

SBAI Toolbox: Standardised Trial Data License Agreement Template



About SBAI Toolbox

The SBAI Toolbox is an additional aid to complement the SBAI's standard-setting activities. While alternative investment fund managers sign up to the Alternative Investment Standards on a comply-or-explain basis, the SBAI Toolbox materials serve as a guide only and are not formally part of the Standards. The SBAI will not hold dedicated consultations in relation to the Toolbox contents; however, it will involve its stakeholders (managers, investors, regulators, service providers etc.) in brainstorming and developing the Toolbox contents, and it will update the materials from time to time.

Over time the SBAI will add relevant content to the SBAI Toolbox. Managers, investors, board directors, service providers, regulators and others are invited to draw upon the SBAI Toolbox materials and suggest any additions or other areas that it would be helpful to cover.

1. Introduction

Alternative investment managers always have sought to access a wide array of data sources to inform their investment research and decisions. In recent years, the topic of “big data”, combined with artificial intelligence¹ and machine learning², has attracted significant attention, fuelled by a significant growth in available alternative data sources, such as business and financial transactions, social media, apps, web-scraping, geo-location data, satellites and sensors. These new data sources include both structured numeric databases, as well unstructured text, video and audio data, etc.

At the same time, the scrutiny of data usage has increased significantly, in particular following recent high-profile data breaches and cases of commercialisation of such data (e.g. Facebook/Cambridge Analytica), raising questions about the “right to use data” and “personal privacy”. In addition, data vendors need to understand and address the specific issues pertaining to the investment sector, including insider trading / use of material non-public information.

The process of introducing such new data sources to the investment process involves a number of steps, including:

- Screening of available data sources/vendors and establishing relevance for investment process
- Vendor due diligence (including legal/compliance considerations)³
- Data trialling: Evaluating the data set for a certain amount of time (to verify it contains relevant information/signals) before the purchase

¹ Artificial intelligence (AI) refers to the theory and development of computer systems able to perform tasks normally requiring human intelligence, such as visual perception, Natural Language Processing, speech recognition, decision-making and transition between languages.

² Machine learning refers to methods that allow computer systems gradually to improve their performance on a specific task without being explicitly programmed (usually employed in areas where explicit algorithms are difficult to programme (e.g. email filtering, network monitoring)). It is closely related to computational statistics, focusing on prediction-making (based on data) and discovery of patterns / “hidden insights”.

³ AIMA has published an Alternative Data Vendor DDQ

- Data onboarding: facilitating the ongoing delivery and use of data

Trialling new data is an important step in this process and can be slowed significantly due to the negotiating process of a trial data license agreement, as there is no generally accepted agreement available in the industry. Some data vendors offer trial data license agreements, but they often lack key protections for managers and do not address adequately relevant issues such as prevention of insider trading and data privacy.

This document contains a Standardised Trial Data License Agreement which includes key legal clauses investment managers (subscribers) and alternative data vendors should consider.

2. Overview of the agreement

The Standardised Trial Data License Agreement covers the following areas:

- **General contractual and commercial arrangements**, including duration of the agreement, fees (if any), etc. (1.-6.)
- **Confidentiality** of the data (7.), including protection of trade secrets of the vendor (and its suppliers)
- **License terms** to access the data for evaluation purposes (8.): the agreement specifies that it is for internal use only (subscriber, its affiliates and consultants)
- **Compliance of data vendor with applicable laws and other obligations** (9.), i.e. not disclosing
 - material non-public information [MNPI] (prevention of insider trading)⁴
 - confidential information
 - personal data (personal identifiable information (PII))
 - information that vendor does not have the right to disclose
- **Representation and warranties** (10.), i.e. vendor has right to commercialise the data
- **Governing law** (11.) and independent contractor status (12.)
- **Rights after termination** (13.), including retention of insubstantial amounts of data (e.g. US investment advisors have regulatory data retention requirements)
- **Additional provisions**, including relating to Limitation of Damages (14.), Third Party Intellectual Property Indemnification (15.), Use of Name (16.), No Restriction on Trading (17.)⁵

3. Issues to consider

Some of the general contractual and other commercial arrangements in the agreement might need to be adapted as a function of the type of dataset and jurisdiction of vendor and subscriber, such as

- The commercially sensitive period (2. g., 10. b. i.)
- The data breadth (10. b. ii)
- The governing law of the agreement (11.)

