

## AGREEMENT FOR THE SUPPLY AND INTERNAL USE OF THE ATHEX MARKET INFORMATION IN ATHEX MEMBERS' APPLICATIONS

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# GENERAL TERMS & CONDITIONS FOR THE SUPPLY AND INTERNAL USE OF THE ATHEX MARKET INFORMATION IN ATHEX MEMBERS' APPLICATIONS

## 1 DEFINITIONS

In this Agreement the following terms shall mean (in alphabetical order):

**Agreement:** a) this Agreement, b) any Annex attached hereto c) any future addendums, amendments or attachments in writing. All data under b) and c) constitute an integral part hereof.

**Annex(es):** The Annexes set out in clause 15.

**Application:** The Member's application where the ATHEX Information is used for calculation purposes and aims at the support of the Member's operation

**ATHEX Indices:** all indices calculated by ATHEX from time to time. ATHEX reserves its right to change the Index Portfolio in its absolute discretion.

**ATHEX Member:** A legal entity having acquired the capacity of the ATHEX Member.

**Change:** Any Material Change or/and any Immaterial Change.

**Commencement Date:** The date agreed by the MEMBER and ATHEX as stated in clause 12.

**Delayed Time Information:** The Information for which 15 minutes or more have elapsed from the time the Information was first disseminated by ATHEX to the MEMBER, such time period being determined by reference to the time/date stamp of the relevant ATHEX system. ATHEX reserves its right to modify in its absolute discretion, from time to time, the aforesaid time period upon written notice towards the counterparty.

**Device:** Any device, (software) application or other method enabling access, reception, display and/or process of the Information including, without limitation, any terminal or similar equipment, pager, mobile etc).

**Fees:** The Fees specified in Annex A, which are payable by the MEMBER to ATHEX.

**FTSE/ATHEX Indices:** All FTSE/ATHEX indices that may be created and reviewed from time to time jointly by ATHEX and FTSE International Ltd. ATHEX reserves its right to change the Index Portfolio in its absolute discretion.

**Immaterial Change:** A change in the way that the Information is disseminated or composed which



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results in the MEMBER having to make only minor modifications to its equipment (software or hardware) in order to receive the Information.

**Information:** Any information created in real time in the Automated Trading System of ATHEX and relayed by the latter.

**Intellectual Property Rights:** Patents, trade marks, service marks, trade and service names, copyrights, topography rights, database rights and design rights whether or not any of them are registered and including applications for any of them, trade secrets and rights of confidence; all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may subsist anywhere in the world.

**Material Change:** A change in the way that the Information is disseminated or composed which results in the MEMBER having to make material modifications to its equipment (software or hardware) in order to receive the Information.

**Number of connections:** the number of connections the MEMBER has in the network for the dissemination of the ATHEX Information in order to receive the latter.

**Premises:** The premises specified in the Annex C and/or any other premises as the Parties may agree where ATHEX will supply the Information.

**Quarter:** Each time period of three (3) calendar months starting on 1st January, 1st April, 1st July and 1st October of each year.

**Real Time Information:** Information for which less than 15 minutes have elapsed from the time the Information was first disseminated by ATHEX to the MEMBER, such time period being determined by reference to the time/date stamp of the relevant ATHEX system. ATHEX reserves its right to modify in its absolute discretion, from time to time, the aforesaid time period upon written notice to the counterparty.

**Reports:** Each MEMBER shall provide ATHEX with reports in accordance with the provisions of Annex D, containing data on the basis whereof it shall be invoiced by ATHEX.

**Subvendor:** Any VENDOR's client receiving or having access to the Information only through that Vendor for the purpose of its redistribution. A SUBVENDOR shall be required to enter into a separate agreement with ATHEX for the supply and use of the Information.

**Service:** The receipt of the Real Time or Delayed Time Information by the MEMBER.

**Technical specifications:** The technical specifications refer to the way and the format in which the Information shall be delivered by the ATHEX and the equipment that the MEMBER shall have in order to receive such Information by ATHEX.

