

**MiFID Contract and Policy Framework for Data Providers**  
**Version 1.0 FINAL - 4 May 2007**

**Definitions of relevant terms follow at the end of this document.**

**I. Purpose of the Framework:**

To provide Data Providers with industry recommendations that can serve as a resource as they are drafting their data usage and distribution agreements and developing policies to govern that usage and distribution.

**II. Scope of Agreement:**

The Data Provider's agreement should include a representation that it will throughout the term of the Agreement (i) supply the Information, whether directly or indirectly, to the Data Vendor's Group on a non exclusive basis and (ii) grant to the Data Vendor's Group a non-exclusive perpetual licence to use, store, process, reproduce, make available and redistribute the Information in any way or form to the Consumers in accordance with the terms of the Agreement.

**III. Data Usage:**

- A. The Data Provider's licences with Data Vendors and Consumers should not be specific to a particular product, application, or usage offered by the Data Vendor or Customer.
- B. The Data Provider's agreement and policies should provide Data Vendors with the right to (1) redistribute the Information to its internal users and Consumers, (2) use the Information in new products or applications without any further authorization by the Data Provider and 3) allow Consumers to use the Information internally and within their group.
- C. Derived Data – Data Vendors and Consumers should be permitted to create Derived Data products from the Information. Derived data products should be treated as the property of the data vendor or consumer that created them and should fall outside the scope of the Agreement.

**IV. Commercial Terms:**

- A. Commercial terms should be consistent with MiFID. They should be reasonable and non-discriminatory.
- B. To comply with MiFID's non-discriminatory mandate, the Data Provider should make the same terms available to every distributor and consumer. Any subsequent amendments to terms and policies should also be published and made equally available to all.
- C. During the initial implementation of MiFID, where commercial terms are envisaged by the Data Provider, it is recommended that a simplified commercial model should be used. Minimal administrative requirements and minimal costs will allow Data Vendors and Consumers to ingest, administer and distribute the MiFID Information more swiftly, would encourage better uptake from the Consumers and therefore generate more market penetration for the Data Provider.

- D. If charges apply, the Data Provider should be clear on the charges associated with access, usage and distribution of its data. Any charges should be commensurate with the volume and importance of the data, and be structured to minimize the administrative overhead on vendors and consumers of the Information.
- E. Reporting Requirements – Any applicable reporting requirements with respect to the number of users accessing the Information should not be so onerous as to constitute a significant administrative burden on Data Vendors and Consumers.
- F. The Data Provider should be clear as to the mechanism and timing associated with any future implementation of new charges or changes to existing charges.
- G. Data Vendors of the Data Provider's Information should be free to charge for provision of that Information.
- H. A Data Vendor's internal use of the Information for Information vending purposes should not be fee-liable. These purposes could include, but are not limited to, promotion, software development, education, or demonstration purposes.

**V. Notice/Leadtime:**

- A. Data Providers should contractually commit to providing data vendors and consumers with sufficient lead-time for any changes to its product, pricing, or policies.

For pricing changes:

- i. Data Providers should use reasonable efforts to implement fee changes and the introduction of new fees with effect from the first day of the calendar quarter (January, April, July, October).
- ii. Data Providers should give at least 120 days prior notice to data vendors and consumers of the fee change

For product or policy changes:

The following guidelines for product changes are taken from the ***FISD Best Practice Recommendations on Market Data Service Levels, Response Times and Communication Procedures*** which can be reviewed in full at

[http://www.fisd.net/Mdadmin/BPR\\_033105.pdf](http://www.fisd.net/Mdadmin/BPR_033105.pdf).

- i. Minor Change – 60 days
- ii. Major Change – 120 days
- iii. Exceptional Change – at least 120 days after consultation with the industry

- B. Data Providers' contracts should be structured so Data Vendors and Consumers can terminate their contracts with the Data Provider, without penalty, prior to the implementation of any material change to a Data Provider's product, pricing, or policies. In such event, the Data Vendors and/or Consumers should be entitled to a pro-rata refund of any charges paid in advance.

## **VI. Display Requirements/Data Formats:**

- A. The Data Provider should be clear as to any requirements regarding the display of its Information by the Data Vendor (and its customers) – e.g., identifying the source’s data within the Data Vendor’s displays and products
- B. Any such display requirements should be practical and consistent with the technical capabilities and commercial realities associated with Data Vendors’ display of information – e.g., screen real-estate limitations, the need to consolidate information from multiple sources.
- C. The Data Provider should publish using data formats that are consistent with recognized industry standards and practices. Such format should facilitate easy receipt, processing, storage, and distribution of the information.
- D. Data formats should enable Data Vendors to identify the source of all MiFID Information for internal data management purposes, even where the Information is provided under conditions of anonymity, so that Data Vendors can comply with distribution requirements including any applicable restrictions.

## **VII. Downstream Distribution and Usage:**

- A. The Data Provider’s agreement and policies should provide for situations where a Data Vendor distributes the Information downstream via data feed products.
- B. Data Providers should not require direct agreements with organisations that neither (a) receive the Information directly from the Data Providers nor (b) redistribute the Information to third parties. It is acceptable for the Data Provider to require, if applicable, that the recipient of a Data Vendor’s data feed product which contains real-time information enter into a direct contractual relationship with the Data Provider *if* that recipient is itself a Data Vendor or sub-vendor (i.e., an organization that redistributes the Information to third parties).
- C. The Data Provider’s agreement and policies should explicitly authorize the use of Service Facilitators by Data Vendors provided that the Data Vendor will impose contractual restrictions on Service Facilitators’ usage of the Information in support of the Data Vendor.
- D. The use and distribution should be unrestricted for delayed and end-of-day representations of the Information, and limited extracts of the Information.