It is also important to highlight that the agreement might require updating in the future in areas where laws are currently evolving or case law can help to understand the interpretation of the law over time, including:

⁴ Note: There are differences in approaches between US and EU insider trading enforcement (i.e. in the US, a breach of fiduciary duty must be established), see "Insider Trading: Comparing U.S. and E.U. Rules", University of Pennsylvania Journal of International Law, August 2016, <http://pennjil.com/insider-trading-comparing-u-s-and-e-u-rules/>

⁵ To ensure the continuous operation of the investment manager.

- Personal data protection/PII (e.g. GDPR in Europe is explicitly mentioned in the agreement, other jurisdictions are currently developing their own privacy laws)
- Web scraping⁶ - legality varies across jurisdictions (e.g. copyright laws⁷) and also depends on the Terms of Service (ToS) of individual websites⁸
- Prevention of insider trading/warranties regarding MNPI: currently specific reference to the SEC and CFTC (17.)

More generally, alternative data vendors and subscribers may wish to reference additional legal regimes or incorporate requirements relating to specific jurisdictions.

Disclaimer

The Standardised Trial Data License Agreement Template is being made available to the public for information purposes only and may be used by you as a template to be adapted and used to reflect your specific circumstances and needs. The Standardised Trial Data License Agreement Template has not been produced to meet the individual requirements of any particular person and does not constitute legal advice. It is your responsibility to seek your own legal advice and ensure that the Standardised Trial Data License Agreement Template is suitable for your purposes.

⁶ Automated extraction and storage of data from websites

⁷ In the US, a website can be considered a “creative work” and can therefore be “copyrighted”, and thereby fall under the [Digital Millennium Copyright Act \(DMCA\)](#), also see the EU proposal for a [Directive on Copyright in the Digital Single Market](#)

⁸ The ToS of a website might prohibit crawling/scraping; for example, Facebook has its own terms for automated data collection from its website: https://www.facebook.com/apps/site_scraping_tos_terms.php, LinkedIn has sued individuals who have anonymously scraped its website for a) violation of the Computer Fraud and Abuse Act (CFAA), b) violation of California Penal Code, c) violation of the Digital Millennium Copyright Act (DMCA), d) breach of contract, e) trespass, f) misappropriation ([Source](#))

4. Standardised Trial Data License Agreement Template

This Trial Data License Agreement (the “Agreement”) is entered into [insert effective date] (“Effective Date”), between COMPANY NAME (“Subscriber”), with its principal offices at [Insert full address of Subscriber] and DATA VENDOR NAME (“Vendor”), of [Insert full address of Vendor] in which Subscriber wishes to evaluate (the “Evaluation”) certain data provided by Vendor, which is more particularly described herein.

1. Evaluation Purpose. Vendor has certain data, information and related software or services (collectively, including what is described in section 4, “Data”) that the Subscriber wishes to use and evaluate under this Agreement which may lead to a future commercial agreement to use the Data in the course of its business.

2. Definitions.

- a. “Affiliate” of a party means any company or other entity which directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the ultimate holding company of that Party, or any limited partnership or limited liability partnership whose general partner or managing member is an aforementioned company or entity. “Control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a company or other entity, whether through the ability to exercise voting power, by contract or otherwise. The licenses and rights described in this Agreement extend to Subscriber’s Affiliates.
- b. “Nominated Consultants” means a chosen third party of the Subscriber that is used in the Evaluation process. The licenses and rights described in this Agreement extend to Subscriber’s Nominated Consultants.
- c. “Subscriber Report(s)” means any printed or electronic books, records, reports, memoranda, correspondence, statements, confirmations, and/or presentations produced for or by Subscriber (or its Affiliates and Nominated Consultants) in the course of business relating to transactions, positions or proposed transactions or positions of Subscriber (or its Affiliates and Nominated Consultants).
- d. “Subscriber Materials” means any analytic, model, spreadsheets or output of the same which is developed or produced with Data and substantial Subscriber and/or third-party data and/or work product.
- e. “Insubstantial Amounts” of the Data means an amount that has no independent commercial value as a product and could not be used as a substitute for Vendor’s products or services.
- f. In this Agreement, (i) references to the plural include the singular and vice versa; (ii) “all” includes “any” and “any” includes “all;” (iii) “or” is disjunctive but not necessarily exclusive; and (iv) “include(s)” and “including” mean “including without limitation;”.

