

## TRIAL DATA LICENSE and MUTUAL NON-DISCLOSURE AGREEMENT

This Trial Data License and Mutual Non-Disclosure Agreement (the “Agreement”) is entered into [ ] (“Effective Date”), between [ ] (“Subscriber”), with its principal offices at [insert address of Subscriber] and New Constructs, LLC (“Licensor”), of 5110 Maryland Way, Suite 350, Brentwood TN 37027 in which Subscriber wishes to evaluate (the “Evaluation”) certain data provided by Licensor, which is more particularly described herein.

1. Evaluation Purpose. Licensor has expended considerable efforts and used proprietary methodologies to compile and maintain certain information, communications, opinions, text, formulas, data, analyses, studies, forecasts, graphics, links, electronic art, software and other material and data formatted, organized and collected in a variety of forms (collectively “Data”) that it wishes to provide to Subscriber; Subscriber agrees to access and use the Data for backtesting purposes only, in order to allow Subscriber to evaluate potential future use of Licensor’s analytics and data, on the terms set forth herein (the “Purpose”). THE TRIAL DATA IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY, AND IS NOT AND SHOULD NOT BE CONSTRUED AS LEGAL, TAX, INVESTMENT, OR FINANCIAL ADVICE, OR AS AN OFFER, SOLICITATION OR RECOMMENDATION TO PURCHASE, SELL OR HOLD ANY SECURITY, CLASS OF SECURITIES, OR OTHER FINANCIAL PRODUCT, OR TO PARTICIPATE IN ANY PARTICULAR INVESTMENT STRATEGY.

### 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 Licensor’s products or services.

3. Fees. Licensor will not charge any fee or other amount in connection with the Evaluation.

4. Data Description. The Data is wholly derived from publicly available information which was publicly available at the time the information was analyzed. Licensor's Proprietary methods have been used to systematically analyze this public information and generate analytics and data (including the Data). Subscriber acknowledges and agrees that the Data is therefore Licensor's proprietary information derived from publicly available materials and shall at all times remain the exclusive property of Licensor.

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 sixty (60) days with such period extendable by prior written agreement of the parties. Unless extended in writing, at the end of the Evaluation Period, Subscriber shall delete all Data as provided in Section 13 below. Licensor will provide necessary assistance to Subscriber during the Evaluation Period and will supply Subscriber with any available supporting documentation requested by Subscriber to enable Subscriber to fully evaluate the Data.

7. Confidentiality and Non-Disclosure.

(i) Subscriber expressly acknowledges Licensor's Representations in Paragraph 10 and that the Data constitutes or incorporates trade secrets of Licensor 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 ("Subscriber Entities") of Subscriber or as permitted by Licensor hereinafter for the purpose of evaluating the Data. Subscriber agrees to advise any such Subscriber Entities of the terms and conditions of this Agreement and also agrees that any violation of this Agreement by any Subscriber Entity shall constitute a violation of this Agreement by Subscriber. 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 Licensor; or (c) any content already in Subscriber's free possession at the time of its disclosure by the Licensor or on Licensor's behalf to Subscriber other than as a result of the wrongful conduct of others; or (d) any content independently developed by the Subscriber without reference to the Data.

(ii) Licensor 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 Licensor 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) – (d) above). This includes, without limitation, the fact of Subscriber's engagement with Licensor or any status of discussions or negotiations; the terms of this Agreement; any potential terms discussed, including, but not limited to, pricing; Subscriber's interest in any particular type of Data, any industries or areas of discussion or in any companies in any relevant industries/areas. Licensor agrees not to act on this information in any way, including in any manner that might constitute market abuse.

(iii) 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.

(iv) This Section 7 shall survive termination or expiration of this Agreement by a period of two (2) years, except in the case of Confidential Information that constitutes trade secrets, with respect to which this Section 7 shall survive termination or expiration of this Agreement without any time restriction.

(v) Nothing in this Agreement shall be construed to prevent either Party from engaging independently in competing business activities, provided it does not use the confidential information of the other Party to do so.

