



FINANCIAL PRODUCTS DATA LICENCE

TERMS AND 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 Europe ("Bats") and the Recipient, as defined in the Data Recipient Order Form (each a "Party" and together the "Parties").

WHEREAS, Bats is authorised by the Financial Services Authority to operate a multilateral trading facility;

WHEREAS, the Recipient wishes to receive data from Bats in order to produce Financial Products for its customers and Product Redistributors; and

WHEREAS, the Recipient already receives Data either directly from Bats under a data recipient agreement or from a data vendor authorised by Bats to re-distribute Data to the Recipient.

IT IS HEREBY AGREED AS FOLLOWS:

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 this written agreement between Bats and the Recipient including its schedules and any and all documents expressly incorporated by explicit written reference;

Business Day: means any day (other than a Saturday or Sunday) on which banks are open for general banking business in London;

Change of Control: means, in respect of the Recipient, the occurrence of a change of the person or entity who Controls the Recipient;

Bats Data: includes any and all data emanating directly or indirectly from the Bats MTF, including without limitation Real-time Data, Historical Data and Test Data;

Commencement Date: means the date set out on the Order Form;

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 or performance of this Agreement, which relates directly or indirectly to the disclosing Party or any third party with which it has or proposes to have business dealings and its or their officers, employees, agents, suppliers or Recipients including without limitation the Data and any information which the receiving Party has been informed is confidential or which it might reasonably expect the other Party would regard as confidential but excluding information:

- already in the public domain;
- that subsequently becomes part of the public domain other than as a result of an unauthorised disclosure; or
- that 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;

Data: means the Bats Data or any part of it and any other data provided by Bats from time to time to the Recipient under this Agreement;

Fees: means those fees applicable to and payable by the Recipient as set out, subject to clause 5.8, in the Order Form and the Price List from time to time;

Financial Product: means the financial instrument specified in the Order Form;

Financial Product Platform: means those platforms (including for example, but without limitation, websites) used by the Recipient for the distribution of Financial Products (including any White Label Platform (as defined in the Order Form)) further set out and selected by the Recipient on the Order Form, provided that any multiple platforms which are branded identically shall be deemed to be a single platform;

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;

Intellectual Property Rights: means copyright, trademarks, design rights, patents, trade secrets, knowhow, utility models, database rights, rights in semiconductor or circuit layouts whether registered or unregistered, whether in existence now or in the future and any other similar or analogous rights and any application or right to apply for registration or renewal of any such rights;

Launch: means: (a) if the Recipient Subscribes for an Enterprise Licence, the Commencement Date; or (b) in any other case, the dates respectively on and from which: Bats authorises (i) the Recipient to launch any Financial Product Platform; or (ii) a Product Redistributor to launch any Independent Platform (as defined in the Order Form) in accordance with Clause 4.1;

Level 1 Data: includes without limitation the real-time best bid and ask prices, order volumes, and the last traded prices with the respective volumes necessary for trading on Bats MTF;

Level 2 Data: includes without limitation all available real-time bid and ask prices with the respective volumes;

Licence: means the licence granted to the Recipient in accordance with Clause 3.1;

Order Form: means the order form agreed in writing between the Parties as amended from time to time by written agreement between the Parties;

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

Product Redistributor: means: (a) a third party to which Recipient provides the Financial Products for redistribution to other third parties or (b) a third party whose branding is used as the principal branding for a White Label Platform (as defined in the Order Form);

Real-time Data: includes without limitation, Level 1 Data, Level 2 Data and the Trade Data;

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

Term: means the term of this Agreement as determined in accordance with Clause 6.1;

Terms of Business: means Clauses 1 to 11 of this Agreement;

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;

Usage Reports: means the reports including information required by Bats in respect of the Financial Product Platforms or Product Redistributors as detailed in the usage report policies available on the Website from time to time; and

Website: means the Bats website www.Batstrading.co.uk as amended or replaced from time to time.

2 Interpretation

- 2.1 In the Agreement a reference to:
- 2.1.1 a “person” includes any individual, company, corporation, firm partnership, joint venture, association, organisation or trust (in each case, whether or not having separate legal personality) and references to any of the same shall include a reference to the others;
 - 2.1.2 any party includes its successors (whether by operation of applicable law, regulation or otherwise) and permitted assigns;
 - 2.1.3 any phrase introduced by the words “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative only and shall not be construed as limiting the generality of any preceding words;
 - 2.1.4 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
 - 2.1.5 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 the Agreement are for convenience only and shall not affect its interpretation.