**Term:** The period from the Commencement Date until the termination of this Agreement in accordance with clause 12.

**Trading Day:** Each day during which securities and derivatives are traded on ATHEX



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**Vendor:** Any legal entity which signs an agreement with ATHEX in order to acquire the right of access to the ATHEX Information feed server for the purpose of distribution of the ATHEX Information to its clients.

### 2 SCOPE

2.1 ATHEX collects, creates, compiles and transmits the Information (as defined and described in Annex B), generated in its Trading System, while the counterparty hereunder wishes to gain access to the Information, directly or indirectly, exclusively for internal use, in order to serve its operational needs in its capacity as an ATHEX Member.

2.2 During the Term ATHEX shall: (i) disseminate the Information, whether directly or indirectly, to the MEMBER on a non-exclusive basis; and (ii) grant to the MEMBER a non-exclusive license to use, store, process and reproduce the Information in accordance with the terms and conditions of this Agreement.

2.3 The MEMBER may not distribute the Information in any way whatever (e.g to subscribers, clients, websites, TV channels, companies listed on ATHEX, other ATHEX Members, Vendors, Subvendors etc.). The Service shall be wholly controlled by the MEMBER.

2.4 The MEMBER may receive the information from the ATHEX and a Data Vendor hereunder with the sole purpose of processing and using the Information in Applications related to its operation of the (Market Making, Algorithmic Trading, Risk Management etc.). The MEMBER may not use the Information in Devices/terminals except if this is expressly provided in this Agreement (up to 10 Applications/Devices).

### 3 TRANSMISSION OF THE INFORMATION BY ATHEX

3.1 ATHEX shall use its best endeavors to disseminate the Information on each Trading Day. The Member shall receive the Information directly (via a direct technical connection with ATHEX) or indirectly (through a Data Vendor/Subvendor). The technical connection of the Member shall have the technical specifications set out in Annex B'. All connection costs shall be borne by the Member. The Member bears also the responsibility for the acquisition, installation and maintenance of the appropriate information and telecommunications equipment as per the technical specifications set out in Annex B'.

3.2 ATHEX reserves the right to make Changes. In such cases, and where practicable, ATHEX shall give the Member: a) a reasonable written notice of any Immaterial Change; and b) a not less than three (3) months' prior written notice of any Material Change, unless such Change must be immediately applied under the exchange legislation.

3.3 ATHEX reserves the right to update unilaterally the Annexes as a result of any Changes made pursuant to clause 3.2 which shall apply as of the effective date on which ATHEX introduces these

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Changes.

3.4 ATHEX reserves the right to update the Annexes as a consequence of new policies or the introduction of new services. In this event, ATHEX shall give the Member a not less than three (3) months' prior written notice. In the event that the Member cannot or does not wish to accept the new conditions related to the new policies or the introduction of new services, it shall be entitled to terminate this Agreement by a written notice to ATHEX to take effect from the date such new conditions shall be implemented by ATHEX.

3.5 The Member undertakes the obligation to implement the required Changes within the time period reasonably specified by ATHEX. The Member shall bear the full costs for any adaptation in its own systems that may become necessary because of such Changes. In the event that any Change requires the Member to modify its equipment (software or hardware) and the Member is unable to do so, or the Member cannot be reasonably required to accept the new conditions, it shall be entitled to terminate this Agreement by a written notice to ATHEX to take effect from the date the Changes shall be implemented by ATHEX.

3.6 ATHEX shall not be responsible for the Member's equipment (software and hardware) or for the provision of the Service.

3.7 ATHEX does not guarantee that the supply of the Information shall be without any interruption or corruption and ATHEX shall not be held liable in any way whatsoever for such interruption or corruption in the Information. However, where ATHEX is directly disseminating Information to the Member, shall use reasonable endeavors:

- a) to notify the Member about any such interruption or corruption as soon as reasonably possible;
- b) where possible, to estimate of how long it will take to remedy such interruption or corruption;
- c) in any case, to promptly remedy such interruptions or corruptions as soon as practically possible after ATHEX becomes aware of it.
- d) to accept to re-send the Information that was lost during the interruption

3.8 Information is deemed to have been delivered upon its transmission by ATHEX.

3.9 ATHEX reserves the right in its absolute discretion to:

- a) introduce, in addition to the existing Information, the prices of any newly financial instrument admitted to trading or/and Indices; and
- b) withdraw from the Information the prices of any financial instrument admitted to trading or/and Index that ceases trading.