- g. "Commercially Sensitive Period" means the last three (3) months of the available Data where the data history is greater than one (1) year, or the last two (2) months where the data history is less than one (1) year.
 - h. "Personal Information" means all information or materials, in any form, that alone, or in combination with other information or materials, (a) uniquely identifies, directly or indirectly, an individual (*e.g.*, a name, an identification number such as a social security number, address or other location data, telephone number, information concerning accounts, financial standing, investment holdings and other financial data and information, assets, etc.), or (b) is considered "sensitive personal data", such as political opinions, ethnicity, religious beliefs or information related to the physical or mental health of an individual, protected health information, or (c) information relating to an individual or individuals which is otherwise protected under applicable law.
 - i. "Open FIGI" means the Financial Instrument Global Identifier, an established global standard issued under the guidelines of the Object Management Group, an international, non-profit standards organization.
3. Fees. Vendor will not charge any fee or other amount in connection with the Evaluation.
4. Data Description. The Data is described in Appendix One DATA DESCRIPTION.
5. Agreement Duration. This Agreement will continue until terminated. Either party may terminate this Agreement for any reason upon fifteen (15) days' written notice to the other party.
6. Evaluation Period. The Subscriber may evaluate the Data for a period of ninety (90) days with such period extendable by prior written agreement of the parties.
7. Subscriber expressly acknowledges Vendor's Representations in Paragraph 10 and that the Data constitutes or incorporates trade secrets of Vendor and/or its third-party data suppliers. Subscriber shall receive and maintain the content as a confidential disclosure and shall not disclose the content or any part thereof to any other person or entity except Nominated Consultants, Affiliates, directors, officers, agents or employees of Subscriber or as permitted by Vendor hereinafter for the purpose of evaluating the Data. Notwithstanding the foregoing, the obligation to maintain confidentiality of the content shall not extend to:
- a. any content that is currently in the public domain other than as a result of Subscriber's breach of confidentiality or the wrongful conduct of others; or
 - b. any content that has been given to Subscriber by a third party who is not known by Subscriber to be in breach of any obligation of secrecy to Vendor; or
 - c. any content which Subscriber is required to provide or disclose to any court, government or regulatory body of competent jurisdiction; or
 - d. any content already in Subscriber's free possession at the time of its disclosure by the Vendor or on Vendor's behalf to Subscriber other than as a result of the wrongful conduct of others; or

- e. any content independently developed by the Subscriber without reference to the Data; or
- f. any content that Subscriber is required to provide or disclose under any law, statute, regulation, directive, decree, order or notification binding on Subscriber.

Vendor agrees to treat all non-public information and other materials which are (or have been) disclosed or provided by (or on behalf of) Subscriber or that Vendor learns about Subscriber or its Affiliates in providing the Data to Subscriber for Evaluation, as confidential and not to disclose it or them to anyone without Subscriber's prior written consent (subject to the exceptions described in clauses (a) – (f) above). This includes, without limitation, the fact of Subscriber's engagement with Vendor, the terms of this Agreement, Subscriber's interest in any particular type of Data, any industries or areas of discussion or in any companies in any relevant industries/areas. Vendor agrees not to act on this information in any way, including in any manner that might constitute market abuse.