3 Licence

- 3.1 In consideration of the payment of the Fees and subject to the terms and conditions of this Agreement, Bats hereby grants to the Recipient during the Term, a personal, non-exclusive, limited, non-transferable, revocable licence to:
- (i) use the Data in accordance with the Order Form and this Agreement for the sole purpose of creating Financial Products; and
 - (ii) to distribute such Financial Products to third parties and to permit its Product Redistributors to redistribute such Financial Products to third parties,
- provided always that:
- 3.1.1 the Data is not directly or indirectly identifiable as part of the Financial Product;
 - 3.1.2 the Financial Product cannot be used as a substitute for the Data or any part thereof;
 - 3.1.3 the Data is not disclosed or otherwise made available to any such third party (including any Product Redistributor); and
 - 3.1.4 it is not possible to reproduce, reverse engineer or otherwise calculate the Data in any way by means of utilising the Financial Product.
- 3.2 Bats expressly reserves any and all other rights in and to the Data other than those limited rights licensed in accordance with this Licence. The Recipient is not entitled to use the Data other than as set out in this Agreement or as set out in Recipient's agreement(s) with Bats' authorised data vendor(s), if any. Should the Recipient wish to use the Data for any other purpose, it must contact Bats and obtain Bats' prior written consent to any such additional use.
- 3.3 Except to the extent permitted in Clause 3.1, 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.

4 Financial Products and Product Redistributors

- 4.1 Unless the Recipient subscribes for an Enterprise Licence, the Recipient shall submit a detailed description (as determined in Bats' discretion acting reasonably) of the Financial Products which it creates, uses and distributes in accordance with this Agreement and Financial Product Platforms and Product Redistributors to Bats in writing prior to: (i) Launch via the Order Form; and (ii) making any subsequent material changes to the Financial Product and Financial Product Platforms or Product Redistributors which impact in any way upon use and/or disclosure of the Data, and the Recipient shall not be entitled to Launch and/or make any material changes unless and until it has received Bats' written approval of the same (not to be unreasonably withheld or delayed). Any such detailed description shall set out, with regard to new Financial Products and/or Financial Product Platforms, the specifications thereof, and with regard to material changes to existing Financial Products and/or Financial Product Platforms Financial, a description, scope and impact and intended effective date of the change.
- 4.2 The Recipient shall only provide the Financial Products to third parties strictly in accordance with the Order Form and this Agreement and as may be otherwise approved by Bats in writing in advance.

5 Fees and Payment

- 5.1 Recipient agrees to make timely payment of the Fees within 30 days of receipt of Bats' invoice and time of payment shall be of the essence.
- 5.2 Fees are payable as applicable in accordance with Clause 5.1 and set out on the Order Form or the Price List (subject to clause 5.8) yearly in advance: (i) on and from Launch up and until the following 31 December (payable on a pro rata basis); and (ii) subsequently prior to each following 1 January.
- 5.3 If Fees are payable in respect of the numbers and/or volume of Financial Product Platforms made available and/or the number of Product Redistributors to which the Recipient provides Financial Products then the Recipient shall provide the applicable Usage Reports within 5 Business Days of the end of each calendar month. For the avoidance of doubt, if the Recipient subscribes for an Enterprise Licence, it shall not be required to provide any reports to Bats.
- 5.4 If Fees are not paid in full in accordance with Clause 5.1, without prejudice to any other rights and remedies available to Bats, Bats may:
- 5.4.1 charge interest on all outstanding amounts at the annual prevailing base lending rate of Bats' principal bankers from time to time plus three (3) per cent, calculated pro rata on a daily basis from the due date to the date of payment;
- 5.4.2 suspend this Agreement and the Licence until the date of payment in full; and/or
- 5.4.3 if such Fees remain unpaid for 30 days following the due date for payment and provided that such Fees are not the subject of a genuine dispute between the Parties, terminate this Agreement by the provision of written notice to that effect.
- 5.5 If Recipient fails to provide a Usage Report in accordance with Clause 5.3, without prejudice to Bats' other rights and remedies, Bats may determine the Fees by doubling the previous month's usage figures, if Recipient is paying Fees on a monthly basis, or the pro-rated annual figures, if Recipient is paying Fees on an annual basis, and invoice the Recipient accordingly. If the Recipient can later prove it has been overcharged, the Recipient shall pay in full provided that Bats shall deduct any overpaid amount from the following Fee invoices as applicable.

