

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BLOOMBERG FINANCE L.P.,

Plaintiff and Counterclaim  
Defendant,

- v -

UBS AG,

Defendant and  
Counterclaim Plaintiff.

Case No. 1:18-cv-06334-VEC

**ANSWER, DEFENSES AND COUNTERCLAIMS OF UBS AG**

UBS AG (“UBS”), by and through its undersigned attorneys, for its Answer, Defenses, and Counterclaims to the Complaint of Bloomberg Finance L.P. (“Bloomberg”) hereby states as follows.<sup>1</sup> Any and all allegations not specifically admitted herein are denied. No statement herein constitutes a comment on the legal theories upon which Bloomberg purports to proceed; to the extent the Complaint asserts legal contentions, such legal contentions require no response in this Answer. To the extent any response is required to headings or other unnumbered paragraphs of the Complaint, UBS hereby denies such allegations, if any, set forth in such headings or other unnumbered paragraphs.

For its specific responses to the Complaint, UBS responds or states as follows:

1. *Bloomberg Finance L.P. (“BFLP” and, together with Bloomberg L.P. and its affiliates, “Bloomberg”) is a leading provider of high quality financial market data. Bloomberg brings this action to recover damages for, and to obtain injunctive relief to prevent, the unauthorized use and dissemination of Bloomberg’s proprietary financial data by UBS AG (“UBS”) in violation of various written agreements between the parties.*

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<sup>1</sup> In this Answer, UBS addresses certain materials referenced in the Complaint. By responding to Bloomberg’s allegations regarding such materials, UBS does not concede that any such materials or statements therein are admissible or relevant. UBS expressly reserves all objections to such materials that may be available to UBS, including, without limitation, pursuant either to the Federal Rules of Civil Procedure and/or Evidence.

**ANSWER TO ¶ 1:** UBS admits that Bloomberg holds itself out as a leading provider of high quality financial data and that Bloomberg purports to bring this action to recover damages and to obtain injunctive relief, but denies that Bloomberg is entitled to any such relief, further denies that UBS has used or disseminated Bloomberg data in violation of any agreements between the parties, and otherwise denies the allegations set forth at Paragraph 1 of the Complaint.

2. *Bloomberg spends enormous resources collecting, screening, curating, and normalizing information relating to millions of financial instruments in a variety of industries and asset classes. The results of this painstaking and expensive process are a set of highly valuable proprietary data compilations that Bloomberg makes available to its customers via various licensing arrangements, each subject to written contractual terms and conditions.*

**ANSWER TO ¶ 2:** UBS admits that Bloomberg makes various data compilations available pursuant to various licensing arrangements, and otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 2 of the Complaint.

3. *A Bloomberg Terminal® subscription allows individual users to view, access, and interact with Bloomberg's data. A Bloomberg data license allows an institution to access and use licensed data within that institution's own internal applications and systems. In either case, a licensee's use of Bloomberg data is subject to contractual restrictions.*

**ANSWER TO ¶ 3:** UBS respectfully refers the Court to individual Bloomberg Terminal licenses and Bloomberg data licenses for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 3 of the Complaint.

4. *In particular, both Bloomberg Terminal licenses and Bloomberg data licenses contain the fundamental requirement that the licensee not use the licensed data in any manner that would result in the licensee effectively becoming a source of or a substitute for Bloomberg's proprietary data, or in any manner that would result in the licensee competing with Bloomberg.*

**ANSWER TO ¶ 4:** UBS respectfully refers the Court to individual Bloomberg Terminal licenses and Bloomberg data licenses for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 4 of the Complaint.

5. *Bloomberg and UBS are parties to two data license agreements executed in 1998—one permitting request-by-request access to proprietary data, the other covering bulk delivery of specified data sets.*

**ANSWER TO ¶ 5:** UBS admits that, among the license agreements to which they are party, Bloomberg and UBS are parties to two data license agreements executed in 1998—one permitting request-by-request access to proprietary data, the other covering bulk delivery of specified data sets, and respectfully refers the Court to those agreements and to the amendments thereto for the complete and accurate terms and conditions thereof.

6. *In 2005, the parties amended the two 1998 Bloomberg data license agreements to allow the use of a subset of the licensed data “within” certain applications developed by UBS. Critically, the 2005 amendment expressly reaffirmed the bedrock provisions of customary Bloomberg licenses, contained in the parties’ 1998 licenses and referenced above, that expressly bar any external use of the data that would serve as a source of, or substitute for, the data itself. In other words, under the agreements at issue, UBS, like all Bloomberg customers, cannot convey Bloomberg’s highly valuable, proprietary data directly to its own customers in a manner that would tend to obviate the customers’ need to purchase their own Bloomberg license, because of the serious harm such unauthorized use poses to Bloomberg’s core business.*

**ANSWER TO ¶ 6:** UBS admits that it is a party to the agreements attached to the Complaint, respectfully refers the Court to those agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, denies having knowledge or information sufficient to form a belief regarding the truth or falsity of allegations concerning “all Bloomberg customers” and otherwise denies the allegations set forth at Paragraph 6 of the Complaint.

7. *During the course of a 2017 investigation of UBS’s misuse of other Bloomberg services arising from a sale of technology and transfer of employees from UBS to StatPro Group Plc (“StatPro”), Bloomberg discovered that—contrary to the terms of the 1998 licenses and the 2005 amendment—UBS was allowing its clients to access and download a vast trove of proprietary Bloomberg data through a UBS product known as “UBS Delta.”*

**ANSWER TO ¶ 7:** UBS admits that for the past 13 years it has maintained and operated a product known as UBS Delta, admits that in April 2017 it was publicly announced that UBS had

entered into a contract to sell UBS Delta to StatPro Group PLC (“StatPro”), and otherwise denies the allegations set forth at Paragraph 7 of the Complaint.

8. *By allowing its customers to download data from UBS Delta, UBS has effectively created both an alternate source of, and a substitute for, Bloomberg’s data, allowing UBS customers to obtain the benefit of Bloomberg’s labor and expertise without obtaining the necessary data license or paying Bloomberg the requisite fee.*

**ANSWER TO ¶ 8:** UBS denies the allegations set forth at Paragraph 8 of the Complaint.

9. *Despite Bloomberg’s repeated requests, as well as its formal termination of the relevant provisions of the 2005 amendment, UBS has—for five months—refused to stop the contractually prohibited distribution of Bloomberg data through UBS Delta. Nor has UBS provided information sufficient to demonstrate that it has stopped misusing Bloomberg’s data.*

**ANSWER TO ¶ 9:** UBS denies the allegations set forth at Paragraph 9 of the Complaint.

10. *Instead, on July 2, 2018, UBS informed Bloomberg that it was replacing Bloomberg as a source of data for UBS Delta, effective August 2018. Bloomberg does not contest UBS’s right to replace Bloomberg as a source of market data for UBS Delta. However, in light of UBS’s conceded past and ongoing violations of the Global Agreements, and its persistent refusal to provide sufficient information regarding any efforts to halt that misuse, Bloomberg believes that in the process of replacing Bloomberg as a source of data within UBS Delta, UBS will disclose Bloomberg’s data to Bloomberg’s competitors, or will provide those competitors with information about Bloomberg’s data, that would allow the competitors to “validate” or otherwise improve their own data, resulting in irreparable harm for which money damages are an insufficient remedy.*

**ANSWER TO ¶ 10:** UBS admits that on or about July 2, 2018, UBS informed Bloomberg that it was replacing Bloomberg as a source of data for UBS Delta, and otherwise denies the allegations set forth at Paragraph 10 of the Complaint.

