



## Data Recipient Standard Terms & Conditions

These terms and conditions apply to the Data Recipient Order Form and form part of the data recipient agreement (the “**DRA**” or the “**Agreement**”) between BATS Trading Limited, a company registered in England and Wales with registered company number 6547680 whose registered office is located at 6th Floor, 10 Lower Thames Street, London, EC3R 6AF, trading under the name BATS Chi-X Europe (“**BATS**”) and the Recipient, as defined in the Data Recipient Order Form (each a “**Party**” and together the “**Parties**”).

### 1 Definitions

1.1 In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

**Affiliate:** means, in relation to either Party, any entity which directly or indirectly owns or Controls or is directly or indirectly owned or Controlled by or in common ownership or Control with that Party;

**Agreement:** means these Terms and Conditions, the Schedules, the Data Order Form, the Price List, the BATS Guidelines and the Technical Specifications;

**Change of Control:** means the occurrence of a change in the person or entity who: (a) directly or indirectly owns or Controls; or (b) is directly or indirectly owned or Controlled by; or (c) is in common ownership of Control, with the Recipient;

**BATS Data:** includes any and all data emanating directly or indirectly from the System, including without limitation Realtime Data, Historical Data and Test Data;

**BATS Guidelines:** means the BATS guidelines available on the Website as amended from time to time;

**Commencement Date:** means the earlier of the date of execution of the Data Order Form by both Parties or the date of first receipt of the Data or any part of it by the Recipient;

**Data Client/ Data Clients:** means an entity which employs or otherwise engages one or more Individual Users (including without limitation Affiliates, Service Providers and Trading Clients);

**Data Client Minimum Requirements:** means those requirements set out in Schedule 1 or otherwise informed to the Recipient by BATS from time to time;

**Confidential Information:** means the terms, conditions and subject matter of this Agreement and all information disclosed by one Party to the other or otherwise received by the other in the negotiation, entering into and performance of this Agreement,

which relates directly or indirectly to that Party or any third Party with which it has or proposes to have business dealings and its or their officers, employees, agents, suppliers or customers, including without limitation: the Data and any information within or relating to the same; technical; business and financial information; plans; dealings; trade secrets; inventions; products; research and development; production; business processes; price information; marketing and sales information; designs; product lines and any information which the recipient Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential but excluding information that: (i) is already in the public domain; (ii) that subsequently becomes part of the public domain other than as a result of an unauthorised disclosure; or (iii) is or becomes available to the receiving Party from a third party who is legally entitled to possess and provide the information to the receiving Party;

**Control:** means holding more than 50% of the shares, or stock having the power to vote at a general meeting or equivalent; or by having the power to control the composition of the board of directors or the possession, direct or indirect, of the power to direct or cause the direction of the management, policies or activities of a person, whether through the ownership of stock, by contract or agency or otherwise;

**Trading Clients:** means a customer of a Trading Participant that trades on the System via the Trading Participant and which has not executed an MTF Participant Agreement;

**Data:** means the BATS Data or any part of it and any other data provided by BATS from time to time to the Recipient as indicated on the Data Order Form from time to time;

**Data Feed:** the means by which Realtime Data is transmitted directly or indirectly to the market from time to time;

**Data Order Form:** means the data order form provided to Recipient by BATS and agreed in writing between the Parties as amended from time to time by written agreement between the Parties;

**Data Vendor:** means a person wishing to Distribute the Data as indicated on a Data Order Form;

**Data Vendor Licence:** means the licence for Data Vendors explicitly granted in accordance with Clause 3.2.2;

**Derived Works:** a work/product that is created out of or by using Data but not including the creation of Financial Products;

**Distribute/Distribution:** means distribution of or otherwise enabling access (directly or indirectly) to Data to third parties;



## Data Recipient Standard Terms & Conditions

**Fees:** means those fees applicable to and payable by the Recipient as set out in the Price List from time to time;

**Financial Product:** means any exchange-traded fund, Indices, institutional or retail fund, derivative contract, including contracts for difference and spread betting products, or other tradable financial instrument and any other interest provided for commercial value, whether or not publicly traded;

**Historical Data:** means BATS' historical data product which includes historical trading and order data available at the end of the trading day or on subsequent trading days for previous trading days;

**Individual User:** each and every person in receipt of the Data and/or any part of it from the Recipient and/or the Data Client, from time to time;

**Indices/Index:** means numerical representation(s) of the value or volatility of a market or market sector calculated from time to time on a standard basis, in order to reflect movements in the underlying constituents;

**Initial Term:** means (i) if the Agreement is entered into before 30 June of a given year, the period until 31 December of the same year; or (ii) if the Agreement is entered into after 30 June of a given year, the period until 31 December of the subsequent year;

**Intellectual Property:** means any and all rights whether registered or unregistered and whether in existence now or in the future including without limitation copyright, trade marks, design rights, patents, utility models, database rights, rights in semiconductor or circuit layouts and the right to have confidential information kept confidential and any other similar or analogous rights and any application or right to apply for registration or renewal of any such rights;

**Level 1 Data:** includes without limitation the realtime best bid and ask prices, order volumes, and the last traded prices with the respective volumes necessary for trading on the System;

**Level 2 Data:** includes without limitation all available realtime bid and ask prices with the respective volumes;

**Licence:** means the Trading Participant Licence and /or the Data Vendor Licence as applicable;

**Permitted Parties:** means the Trading Clients and Service Providers;

**Price List:** means the list of Fees published by BATS on the Website from time to time;

**Privacy Policy:** means BATS' policy for processing of personal data as published on its Website from time to time;

**Purpose:** means an extension to the licence in respect of the Data or any part of it explicitly agreed in writing by the Parties in accordance with Clause 3.8;

**Realtime Data:** includes without limitation, Level 1 Data, Level 2 Data and the Trade Data;

**Services:** means all services provided by BATS to the Recipient, directly or indirectly in relation to the Agreement;

**Service Provider:** means an entity or individual contracted by the Recipient to provide IT, advisory and/or consultancy services to Recipient requiring access to the Data; Service Provider includes "service facilitators" supporting or assisting the transmission of Data to the Recipient and/or its Affiliates, or by Recipient to Permitted Parties;

**System:** means the multilateral trading facility (MTF) and any and all other IT systems or platforms operated by or on behalf of BATS from time to time;

**Technical Specifications:** means the technical documents detailing the delivery of the Data as published on the Website from time to time;

**Term:** means the term of this Agreement as determined in accordance with Clause 5.1;

**Terms and Conditions:** means Clauses 1 to 22;

**Test Data:** means non-production data made available to Recipients for testing software and applications;

**Trade Data:** includes without limitation any and all on/off order book time and sales data;

**Trading Participant:** means a person accessing the Data in order to trade on the System from time to time and authorised by BATS to do so, as indicated on the Data Order Form;

## Data Recipient Standard Terms & Conditions

**Trading Participant Licence:** means the licence for Trading Participants explicitly granted in accordance with Clause 3.2.1;

**Venue:** means an entity that receives or wishes to receive the Data primarily to utilize in the operation of an execution venue, including a Multilateral Trading Facility or a Recognised Investment Exchange (as such terms are defined in the FSA Handbook) and/or any similar or like platform as determined in the absolute discretion of BATS; and

**Website:** means the BATS web site [www.batstrading.co.uk](http://www.batstrading.co.uk), as amended from time to time.

- 2.3.1 first, the Price List;
- 2.3.2 second, the Data Order Form;
- 2.3.3 third, these Terms and Conditions.
- 2.3.4 fourth, the BATS Guidelines;
- 2.3.5 fifth, the Technical Specification; and
- 2.3.6 sixth, the Schedules.

### 2 Interpretation and order of precedence

- 2.1 In this Agreement a reference to:
  - 2.1.1 a Clause or Schedule is, except where expressly stated otherwise, a reference to a clause of and schedule to this Agreement;
  - 2.1.2 a word importing one gender shall (where appropriate) include any other gender and a word importing the singular shall (where appropriate) include the plural and vice versa; and
  - 2.1.3 any statute or statutory provision includes, except where otherwise stated, the statute or statutory provision as amended, consolidated or re-enacted from time to time, and includes any subordinate legislation made under the statute or statutory provision (as so amended, consolidated or re-enacted).
- 2.2 The headings in this Agreement are for convenience only and shall not affect its interpretation.
- 2.3 If there is any conflict and/or inconsistency between these Terms and Conditions, the Schedules the Data Order Form, the Price List, the BATS Guidelines, the Technical Specification, which shall all form a part to this Agreement, the following order of precedence shall apply:

