

**GENERAL CONDITIONS**  
**(2009 Edition)**

## GENERAL CONDITIONS

### 1. - Definitions

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

“Accreditation Process”	means the process of accrediting the Service Provider as more particularly described in the Service Description;
“Agreement”	means the agreement between the Service Provider and Borsa Italiana concerning the supply of the Service Provider Service indicated in the Request for Service;
“Approved Status”	means approval of Service Provider by Borsa Italiana pursuant to Article 2;
“Business Day”	means any day which is not a Saturday or Sunday or a public holiday in the City of Milan;
“Communication Agreement”	means a communications agreement approved by Borsa Italiana providing communication link(s) between the Service Provider and Borsa Italiana;
“Data”	means the Input Data and the Output Data and all related intellectual property rights owned by Borsa Italiana;
“Force Majeure Event”	means any cause beyond a Party’s reasonable control affecting the performance of its obligations under this Agreement including but not limited to fire, flood, explosion, act of terrorism, accident, war, strike, embargo, governmental or regulatory requirement, civil or military authority, Act of God or industrial disputes;
“Input Data”	means any information sent by a Service Provider Client via the Service Provider Network to the System;
"Minimum Criteria"	means the minimum criteria set out in the Service Description that a Service Provider must meet in order to gain and retain the Approved Status under the Accreditation Process;
“Output Data”	means any information sent by the System to the Service Provider Client via the Service Provider Network ;
“Party”	means Borsa Italiana or the Service Provider;
“Parties”	means Borsa Italiana and the Service Provider;
“Request of Service”	means the draft contract signed by the Service Provider and containing the request for the supply of the Services;
“Rules”	means the Rules of the markets organised and managed by Borsa Italiana and related Instructions, AIM Italia Rules, ExtraMOT Rules and MAC Rules and/or relevant schedules o annexes, available on the Borsa Italiana’s corporate website as amended from time to time;
"Service Provider’s Client"	means a customer of the Service Provider which is permitted to connect to the System via the Service Provider Network and which has been approved by Borsa Italiana;
“Service Provider’s Client Agreement”	means an agreement entered into by the Service Provider and the Service Provider Client;
“Service Provider’s Application Questionnaire”	means the questionnaire to be filled in by the Service Provider available on the Borsa Italiana’s corporate website as amended from time to time;
"Service Provider’s Network"	means the Service Provider's network allowing the connection between the Service Provider Client and the Service Provider more particularly described in the Service Provider’s Response;
“Service Provider’s Response”	means the Service Provider’s response to the Service Provider Application Questionnaire;
“Service Provider’s Service”	the Service Provider Service as agreed between the parties, by which the Service Provider will provide connection between the Service Provider Client and the System which is described in the Service Provider’s Response and any network diagrams and associated IP addressing schema agreed by the Service Provider and Borsa Italiana;
“Service Start Date”	means the date on which Borsa Italiana notifies the Service Provider that all necessary testing has been completed and confirming that the Accreditation Process has been successfully completed;

"Service Description"	means any service definition, technical or other specification which relates to the Service Provider Service including the accreditation policy or guidelines provided to the Service Provider by Borsa Italiana or available on the Borsa Italiana's corporate website as amended from time to time;
"Schedules"	means the Price List, the Rules, the Service Provider's Application Questionnaire, the Service Provider's Response and the Service Description provided to the Service Provider by Borsa Italiana or available on the Borsa Italiana's corporate website as amended from time to time;
"System"	means any system(s) reachable by the Service Provider through the communication link(s) under the Communications agreement;
"Tests"	means the tests to be carried out by the Service Provider.

## **2. Accreditation Process and Approved Status**

2.1 The Service Provider must have obtained the Approved Status under the Accreditation Process, before it can provide the Service Provider Service.

2.2 The Parties shall take the following steps as part of the Accreditation Process:

2.2.1 the Service Provider shall complete the Service Provider's Response to Borsa Italiana, which must demonstrate the Service Provider's fitness to provide the Service Provider Service, including, without limitation, evidence of how the Service Provider will meet the Minimum Criteria;

2.2.2 the Service Provider shall have in place a Communications Agreement and any other agreements required by Borsa Italiana as set out in the Service Description; and

2.2.3 the Parties shall complete the relevant Tests;

2.3 Upon successful completion of the steps in Article 2.2, the Service Provider shall be deemed to have provisional Approved Status.