11. *Bloomberg therefore brings this action to obtain redress for UBS’s past and ongoing breaches, and to obtain injunctive relief to prevent against a future breach, of the parties’ written agreements.*

**ANSWER TO ¶ 11:** UBS admits that Bloomberg purports to bring this action to recover damages and to obtain injunctive relief, but denies that Bloomberg is entitled to any such relief, further denies that UBS has used or disseminated Bloomberg data in violation of any agreements

between the parties, and otherwise denies the allegations set forth at Paragraph 11 of the Complaint.

12. *Bloomberg Finance L.P. is a Delaware limited partnership with its principal place of business in New York, New York. BFLP's general and limited partners are domiciled in the United States. Bloomberg L.P. acts as operating agent for BFLP.*

**ANSWER TO ¶ 12:** UBS denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 12 of the Complaint.

13. *UBS AG ("UBS") is a Swiss joint-stock company with its principal place of business in Switzerland. Pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., UBS operates a Federal Branch at 299 Park Avenue, New York, New York.*

**ANSWER TO ¶ 13:** UBS admits the allegations set forth at Paragraph 13 of the Complaint.

14. *This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(2) because the dispute is between a citizen of the United States and a citizen of a foreign state and the matter in dispute exceeds the sum or value of \$75,000 exclusive of interest and costs.*

**ANSWER TO ¶ 14:** Paragraph 14 of the Complaint states a legal conclusion to which no response is necessary. To the extent a response is necessary, UBS denies having knowledge or information sufficient to form a belief as to Bloomberg's citizenship or that the matter in dispute exceeds the sum or value of \$75,000 exclusive of interest and costs, and otherwise denies the allegations set forth at Paragraph 14 of the Complaint.

15. *This Court has personal jurisdiction over UBS because, among other things, UBS transacts business in, and has substantial contacts with, New York. UBS also purposefully availed itself of doing business with Bloomberg, which has its principal place of business in New York, and it expressly submitted to the jurisdiction of the courts of the State of New York in the relevant agreements. See N.Y. Gen. Oblig. Law § 5-1402.*

**ANSWER TO ¶ 15:** With respect to this action only, UBS does not contest that this Court has personal jurisdiction over UBS, but otherwise denies the allegations set forth at Paragraph 15 of the Complaint. UBS further avers that the forum selection clauses of the contracts between the parties designate the "courts of the State of New York" as the proper forum for adjudication of

“any legal proceedings that may result from a dispute as to the interpretation or breach of any of the [agreements’] terms and conditions . . . .”

16. *Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), or, in the alternative, pursuant to 28 U.S.C. § 1391(b)(3).*

**ANSWER TO ¶ 16:** Paragraph 16 of the Complaint sets forth legal conclusions to which no response is required. UBS respectfully refers to its motion to dismiss the Complaint on grounds of forum non conveniens. To the extent a response is required, UBS avers that the forum selection clauses of the contracts between the parties designates the “courts of the State of New York” as the proper forum for adjudication of “any legal proceedings that may result from a dispute as to the interpretation or breach of any of the [Agreements’] terms and conditions,” and otherwise denies the allegations set forth at Paragraph 16 of the Complaint.

17. *Founded in 1981, Bloomberg is a leading provider of financial market data, offering access to curated, high quality market and reference data for over 50 million instruments across a range of asset classes, such as fixed income and equities.*

**ANSWER TO ¶ 17:** UBS admits that Bloomberg holds itself out as a leading provider of financial market data, but denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 17 of the Complaint.

18. *There is no single standard by which the issuers of these millions of instruments publish relevant market and reference data. Accordingly Bloomberg, like other market data providers, uses a unique and proprietary set of methods and processes to aggregate, organize, and curate financial data.*

**ANSWER TO ¶ 18:** UBS denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 18 of the Complaint.

19. *Any Bloomberg client that wishes to receive Bloomberg’s proprietary data so that the data can be used on an enterprise-wide basis outside of the Bloomberg Terminal environment is required to execute one of two types of Bloomberg Data License agreements.*

**ANSWER TO ¶ 19:** UBS denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 19 of the Complaint.

20. *Under a “Per Security” license agreement, Bloomberg licenses the use of market data on a request-by-request basis in return for a per-request fee.*

**ANSWER TO ¶ 20:** UBS respectfully refers the Court to the Per Security agreement attached to the Complaint and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 20 of the Complaint.

21. *Under a “Bulk Data” license agreement, Bloomberg licenses the use of datasets that Bloomberg makes available for download in return for a monthly recurring charge.*

**ANSWER TO ¶ 21:** UBS respectfully refers the Court to the Bulk Data agreement attached to the Complaint and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 21 of the Complaint.

22. *Bloomberg’s proprietary data is subject to strict usage restrictions designed to protect Bloomberg’s property rights in the data and the expense of time and effort Bloomberg incurs to aggregate and curate the data.*

**ANSWER TO ¶ 22:** UBS respectfully refers the Court to the agreements attached to the Complaint and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 22 of the Complaint.

23. *The fundamental restriction contained in every Bloomberg data license agreement is a prohibition on redistribution of Bloomberg data to third parties. Without this provision, a single customer could undermine Bloomberg’s business by sharing any or all of Bloomberg’s valuable data with an unlimited number of third parties.*

**ANSWER TO ¶ 23:** UBS respectfully refers the Court to the agreements attached to the Complaint and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 23 of the Complaint.

24. *Bloomberg and UBS are parties to two data license agreements, effective as amended on September 28, 1998. [Footnote 1: The agreements, as well as the addendum described in Paragraph 37 below, were initially executed by Bloomberg L.P. and subsequently assigned to BFLP.]*

**ANSWER TO ¶ 24:** UBS admits that, among the license agreements to which they are party, Bloomberg and UBS are parties to two data license agreements effective as amended on September 28, 1998, and respectfully refers the Court to those agreements and to the amendments thereto for the complete and accurate terms and conditions thereof.

25. *Pursuant to a Bloomberg Per Security Data License Agreement (the “Per Security License”), Bloomberg granted UBS a nonexclusive, nontransferable license to use certain financial market data on a request-by-request basis within UBS, in return for which UBS agreed to pay Bloomberg according to a per-request Pricing Schedule annexed to the agreement and subject to amendment from time to time. [Footnote 2: A copy of the Per Security License is annexed hereto as Exhibit 1.]*

**ANSWER TO ¶ 25:** UBS admits that it and Bloomberg are parties to the Per Security License attached to the Complaint, and respectfully refers the Court to the Per Security License and to the amendments thereto for the complete and accurate terms and conditions thereof.