In the event that a receiving party receives a request, or is required, to disclose any confidential information under a subpoena, court order, statute, law, rule, regulation or inquiry issued by a court of competent jurisdiction or by a judicial or administrative agency, legislative body or committee, or self-regulatory organization (each a "Legal Request"), such receiving party shall, as permitted by law, promptly notify the disclosing party in writing of such demand for disclosure so that such disclosing party may seek to avoid or minimize the Legal Request or obtain an appropriate protective order or other relief, or in the discretion of such disclosing party, waive compliance with the provisions of this Agreement. If so requested, such receiving party shall reasonably cooperate in the defense against any Legal Request. If such disclosing party is unable to obtain or does not seek a protective order and such receiving party is legally required to disclose such confidential information, such receiving party will disclose only that portion of the requested confidential information that it is required to disclose. Such disclosing party agrees to reimburse such receiving party for its reasonable expenses, including the reasonable fees and expenses of its counsel, in connection with action taken pursuant to this paragraph. Notwithstanding the foregoing, notice to such disclosing party shall not be required where disclosure is made in response to an examination by a self-regulatory organization.

8. License. Vendor grants Subscriber, its Affiliates and Nominated Consultants a worldwide, royalty-free license to access, copy and use the Data as further described herein. This license includes the right for Subscriber, its Affiliates, and Nominated Consultants to:

- a. allow the Data to be accessed, used and operated on Subscriber's (and its Affiliate's and Nominated Consultant's) behalf by Subscriber's (and its Affiliate's and Nominated Consultant's) service providers, provided that the service providers may only use the Data for the Evaluation Purpose and in the course of providing services for Subscriber (or its Affiliates and Nominated Consultants);
- b. allow a service provider, for the benefit of Subscriber (or its Affiliates and Nominated Consultants), to access, copy and host Data on computers and other media at a service provider facility, regardless of location;

- c. import any Data into its various databases, and internally redistribute among its departments and Affiliates at any location any such Data or databases without restriction; and/or
- d. disclose externally Insubstantial Amounts of the Data; and/or
- e. create derivative works, including, but not limited to, incorporating the Data into its models and analyses.

Subscriber agrees not to copy, modify, translate, decompile, disassemble, or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable, object, source or database code of the Data, or the source code or protocols from, the executable, object, source or database code of the Data, and agrees not to permit or authorize anyone else to do so.

9. Compliance with Applicable Laws and Other Obligations. Vendor covenants that it (including its employees and agents) will not disclose to Subscriber any:

- a. material, non-public information;
- b. information that is subject to a confidentiality obligation;
- c. information that Vendor does not have the right to disclose; or
- d. Personal Information.

Vendor shall notify Subscriber immediately after discovering any possible breach of these covenants.

For the avoidance of doubt, Vendor shall be solely responsible for compliance with all applicable laws, rules, regulations and administrative orders relating to privacy and data protection, including, but without limitation, the European Union's General Data Protection Regulation (GDPR). In no event shall Vendor (i) disclose or otherwise provide any Personal Information to Subscriber or (ii) provide any information to Subscriber which would allow Subscriber to identify any underlying individual to which the Data relates.

10. Representations and Warranties.

- a. Vendor represents, warrants and covenants that:
 - i. it has all requisite legal and corporate power and authority to disclose all of the Data to Subscriber as contemplated hereby for use as contemplated hereunder;
 - ii. it has taken all corporate action necessary for the authorization, execution and delivery of this Agreement;
 - iii. it has obtained and shall maintain all rights, approvals, licenses, certifications, accreditations and consents necessary to perform its obligations under this Agreement and disclose Data to Subscriber for the uses contemplated hereunder;