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### 4 USE OF THE INFORMATION

4.1 The Member may use, store, process and reproduce the Information in any way or form, on a Real Time or Delayed Time basis, subject to the terms of this Agreement. The licence granted for the use of the Information is not exclusive and may not be transferred or assigned to any third party even free of charge, without ATHEX's prior consent in writing.

4.2 The Member shall not misrepresent the Information in any way whatever.

4.3 The Member may not distribute the information to any third party, nor facilitate access of such parties to the Information in any way, whether directly or indirectly, by its own actions or through any other individual or legal entity. In the event that the Member allows access to the Information to any third party, the Member shall be liable towards ATHEX to pay the Fees which ATHEX would have been entitled to collect had there been in place an "AGREEMENT FOR THE SUPPLY AND USE OF THE ATHEX MARKET INFORMATION" with ATHEX and the Member for the period during which the third party had access to the Information. If no reliable reporting on such use of Information is available, ATHEX shall be entitled to estimate the amount due in accordance in its reasonable discretion.

4.4 The Member shall inform ATHEX of any case of unauthorised use of the Information it becomes aware of, as soon as practically possible and it shall be obliged to immediately cease transmission of the Information to such unauthorised third party, otherwise ATHEX shall be entitled to immediately terminate the present Agreement without compensation.

### 5 PROTECTION OF THE INFORMATION

5.1 The Member shall be responsible for its employees to whom grants access.

5.2 The Member shall install suitable control and security systems in line with technological advances, in order to prevent any unlawful use of the Information or use in violation of the provisions of this Agreement.

### 6 MEMBER'S REPORTING OBLIGATIONS

6.1 The MEMBER shall send to ATHEX a report, according to the provisions of Annex D' hereunder, directly from the commencement hereof, or when the reporting data change, or whenever requested by ATHEX.

### 7 ATHEX AUDIT RIGHTS

7.1 ATHEX may upon a thirty (30) days' prior written notice to the Member (or any such earlier notice period agreed by the Parties), at the expense of ATHEX, audit the records and systems of the Member related to the use of the Information, during normal business hours and subject to the Member's security and confidentiality requirements, in order to verify compliance with this Agreement and, in

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particular, the completeness and accuracy of the reports and relative payments referred to in clauses 6 and 8. A notice period of ten (10) days shall be given where ATHEX has good reasons to consider that a breach of the Agreement by the Member has taken place.

7.2 Both Parties shall co-operate to ensure that the purpose of the audit is achieved with minimum disruption of the business operations of the counterparty. The Member shall permit to the person/s acting as Auditor/s access to its Premises, installations, files and information services in general and it shall provide the Auditor/s with any necessary assistance for the performance of his/their task. The Member shall take any legal and technical measure necessary to enable ATHEX to carry out the audit.

7.3 ATHEX reserves the right to verify the validity of the information provided by the Member in its reports.

7.4 All above mentioned records and files shall be kept for at least 5 years and in case they are lost, ATHEX must be informed about the extent of the loss.

7.5 All books, records and systems inspected in the course of an audit and all necessary documentation shall be treated by the auditors and their assigned representatives as strictly confidential. ATHEX shall ensure that the appointed auditors shall comply with the confidentiality provisions set out in this Agreement. Such information shall be deemed to be confidential and may be used by the ATHEX only for the judicial defense of its rights.

7.6 If any such audit reveals that there has been an underpayment of Fees in respect of the period covered by the audit, the Member shall pay such underpayment of Fees to ATHEX with the applicable legal interest of default. If such underpayment of Fees is more than ten percent (10%) with regard to the total fees ATHEX is entitled to collect for the auditing period, the Member shall bear the reasonable cost for the audit (including travel and accommodation costs).

7.7 The Member shall permit access of ATHEX to all relevant documents and technical infrastructure related to the use of the Information.

## 8 FEES

8.1 For the supply of the Information and the right to use it in accordance with the terms of this Agreement, the Member shall pay to ATHEX accumulatively all Fees described in Annex A'.