- 5.6 All sums payable under this Agreement by the 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. All amounts payable by the Recipient to Bats under the Agreement shall be exclusive of value added tax ("VAT") (if any). VAT shall be charged in addition to such amounts. Recipient shall assume full and complete responsibility for the payment of any taxes, charges or assessments imposed on Recipient by any foreign or domestic national, state, provincial or local government bodies, or subdivisions thereof, and any penalties or interest, (other than income taxes imposed on Bats) relating to the provision of the Data to Recipient. All such taxes (including VAT where applicable), charges and duties shall be added to and, together with the applicable rates, clearly indicated on the face of Bats' invoices. In addition, if Recipient is required under applicable law to deduct or withhold any such tax, charge or assessment from the amounts due to Bats under the Agreement, then such amount shall be increased so that the net amount actually received by Bats after the deduction or withholding of such tax, charge or assessment, will equal one hundred per cent (100%) of the Fees.
- 5.7 Bats reserves the right to change the Fees no more than once in any calendar year by not less than 90 days' prior written notice given to the Recipient by means of both a notice posted on the Website, and by email (and, for the avoidance of doubt, such written notice shall not be validly served unless it is given to the Recipient by email). If a change in Fees is more than the Retail Price Index (calculated from the year preceding the date of the Fee change notice) plus 10%, then the Recipient may terminate this Agreement upon providing at least 30 days' written notice to Bats, otherwise the Recipient shall have no termination rights in relation to changes in the Fees.
- 5.8 The Fees payable pursuant to this Agreement are the Fees set out in the Order Form unless and until Bats serves notice of any change to the Fees pursuant to and in accordance with clause 5.7, in which case following such notice the Fees payable pursuant to this Agreement are the Fees set out in the Price List.
- 5.9 In the event that Bats terminates this Agreement pursuant to clause 6.3, the Recipient shall be entitled to a pro rata refund of any amounts paid for the period in which no Data has been provided due to such termination of this Agreement. Subject to the foregoing, there is no right to reimbursement of Fees in the event of suspension or termination of the Agreement.

6 Term and Termination or Suspension

- 6.1 This Agreement shall commence on and from the Commencement Date and unless earlier terminated in accordance with the terms of the Agreement shall continue:
- 6.1.1 until the end of the then current calendar year if the Commencement Date is between 01 January to 30 June; or
- 6.1.2 until the end of the following calendar year if the Commencement Date is between 01 July to 31 December, 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 (with the effect that the termination shall take effect at the expiry of such notice).
- 6.2 Either Party may terminate this Agreement with immediate effect by writing to the other Party if the other Party:
- 6.2.1 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
- 6.2.2 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 or is unable to pay its debts as they fall due.

- 6.3 Bats may terminate this Agreement without cause by the provision of at least 90 days written notice to the Recipient.
- 6.4 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.
- 6.5 The Recipient must inform Bats within thirty days of any Change of Control. Bats shall be entitled to terminate this Agreement by the provision of at least 30 days' written notice following a Change of Control by the Recipient.
- 6.6 Bats may from time to time either temporarily or permanently restrict, suspend, prevent access to or cease to provide the Data and provision by Recipient of any Financial Product, if and only to the extent that, in Bats' reasonable opinion: (a) Recipient is in breach of the Agreement; (b) regulatory implications require such an action; (c) system maintenance, stability or development work is required; and/or (d) the Recipient and/or such Financial Product and/or Product Redistributor is bringing Bats into disrepute. In each case Bats will provide reasonable prior written notice of such an action, an in any event no less than 5 days' notice unless it is not commercially practicable or permissible to do so; provided that, in the event that Bats exercises its rights under (b) or (c) above, the Recipient shall be entitled to a pro rata refund of any amounts paid for the period for which access was restricted, suspended or prevented.
- 6.7 Not more than once per calendar year, and by the provision of at least 10 days' prior written notice, the Recipient shall permit Bats (or its authorised agents and/or sub-contractors) to inspect and audit use of the Data or any part of it and/or compliance with this Agreement, and shall provide all relevant information, comply with all reasonable requests or directions by Bats (or its authorised agents and/or sub-contractors) during or as a result of such inspection and/or audit, to enable Bats (or its authorised agents and/or sub-contractors) to verify and/or procure that the Recipient is in full compliance with its obligations under this Agreement. Bats (or its authorised agents and/or sub-contractors) 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. Bats shall bear the cost of such an audit, unless an underpayment of Fees is revealed, in which case the Recipient shall bear the reasonable costs of the audit and be liable to pay the outstanding Fees in accordance with Clause 5.4 including any interest payable on and from the due date that would have applied had the Fees been correctly reported and invoiced. 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 6.7.
- 6.8 Bats may terminate this Agreement immediately by giving written notice at any time where required to do so by regulatory authority.

7 Warranties

- 7.1 Bats warrants and represents that:
- 7.1.1 it has all necessary rights, power and authorities to enter into the Agreement and the Licence;
 - 7.1.2 it has all necessary rights, power and authorities to provide the Data to the Recipient;
 - 7.1.3 the Data will be provided in compliance with any applicable English law, rule or and regulation;
 - 7.1.4 the use of the Data by the Recipient in accordance with this Agreement will not infringe the Intellectual Property Rights of any third party; and
 - 7.1.5 it will throughout the Term act in compliance with any applicable law, rule or regulation.

- 7.2 The Recipient 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. 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, other than if caused by Bats' fraud or wilful misconduct. When notified by the Recipient of an inaccuracy in the Data, Bats shall use reasonable endeavours to rectify such 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, other than if caused by Bats' fraud or wilful misconduct. Save for any liability arising from a breach of the warranties under clause 7.1, Bats accepts no liability for the results of any acts or omissions taken on the basis of the Data.
- 7.3 The Recipient acknowledges and agrees that any and all Intellectual Property Rights which subsist or may subsist in the Data and/or in the information comprised in the Data shall remain the property of Bats (and/or, if applicable, of the third party which provided the information to Bats).
- 7.4 Bats acknowledges and agrees that any and all Intellectual Property Rights which subsist or may subsist in the Financial Products and/or Financial Product Platforms shall vest exclusively in and remain the property of the Recipient.
- 7.5 Subject to Bats' warranty at clause 7.1.4, the Recipient represents and warrants that it has all rights, authority and licenses to enter into the Agreement and will throughout the Term act in compliance with any applicable law, rule or regulation.
- 7.6 The Recipient hereby acknowledges and agrees that the Data and any and all rights of any kind in and to the same are the property of Bats (and/or, if applicable, of the third party which provided the information to Bats) and that such property is of high commercial value. 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.
- 7.7 Except as explicitly stated to the contrary in this Agreement each Party 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 Data, the Financial Products, the Financial Product Platforms, 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.

8 Limitation of Liability

- 8.1 Nothing in this Agreement excludes or in any way limits either Party's liability for:
- 8.1.1 fraud,
 - 8.1.2 wilful default,
 - 8.1.3 death, or personal injury caused by negligence; and/or
 - 8.1.4 the indemnities set out in this Agreement under Clause 9; and/or
 - 8.1.5 any liability to the extent the same may not be excluded or limited as a matter of law.
- 8.2 Subject to clause 8.1, Bats shall not be liable to the other Party under or in connection with the terms of this Agreement for any and all of the following, howsoever arising, whether or not such loss or damage was foreseeable or in the contemplation of the Parties to this Agreement and whether arising out of breach of contract, tort (including negligence), breach of statutory duty or otherwise:
- 8.2.1 loss of opportunities;
 - 8.2.2 loss of income;
 - 8.2.3 loss of actual or anticipated profits;
 - 8.2.4 loss of business;

- 8.2.5 loss of contracts;
 - 8.2.6 loss of goodwill or reputation;
 - 8.2.7 loss or anticipated savings;
 - 8.2.8 loss of, damage to or corruption of data; or
 - 8.2.9 indirect or consequential loss or damage of any kind.
- 8.3 Subject to Clauses 8.1 and 8.2, Bats' entire liability howsoever arising and whether arising out of breach of contract, tort (including negligence), breach of statutory duty, 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 this Agreement shall be limited in respect of all incidents or series of incidents occurring in any one calendar year, to the greater of the Fees paid under this Agreement in the 12 months immediately preceding the date on which the first claim arose and £1,000.
- 8.4 Recipient hereby acknowledges and agrees that it shall bring any claim arising under or relating to this Agreement within 12 months from the date of the claim arising, or, if later, within 12 months from the date Recipient first became aware of the matters leading to the claim, and failure to do so shall result in any such claim automatically and irrevocably expiring.

9 Indemnity

- 9.1 The Recipient agrees to indemnify and hold harmless Bats from and against any and all claims, actions, liabilities, losses, damages, costs, and expenses (including without limitation reasonable legal expenses) suffered or incurred by Bats which arise out of or in connection with, directly or indirectly, a breach of this Licence.
- 9.2 The indemnity set out in this Clause 9 is subject in each case to the provisos that: (i) the claim does not arise from the indemnifying Party's breach of any of the terms and conditions set out in this Agreement; (ii) the indemnified Party has made no admission with respect to such claim without the prior approval of the indemnifying Party; (iii) the indemnified Party promptly notifies the indemnifying Party in writing of such claim; (iv) the indemnifying Party has sole control of the defence or related settlement negotiations of any such claim; (v) the indemnifying Party retains all amounts recovered; (vi) the indemnified Party provides the indemnifying Party with all information reasonably requested by the indemnifying Party for the purposes of enabling the indemnifying Party to assess the claim; (vii) the indemnified Party uses reasonable endeavours to mitigate its losses; and (viii) the indemnified Party assists the indemnifying Party in every reasonable manner reasonably required by the indemnifying Party including joining any lawsuit as a party subject to the indemnifying Party paying the reasonable costs and expenses of the indemnified Party properly and reasonably incurred in the provision of such assistance.

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 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 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.
- 10.4 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 Information provided to the other in connection with this Agreement within five Business Days of such request (or as soon as reasonably practical thereafter) and in each such case shall certify in writing that it has done the same. Notwithstanding the foregoing of this clause 10.4, the Recipient shall be entitled to retain and use a copy of any such Confidential Information acquired prior to the date of termination, without further payment to Bats, solely for any legal or regulatory purposes.
- 10.5 Each Party may disclose Confidential Information of the other Party as may be required by law, regulation or instruction of a competent authority, 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.

11 General

- 11.1 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 this Agreement and shall in no way affect the legality, validity or enforceability of the remaining terms.
- 11.2 Neither Party may transfer or assign the Agreement to any third party without the prior written approval of the other Party, however, Bats may transfer or assign the Agreement to an Affiliate and will provide the Recipient with written notice of any such assignment.
- 11.3 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, and provided that such Party uses commercially reasonable efforts to fulfil its obligations under the Agreement.
- 11.4 Any notice which either Party is required or authorised by the Agreement to give or make to the other shall be given in writing by email (to be provided by the Recipient in the completed Order Form), post or hand delivery addressed to the other Party at their last known business address. 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 4.30pm, 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 Head of Legal and if given by email, sent to legalEU@Batstrading.com or such other email address as Bats may request from time to time. It is the each Party's responsibility to inform the other Party promptly of any change to contact details provided to the other Party.
- 11.5 The 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 the Agreement except as expressly stated in the 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 the 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 the Agreement) and that Party's only remedies shall be for breach of contract as provided in the Agreement.

- 11.6 In the event of any conflict or inconsistency between the terms of these Terms of Business and the Order Form, then the terms and conditions of these Terms of Business shall prevail over the Order Form to the extent of the conflict or inconsistency.
- 11.7 Notwithstanding anything to the contrary in this Agreement (but subject to clause 5.7): (i) Bats reserves the right, at its discretion, to make changes to the Agreement. Bats will give the Recipient at least 5 Business Days' prior notice before such changes are effective; and (ii) if Bats makes a material amendment to the terms of the Agreement, Bats shall provide at least 60 Business Days' written notice of the same and if the amendment is to the Recipient's material 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 10 Business Days' written notice (or as much notice as reasonably possible in the circumstances if provided with less than 10 Business Days' notice by Bats). Subject to the foregoing of this clause 11.7, the Agreement may be amended only in writing by authorised representatives of both Parties.
- 11.8 The terms and conditions of Clauses 1, 2, 7.1, 7.3, 8, 9, 10, 11.1, 11.4, 11.5, 11.6, 11.8, 11.9, 11.10 and 11.11 shall survive any termination, cancellation or expiration of the Agreement.
- 11.9 Any waiver by the other Party in writing of any of the other Party's obligation hereunder, or any failure to insist upon strict compliance with any obligation shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure.
- 11.10 Nothing in the Agreement is intended for the benefit of any third party, and the Parties do not intend that any term of the Agreement should be enforceable by a third party either under the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- 11.11 The Agreement (and any non-contractual obligations arising out of or in connection with the Agreement) shall be governed by the laws of England and Wales. The Parties consent to the exclusive jurisdiction of the English Courts in relation to any legal action or proceedings arising out of or in connection with the Agreement.