### 3 Grant of License; Restrictions; Provision of the Data

- 3.1 The Recipient shall complete the Data Order Form indicating the Data it desires to receive and whether it wishes to be a Trading Participant and/or Data Vendor. If a Data Order Form is approved by BATS and agreed between the Parties, the Recipient acknowledges, understands and agrees that it shall only be licensed in accordance with Clause 3.2 to the extent applicable to a Trading Participant and/or Data Vendor, respectively. The Recipient shall submit an updated Data Order Form as soon as reasonably possible if any of the information in the Data Order Form becomes inaccurate.
- 3.2 In consideration of the payment of any Fees and subject to the terms and conditions of this Agreement, BATS grants the Recipient as applicable in accordance with Clause 3.1, a limited, non-exclusive, non-transferable, world-wide licence during the term of this Agreement only to:

#### **Trading Participant**

- 3.2.1 in the case that the Recipient is a Trading Participant:
  - 3.2.1.1 use, copy, store, process and display the Data only for the purposes of:
    - (i) trading on or via the System;
    - (ii) recording transactions made in accordance with (i);
    - (iii) creating Derived Works for internal use and purposes only provided always that:

## Data Recipient Standard Terms & Conditions

- the Data is not directly or indirectly identifiable as part of the Derived Works;
  - the Derived Works are not in any way a substitute for the Data or any part of it;
  - the Data cannot be reverse engineered or otherwise ascertainable directly or indirectly as a result of receipt of the Derived Works;
- (iv) internal valuation, analysis, report preparation, benchmarking or assessments,
- (v) reproducing and storing in one or more databases for internal use only; and
- (vi) subject to Clause 10.7, retaining and storing subsequent to the termination of this Agreement, in any medium including, but not limited to, electronic storage, for record keeping purposes as required by law and/or regulation only;
- 3.2.1.2 subject always to Clause 3.6, Distribute limited excerpts of Data to:
- (i) Trading Clients only for the purposes of Clause 3.2.1.1 (i) and (ii) provided that the Recipient does not, directly or indirectly, charge for access to/or use of the Data; and
  - (ii) Service Providers only to the extent and for the duration necessary to enable them to provide IT, advisory and/or consultancy services to/or for the Recipient provided that this shall not include the right to Distribute the Data.
- 3.2.1.3 subject always to Clause 3.4, provide access to any and/or all Data to Individual Users that are employed by Trading Participant solely for the purposes set out in Clause 3.2.1.1; and
- 3.2.1.4 any further Purpose explicitly licensed in writing by BATS in accordance with Clause 3.8.
- AND/OR**
- Data Vendor**
- 3.2.2 in the case that the Recipient is a Data Vendor:
- 3.2.2.1 subject always to Clause 3.4, Distribute the Data to Data Clients;
  - 3.2.2.2 use, copy, store, process and display the Data only in so far as is necessary for the purposes of Clause 3.2.2.1;
- 3.2.2.3 subject always to Clause 3.6, Distribute limited excerpts of Data to Service Providers only to the extent necessary to enable them to provide IT, advisory and/or consultation services to/or for the Recipient provided that this shall not include the right to Distribute the Data; and
- 3.2.2.4 any further Purpose explicitly licensed in writing by BATS in accordance with Clause 3.8.
- 3.3 BATS expressly reserves any and all other rights in and to the Data other than the limited licence rights granted in accordance with the Licence.
- 3.4 The Recipient shall be liable and responsible for each and every:
- 3.4.1 Individual User's access to the Data via the Recipient and their compliance with the Licence and this Agreement; and
  - 3.4.2 Data Clients' access to the Data via the Recipient and their compliance with the Licence and this Agreement.
- 3.5 The Recipient shall procure that no Data Client Distributes the Data unless with the prior written consent of BATS. If the Recipient becomes aware of any Permitted Parties that Distribute and/or intend to Distribute the Data it shall inform BATS immediately and instruct such parties to contact BATS in respect of the same.
- 3.6 Where the Recipient provides its Permitted Parties with access to the Data in accordance with Clauses 3.2.1.2. or 3.2.2.3, the Recipient shall ensure that such Permitted Parties shall not Distribute the Data. Without prejudice to the foregoing, the Recipient shall ensure that each and every Permitted Party is subject to contractual obligations directly enforceable by BATS no less onerous than the Recipient is subject to under this Agreement and the Recipient shall be liable and responsible for each and every Permitted Party's compliance with the Licence and this Agreement.
- 3.7 Where a Recipient wishes to Distribute Data to a Data Client in accordance with the Data Vendor Licence, the Recipient shall procure that each such Data Client is subject to an agreement containing equivalent terms to those set out in the Data Client Minimum Requirements in Schedule 1 and that each such Data Client shall be liable and responsible for each and every Individual User licensed via the Data Client.