8.2 The Fees shall be paid in Euro in the bank account specified by ATHEX. All Fees do not include any applicable value added tax or local tax arising from the Agreement, for which the Member shall remain liable.

8.3 ATHEX may adjust the Fees from time to time by giving the Member a not less than 90 (ninety) days' prior written notice, provided, however, that any such adjustment: (i) shall apply equally to any other ATHEX Member which will have picked the same type of Information Service; and (ii) shall only take effect from the first working day of a month.

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8.4 If as a result of such adjustment, the Fees are to be increased, the Member may terminate this Agreement by giving ATHEX a written notice within 30 (thirty) days of the date of the notice referred to in clause 8.3. This Agreement shall be terminated on the date that such increase will come in effect.

8.5 Any amounts overdue shall bear the legal interest of default applicable. Furthermore all judicial and extra-judicial costs shall be entirely borne by the Member.

8.6 ATHEX shall post the invoices at the address of the Member's registered office.

### 9 INDEMNITY AND LIABILITY

9.1 ATHEX shall indemnify the Member against all direct losses, damages and expenses (including reasonable legal fees) incurred by the Member arising out of any claim that the use of the Information in accordance with this Agreement by the Member infringes the Intellectual Property Rights of any third party.

9.2 ATHEX shall not be liable for any losses, damages, costs, claims and expenses howsoever arising:

- a) 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 the reasonable control of ATHEX; and
- b) from any error or omission in collecting, recording, processing, storing, making available or supply of the Information unless caused by gross negligence of ATHEX.

9.3 The aggregate liability of ATHEX towards the Member under this Agreement whether for negligence, breach of contract, any indemnity, misrepresentation or otherwise, shall not exceed an amount equal to the total (inclusive of Value Added Tax) of Annual License Fees paid to ATHEX by the Member for the preceding 12 months prior to the circumstances giving rise to the claim in respect with this Agreement.

9.4 Neither party will be liable towards 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.

9.5 Neither party shall be held liable or be deemed to be in default under this Agreement for any failure to perform its obligations hereunder, arising directly or indirectly from events or circumstances beyond its reasonable control (including without limitation governmental orders or restrictions, war, war-like conditions, hostilities, blockade, embargo, detention, revolution, riot, looting, strikes or lock-outs in which the party gaining benefit from the force majeure event does not participate, plagues or other epidemics, fire, flood, thunderbolts and other Acts of God).

9.6 If such circumstances as described in clause 9.5 continue for more than 14 (fourteen) days, either party may terminate this Agreement immediately upon notice.

9.7 If a force majeure event occurs as described in clause 9.5, the party not being able to perform its



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obligations due to force majeure shall inform the other party as soon as practicably possible.

### 10 INTELLECTUAL PROPERTY RIGHTS

10.1 The Intellectual Property Rights of whatever nature on the Information shall be and remain vested with ATHEX or its licensors.

10.2 ATHEX declares that:

- a) it has the right to disseminate the Information to the Member for the purposes specified in this Agreement and that the Information and its use as specified in the Agreement shall not infringe the Intellectual Property Rights of any third party; and
- b) the dissemination of the Information to the Member shall not infringe any applicable law, rule or regulation.

10.3 This Agreement does not involve any transfer of any intellectual Property Rights. If the Member wishes to make use of the trademarks of ATHEX or FTSE, a separate license agreement needs to be concluded. Consequently, the Member may not sell, license, substitute, transfer, assign, convert, publish, disclose, copy or make available by any means, the Information to any third party, nor use it in order to provide services to any third party or to develop or produce any information product, new or derivative.

10.4 The Member may not use or register any trade mark which is identical or similar to any trade mark of ATHEX or its subsidiaries, sisters or holding companies, or FTSE whether registered or unregistered and it may use such trademarks only in accordance with the provisions of Annex E'.