26. *Pursuant to a Bloomberg (Bulk Data) Data License Agreement (the “Bulk Data License”), Bloomberg granted UBS a nonexclusive, nontransferable license to use, within UBS, certain financial market data to be delivered by Bloomberg on a periodic basis, in return for which UBS agreed to pay Bloomberg a monthly recurring charge set forth in a Schedule of Services annexed to the agreement and subject to amendment from time to time. [Footnote 3: A copy of the Bulk Data License is annexed hereto as Exhibit 2.]*

**ANSWER TO ¶ 26:** UBS admits that it and Bloomberg are parties to the Bulk Data License attached to the Complaint, and respectfully refers the Court to the Bulk Data License and to the amendments thereto for the complete and accurate terms and conditions thereof.

27. *The Per Security License and the Bulk Data License (together the “Global Agreements”) both contain an identical Section 4, entitled “Restrictions on Use,” which sets forth a number of*

*expressly enumerated restrictions on the manner in which UBS is permitted to use the data licensed from Bloomberg under the Global Agreements.*

**ANSWER TO ¶ 27:** UBS admits the allegations set forth at Paragraph 27 of the Complaint, and avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended.

28. *First, the Global Agreements both expressly forbid UBS from causing the licensed data to be “distributed, published, copied, broadcasted, reproduced, ported or otherwise routed to any third party in any way not authorized” in the agreements. The agreements further bar UBS from using the licensed data in such a way that the licensed data, when so used, becomes a “source of or substitute for the Data” otherwise available from Bloomberg. These provisions protect Bloomberg’s core business from the serious harm that would ensue from the unauthorized use and dissemination of its highly valuable proprietary data.*

**ANSWER TO ¶ 28:** UBS admits that Paragraph 28 of the Complaint quotes portions of the Global Agreements, avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at the third sentence of Paragraph 28 of the Complaint, and otherwise denies the allegations set forth at Paragraph 28 of the Complaint.

29. *Second, the Global Agreements both expressly forbid UBS from using the licensed data—or the results of calculations performed using the licensed data (which the Agreements call “Resultant Data”)—“in any manner that could compete with the business of Licensor or Licensor’s affiliates.”*

**ANSWER TO ¶ 29:** UBS admits that Paragraph 29 of the Complaint quotes portions of the Global Agreements, avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, respectfully refers the Court to the Global Agreements and to the amendments thereto for the com-

plete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 29 of the Complaint.

30. *Third, the Global Agreements expressly “do not include the right to store all or any part of the Data in databases for access by any third party or to distribute any database services containing all or part of such data,” except that UBS “may, for its internal use only, store the Data for the duration of the Term of [each] Agreement.” (Emphasis added.)*

**ANSWER TO ¶ 30:** UBS admits that Paragraph 30 of the Complaint quotes portions of the Global Agreements, avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 30 of the Complaint.

31. *In Section 6 of the Global Agreements, Bloomberg and UBS further expressly agree that “the dissemination or distribution by [UBS] of information identical or similar to the Data and from which dissemination or distribution [UBS] derives or may derive commercial revenue shall be deemed a breach of the terms of paragraphs 4(a) through 4(f) hereof and shall give rise to an immediate right of [Bloomberg] to terminate this Agreement or any portion of the Services provided hereunder.”*

**ANSWER TO ¶ 31:** UBS admits that Paragraph 31 of the Complaint quotes portions of the Global Agreements, avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 31 of the Complaint.

32. *Section 6 of the Global Agreements also provides that “[i]n the event of a breach or threatened breach of any of the provisions of this Agreement by [UBS] . . . [Bloomberg] shall be entitled to injunctive relief to enforce the provisions hereof. . . . In the event Licensor prevails in any such action, [Bloomberg] shall be entitled to recover from [UBS] all reasonable costs, expenses and attorneys’ fees incurred in connection therewith.”*

**ANSWER TO ¶ 32:** UBS admits that Paragraph 32 of the Complaint quotes portions of the Global Agreements, avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 32 of the Complaint.

33. *Pursuant to Section 15, the Global Agreements are governed by the laws of the State of New York “without giving effect to the conflicts-of-law provisions thereof,” and the parties expressly “consent to the jurisdiction of the courts of the State of New York with respect to any legal proceedings that may result from a dispute as to the interpretation or breach of any of the terms and conditions” of the Agreements.*

**ANSWER TO ¶ 33:** UBS admits that Paragraph 33 of the Complaint quotes portions of the Global Agreements, respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 33 of the Complaint.

34. *Together, the terms of the Global Agreements—including specifically the terms cited herein—preclude a licensee of Bloomberg’s proprietary data from passing that data to third parties in any manner that would allow third parties to obtain the benefit of Bloomberg’s proprietary data without obtaining—and paying for—a license from Bloomberg.*

**ANSWER TO ¶ 34:** UBS denies the allegations set forth at Paragraph 34 of the Complaint, except avers that the Global Agreements were amended in 2005 to permit additional uses of the data licensed from Bloomberg pursuant to the Global Agreements as amended, and respectfully refers the Court to the Global Agreements and to the amendments thereto for the complete and accurate terms and conditions thereof.

35. *In 2004, UBS approached Bloomberg with questions regarding the type of Bloomberg data available to UBS under the Global Agreements. One of UBS’s concerns related to a risk and portfolio management system, then known as Credit Delta, which used Bloomberg data obtained by UBS under the Global Agreements.*

**ANSWER TO ¶ 35:** UBS admits that in 2004 the parties had discussions regarding the type of Bloomberg data available to UBS under the Global Agreements, including with respect to UBS's risk and portfolio management system, then known as CreditDelta, and otherwise denies the allegations set forth at Paragraph 35 of the Complaint.

*36. The parties negotiated an addendum to the Global Agreements that both expanded the types of financial instruments and data fields available to UBS under those Agreements and provided UBS with a limited right to use a specified subset of UBS's licensed Bloomberg data within certain UBS software products that were made available to third party clients of UBS.*

**ANSWER TO ¶ 36:** UBS admits that the parties negotiated an addendum to the Global Agreements that both expanded the types of financial instruments and data fields available to UBS under those Agreements and provided UBS with a limited right to use a specified subset of UBS's licensed Bloomberg data in connection with certain UBS software products that were made available to third party clients of UBS, and otherwise denies the allegations set forth at Paragraph 36 of the Complaint.