## Data Recipient Standard Terms & Conditions

- 3.8 For the Recipient to utilise the Data for any purpose other than those explicitly licensed in accordance with Clause 3.2.1 or 3.2.2 above (including but not limited to using the Data to create Financial Products), the Recipient must provide BATS with a complete and accurate description of such purpose including without limitation a complete description of the potential use of the Data and the likely recipients of the Data. If BATS agrees to each such use the Parties shall sign and agree an amended Data Order Form (including any changes to the Agreement BATS requires) and the Recipient shall be deemed licenced for such Purpose in accordance with Clause 3.2.1.4 or 3.2.2.4 as applicable.
- 3.9 The Recipient agrees to identify at all times BATS as the source of the Data. Without limitation, any reference in the Distributed Data to any trade mark of BATS by the Recipient shall acknowledge BATS' rights in such mark as follows: "BATS®" is a registered trade mark of BATS Trading Limited a company with registered number 6547680 whose registered address is 6th Floor, 10 Lower Thames Street, London, EC3R 6AF, and "Chi-X®" is a registered trade mark of Chi-X Europe Limited, a wholly owned subsidiary of BATS Trading Limited, with registered number 1651728 whose registered address is 6th Floor, 10 Lower Thames Street, London, EC3R 6AF, and may only be used under licence from BATS Trading Limited. Data is the property of BATS Trading Limited". BATS shall own any and all rights including without limitation Intellectual Property rights and any and all goodwill arising directly or indirectly out of the Recipient's use of the "BATS®" and "Chi-X®" trade marks.
- 3.10 It is a condition of this Agreement and the Licence that the Recipient shall not provide the Data or any part of it to a third party Venue, unless with the prior written consent of BATS.
- 3.11 The Recipient shall report to BATS in accordance with the BATS Guidelines and with reasonable written requests from BATS regarding the use of Data.
- 3.12 The Recipient shall not alter the Data to make it inaccurate or misleading and shall not use the Data or any part of it for any illegal purpose or otherwise than in compliance with the applicable laws in the jurisdictions in which the Recipient operates.
- 3.13 The Recipient shall indemnify BATS from and against any and all loss, liability, claim, action, proceedings, costs or expenses (including any legal costs and any other reasonable expenses) incurred by BATS:
- (i) arising out of or in connection with a breach of the Licence and/or
  - (ii) as a result of the access to the Data by the Permitted Parties except to the extent the same is wholly caused by BATS' willful misconduct or fraud.
- 4 **Affiliates**
- 4.1 The Recipient shall be responsible for notifying BATS of its Affiliates who will be receiving and/or utilising the Data, prior to the commencement of this Agreement and subsequently in writing of any changes to this information from time to time. BATS may in its reasonable discretion refuse and/or revoke the permission of an Affiliate who wants to receive and use the Data.
- 4.2 Subject to Clauses 4.1, 4.3, 4.4, 4.5 and 4.6, the permissions granted to the Recipient under Clause 3 shall extend to its Affiliates, provided that the Data is used by the Affiliates for internal purposes only.
- 4.3 The Recipient shall be responsible for the payment of all applicable Fees associated with any such distribution under Clause 4.2 to its Affiliates and shall procure that each of its Affiliates complies fully with and is subject to this Agreement as if it were the Recipient.
- 4.4 The Recipient shall indemnify BATS from and against any and all losses, liabilities, claims, actions, proceedings, costs or expenses (including any legal costs and any other reasonable expenses) incurred by BATS arising out of or in connection with, directly or indirectly the Affiliates' access to and/or use of the Data and/or this Agreement, except to the extent the same is wholly caused by BATS' willful misconduct or fraud.
- 4.5 Any loss or damage suffered by the Recipient Affiliates in connection with this Agreement shall be treated as loss or damage suffered by the Recipient and the Recipient shall be entitled to seek to recover such loss or damage under this Agreement subject always to the exclusions and limitations on liability set out at Clause 7.
- 4.6 It is a condition of this Agreement that no Affiliate that is or becomes a Venue may be licensed unless explicitly agreed otherwise in advance and in writing by BATS.



## Data Recipient Standard Terms & Conditions

### 5 Term and Termination or Suspension

5.1 This Agreement shall commence on and from the Commencement Date and unless earlier terminated in accordance with the terms of the Agreement shall continue for the Initial Term and thereafter automatically renew for further successive terms of one year unless terminated by either Party by the provision of at least ninety (90) days prior written notice to the other Party.