## **VIII. Warranty:**

- A. The Data Provider’s agreement should provide a warranty that (1) the Data Provider has the right to supply the Information to the Data Vendor’s (or Consumer’s) group and that (2) the Information and its use as specified in the Data Provider’s Agreement will not infringe any Intellectual Property Rights of any third party; and that (3) the supply of the Information to the Data Vendor will not infringe any applicable statute, law, rule or regulation.
- B. The Data Provider should represent that:

- a) it provides the Vendor with the best available Information and that the Information is of a quantity and quality (including in terms of consistency, accuracy, timeliness and comprehensiveness) at least equal to comparable Information supplied by the Data Provider to any other third party from time to time. The Data Provider ensures that the Data Vendor will not be discriminated against compared to other information vendors or Consumers receiving the Information directly from the Data Provider with respect to the quality and scope of the current or future Information;
- b) the Information is regularly and promptly updated or otherwise modified to reflect any change or development affecting any matter to which the Information relates;
- c) it will use reasonable efforts to ensure that any Information delivered or transmitted to the Data Vendor by electronic methods shall be free from viruses; and
- d) although it does not warrant that the Information will be complete or error-free, the Data Provider will however use reasonable endeavours to :
  - ensure that the Information is accurate and complete
  - notify the Data Vendor of any errors or omissions in the Information as soon as reasonably practicable after it becomes aware of them
  - take the necessary steps to have any such errors or omissions corrected as soon as reasonably practicable after the Data Provider becomes aware of it

#### **IX. Liability:**

- A. The contract should be clear and reasonable in laying out DataVendor's and Consumer's liability for any breach of the contract or any other requirement imposed by the Data Provider. Indemnities and Liabilities should be reasonable and fair.
- B. The Data Provider should use terms comparable to the provisions of the FISD model exchange contract which is excerpted below:

*8.1 The [Data Provider] is liable for and will indemnify the [Data] Vendor's Group against all direct loss, damage cost or expense (including legal fees) arising out of:*

- a) all claims or proceedings relating to the possession, use or exploitation of the Information by the [Data] Vendor's Group and/or the Clients, based on the fact that such possession, use or exploitation infringes any Intellectual Property Rights of any third party;*
- b) any breach by the [Data Provider] of any express or implied condition, warranty or undertaking under this Agreement; or*
- c) the [Data Provider]'s gross negligence or wilful misconduct.*

*8.2 In the case described in clause 8.1.a), without affecting the [Data] Vendor Group's other rights, the [Data Provider] will, at its own expense in relation to any such claim or proceeding, promptly:*

- a) procure for the [Data] Vendor's Group any required licence, consent or authorisation necessary to permit the [Data] Vendor's Group to perform any act authorised by this Agreement; or*
- b) modify or replace or procure the modification or replacement of any part of the Information which is necessary to ensure that the relevant infringement is prevented.*

8.3 The [Data Provider] shall not be liable for any loss, damage, costs, claims and expenses whatsoever:

- a) arising from mechanical or electrical or telephone breakdown or power failure or malfunction of any computer and/or data transmission or receiving apparatus and/or auxiliary equipment or any other cause beyond reasonable control of the [Data Provider];
- b) arising from any error or omission in the collecting, recording, processing, storing, making available for supply or supplying of the Information, unless such loss, damage, costs, claims or expenses arise from the gross negligence or wilful misconduct of the [Data Provider].

8.4 The [Data] Vendor will not be liable for any loss, damage or cost incurred by the [Data Provider] arising from any delays, errors or omissions however occasioned in using, storing, processing, attributing, reproducing or redistributing the Information, except in the case where such loss, damage or cost is caused by the [Data] Vendor's gross negligence or wilful misconduct.

Note: The following terms in "{ }" may not be applicable.

{8.5 To the extent permitted by law, under no circumstances (except for the Data Provider's liability under 8.1(a), for which the Data Provider remains wholly liable) will each party's liability under this Agreement exceed [ the total amount of Fees paid by the [Data] Vendor's Group to the [Data Provider] during the last 12 (twelve) months preceding the event giving rise to liability] or [ the local equivalent of US\$ ..... (..... US Dollars)] , whichever is the higher, regardless of the cause or form of action. }

8.6 Neither party will be liable to the other for any indirect, special or consequential loss or damage including without limitation loss of profit, business revenue or goodwill or loss of data arising out of this Agreement.

8.7 This clause 8 survives termination of this Agreement.

## **X. Definitions:**

**Consumer** - Entities and individuals that wish to receive Information and include investment firms, other buy-side firms, individual investors, etc.

**Data Aggregator** - A service provider that provides pre- and post-trade publishing facilities to any investment firm, systematic Internaliser, or multi-lateral trading facility that wishes to outsource its MiFID trade reporting obligations

**Data Provider** – Any organisation that publishes Information under MiFID, either as an original source of the data, or as a Data Aggregator publishing on behalf of an original source. Data Providers could include original sources like Systematic Internalisers, Multi-lateral Trading Facilities, and Investment Firms, and re-publishers like Data Aggregators.

**Data Vendor** – An organisation that receives Information from one or more Data Aggregators and distributes that data to consumers.

**Derived Data** - Pricing data or other information that is created in whole or substantially in part from the Information but cannot be used as a substitute for the Information.

**Information** - Real-time pre- and post-trade transparency data that is published under MiFID.

**MiFID** - Directives 2004/39/EC, 2006/73/EC and Regulation (EC) No 1287/2006 together with all associated guidelines issued by CESR.

**Service Facilitator** – A third party to which a Data Vendor outsources the responsibility for managing some portion of its technical, financial, legal, or operational role in distributing the Data Provider's Information.