*37. The negotiations resulted in the execution, on January 24, 2005, of the "Second Addendum to Bloomberg Per Security Data License Agreement and Bloomberg (Bulk Data) Data License Agreement Between Bloomberg L.P. and UBS AG" (the "2005 Addendum"). [Footnote 4: A copy of the 2005 Addendum is attached hereto as Exhibit 3.]*

**ANSWER TO ¶ 37:** UBS admits the allegations set forth at Paragraph 37 of the Complaint.

*38. As relevant here, Section 8 of the 2005 Addendum altered the Services set forth in the Global Agreements by permitting UBS to use specific data fields "within certain [UBS]-developed applications." (Emphasis added.) Exhibit C of the 2005 Addendum identified the data fields that could be displayed for specific asset classes. For fixed-income securities, these fields were generally limited to reference data that categorized securities (for example by industry or sector) and provided key economic information relating to the security, such as the coupon or maturity date of a bond.*

**ANSWER TO ¶ 38:** UBS admits that Paragraph 38 of the Complaint quotes a portion of Paragraph 8 of the 2005 Addendum, respectfully refers the Court to the 2005 Addendum for the

complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 38 of the Complaint.

39. *The same section of the 2005 Addendum expressly provided, however, that UBS “may not use or disseminate such Data in any way which could, as determined in [Bloomberg’s] sole good faith discretion, either (i) cause the information so used or distributed to be used as a source of or a substitute for the Data otherwise required to be supplied by [Bloomberg] or available from [Bloomberg] or (ii) compete with the business of [Bloomberg] or [Bloomberg’s] affiliates.” Thus, the 2005 Addendum made clear that the “source or substitute” prohibition remained in place, as did the prohibition against using Bloomberg’s own data to compete with Bloomberg’s business. In return for this limited additional right of usage, UBS agreed to pay Bloomberg an annual fee of \$300,000.*

**ANSWER TO ¶ 39:** UBS admits that Paragraph 39 of the Complaint quotes a portion of Paragraph 8 of the 2005 Addendum, respectfully refers the Court to the 2005 Addendum for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 39 of the Complaint.

40. *In April 2017, StatPro, a provider of cloud-based portfolio management and analytics services, announced that it had agreed to acquire from UBS the intellectual property of a UBS-developed portfolio analysis and risk management system then known as “UBS Delta.” According to a press release issued by StatPro, and according to representations subsequently made by UBS to Bloomberg, the transaction was scheduled to occur over a period of three to five years “as StatPro incorporates UBS Delta’s functionality into its flagship product, StatPro Revolution.” [Footnote 5: StatPro to Acquire UBS Delta, STATPRO (Apr. 7, 2017), <http://www.statpro.com/news/statpro-to-acquire-ubs-delta-2/>.]*

**ANSWER TO ¶ 40:** UBS admits that it was publicly announced in April 2017 that UBS had entered into a contract to sell UBS Delta to StatPro, further admits that Paragraph 40 of the Complaint quotes a portion of the press release issued by StatPro in April 2017, and respectfully refers the Court to the cited press release for its complete and accurate content and context.

41. *The announced acquisition of the UBS Delta system by StatPro raised two concerns at Bloomberg. First, at the time of the transaction, approximately ten of UBS’s Bloomberg Terminal subscription accounts were being used by UBS personnel in connection with UBS Delta. If those personnel were to become employees of StatPro as part of its acquisition of UBS Delta, their continued use of the UBS-licensed Bloomberg Terminals would violate the terms of the applicable Terminal Agreements.*

**ANSWER TO ¶ 41:** UBS admits the allegations set forth at the second sentence of Paragraph 41 of the Complaint, denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at the first sentence of Paragraph 41 of the Complaint, and otherwise denies the allegations set forth at Paragraph 41 of the Complaint.

*42. Second, to the extent UBS was using licensed Bloomberg data "within" UBS Delta as contemplated in the 2005 Addendum, the acquisition of UBS Delta by StatPro would result in a third party (StatPro) gaining access to proprietary Bloomberg data without a license, in violation of the terms of the Global Agreements and the 2005 Addendum.*

**ANSWER TO ¶ 42:** UBS denies the allegations set forth at Paragraph 42 of the Complaint.

*43. Bloomberg therefore contacted UBS in an attempt to determine the implication of the UBS/StatPro transaction with respect to certain Bloomberg Terminal agreements and the Global Agreements.*

**ANSWER TO ¶ 43:** UBS admits that Bloomberg contacted UBS in 2017 to discuss the UBS/StatPro transaction, and otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 43 of the Complaint.

*44. In June 2017, Vinesh Hirani, then UBS's Deputy Global Head of Market Data Services, confirmed on a telephone call with Bloomberg personnel that the Bloomberg Terminal accounts that had previously been used at UBS in connection with UBS Delta were still being used by the same individuals, but that those individuals had ceased to be employees of UBS and had instead become employees of StatPro.*

**ANSWER TO ¶ 44:** UBS admits that, in June 2017, Vinesh Hirani spoke to Bloomberg personnel regarding the Bloomberg Terminals used in connection with UBS Delta, admits that certain individuals with responsibilities relating to UBS Delta became employees of StatPro in 2017 and further avers that those same individuals were contracted back to UBS as consultants to continue to maintain and operate UBS Delta until the completion of the sale of UBS Delta to StatPro. UBS denies that it has used or disseminated Bloomberg data in violation of any agree-

ments between the parties, and otherwise denies the allegations set forth at Paragraph 44 of the Complaint.

45. *In August 2017, Bloomberg sent UBS a questionnaire seeking specific information regarding, among other things, the use of proprietary Bloomberg data in connection with UBS Delta.*

**ANSWER TO ¶ 45:** UBS admits the allegations set forth at Paragraph 45 of the Complaint.

46. *The questionnaire asked whether “any other Bloomberg services (e.g. Bloomberg Data License accounts)” were being used in connection with UBS Delta; whether “any Bloomberg data [was] being re-distributed / communicated to clients”; and whether “all clients” of UBS Delta were Bloomberg subscribers.*

**ANSWER TO ¶ 46:** UBS admits that Paragraph 46 of the Complaint quotes from portions of the questionnaire and respectfully refers the Court to the questionnaire for its complete and accurate content and context.

47. *UBS returned the questionnaire in September 2017.*

**ANSWER TO ¶ 47:** UBS admits the allegations set forth at Paragraph 47 of the Complaint.

48. *In response to the question whether UBS Delta was using Bloomberg Data License or other Bloomberg services, UBS answered in the affirmative, asserting that “UBS has an agreement allowing UBS Delta access to certain Bulk Fixed Income Extended data to support the UBS Delta service,” citing the 2005 Addendum. (Emphasis added.)*

**ANSWER TO ¶ 48:** UBS admits that Paragraph 48 of the Complaint quotes a portion of UBS’s questionnaire response, respectfully refers the Court to the questionnaire response for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 48 of the Complaint.