5.2 Either Party may terminate this Agreement with immediate effect by writing to the other Party if the other Party:

5.2.1 commits a material breach (including persistent breaches which cumulatively constitute a material breach) of any of the terms of this Agreement and, if such breach is capable of remedy, fails to remedy the breach within thirty (30) days of receiving written notice from the other Party specifying the breach and requiring the breach to be remedied; or

5.2.2 becomes or is deemed insolvent, or has a receiver, administrative receiver, administrator or manager appointed of the whole or any part of its assets or business; or takes or suffers any similar or analogous procedure to any of the events described in this Clause 5.2.2 or is unable to pay its debts as they fall due.

5.3 BATS may exercise its termination rights under this Agreement in whole or in part in respect of any particular part of the Data from time to time.

5.4 The Recipient must inform BATS within fifteen (15) days of any Change of Control. BATS shall be entitled to terminate this Agreement immediately by the provision of written notice following a Change of Control by the Recipient.

5.5 BATS may from time to time either temporarily or permanently restrict, suspend, prevent access to or cease to provide the Data and/or Services, if in BATS' reasonable opinion: (a) Recipient is or is likely to be in breach of the Agreement; (b) regulatory implications require such an action; (c) system maintenance, stability or development work is required; and/or (d) Recipient is posing a risk to BATS, in which case BATS will provide reasonable prior notice of such an action unless it is not commercially practicable or permissible to do so.

5.6 The Recipient acknowledges and agrees that a breach of any of the terms of the Agreement may result in irreparable and continuing damage to BATS for which there may or will be no adequate remedy at law, and that in the event of such breach, BATS shall be entitled to apply for injunctive relief and/or a decree for specific performance and such other and further relief as may be appropriate.

5.7 BATS may terminate this Agreement immediately by giving written notice at any time where required to do so by regulatory authority or when discontinuing to provide the Services and/or Data to all Recipients.

5.8 Not more than once per calendar year, and by the provision of at least 10 days' prior written notice, the Recipient shall, and shall procure that Data Clients shall, permit BATS to inspect and audit use of the Data and/or the systems and equipment used for the receipt and distribution of the Data, or any part of it and/or compliance with this Agreement, and shall comply with all requests or directions by BATS during or as a result of such inspection and/or audit, to enable BATS to verify and/or procure that the Recipient is in full compliance with its obligations under this Agreement. BATS and/or BATS' auditors shall conduct the inspection and/or audit during normal working hours and in compliance with the Recipient's reasonable security and access policies and procedures. The Recipient shall maintain all records required to be maintained under this Agreement for six (6) years after creation, to be made available to BATS on request for inspection and/or audit in accordance with this clause 5.8.

### 6 Payment

6.1 The Recipient shall pay the Fees, if any, for Data chosen in a Data Order Form within 30 days from date of any BATS invoice. All Fees if payable shall be payable annually in advance on and from the relevant Commencement Date and within thirty (30) days from 1 January in each subsequent year of the Term. If the Initial Term will be less than twelve (12) months the first payment of Fees shall be pro-rated accordingly.

6.2 All Fees are exclusive of Value Added Tax or any other similar tax or levy which may be payable thereon. BATS will add any such taxes or levies to its invoices at the rate prescribed by legislation from time to time, and the