- iv. where Data includes third party information and/or sources, all necessary permissions and licenses have been obtained by Vendor;
- v. each disclosure of Data by it hereunder will be in full compliance with all applicable laws and regulations, including the Gramm-Leach-Bliley Act of 1999 and its implementing regulations and guidelines, and the European Union's General Data Protection Regulation;
- vi. it has all rights required to permit Subscriber to use the Data described herein without infringing any copyright, patent, trade secret or other proprietary right of any third party;
- vii. there are no approvals from any governmental agency or authority which are required for the execution, delivery and performance by Vendor of this agreement and the transactions contemplated hereby;
- viii. it has all rights required to permit Subscriber to use the products and services described herein free and clear of all liens, security interests, pledges, charges or other encumbrances;
- ix. to its knowledge, there is no material violation, conflict or infringement by any person or entity of any right of Vendor with respect to the Data described herein;
- x. there is no claim, suit, action or proceeding pending or, to the knowledge of Vendor, threatened against Vendor:
 - i. alleging any violation, conflict or infringement with any intellectual property or other proprietary right owned by any other person or entity; or
 - ii. challenging Vendor ownership or use of, or the validity or enforceability of, the Data described herein;
- xi. the Data described herein are accurate and complete to the best of its knowledge; and
- xii. to the best of its knowledge, the Data described herein do not contain any disabling devices or viruses that are intended to damage any system or data or could prevent Subscriber from using Subscriber's system or data, and the Data described herein will be free of defects which materially affect their performance. Vendor shall use its commercially reasonable efforts to scan, identify and remove any viruses uploaded to or placed in the Data described herein or incorporated into them.

b. Vendor further represents, warrants and covenants that:

- i. Data History: Data provided to Subscriber contains the full available history, with the exception of the Commercially Sensitive Period, unless otherwise specified herein.

- ii. Data Breadth: Data provided to Subscriber contains the full available breadth of coverage; and captures all available geographic and company level data, unless otherwise specified herein.
 - iii. Data Timestamp: Where possible, Data provided to Subscriber will contain timestamped information.
 - iv. Data Documentation: Vendor will supply Subscriber with all available supporting documentation to enable Subscriber to fully evaluate the Data.
 - v. Data Support: Vendor will provide necessary assistance to Subscriber during the Evaluation Period.
 - vi. It will, where possible include a verified third party symbology, such as Open FIGI.
- c. Subscriber represents, warrants and covenants that:
- i. the Data is provided to the Subscriber for Evaluation Purposes only;
 - ii. Subscriber has all legal rights and permissions necessary to perform its obligations under this Agreement;
 - iii. Subscriber shall comply with all applicable laws, rules, and regulations in its use of the Data supplied by Vendor hereunder.

11. Governing Law. This Agreement shall be governed by and construed in accordance with [insert governing law (e.g. English law, laws of the State of New York)] without regard to its conflicts of law provisions. Each party agrees:

- a. that the Federal Courts of the United States and the courts of the State of New York in New York County are to have jurisdiction to settle any disputes in connection with this Agreement;
- b. to submit to the jurisdiction of such courts; and
- c. to waive any objection which it may have at any time to the laying of venue of any proceedings brought in any such court, waive any objection that such proceedings have been brought in an inconvenient forum and further waive the right to object, with respect to such proceedings, that such court does not have jurisdiction over said party.

Each party will have the right to seek injunctive or other equitable relief in order to remedy or prevent any breach or threatened or anticipated breach of this Agreement by the other. Any injunction or equitable relief will be in addition to any damages or other relief to which either party may be entitled. Each party, to the extent permitted by law, knowingly, voluntarily and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this agreement.

12. Independent Contractor Status. The parties acknowledge that Vendor is an independent contractor for purposes of this Agreement and nothing in this Agreement shall be construed to constitute

the parties as partners, joint ventures, co-owners or otherwise as participants in a joint enterprise with respect to the matters set forth herein. Neither party has the power to bind the other party in any manner whatsoever by virtue of this Agreement. To the extent this Agreement confers any rights and benefits on Subscriber, such rights and benefits shall be deemed conferred on Subscriber's affiliates.

13. Rights after Termination. Upon termination, unless otherwise agreed in writing, following written request Subscriber will delete any Data in its possession within one (1) week of termination, including deleting or requesting deletion of Data possessed by Nominated Consultants and other service providers as specified in 8.a and 8.b. except Subscriber will not be required to delete:
- a. Data residing on Subscriber's backup tapes or its servers if permanent deletion would be infeasible;
 - b. copies of Data to the extent required by law or maintained pursuant to Subscriber's document retention program;
 - c. Data in Subscriber Materials and Subscriber Reports; or
 - d. Insubstantial Amounts of the Data used in the ordinary course of business.

Subscriber may use any such retained Data for any of the purposes permitted in this Agreement. Each party's rights and obligations under sections 7 and 11-18 of this Agreement shall survive any termination of this Agreement.

14. Limitation of Damages. Except for the intellectual property indemnity below, breach of confidentiality or in the event of a party's fraud, willful misconduct or gross negligence, neither party shall be liable to the other or to any third party for indirect or consequential damages, whether in contract, tort or otherwise, even if a party has been advised of the possibility of such damages.

15. Third Party Intellectual Property Indemnification. Vendor shall defend, indemnify and hold Subscriber, its Affiliates and its and their directors, officers, employees, agents and other representatives, including Nominated Consultants harmless against any third-party claim that the Data, when used as a stand-alone product by Subscriber and without any modification, infringes such third party's intellectual property rights or other proprietary rights.

16. Use of Name. Vendor shall not (a) disclose that Subscriber (or its Affiliates) is its client or is receiving Data or (b) use Subscriber's (or its Affiliates') names, trademarks, service marks or symbol, or any abbreviation, contraction or simulation thereof in any advertising, publicity, press release, or other promotional endeavor, including any customer list, web site or other materials distributed to Vendor's customers or potential customers, without Subscriber's written consent, which if given may be withdrawn at any time.

17. No Restriction on Trading. Nothing herein is intended to limit or prohibit Subscriber or any of its Affiliates from trading any financial product, including specifically those regulated by the SEC or CFTC. Vendor will not disclose to Subscriber any information if:

- a. the disclosure violates any applicable laws or regulations, including any relevant securities laws, and particularly insider trading laws;
- b. the disclosure violates any agreement, contract or duty to which Vendor is subject;
or

- c. Vendor knows or reasonably should know that the disclosure of the information by the direct or indirect source of the information breaches or breached any agreement, contract, or duty to which the direct or indirect source was subject.

18. Entire Agreement. The parties agree that this Agreement:

- a. is a complete and exclusive statement between the parties with respect to the subject matter hereof;
- b. supersedes all related discussions, understandings, prior agreements and other communications between the parties with respect to the subject matter hereof; and
- c. may not be modified, amended or rescinded unless set forth in writing and signed by both parties.

No click-through, pop-up or other online terms presented by Vendor or the Data shall have any force or effect notwithstanding whether any Subscriber personnel accept such terms in their use of the Data. If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, then each provision not so affected will remain in full force and effect. No course of dealing, course of performance, or failure of either party strictly to enforce any term, right, or condition of this Agreement shall be construed as a waiver of any other term, right, or condition. No waiver or breach of any provision of this Agreement shall be construed to be a waiver of any subsequent breach of the same or any other provision.

19. Assignment & Binding Effect. Neither party may assign this Agreement without the other party's prior written consent, except that no such consent is needed in the event of a party's assignment or transfer of the majority of its stock or all or substantially all of its assets to which the Data or evaluation thereof relates, as part of a merger, acquisition or asset sale. Any assignment in violation of this Agreement will be void. This Agreement benefits and binds the parties to this Agreement and their respective successors and permitted assigns.

Accepted and Agreed:

SUBSCRIBER NAME

By: _____

Print Name: _____

Title: _____

Date: _____

Address for Notices:

Subscriber Full address

With a mandatory copy via email to:
Subscriber@email.com

VENDOR NAME

By: _____

Print Name: _____

Title: _____

Date: _____

Address for Notices:

Vendor Full address

With a mandatory copy via email to:
DataProvider@email.com

APPENDIX ONE - TRIAL DATA LICENSE AGREEMENT

DATA DESCRIPTION:

Appendix A: Contributors

The SBAI would like to thank the contributors to this document. A particular thank you goes to Emmett Kilduff, Founder & CEO of Eagle Alpha and Jonathan Streeter, Partner at Dechert for their input and advice. In addition, the following data vendors contributed during the drafting stage:

- Distill Analytics
- JetTrack
- LinkUp
- Thinknum