49. *In response to the question whether any Bloomberg data was being redistributed or communicated to clients, UBS stated that the Bloomberg Terminal accounts used in connection with UBS Delta were “NOT being used to redistribute data,” though UBS conceded that the Bloomberg Terminals were in fact used to redistribute data through “[o]ccasional indirect communication” or “a one off chart to illustrate a point.” UBS also asserted that “UBS have an agreement in place allowing for certain Bulk Fixed Income Extended data to be used in support of the UBS Delta service.” (Emphasis added.)*

**ANSWER TO ¶ 49:** UBS admits that Paragraph 49 of the Complaint quotes a portion of UBS's questionnaire response, respectfully refers the Court to the questionnaire response for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 49 of the Complaint.

50. *In response to the question whether all clients of UBS Delta were Bloomberg subscribers, UBS responded: "We don't know."*

**ANSWER TO ¶ 50:** UBS admits that Paragraph 50 of the Complaint quotes a portion of UBS's questionnaire response, respectfully refers the Court to the questionnaire response for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 50 of the Complaint.

51. *Bloomberg continued to seek additional information from UBS regarding both the use of the UBS-licensed Bloomberg Terminal accounts by StatPro employees and the use of Bloomberg proprietary data in—and distribution of proprietary Bloomberg data through—UBS Delta.*

**ANSWER TO ¶ 51:** UBS admits that Bloomberg sought additional information from UBS regarding UBS Delta, and otherwise denies the allegations set forth at Paragraph 51 of the Complaint.

52. *On January 12, 2018, a Bloomberg employee sent UBS's Vinesh Hirani and Clinton Moseley, the Chief Operating Officer of Foreign Exchange, Rates, and Credit Distribution, an e-mail asking: What do the client outputs from UBS Delta look like (is it just a set of risk numbers viewable on the screen or are the clients additionally able to access / download Bloomberg datasets associated with these calculations or with the securities within their portfolio)?*

**ANSWER TO ¶ 52:** UBS admits that a Bloomberg employee sent Vinesh Hirani and Clinton Moseley an email on or about January 12, 2018 requesting information regarding UBS Delta, respectfully refers the Court to the referenced email for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 52 of the Complaint.

53. *UBS responded on January 16, 2018 that UBS Delta did in fact allow clients to access and download proprietary Bloomberg data, writing: Clients are able to extract their portfolio information on the screen, via pdf or excel (csv or xml). They cannot download the datasets as-*

sociated with the calculations per se (i.e. the inputs), but, can obviously see the blended data as it relates to their portfolios (including reference data & UBS calculations) and therefore will see the end result which is a blend of data from various Market data suppliers and UBS data sets (including Bloomberg – for example pricing data for a bond comes from Reuters and reference data such as the Coupon comes from Bloomberg). (Emphasis added.)

**ANSWER TO ¶ 53:** UBS admits that it responded to Bloomberg on or about January 16, 2018, respectfully refers the Court to the referenced email response for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 53 of the Complaint.

54. *Since the vast majority of the data subject to the expanded license in Section 8 of the 2005 Addendum is reference data, the import of Hirani's email was clear: UBS Delta facilitated the redistribution of Bloomberg data directly to unlicensed third parties, in violation of the Global Agreements and the 2005 Addendum.*

**ANSWER TO ¶ 54:** UBS denies the allegations set forth at Paragraph 54 of the Complaint.

55. *In light of UBS's concessions set forth above, Bloomberg determined that the use of UBS-licensed Bloomberg Terminals by StatPro employees constituted a breach of UBS's Bloomberg Terminal subscriptions, and that the ability of UBS clients to access and download proprietary Bloomberg data through UBS Delta constituted a breach of the Global Agreements as amended by the 2005 Addendum.*

**ANSWER TO ¶ 55:** To the extent Paragraph 55 of the Complaint sets forth legal conclusions, no response is required. To the extent a response is required, UBS denies having knowledge or information sufficient to form a belief regarding the truth or falsity of allegations concerning Bloomberg's determinations, and otherwise denies the allegations set forth at Paragraph 55 of the Complaint.

56. *Bloomberg therefore sent UBS a letter on February 14, 2018, giving notice that Bloomberg was terminating the Bloomberg Terminal subscriptions at issue and demanding that UBS "cease and desist sharing, making available, and/or allowing access to current and historical Bloomberg data by any third party . . . ."*

**ANSWER TO ¶ 56:** UBS admits that Bloomberg sent UBS a letter on or about February 14, 2018, respectfully refers the Court to the referenced letter for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 56 of the Complaint.

57. *Bloomberg also gave notice that, pursuant to Section 6 of the Global Agreements, which allowed Bloomberg to terminate “any portion of the Services provided hereunder” in the event of a breach, Bloomberg was terminating the license created under Section 8 of the 2005 Addendum that permitted the use of Bloomberg data “within certain [UBS]-developed applications.” Bloomberg demanded that “no later than May 15, 2018 [UBS] cease and desist using Bloomberg data within UBS Delta or any other application made available to UBS customers or other third parties”; that UBS “cease and desist sharing, making available, and/or allowing access to current and historical data by any third party”; and that UBS “ensure that all such parties delete and purge any such Bloomberg data.”*

**ANSWER TO ¶ 57:** UBS admits that Bloomberg sent UBS a letter on or about February 14, 2018, respectfully refers the Court to the referenced letter for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 57 of the Complaint.

58. *In response to subsequent requests from UBS, Bloomberg agreed to delay the termination of the Bloomberg Terminal subscriptions; the subscriptions were ultimately terminated on or around April 13, 2018.*

**ANSWER TO ¶ 58:** UBS admits the allegations set forth at Paragraph 58 of the Complaint.

59. *In response to a request from UBS, Bloomberg also agreed to extend the deadline for UBS to desist from using Bloomberg data within UBS Delta to June 15, 2018.*

**ANSWER TO ¶ 59:** UBS admits the allegations set forth at Paragraph 59 of the Complaint.

60. *In the intervening period between February 14, 2018 and June 15, 2018, Bloomberg attempted to obtain more information about UBS’s use of Bloomberg data in UBS Delta in order to test UBS’s claims that its use had been consistent with its contractual duties.*

**ANSWER TO ¶ 60:** UBS admits the allegations set forth at Paragraph 60 of the Complaint.

61. *Section 8 of the Global Agreements, entitled “Access and Audit,” permits Bloomberg “at any time to monitor, either physically or electronically, [UBS’s] use of the [licensed] data.”*

**ANSWER TO ¶ 61:** UBS admits that Paragraph 61 of the Complaint quotes a portion of the Global Agreements, respectfully refers the Court to the Global Agreements for their complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 61 of the Complaint.

62. *In the February 14, 2018 letter, Bloomberg informed UBS that it intended to “exercise its audit and information rights under the [Global] Agreements, including without limitation, for the*

*purpose of confirming all use of Bloomberg data and services in connection with” UBS Delta “and to ensure your compliance with our demands as set forth herein.”*

**ANSWER TO ¶ 62:** UBS admits that Bloomberg sent UBS a letter on or about February 14, 2018, further admits that Paragraph 62 of the Complaint quotes portions of the February 14 letter, and respectfully refers the Court to the referenced letter for its complete and accurate content and context.