## Data Recipient Standard Terms & Conditions

- Recipient shall pay such taxes or levies together with and in addition to the Fees.
- 6.3 BATS may add interest on overdue payments, at the prevailing base lending rate of Citibank NA (from time to time) plus three per cent, calculated on a daily basis.
- 6.4 If any Fees are outstanding on or following, thirty (30) days from the date of BATS' written invoice, then BATS may, without prejudice to its other rights and remedies, terminate this Agreement immediately upon written notice to the Recipient.
- 6.5 All sums payable under this Agreement by Recipient are payable in full without deduction, withholding, set-off or counterclaim for any reason whatsoever, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, save as may be required by law.
- 6.6 There is no right to reimbursement of Fees in the event of suspension or termination of the Agreement or the Services.
- 7 **Limitation of Liability**
- 7.1 BATS does not exclude or in any way limit liability for:
- 7.1.1 fraud, death, or personal injury caused by BATS' negligence; and/or
- 7.1.2 Clauses 9.1; and/or
- 7.1.3 any liability to the extent the same may not be excluded or limited as a matter of law.
- 7.2 Subject to Clause 7.1, BATS shall not be liable to the Recipient under or in connection with the terms of the Agreement for any and all of the following, howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the Parties to the Agreement and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise: loss of opportunities; loss of income; loss of actual or anticipated profits; loss of business; loss of contracts; loss of goodwill or reputation; loss of anticipated savings; loss of, damage to or corruption of data; or indirect or consequential loss or damage of any kind.
- 7.3 Subject to Clause 7.1 and Clause 7.2, BATS' entire liability howsoever arising and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, indemnity or otherwise to the Recipient and/or any other person in respect of any claims or losses of any nature, arising directly or indirectly, from the Agreement and/or the Data shall be limited in respect of all incidents or series of incidents occurring in any one calendar year, to the Fees paid under the Agreement in the calendar year when the date on which the first claim arose.
- 7.4 The Recipient hereby acknowledges and agrees that it shall bring any claim arising under or relating to this Agreement within twelve months from the date of the claim arising, and failure to do so shall result in any such claim automatically and irrevocably expiring.
- 7.5 BATS does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Services and/or the Data. Subject to Clause 7.1, no responsibility is accepted by or on behalf of BATS for any errors, omissions, or inaccuracies in the Services and/or the Data. When notified by the Recipient of an inaccuracy in the Data, BATS shall use reasonable endeavours to rectify those inaccuracies within BATS' control as soon as reasonably practical. The correction of any such inaccuracy shall be the Recipient's sole remedy in relation to the same. BATS accepts no liability for the results of any acts or omissions taken on the basis of the Services and/or Data.
- 8 **Warranties**
- 8.1 BATS warrants that it has all rights, authority and licenses to enter into the Agreement and will take all reasonable steps to ensure that the Data is made available in accordance with the Technical Specification and in compliance with any applicable English law, rule or and regulation.
- 8.2 The Recipient hereby acknowledges and agrees that whilst BATS attempts to ensure that the Data and the Services are accurate, the Data and Services are made available "AS IS" and on an "AS AVAILABLE" basis and may not be accurate or up to date.
- 8.3 Recipient represents and warrants that it has all rights, authority and licenses to enter into the Agreement and will throughout the term of the Agreement act in compliance with any applicable law, rule or and regulation.
- 8.4 The Recipient hereby acknowledges and agrees that the Data and any and all rights of any kind in and to the same

## Data Recipient Standard Terms & Conditions

- are the property of BATS and/or its licensors and that such property is of high commercial value.
- 8.5 Except as explicitly stated to the contrary in this Agreement the Recipient hereby acknowledges and agrees that all warranties, conditions, representations and terms, whether express or implied by statute, common law or otherwise, with respect to the Services and/or the Data, including but not limited to the implied warranties, conditions, representations and terms of satisfactory quality, fitness for a particular purpose, non-infringement, compatibility, security and accuracy are excluded from the terms of the Agreement to the extent that they may be excluded as a matter of law.
- 9 **Indemnities**
- 9.1 BATS agrees to indemnify and hold harmless the Recipient from and against any action or claim that the Recipient's use of the BATS Data in accordance with the terms and conditions of this Agreement infringes the Intellectual Property rights of a third party ("**IPR Claim**") and shall indemnify the Recipient from and against any direct, reasonable, losses, damages, costs and expenses (including reasonable legal fees) awarded against the Recipient as a direct result of any IPR Claim provided that:
- 9.1.1 the Recipient notifies BATS in writing of the IPR Claim immediately on becoming aware of it;
- 9.1.2 the Recipient grants sole control of the defence of the IPR Claim to BATS;
- 9.1.3 the Recipient gives BATS all reasonable assistance including but not limited to giving BATS complete and accurate information and full assistance to enable BATS to settle or defend the IPR Claim;
- 9.1.4 the Recipient shall in so far as is reasonable mitigate its losses; and
- 9.1.5 BATS may remove or replace BATS Data at its sole option at any time.
- 10 **Confidentiality**
- 10.1 Each of the Parties undertakes to maintain and procure the maintenance of the confidentiality of Confidential Information at all times and to keep and procure the keeping of all Confidential Information secure and protected against theft, damage, loss or unauthorised access, and not at any time, whether during the term of this Agreement or at any time thereafter, without the prior written consent of the other Party directly or indirectly, to use or authorise or permit the use of or disclose, exploit, copy or modify any Confidential Information, or authorise or permit any third party to do the same, other than for the sole purpose of the performance of its rights and obligations hereunder.
- 10.2 Each of the Parties undertakes to disclose Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the purposes contemplated under this Agreement, and to procure that such officers, employees, agents and contractors are made aware of and observe the confidentiality obligations in this Clause 10.
- 10.3 Each Party shall indemnify the other Party for any and all loss or damage incurred by the other Party as a result of any breach by the indemnifying Party or its officers, employees, agents or contractors, of any of its or their obligations under this Clause 10.
- 10.4 Each Party may disclose Confidential information to a professional advisor as reasonably required provided always that any such professional adviser to whom Confidential Information is disclosed is subject to obligations of confidentiality of at least as high a standard as these imposed on the receiving Party under this Clause 10.
- 10.5 Subject to Clause 10.7, upon termination or expiry of this Agreement, each Party shall at the option of the disclosing party return, or upon request erase and or destroy, all confidential and other material provided to the other in connection with this Agreement within five business days of such request and in each such case shall certify in writing that it has done the same.
- 10.6 Each Party may disclose Confidential Information of the other Party as may be required by law, regulation or order of a competent authority to be disclosed by the receiving Party, provided that, to the extent practicable and permissible in the circumstances, the disclosing Party is in each case given reasonable advance notice of the intended disclosure and a reasonable opportunity to challenge the same.



## Data Recipient Standard Terms & Conditions

- 10.7 After termination of the Agreement, the Recipient may retain historic BATS Data and Confidential Information for any use by the Recipient and/or its Affiliates as permitted under the Agreement.
- 11 **Amendments**
- 11.1 Subject to clause 11.2, BATS reserves the right, at its discretion, to make changes to any part of the Website, the Data, the Services, the Fees or the terms of the Agreement at any time.
- 11.2 If BATS makes a material amendment to the terms of this Agreement, BATS shall use all reasonable endeavours to provide at least sixty (60) days' written notice of the same and if the amendment is to the Recipient's detriment, the Recipient shall be entitled to terminate the Agreement effective from the date on which the amendment is to be implemented, by the provision of at least ten (10) days' written notice (or as much notice as reasonably possible in the circumstances if provided with less than ten days' notice by BATS).
- 12 **Privacy Policy**
- The Recipient shall provide certain personal information to BATS as requested and acknowledges that this is necessary for the provision of access to the Data and Services. BATS will treat any personal information collected in accordance with its Privacy Policy.
- 13 **Assignment**
- 13.1 The Recipient may novate, transfer or assign all or any of its rights and/or obligations under this Agreement to: (i) an Affiliate; or (ii) to any entity which succeeds to all or substantially all of Recipient's assets and business, and will provide notice to BATS of the same. BATS may terminate this Agreement by the provision of at least thirty days notice after receipt of notice from the Recipient of such a transfer if in BATS' reasonable opinion it does not wish to continue to make the Data and/or Services available to Recipient's successor and/or Affiliate as applicable. Except for those limited rights granted in accordance with Clause 4, the Recipient may not transfer, novate, assign or sub-license this Agreement or any of its rights or obligations hereunder to a third party without the prior written consent of BATS, such consent not to be unreasonably withheld or delayed.
- 13.2 BATS may novate, assign, sub-license or otherwise transfer all or any of its rights and/or obligations under this Agreement and will provide notice to the Recipient of the same. BATS may subcontract all or any of its rights and/or obligations under this Agreement but BATS shall remain liable to the Recipient for the performance of its obligations under and in accordance with this Agreement.
- 14 **Force Majeure**
- 14.1 Neither Party shall be liable for any delay or failure to perform its obligations hereunder so long as that delay or failure is the result of an event beyond its reasonable control. Notwithstanding the foregoing, Recipient agrees and acknowledges that its obligation to pay Fees shall remain in full force and effect.
- 15 **Notices**
- Any notice which either Party is required or authorised by this Agreement to give or make to the other shall be given in writing by email (to be provided by the Recipient in the completed Data Order Form), post or hand delivery addressed to the other Party at their last known business address. In addition, any notice which BATS is required or authorised by this Agreement to give or make to the Recipient may be given by trading notice published by BATS on the Website. Notices given by hand delivery shall be deemed to have been given on the date and at the time of delivery. Notices sent by post shall be sent by first class post and shall be deemed received on the second business day after posting. Notices sent by email on a business day before 4.30p.m, shall be deemed received on that day. In any other case, they shall be deemed received on the next business day after the day on which it was sent. In the case of BATS such notice must be specifically addressed to the Legal Department and if given by email, sent to [legalEU@batstrading.com](mailto:legalEU@batstrading.com) or such other email address as BATS may request from time to time. It is the Recipient's responsibility to inform BATS promptly of any change to contact details provided to BATS.