2.4 In order to achieve the full Approved Status the Service Provider and/or Borsa Italiana shall have completed all appropriate Tests with at least one Service Provider Client.

2.5 Upon successful completion of the steps in Article 2.4, the Service Provider shall be deemed to have full Approved Status. Borsa Italiana shall notify the Service Provider the acceptance of the Request for Service and that it has achieved Approved Status confirming the Service Start Date. The Service Provider shall not permit any Service Provider Client to connect to the System via the Service Provider Network until it has received full Approved Status.

2.6 The Service Provider Service shall be deemed to be in operation from the Service Start Date. With effect from the Service Provider's Service Start Date until termination of this Agreement howsoever caused or suspension of this Agreement pursuant to Article 3, the Service Provider shall be entitled to refer to itself as an "Approved Service Provider of Borsa Italiana".

2.7 Any press release or marketing material of the Service Provider relating to its Approved Status (excluding the statement contained in Article 2.6 above) must be agreed by Borsa Italiana in writing in advance of release or publication.

## **3 Suspension of Service Provider Client/ Service Provider access to the System**

3.1 In the event that Borsa Italiana considers that the access to its System by any Service Provider Client and/or provision of the Service Provider Service by the Service Provider is causing, or is likely to cause:

3.1.1 technical problems for Borsa Italiana; or

3.1.2 interference with the continued access of any entity to the System; or

3.1.3 any risk for the orderly trading activity on its markets; or

3.1.4 Borsa Italiana to be in breach of its regulatory responsibilities,

it may immediately and without notice (subject to Article 3.2) or liability for compensation or damages either itself suspend the access of one or more of the Service Provider Client to the System, or instruct the Service Provider to do so, in which case the Service Provider shall comply with such instruction without delay.

3.2 If Borsa Italiana takes any action pursuant to Article 3.1 it shall provide to the Service Provider as much prior written notice of such action as possible and if not possible, such notice shall be provided as soon as possible thereafter.

3.3 Without prejudice to Article 3.1 and/or other remedies set forth in this Agreement, Borsa Italiana has the right to limit the number of Service Provider Client that the Service Provider can connect to the System through the Service Provider's Network (i) in the event of persistent technical problems affecting a significant numbers of Service Provider Client or (ii) in the event the Service Provider fails to modify its systems in order to comply with the upgrades made by Borsa Italiana.

#### **4 Borsa Italiana obligations**

4.1 Borsa Italiana will take all reasonable steps to provide and maintain the reliability of the access to the System.

4.2 Borsa Italiana's obligation to provide access to the System is conditional upon the Communications Agreement entered into by the Parties pursuant to Article 2.2.2 remaining in full force and effect at all times.

4.3 Borsa Italiana's responsibility to provide access to the System shall cease at the demarcation point specified in the Service Description and it shall be the Service Provider's responsibility to make appropriate arrangements beyond this demarcation point.

#### **5 Service Provider obligations**

5.1 The Service Provider shall comply at all times with the Rules and the Minimum Criteria;

5.2 The Service Provider shall comply with any other applicable requirements set out in the Service Description available on the Borsa Italiana's corporate website as amended from time to time.

5.3 The Service Provider shall ensure that its access to the System complies with any relevant legislative and regulatory requirements including without limitation all applicable telecommunications and financial services legislation and regulation and shall not use or permit the access to the System for any illegal or immoral purpose.

5.4 The Service Provider shall provide Borsa Italiana with such assistance and information as Borsa Italiana may reasonably require in connection with this Agreement including without limitation access to employees, systems, data and records, provided the Borsa Italiana complies with such requirements in relation to security and operational matters as the Service Provider may reasonably require. The Service Provider shall permit Borsa Italiana or any third party Borsa Italiana may avail of, to have access to its premises in order to verify if and how the Service Provider meets the Minimum Criteria.

5.5 The Service Provider warrants that the Service Provider's Response is accurate and that it has been prepared with all due skill and care.

5.6 The Service Provider shall notify Borsa Italiana in writing in advance of any material changes that are made to the Service Provider's Network or material changes to any other systems, information or processes that have been previously notified to Borsa Italiana in particular, but without limitation, any such information included within the Service Provider's Response. Any

material changes which may affect service to Service Provider Client or alter the level of the Service Provider compliance with the Minimum Criteria shall be agreed by the parties prior to such changes being made. The Service Provider is required to retain Approved Status at all times.

- 5.7 Upon becoming aware of any actual security breaches of the Service Provider Network, any Data corruption or any other issue or event which may threaten the working or integrity of the access to the System, the Service Provider shall:
- 5.7.1 promptly notify Borsa Italiana by telephone (followed up by a written report providing such details as may be requested by the Borsa Italiana); and
  - 5.7.2 in accordance with guidelines supplied by Borsa Italiana promptly instruct any relevant Service Provider Client to contact Borsa Italiana if the breach, issue or event affects such Service Provider Client's access to the System.
- 5.8 Matters which must be immediately reported to Borsa Italiana in accordance with Article 5.6 shall include:
- 5.8.1 breach of Articles 5.1 to 5.65; or
  - 5.8.2 unauthorised access to the Service Provider Network in connection with the Service Provider Service; or
  - 5.8.3 Service Provider Network failure in connection with the Service Provider Service; or
  - 5.8.4 any notification by a Service Provider Client of actual or suspected corruption of the Data; or
  - 5.8.5 integrity issues arising from corrupted Data.

## **6 Term and Termination**

- 6.1 This Agreement shall take effect from the Start Date and shall continue unless terminated by either Party in accordance with this Agreement.
- 6.2 Either Party may terminate this Agreement:
- 6.2.1 by giving the other party at least 3 (three) months written notice or any such notice which may be required to allow the activities specified in Article 6.7 hereunder, that it wishes to do so;
  - 6.2.2 forthwith by notice in writing in the event of a material breach of this Agreement by the other Party ("the Relevant Party"), and which is incapable of remedy or which is capable of remedy but which the Relevant Party fails to remedy within fifteen (15) Business Days of having been notified of such breach;
  - 6.2.3 forthwith by notice in writing in the event of a Force Majeure Event under this Agreement which subsists for a continuous period of at least thirty (30) calendar days.
- 6.3 A material breach for the purposes of Article 6.2.2 shall include, without limitation, any breach of Articles 5.1, 5.2, 5.3, 5.65 and 7.3.
- 6.4 The Service Provider may exercise the right of withdrawal from this Agreement in case of amendments referred to in Article 11 by giving Borsa Italiana the relevant communication within the time established by Borsa Italiana in the communication containing the text of the amendments referred to in Article 11.2. In all these cases of withdrawal, this Agreement will effectively cease to have effect 3 (three) months after the notification of the withdrawal of the Service Provider notice or any such notice which may be required to allow the activities speci-

fied in Article 6.7. From the notification of the withdrawal of the Service Provider to the effective date of termination of this Agreement the contractual conditions, including the Price List, previously in force shall apply to the Service Provider.

- 6.5 Without prejudice to its right to terminate or suspend immediately under this Agreement, Borsa Italiana shall endeavour to give as much notice as practicable of its intention to terminate under Article 6 in order to enable an orderly migration of Service Provider Client to an alternative access to the System.
- 6.6 Exercise by either Party of its rights under this Article 6 shall be without prejudice to any other rights or remedies it may have, and shall not affect any rights accrued or obligations arising on or before the date of termination or suspension nor the continuance in force of any term that is intended either expressly or by implication to survive termination or suspension of this Agreement.
- 6.7 On receipt or giving of notice of termination or on expiry of this Agreement:
- 6.7.1 the Service Provider shall give notice to Service Provider Client to terminate the Service Provider Client Agreements or such part or parts thereof that relate to the use by Service Provider Client of the Service Provider Network for the purpose of accessing the System, effective on the date on which the termination or expiry of this Agreement shall take effect;
- 6.7.2 the Service Provider shall co-operate in good faith to ensure that Service Provider Client can be migrated to an alternative access to the System with the minimum expense and disruption to the Service Provider Client, however the Service Provider shall not be required to incur material expenditure in doing so. For the avoidance of doubt, Borsa Italiana shall be entitled to contact any Service Provider Client direct to assist with the migration process shall not be required to incur material expenditure in doing so.