63. *On February 28, 2018, Bloomberg sent UBS an “Audit Process” document defining the scope of the inquiry Bloomberg intended to perform regarding UBS’s “use of Bloomberg Services under contracts between Bloomberg and UBS AG and/or its affiliates . . . .”*

**ANSWER TO ¶ 63:** UBS admits that on or about February 28, 2018, Bloomberg sent UBS an “Audit Process” document and respectfully refers the Court to the referenced document for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 63.

64. *The Audit Process document identified, as one of its “primary” focuses, “all use of Bloomberg data under Section 8 of that certain Second Addendum to the Data License Agreement,” in order to confirm whether UBS “has ceased sharing, making available and/or allowing access to current or historical Bloomberg data by any third party . . . ,” and whether UBS “has ceased using Bloomberg data within (a) all instances of UBS Delta made available to third parties (i.e., instances other than for internal use by UBS) and (b) any other application made available to third parties.”*

**ANSWER TO ¶ 64:** UBS admits that Paragraph 64 of the Complaint quotes from the “Audit Process” document and respectfully refers the Court to the referenced document for its complete and accurate content and context.

65. *During a subsequent telephone call on March 9, 2018, UBS again admitted that UBS Delta redistributed proprietary Bloomberg data, although the participating UBS personnel wrongly asserted that the redistribution was permitted under the 2005 Addendum.*

**ANSWER TO ¶ 65:** UBS denies the allegations set forth at Paragraph 65 of the Complaint.

66. *On March 21, 2018, three Bloomberg personnel attended (in person or by teleconference) a demonstration of UBS Delta performed by UBS and StatPro employees at UBS’s offices in London.*

**ANSWER TO ¶ 66:** UBS admits the allegations set forth at Paragraph 66 of the Complaint.

67. *The demonstration confirmed the admission made by Vinesh Hirani on January 16, 2018—namely, that the UBS Delta service did in fact allow UBS clients to access and export proprietary Bloomberg data, regardless of whether the UBS client itself had a Bloomberg data license covering the data in question.*

**ANSWER TO ¶ 67:** UBS denies the allegations set forth at Paragraph 67 of the Complaint.

68. *These demonstrations also confirmed that UBS Delta clients could access and download Bloomberg reference data associated not just with those users' actual portfolio holdings, but with the entire universe of Bloomberg reference data made available to UBS under Section 8 of the 2005 Addendum. In other words, using a UBS Delta account, UBS customers could access and download the entire data set that Bloomberg had allowed UBS to use only "within" UBS Delta.*

**ANSWER TO ¶ 68:** UBS denies the allegations set forth at Paragraph 68 of the Complaint.

69. *On May 3, 2018, UBS confirmed this in writing, stating that "UBS Delta clients can see more [Bloomberg proprietary data] than [just the data associated with] their active holdings, and can search, for example, via a specific ISIN for any bond they do not necessarily have, as we showed in the [March 21] demo."*

**ANSWER TO ¶ 69:** UBS admits that on or about May 3, 2018 it provided certain information in writing to Bloomberg, respectfully refers the Court to the referenced writing for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 69 of the Complaint.

70. *Following the March 21 demonstration, Bloomberg attempted to obtain more information regarding UBS Delta, including the precise technical architecture by which propriety Bloomberg data was transferred from Bloomberg's servers through UBS's internal systems to UBS Delta.*

**ANSWER TO ¶ 70:** UBS admits that Bloomberg obtained more information regarding UBS Delta after the March 21, 2018 presentation, and otherwise denies the allegations set forth at Paragraph 70 of the Complaint.

71. *Bloomberg also sought to better understand who the UBS Delta clients were in order to determine whether they were also Bloomberg customers and, if so, whether they had data licens-*

*es covering the Bloomberg data that UBS had allowed them to access and export through UBS Delta.*

**ANSWER TO ¶ 71:** UBS admits that Bloomberg sought the identities of UBS Delta clients, avers that such information is confidential and proprietary and that Bloomberg does not have any right to such information, avers that Bloomberg has refused offers from UBS to utilize a neutral intermediary so that the information that Bloomberg seeks can be provided without disclosure of the identities of UBS Delta clients, and otherwise denies the allegations set forth at Paragraph 71 of the Complaint.

*72. Despite repeated requests, UBS has steadfastly refused to identify the UBS Delta clients, providing only “the overall number of clients and users and the overall number of securities per asset class across those clients.”*

**ANSWER TO ¶ 72:** UBS admits that Bloomberg sought the identities of UBS Delta clients, avers that such information is confidential and proprietary and that Bloomberg does not have any right to such information, avers that Bloomberg has refused offers from UBS to utilize a neutral intermediary so that the information that Bloomberg seeks can be provided without disclosure of the identities of UBS Delta clients, and otherwise denies the allegations set forth at Paragraph 72 of the Complaint.

*73. Nor has UBS provided any meaningful additional information regarding the technical architecture by which proprietary Bloomberg data is transferred from Bloomberg’s distribution servers through UBS’s internal systems to UBS Delta—including whether, contrary to Section 4 of the Global Agreements, UBS has “store[d] all or any part of the Data in databases for access by any third party.”*

**ANSWER TO ¶ 73:** UBS denies the allegations set forth at Paragraph 73 of the Complaint.

*74. Instead, on July 2, 2018, UBS Group Chief Financial Officer Kirt Gardner informed Bloomberg that UBS intended to replace Bloomberg as a source of market data for UBS Delta by August 2018.*

**ANSWER TO ¶ 74:** UBS admits that on or about July 2, 2018 Kirt Gardner informed Bloomberg that UBS intended to replace Bloomberg as a source of market data for UBS Delta, and otherwise denies the allegations set forth at Paragraph 74 of the Complaint.

*75. Bloomberg does not contest UBS's right to replace Bloomberg as a source of market data for UBS Delta. In light of Bloomberg's February 14, 2018 termination of the data license created by Section 8 of the 2005 Addendum, UBS is required to desist from using Bloomberg data in all instances of UBS Delta made available to third parties.*

**ANSWER TO ¶ 75:** To the extent Paragraph 75 of the Complaint sets forth legal conclusions, no response is required. To the extent a response is required, UBS respectfully refers the Court to the referenced documents for their complete and accurate content and context, denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth in the first sentence of Paragraph 75 of the Complaint and otherwise denies the allegations set forth at Paragraph 75 of the Complaint.

*76. However, the process of transitioning a data-intensive application like UBS Delta from one data provider to another necessarily creates an inherent risk of unauthorized disclosure or use of proprietary data for the benefit of the new data provider.*

**ANSWER TO ¶ 76:** UBS denies the allegations set forth at Paragraph 76 of the Complaint.

*77. For example, running UBS Delta processes using data from a source other than Bloomberg is likely to generate different values, in at least some instances, than those that would be generated using Bloomberg data. Given that UBS Delta is a customer-facing application, and that customers will therefore notice any changes in calculated values associated with a switch from Bloomberg to an alternate data provider, UBS has a strong incentive to "validate" its replacement data by comparing the values generated using Bloomberg data with the values generated using the alternate data and identifying any differences.*

**ANSWER TO ¶ 77:** UBS avers the allegations set forth at Paragraph 77 of the Complaint are conjectural, hypothetical, speculative and uncertain and, thus, do not require a response. To the extent a response is required, UBS denies the allegations set forth at Paragraph 77 of the Complaint.