8. License. Licensor grants Subscriber, its Affiliates and Nominated Consultants a worldwide, royalty-free, limited, non-exclusive, non-transferable, non-sublicensable, revocable 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. Licensor covenants that it (including its employees and agents) will not disclose to Subscriber any (i) material, non-public information; (ii) information that is subject to a confidentiality obligation; (iii) information that Licensor does not have the right to disclose; or (iv) personal data or personally identifiable information. Licensor shall notify Subscriber immediately after discovering any possible breach of these covenants. For the avoidance of doubt, Licensor shall be solely responsible for

compliance with all applicable laws, rules, regulations and administrative orders relating to privacy and data protection.

10. Representations and Warranties.

a. Licensor represents, warrants and covenants that: (i) Licensor has all legal rights and permissions necessary to perform its obligations under this Agreement; (ii) Licensor has complied with and will continue to comply with any applicable law, rule or regulation in creating, gathering or providing the Data and the use of the Data as permitted hereunder will not violate such laws; (iii) the Data does not contain any material nonpublic information; (iv) the Data does not, and shall not, contain any personal data or personally identifiable information; and (v) Licensor has used and shall use reasonable efforts in accordance with industry standards to ensure that no malware is introduced into the Data. OTHER THAN THE SPECIFIC REPRESENTATIONS SET FORTH IN THIS PARAGRAPH, THE DATA AND ALL OTHER INFORMATION OF LICENSOR WHICH MAY BE PROVIDED OR MADE AVAILABLE TO YOU IS PROVIDED "AS/IS" WITHOUT ANY WARRANTY OR REPRESENTATION OF ANY KIND. LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING: WARRANTIES OF MERCHANTABILITY, SUITABILITY, INTEGRATION, CURRENTNESS, ACCURACY, AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE.

b. 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 Licensor hereunder.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflicts of law provisions. Each party agrees: (i) 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; (ii) to submit to the jurisdiction of such courts; and (iii) 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. Notwithstanding the foregoing, each party will have the right to seek injunctive or other equitable relief in any court of competent jurisdiction 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 Licensor 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.

13. Rights after Termination. Upon termination or expiration of the Evaluation Period, unless otherwise agreed in writing, Subscriber will delete any Data in its possession within one (1) week of termination or expiration, 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 or 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; provided, further, that Licensor's total cumulative liability arising out of or relating to this Agreement shall not exceed ten thousand dollars (\$10,000).

15. Third Party Intellectual Property Indemnification. Licensor 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. Licensor 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 Licensor's customers or potential customers, without Subscriber's written consent, which if given may be withdrawn in writing at any time.

17. No Restriction on Trading. Except for the restriction noted in Section 10(b)(v), no other provision 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. Licensor will not disclose to Subscriber any information if (i) the disclosure violates any applicable laws or regulations, including any relevant securities laws, and particularly insider trading laws; (ii) the disclosure violates any agreement, contract or duty to which Licensor is subject; or (iii) Licensor 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: (i) is a complete and exclusive statement between the parties with respect to the subject matter hereof; (ii) supersedes all related discussions, understandings, prior agreements and other communications between the parties with respect to the subject matter hereof; and (iii) may not be modified, amended or rescinded unless set forth in writing and signed by both parties. 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; provided 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 except to the extent this Agreement would as a result be assigned or assumed by a competitor to Licensor, in which case Licensor's prior written consent is required. 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.

20. Notices. All notices, requests and demands to or upon the parties hereto shall be in writing and deemed to have been properly given or made when properly transmitted via email, addressed as follows or to such other email address as may be designated hereafter in writing by the respective parties:

To the Company:  
support@newconstructs.com

To the Subscriber:  
**Email:**

Such notice shall be deemed duly given (a) the date of transmission, if such notice or communication is delivered via email attachment at the email address as set forth above at or prior to 5:30 p.m. (New York City time) on a business day, or (b) the next business day after the date of transmission, if such notice or communication is delivered via email attachment at the email address as set forth above on a day that is not a business day or later than 5:30 p.m. (New York City time) on any business day. For those communications or records that the parties are otherwise required under applicable law to provide in a written paper form, the parties agree that each may provide such communications or records to the other by means of electronic communications as set forth in this Section 20.

**Accepted and Agreed:**

New Constructs, LLC

By: \_\_\_\_\_  
Name: David Trainer  
Title: President  
Date:

**Subscriber**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: