facilitator shall cooperate fully with NYSE Euronext to facilitate any such defence.
- 18.5 The Member accepts full responsibility for the usefulness of Data, as incorporated in any Member Services. The Member expressly acknowledges that neither NYSE Euronext nor any Data Provider makes, other than as set out in this Agreement, any representations or

warranties, express or implied, with respect to the merchantability, quality or fitness for purpose of the Data and excludes all warranties, expressed or implied by statute, common law or otherwise, that lawfully can be excluded.

- 18.6 To the extent permissible by law, the Member will indemnify, hold harmless and defend NYSE Euronext against all losses, claims, damages, expenses or costs which NYSE Euronext incurs or pays to any third party arising from access to or use of Data by the Member, any Member Group Company or any Service Facilitator. NYSE Euronext shall promptly notify the Member in writing of any such losses, claims, damages, expenses or costs and the Member shall have control of the settlement and defence of any action to which this indemnity relates. NYSE Euronext shall cooperate with the Member to facilitate any such defence. The Member shall consult NYSE Euronext and keep NYSE Euronext informed of the relevant steps in the Member's handling of any such claims.
- 18.7 Except in connection with (i) the Member's payment obligations under this Agreement, (ii) each Party's indemnification obligations as set out in this Agreement, (iii) any breach by the Member of the obligations under clause 8.4 (Use of Data) and (iv) any liability that cannot legally be excluded, neither Party shall be liable to the other Party, or to others directly or indirectly making use of any Data, for any loss of profits, loss of revenue, loss of business or loss of goodwill, or for any indirect or consequential loss, damage, injury, cost or expense, arising in any way out of or in connection with this Agreement.
- 18.8 NYSE Euronext's liability under this Agreement, whether in contract, tort (including negligence), misrepresentation or otherwise, shall, in respect of all causes of action arising in any calendar year, not exceed the Fees and Charges paid and payable by the Member in respect of that calendar year.

## **19. Governing Law and Jurisdiction**

- 19.1 The construction, validity and performance of this Agreement shall be governed by the laws of the Netherlands. Both Parties submit to the non-exclusive jurisdiction of the competent courts of the Netherlands.

## **20. General Provisions**

- 20.1 All notices and notifications required under this Agreement shall be communicated in writing (including electronic mail). Notices and notifications required under this Agreement shall, if addressed in accordance with clause 20.2, be deemed to have been served (a) three (3) business days after the time of posting if sent by registered post or (b) the next business day after an electronic transmission.
- 20.2 Notices and notifications under this Agreement shall be addressed as follows:
- a) for notices to NYSE Euronext, marked for the attention of The Managing Director at its registered office (or sent to DataSupportEurope@nyx.com if sent by electronic mail), and
  - b) for notices to the Member, to the main contact or secondary contact for Agreement notices set out in Table 4 of the Application Form.

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- 20.3 Neither Party shall be liable for any delay or failure to meet its obligations (other than a payment obligation) under this Agreement due to any cause outside its reasonable control, including without limitation flood, extraordinary weather conditions, earthquake or other Act of God, fire, war, insurrection, riot, labour dispute or act of Government. However, either Party may terminate this Agreement on thirty (30) days' notice if the other Party has been prevented from complying with this Agreement for more than sixty (60) days.
- 20.4 If any part, term or provision of this Agreement is held to be illegal, invalid or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected. The Parties shall replace the invalid part, term or provision with a valid one that best reflects the original intention of the Parties.
- 20.5 NYSE Euronext is entitled to rely on the validity of any representation, notice or communication from an officer of the Member or any Member Group Company or Service Facilitator and from the authorised contacts listed by the Member in the Application Form/Schedules (the "Authorised Contacts"). The Member agrees to inform NYSE Euronext promptly of any change in the details of Authorised Contacts and to comply with any reasonable procedures or disciplines introduced by NYSE Euronext for the purpose of validating communications from Authorised Contacts.
- 20.6 The failure of either Party at any time to enforce any provision of this Agreement shall not affect its right thereafter to require complete performance by the other Party.
- 20.7 This Agreement will only be valid if executed in the English language. In the event that this Agreement is translated into another language, the translation shall be for information purposes only and shall not be binding upon the Parties.
- 20.8 The following provisions shall survive termination of this Agreement: clauses 1 (Definitions), 2 (Interpretations), 5 (Intellectual Property Rights), 8.10, 11 (Fees, Reporting and Payment), 12 (Maintenance of Records and Audit), 13 (Confidentiality), 18 (Warranties and Indemnities/Limitation of Liability), 19 (Governing Law) and 20 (General Provisions). Any restriction or prohibition on any use or distribution of Data that applies during the term of this Agreement shall also survive termination of this Agreement.