78. *Additionally, given the high quality of Bloomberg's data, and because UBS Delta customers have, to date, received and observed values calculated using Bloomberg data, UBS has a strong incentive to address any such differences by altering the replacement data set so that it generates the same calculated values as those that are generated by the use of Bloomberg's data.*

**ANSWER TO ¶ 78:** UBS avers the allegations set forth at Paragraph 78 of the Complaint are conjectural, hypothetical, speculative and uncertain and, thus, do not require a response. To the extent a response is required, UBS denies the allegations set forth at Paragraph 78 of the Complaint.

79. *Any such attempt by UBS or its new data provider(s) to validate the new values by comparing them to values generated using Bloomberg data, and to correct any variances, would result in the validation, alteration—and improvement—of a competing data vendor's products and services to the detriment of Bloomberg, in further breach of the Global Agreements.*

**ANSWER TO ¶ 79:** UBS avers the allegations set forth at Paragraph 79 of the Complaint are conjectural, hypothetical, speculative and uncertain and, thus, do not require a response. To the extent a response is required, UBS denies the allegations set forth at Paragraph 79 of the Complaint.

80. *Moreover, UBS is likely to seek an alternative data source or sources that provide data at least as extensive in coverage as the data licensed under the Global Agreements. Yet the continued use by UBS or disclosure to Bloomberg's competitors of generalized or aggregated information about Bloomberg's data—including information regarding the scope of Bloomberg's data coverage—constitutes another contractual breach that would result in the erosion of the competitive advantage Bloomberg has acquired through great expenditure of time and resources.*

**ANSWER TO ¶ 80:** UBS avers the allegations set forth at Paragraph 80 of the Complaint are conjectural, hypothetical, speculative and uncertain and, thus, do not require a response. To the extent a response is required, UBS denies the allegations set forth at Paragraph 80 of the Complaint.

81. *Any transition of UBS Delta from Bloomberg data to a new source of market data must therefore be properly and carefully managed to safeguard Bloomberg's proprietary interests in its data. UBS's stated intent to complete the transition by August 2018 strongly suggests that work on the transition has already begun and is ongoing.*

**ANSWER TO ¶ 81:** UBS denies the allegations set forth at Paragraph 81 of the Complaint.

82. *Despite repeated requests by Bloomberg, UBS has refused to confirm that it will comply with Bloomberg's February 14, 2018 demand to delete and purge all Bloomberg data from customer-facing instances of UBS Delta. UBS has also refused to confirm that it will ensure (as demanded in the February 14, 2018 letter) that all unauthorized third-party recipients of redistributed Bloomberg data likewise delete and purge all such data.*

**ANSWER TO ¶ 82:** UBS denies the allegations set forth at Paragraph 82 of the Complaint.

83. *UBS's refusal to confirm the deletion and purging of Bloomberg data from customer-facing instances of UBS Delta and from UBS Delta customers themselves raises a reasonable concern that UBS has not taken, and will not take, adequate steps to halt and prevent the unauthorized redistribution of Bloomberg data.*

**ANSWER TO ¶ 83:** UBS denies the allegations set forth at Paragraph 83 of the Complaint.

84. *Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.*

**ANSWER TO ¶ 84:** UBS repeats and restates its answers set forth in the preceding Paragraphs as if fully set forth herein.

85. *Plaintiff and UBS are parties to the Global Agreements and the 2005 Addendum.*

**ANSWER TO ¶ 85:** UBS admits the allegations set forth at Paragraph 85 of the Complaint.

86. *Section 4 of the Global Agreements expressly forbids UBS from using the data licensed thereunder in such a way that it becomes a "source of or substitute for" data otherwise available from Bloomberg.*

**ANSWER TO ¶ 86:** UBS admits that Paragraph 86 quotes a portion of Section 4 of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 86 of the Complaint.

87. *Section 4 of the Global Agreements expressly forbids UBS from storing all or any part of the data licensed from Bloomberg in databases for access by any third party, and from distributing any database services containing all or part of the licensed data, except that UBS "may, for its internal use only, store the Data for the duration of the Term of [each] Agreement."*

**ANSWER TO ¶ 87:** UBS admits that Paragraph 87 quotes a portion of Section 4 of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 87 of the Complaint.

88. *Section 6 of the Global Agreements provides that “the dissemination or distribution by [UBS] of information identical or similar to the Data and from which dissemination or distribution [UBS] derives or may derive commercial revenue shall be deemed a breach” of the Agreements.*

**ANSWER TO ¶ 88:** UBS admits that Paragraph 88 quotes a portion of Section 6 of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 88 of the Complaint.

89. *Section 8 of the 2005 Addendum to the Global Agreements permits UBS to use certain data licensed thereunder “within certain [UBS]-developed applications,” but expressly forbids UBS from “us[ing] or disseminat[ing] such Data in any way which could, as determined in [Bloomberg’s] sole good faith discretion, . . . (i) cause the information so used or distributed to be used as a source of or a substitute for the Data otherwise . . . available from [Bloomberg].”*

**ANSWER TO ¶ 89:** UBS admits that Paragraph 89 quotes a portion of Section 8 of the 2005 Addendum, respectfully refers the Court to the 2005 Addendum for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 89 of the Complaint.

90. *By allowing UBS Delta clients to access and export proprietary Bloomberg data on demand, UBS has caused the information available through UBS Delta to be used as a source of or a substitute for Bloomberg’s proprietary data in violation of the Global Agreements as amended by the 2005 Addendum.*

**ANSWER TO ¶ 90:** UBS Denies the allegations set forth at Paragraph 90 of the Complaint.

91. *By allowing UBS Delta clients to access and export proprietary Bloomberg data on demand and without regard to the existence or scope of any Bloomberg license held by the client, UBS has disseminated or distributed information identical or similar to the data licensed under*

*the Global Agreements, from which dissemination or distribution UBS derives commercial revenue, in violation of the Global Agreements as amended by the 2005 Addendum.*

**ANSWER TO ¶ 91:** UBS denies the allegations set forth at Paragraph 91 of the Complaint.

92. *By allowing UBS Delta clients to access and export proprietary Bloomberg data—including as part of “a blend of data from various Market data suppliers”—UBS has stored all or any part of the data licensed from Bloomberg in databases for access by any third party and has distributed a database service containing all or part of the licensed data other than for internal use in violation of Section 4 of the Global Agreements.*

**ANSWER TO ¶ 92:** UBS denies the allegations set forth at Paragraph 92 of the Complaint.

93. *UBS’s breach of the Global Agreements and the 2005 Addendum in this manner has directly and proximately damaged Plaintiff in an amount greater than \$75,000 to be determined at trial, but not less than the amount of the Bloomberg data license fees that UBS Delta customers were able to avoid by accessing and exporting proprietary Bloomberg data through UBS Delta rather than pursuant to a Bloomberg data license.*

**ANSWER TO ¶ 93:** UBS denies the allegations set forth at Paragraph 93 of the Complaint.

94. *Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.*

**ANSWER TO ¶ 94:** UBS repeats and restates its answers set forth in the preceding Paragraphs as if fully set forth herein.