## **7 Intellectual Property Rights**

- 7.1 Borsa Italiana represents that all right, title and interest (including without limitation all intellectual property and other proprietary rights) worldwide in and to any equipment, Data or any services supplied by Borsa Italiana pursuant to this Agreement belongs exclusively and absolutely to Borsa Italiana, its sub-contractors or licensors (as the case may be).
- 7.2 The Service Provider may not under this Agreement distribute, copy, record, reproduce, transfer to third parties, sell or otherwise exploit in any other way, in whole or in part, the Data. The Service Provider's rights to use, store, process, reproduce, make available and re-distribute the Data shall be governed by separate agreements(s) which the Service Provider shall enter into with Borsa Italiana.
- 7.3 To the extent that the agreement(s) referred to in Article 2.2.2 do not cover part or parts of the Data, the Service Provider is hereby licensed on a non-exclusive basis and for the term of this Agreement to transmit the Input Data to Borsa Italiana and transmit the Output Data to Service Provider Client in accordance with this Agreement.
- 7.4 To the extent that any of the terms in Article 7 conflict with any of the terms contained in any separate agreements(s) which the Service Provider shall enter into with Borsa Italiana pursuant to Article 2.2.2 the terms of such separate agreements shall apply.
- 7.5 The Service Provider shall assist Borsa Italiana with all reasonable requests made by Borsa Italiana to protect its intellectual property rights and shall promptly notify Borsa Italiana in writing upon becoming aware of any unauthorised access or use by any party of the Borsa Italiana's intellectual property rights including, without limitation, the Data.
- 7.6 Except in the case of the rights granted to the Service Provider as set out in Articles 2.7, each Party shall not use any of the other Party's trade marks or trade names without the express prior

written consent of such other Party and each Party acknowledges that it has no ownership rights in and to any of the other Party's names and marks.

## **8 Liability**

- 8.1 The liability of each Party to the other shall exist, for any claim deriving from this Agreement, only for losses that are the immediate and direct consequence of wilful misconduct or gross negligence on the defaulting Party.
- 8.2 Without prejudice to any liability that Borsa Italiana may have to the Service Provider, the Service Provider shall hereby hold harmless Borsa Italiana, in the event of claims for damages consequent upon actions by the Service Provider Client from any claim made in relation to deeds or actions inherent in the performance of the Agreement.
- 8.3 Neither Party shall be liable to the other for any delay or failure to fulfil any obligation hereunder to the extent such delay or failure was due to a Force Majeure Event. Neither Party shall have any liability to the other in respect of termination of the Service Provider Service, access to the System, or this Agreement as a result of termination under Article 6.2.2 above.
- 8.4 Borsa Italiana is required to give effect to all the instructions issued by the authorities and/or by other persons they have authorised. This may lead to temporary suspensions and delays in the performance of the obligations of Borsa Italiana or in their performance in special ways; the Service Provider shall nonetheless be required to perform the obligations deriving from the Agreement and pay the sums due to Borsa Italiana.

## **9 Fees**

- 9.1 For the supply of the Service Provider Service, the Service Provider shall pay to Borsa Italiana the fees set out in the Price List in the amounts, within the time and in the manner specified therein.
- 9.2 Without prejudice to Article 8, if the Service Provider fails to pay the undisputed fees due within the prescribed time, default interest shall be charged automatically on the amount in question without the need for a written notification at the highest three-month Euribor observed in the period the payment is overdue plus two percentage points.
- 9.3 Without prejudice to the right to file a separate action for money had and received, the Service Provider may not raise any objections, even in the event of interruptions or suspensions in the supply of the Service Provider Service, aimed at avoiding or delaying payment of the undisputed fees due.

## **10 Communications**

- 10.1 Borsa Italiana shall send the Service Provider individual communications in the ways specified in the following paragraph.
- 10.2 Without prejudice to Article 11 and specific procedures laid down in the Schedules for particular communications, individual communications by Borsa Italiana shall be reduced to writing and sent by registered letter with return receipt, telegram, fax, courier service or any other means permitting documentation of receipt. Individual communications shall be sent by each of the Parties to the other Party to the addresses expressly specified in the Request for Service. These communications shall be understood to be known by the other Party from the time of their receipt and shall become effective at the time specified in the General Conditions or, in the absence thereof, on the later date specified in the communication.

## **11 Amendments of the Schedules**

- 11.1 The Service Provider acknowledges and accepts that Borsa Italiana may modify or supplement any provision of the Schedules.
- 11.2 Borsa Italiana shall inform the Service Provider of such amendments by posting the text thereof

on its website, at least 15 (fifteen) calendar days before the effective date of the amendments. In such communication Borsa Italiana shall specify the time within which the Service Provider may exercise the right of withdrawal referred to in Article 6.4. In no case may such time be less than 10 (ten) calendar days from the date of the communication.

- 11.3 Changes to the Price List, except for those in the Service Provider's favour, shall be communicated by posting the text thereof on Borsa Italiana's corporate website, with advance notice of not less than 30 (thirty) calendar days. Borsa Italiana shall determine and communicate the effective date of changes to the Price List in the Service Provider's favour.
- 11.4 Matter communicated by means of such website shall be understood to be known by the Service Provider from the time it is posted on the website and shall become effective on the later date specified in the communication. Notwithstanding the above Articles 11.2 and 11.3, Borsa Italiana shall send an e-mail to the Service Provider, to the address provided in the Request for Services, as modified and communicated to the Service Provider, containing the notification of the changes on the website. In case of changes to the Schedules, except for the General Conditions and the Price List, the e-mail shall be sent the same day of the notification of the changes through the website. In case of changes to the General Conditions and/or the Price List, the e-mail shall be sent at least 1 (one) day before the notification of the changes through the website.
- 11.5 In the cases referred to in this Article the Service Provider may exercise the right of withdrawal from the Agreement within the time and in the manner and with the effects specified in Article 6.4.

## **12 Assignment and delegation**

- 12.1 The Agreement and/or the rights and obligations deriving therefrom may not be transferred by the Parties to third parties. The Service Provider authorises Borsa Italiana to transfer the Agreement and/or the rights and obligations deriving therefrom to another company within the London Stock Exchange Group. Each party hereby authorises the other party to transfer the Agreement and/or the rights and obligations deriving therefrom in the event of the merger or acquisition of the party with another company or the transfer of the business unit in question. In such cases the transferring party shall give the other party adequate advance notice.
- 12.2 Notwithstanding anything to the contrary in this Agreement, each Party may use authorised employees and/or agents and/or sub-contractors for the purpose of performing its obligations under this Agreement provided each Party shall remain fully responsible for all acts and omissions of its respective employees, agents and sub-contractors.

## **13 Confidentiality and Information Security**

- 13.1 The parties shall keep confidential all information relating to this Agreement or the other party, its business, operations and customers unless such information has become public knowledge (otherwise than in breach of this clause) or disclosure is required by law or a party's regulatory body or disclosure is made in confidence to a party's professional advisers. This clause shall survive termination of this Agreement.
- 13.2 The Service Provider acknowledges that the Borsa Italiana may record telephone calls and emails between the Service Provider and the Borsa Italiana for regulatory or security purposes.
- 13.3 In storing and processing personal information for the purposes of this Agreement, each Party shall comply with the provisions of the Legislative Decree 196 dated 30 June 2003. Each party agrees to indemnify the other in respect of any claims, demands or losses incurred by the non-defaulting party in respect of any breach of this Article.

## **14 General Provisions**

- 14.1 Each paragraph and provision of this Agreement is severable from the rest of this Agreement, and if one part should be found to be invalid, illegal or void for any reason, it shall not affect the validity or legality of any other part and the remaining parts shall continue to have full force and effect.



- 14.2 The version in the English language available on the web site of the Request for Services and the General Conditions, including the Schedules, are translations of the version in the Italian language. It is agreed that in the event of a discrepancy between the two versions, the version in the Italian language shall prevail.

## **15 Law and Jurisdiction**

- 15.1 This Agreement shall be governed by, and construed in all respects, in accordance with the Italian law.
- 15.2 Any disputes having for their object the considerations hereunder shall be submitted to the exclusive jurisdiction of the Courts of Milan, Italy.
- 15.3 Any dispute other than those referred to in Article 15.2 that concerns or derives directly or indirectly from the Agreement (including claims for damages) shall first be referred to an Appeals Board.
- 15.4 The Appeals Board referred to in Article 15.3 shall be made up of three members appointed by the Board of Directors of the Borsa Italiana, which shall also appoint one of the members to be the chairman. The seat of the Appeals Board shall be at the Borsa Italiana. All the members of the Appeals Board shall be chosen from among independent persons of proven expertise in matters concerning financial markets. The appointment shall be for three years and may not be renewed. Where one of the members vacates the position before the expiry of the term of his appointment, the Board of Directors of the Borsa Italiana shall appoint a substitute; such appointment shall be for a term equal to the remainder of the term of office of the other members of the Appeals Board.
- 15.5 The Appeals Board shall render a reasoned opinion in accordance with law within 30 (thirty) days of the date the dispute was referred to it subject to affording the Parties an opportunity to state their cases in the meantime. The chairman of the Appeals Board may, in agreement with the other members of the Board, entrust the examination of the question to a single member of the Board. The proceedings shall be conducted in the Italian language.
- 15.6 The opinion of the Appeals Board shall be notified promptly to the Parties in writing. It shall not be binding on the Parties and where one of the latter initiates arbitration pursuant to Article 15, it shall not be binding on the arbitrators appointed, who shall have the broadest prerogatives and powers to re-examine the entire dispute without any preclusion.
- 15.7 Any disputes between the Borsa Italiana and the Service Provider concerning and/or consequent upon the Agreement that have not been settled by the Parties accepting the opinions of the Appeals Board referred to in the preceding paragraphs shall be submitted to an Board of Arbitration made up of three members. The Party requesting arbitration shall send the other Party, in the manner provided for in the first paragraph of Article 810 of the Italian Code of Civil Procedure, a document containing the declaration of its intention to begin arbitral proceedings, with an indication of the disputed matter and the name of its arbitrator. Within 20 (twenty) days of such notification the other Party must designate the second arbitrator in the same manner; in the event of its failing to do so, the second paragraph of Article 810 of the Italian Code of Civil Procedure shall apply. Within 20 (twenty) days of the notification to the Party requesting arbitration of the document containing the designation of the second arbitrator, the arbitrators so designated – each duly informed by the Party that designated him/her – shall proceed by mutual consent to appoint the third arbitrator, who shall act as chairman. In the event of delay and/or failure to agree within the time referred to above, either of the Parties may apply to the President of the Court of Milan to designate the second arbitrator and/or the third arbitrator. Arbitrators shall be substituted in the same way as they are appointed. The proceedings before the Board of Arbitration must begin, under condition to become null and void, within 30 (thirty) days of receipt of the notification referred to in Article 15.6.
- 15.8 The seat of the Board of Arbitration shall be in Milan at the place established by its chairman. The Board of Arbitration may nonetheless hold its meetings in the place it establishes in the Italian Republic. It is ritual and it shall decide in accordance with Italian law. The arbitrators must

render their award within 90 (ninety) days of the acceptance by the chairman of the Board of his/her appointment; this time may be extended for not more than 90 (ninety) days only where the Board of Arbitration considers expert evidence needs to be obtained. The award shall also determine and allocate the arbitration costs and the arbitrators' fees. The arbitration proceedings shall be conducted in the Italian language.

- 15.9 It is agreed that the parties may apply for the award to be filed and executed in accordance with the Italian Code of Civil Procedure. For matters not expressly provided for in this article, the rules laid down in Article 806 et seq. of the Italian Code of Civil Procedure shall apply. According to Article 829 of the Italian Code of Civil Procedure the parties agree that the award can be challenged on ground of incorrect application of law.

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