## Data Recipient Standard Terms & Conditions

16 **Entire Agreement**

This Agreement contains all the terms agreed between the Parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated in this Agreement. Neither Party shall have any remedy in respect of any untrue statement made by the other upon which that Party relied in entering into this Agreement (unless such untrue statement was made fraudulently or was as to a fundamental matter including as to a matter fundamental to the other Party's ability to perform its obligations under this Agreement) and that Party's only remedies shall be for breach of contract as provided in this Agreement.

17 **Counterparts**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

18 **Survival**

The terms and conditions of Clauses 1, 2, 4.4, 6.3, 7, 8.4, 8.5, 10.5, 12, 15, 16, 18, 0, 20, 21 and 22 shall survive termination, cancellation, replacement, expiration or modification of this Agreement.

19 **Waiver**

Failure by BATS to enforce or to exercise at any time or for any period of time any term of or any right pursuant to the terms of the Agreement does not constitute, and shall not be construed as, a waiver of such terms or right and shall in no way affect the BATS' rights later to enforce or exercise it.

20 **Severability**

If any term of this Agreement is found to be illegal, invalid, or unenforceable under any applicable law, such term shall, insofar as it is severable from the remaining terms be deemed omitted from the Agreement and shall

in no way affect the legality, validity or enforceability of the remaining terms.

21 **Contracts (Rights of Third Parties) Act 1999**

Except for those limited rights granted in accordance with Clause 4, no term of this Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a Party to this Agreement. 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 Recipient Affiliates).

22 **Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of England and each Party hereby submits to the exclusive jurisdiction of the English Courts.



## Data Recipient Standard Terms & Conditions

### Schedule 1 – Data Client Minimum Requirements

- 1 The Recipient shall ensure that each and every Data Client is subject to the following terms:
  - 1.1 The Recipient may only grant the Data Client a limited, non-exclusive, non-transferable (except as explicitly set out below), world-wide sub-licence during the Term to the Data Client only and explicitly to enable Individual Users that are employees of the Data Client and engaged only in carrying out the business of the Data Client to receive and use the BATS Data for internal purposes, provided always that:

#### Individual Users

- 1.1.1 Data Client shall be liable and responsible for each and every such Individual User's compliance with the Data Client Minimum Requirements at all times;

#### Access and audit

- 1.1.2 Where requested, the Data Client agrees to provide accurate and complete information to the Recipient, BATS or their appointed agents regarding the Data Client's (and their Individual Users) access to, and use of, the Data.
- 1.1.3 The Data Client shall also allow the Recipient, BATS or their appointed agents access to their premises at reasonable times and on reasonable notice in order to inspect and audit the Data Client's access to and use of the Data;
- 1.1.4 The Data Client acknowledges that BATS may terminate and/or suspend access to the Data immediately in full or in part at any time;

#### Data

- 1.1.5 The Data Client acknowledges and agrees that the BATS Data and any and all rights of any kind in and to the same are the property of BATS, and that BATS incurs considerable cost and expense and expends considerable effort in generating and providing the same.
  - 1.1.6 The Data Client acknowledges and agrees that a breach by it or any of its Individual Users of any of the terms of these Minimum Requirements may result in irreparable and continuing damage to BATS for which there may or will be no adequate remedy at law, and that in the event of such breach, BATS shall be entitled to apply for injunctive relief and/or a decree for specific performance and such other and further relief as may be appropriate.
  - 1.1.7 The Data Client hereby acknowledges and agrees that whilst BATS attempts to ensure that the Data is accurate, the Data is provided "AS IS" and on an "AS AVAILABLE" basis and may not be accurate or up to date. Data may or may not have been prepared by BATS but is made available without responsibility on the part of BATS. BATS does not guarantee the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Data. No responsibility is accepted by or on behalf of BATS for any errors, omissions, or inaccuracies in the Data BATS accepts no liability for the results of any acts or omissions taken on the basis of the Data.
- 1.2 Save as provided in paragraph 1.1 above, the Data Client shall not in any way, directly or indirectly use, display, access, transfer, re-distribute, reference, re-sell or sub-license the Data to third parties and/or use the Data (or any of the information contained therein) for any illegal purpose or to bring BATS, its members or its business or markets into disrepute.