10.5 This clause survives termination of this Agreement.

### 11 CONFIDENTIALITY

11.1 Each party acknowledges that Confidential Information may be disclosed to it under this Agreement. Each party undertakes to hold such Confidential Information in confidence and not, without the consent of the other, disclose it to any third party nor use it for any purpose other than for the fulfilment of this Agreement. The Parties further agree that Confidential Information disclosed to ATHEX by way of the Member's reports or on the occasion of an audit, shall be treated as confidential. The confidentiality obligation under this clause shall survive the termination of this Agreement for 5 (five) years after such date.

11.2 The Parties undertake to ensure that their employees and subcontractors shall comply with this clause.

11.3 This obligation of confidentiality shall not apply to Confidential Information that has become generally available to the public through no act or omission of the receiving party, or becomes known to the receiving party through a third party which has no obligation of confidentiality, or when it is required



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to be disclosed by law, court order or request by any state or regulatory authority.

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

### 12 TERM AND TERMINATION

12.1 This Agreement shall enter into force on the Commencement Date and shall continue to be in force until terminated by either party giving the other a not less than three (3) months' prior written notice at any time, to be effective at the end of a calendar month.

12.2 Notwithstanding clause 12.1, either party may terminate this Agreement unilaterally and immediately in the event of:

- a) any material breach of this Agreement by the other party which is incapable of remedy or, if capable of remedy, is not remedied within 30 (thirty) days from the receipt of a written notice given by the counterparty requiring remedy or
- b) a moratorium of payment of debts is issued or an insolvency petition of the other party has been filed;
- c) any proceedings, whether voluntary or involuntary, for the winding-up of the other party or for the appointment of a receiver

12.3 Termination of this Agreement shall not affect the accrued rights or liabilities of the Parties arising out of this Agreement till the termination date and all clauses which are stipulated to survive this Agreement, shall remain in force.

### 13 GENERAL TERMS

13.1 This Agreement constitutes the entire agreement of the Parties with regard to the subject matter hereof and it supersedes any proposals, representations or prior agreements, whether oral or in writing, relating to the dissemination of the Information.

13.2 Neither party may assign any right or obligation of this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld, conditioned or delayed. If any such consent is denied by the counterparty, the other party may terminate this Agreement upon an at least 3 (three) months' prior written notice. By derogation of the paragraph above, ATHEX may assign its rights and obligations deriving from this Agreement to another affiliated company of the ATHEX Group, existing or to be incorporated in the future, without the consent of the Member. The same shall apply in case of merger, break up or spin off with another affiliated company of the ATHEX Group or a third company.

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13.3 Unless otherwise provided in this Agreement, no variation or modification to this Agreement shall be valid unless mutually agreed in writing and signed by authorized representatives of both Parties.

13.4 If any term of this Agreement or its application in any circumstances shall, to any extent, be invalid or unenforceable, the rest provisions of this Agreement and the application of such a provision in other circumstances shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

13.5 All correspondence relating to this Agreement shall be sent by registered post or fax or be delivered in person to the addresses specified in Annex C' or to such other addresses as may be notified by either party to the other. Notices shall be deemed to have been received upon evidence of delivery or 4 days after having being sent.

13.6 Failure or delay by either party to exercise any right or remedy under this Agreement shall not be considered as a waiver of such right or remedy nor as an acceptance of the event giving rise to such right.

13.7 Nothing in this Agreement shall create or be deemed to create a partnership or agency relationship between the Parties.

13.8 This Agreement shall be valid only in the English language. Headings are for convenience only and do not affect the interpretation of this Agreement.

### 14 DISPUTES AND APPLICABLE LAW

14.1 This Agreement will be governed by the laws of Greece. Both Parties submit themselves to the exclusive jurisdiction of the Courts of Athens.

### 15 ANNEXES

In the event of conflict between the clauses of the document "GENERAL TERMS & CONDITIONS FOR THE SUPPLY & USE OF THE ATHEX MARKET INFORMATION IN MEMBERS' APPLICATIONS" and the Annexes, the clauses of said document shall prevail. The Annexes hereof are:

**ANNEX A: PRICE LIST OF FEES**

**ANNEX B: INFORMATION AND TECHNICAL SPECIFICATIONS ANNEX C: CONTACT PERSONS**

**ANNEX D: REPORTING GUIDELINES**

**ANNEX E: TERMS OF USE OF TRADE MARKS AND NAMES**