95. *Section 4(b) of the Global Agreements prohibits the use of Bloomberg’s data or any data that is derived from Bloomberg’s data “in any manner that could compete with the business of Licensor or Licensor’s affiliates.”*

**ANSWER TO ¶ 95:** UBS admits that Paragraph 95 quotes a portion of Section 4(b) of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 95 of the Complaint.

96. *Section 8 of the 2005 Addendum to the Global Agreements permits UBS to use certain data licensed thereunder “within certain [UBS]-developed applications,” but expressly forbids UBS from “us[ing] or disseminat[ing] such Data in any way which could, as determined in [Bloomberg’s] sole good faith discretion, . . . (ii) compete with the business of [Bloomberg] or [Bloomberg’s] affiliates.”*

**ANSWER TO ¶ 96:** UBS admits that Paragraph 96 quotes a portion of Section 8 of the 2005 Addendum, respectfully refers the Court to the 2005 Addendum for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 96 of the Complaint.

97. *By charging UBS customers to access a system that allows the downloading of proprietary Bloomberg data, UBS has effectively competed with Bloomberg's data licensing business in violation of the Global Agreements as amended by the Second Addendum.*

**ANSWER TO ¶ 97:** UBS denies the allegations set forth at Paragraph 97 of the Complaint.

98. *Additionally, UBS Delta competes with Bloomberg's PORT+ product. PORT+ is a portfolio and risk analytics tool that allows users to analyze various risk metrics and generate various reports at an organizational level. Bloomberg has invested substantial resources to build and develop the PORT+ program, which it offers to Bloomberg Terminal users for an additional fee.*

**ANSWER TO ¶ 98:** UBS admits that Bloomberg has stated its belief that PORT+ is a competitor of UBS Delta, but otherwise denies having knowledge or information sufficient to form a belief regarding the truth or falsity of the allegations set forth at Paragraph 98 of the Complaint.

99. *UBS Delta also includes a reporting function that allows users to analyze various risk metrics and generate organizational-level reports, and thereby competes directly with Bloomberg's PORT+ program.*

**ANSWER TO ¶ 99:** UBS admits that UBS Delta includes a reporting function that allows users to analyze various risk metrics and generate organizational-level reports, further admits that Bloomberg has stated its belief that PORT+ is a competitor of UBS Delta, and otherwise denies the allegations set forth at Paragraph 99 of the Complaint.

100. *By using the data licensed under the Global Agreements in UBS Delta, UBS has therefore used that data in a manner that competes with the business of Plaintiff and its affiliates, in violation of the Global Agreements as amended by the 2005 Addendum.*

**ANSWER TO ¶ 100:** UBS denies the allegations set forth at Paragraph 100 of the Complaint.

101. *UBS's breach of the Global Agreements and the 2005 Addendum in this manner has directly and proximately damaged Plaintiff in an amount greater than \$75,000 to be specifically*

*determined at trial, but not less than the amount of the Bloomberg data license fees that UBS Delta customers were able to avoid by accessing and exporting proprietary Bloomberg data through UBS Delta rather than pursuant to a Bloomberg data license, as well as the Bloomberg PORT+ license fees that Plaintiff would have received but for UBS's unauthorized competitive use of the licensed.*

**ANSWER TO ¶ 101:** UBS denies the allegations set forth at Paragraph 101 of the Complaint.

102. *Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.*

**ANSWER TO ¶ 102:** UBS repeats and restates its answers set forth in the preceding Paragraphs as if fully set forth herein.

103. *Section 4 of the Global Agreements expressly forbids UBS from causing the licensed data to be "distributed, published, copied, broadcasted, reproduced, ported or otherwise routed to any third party in any way not authorized" in the agreement.*

**ANSWER TO ¶ 103:** UBS admits that Paragraph 103 quotes a portion of Section 4 of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 103 of the Complaint.

104. *On February 14, 2018, Bloomberg demanded that UBS cease and desist sharing, making available, and/or allowing access to current and historical Bloomberg data by StatPro, and that UBS ensure that StatPro delete and purge any such Bloomberg data.*

**ANSWER TO ¶ 104:** UBS admits that Bloomberg sent UBS a cease and desist letter on February 14, 2018, respectfully refers the Court to the referenced letter for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 104 of the Complaint.

105. *UBS has refused to confirm that it has complied with these demands.*

**ANSWER TO ¶ 105:** UBS denies the allegations set forth at Paragraph 105 of the Complaint.

106. *In light of its conceded violations of the Terminal Agreements and the Global Agreements, UBS's refusal to confirm compliance with Bloomberg's demands set forth above raises the reasonable inference that UBS: (i) has not ceased and desisted from making Bloomberg data*

available to StatPro, and has continued to allow StatPro to have access to Bloomberg data, (ii) has not ensured that StatPro has deleted and purged any such Bloomberg data in its possession, and (iii) has not implemented any steps to safeguard against the disclosure of Bloomberg's data to StatPro.

**ANSWER TO ¶ 106:** UBS denies the allegations set forth at Paragraph 106 of the Complaint.

107. *By allowing StatPro and employees of StatPro, to access and export proprietary Bloomberg data in connection with StatPro's acquisition of UBS Delta, UBS has allowed the licensed data to be distributed to a third party without authorization in violation of the Global Agreements.*

**ANSWER TO ¶ 107:** UBS denies the allegations set forth at Paragraph 107 of the Complaint.

108. *The disclosure of Bloomberg's proprietary data to StatPro, a competitor to Bloomberg in the market for portfolio management software, allows StatPro to leverage Bloomberg's curated proprietary data set to improve its own products, thereby unfairly reducing Bloomberg's competitive advantage.*

**ANSWER TO ¶ 108:** UBS denies the allegations set forth at Paragraph 108 of the Complaint.

109. *UBS's breach of the Global Agreements and the 2005 Addendum through the unauthorized disclosure of proprietary data to StatPro, a competitor in the market for portfolio management software, has caused Plaintiff irreparable and ongoing harm, including through the irreversible improvement of the products and/or services of a competitor to Bloomberg.*

**ANSWER TO ¶ 109:** UBS denies the allegations set forth at Paragraph 109 of the Complaint.

110. *Plaintiff's remedy at law for such impermissible disclosures of proprietary data to StatPro would be inadequate to compensate it for the harm that will have been done. The use of Bloomberg's data and information about Bloomberg's data to improve competing products and services cannot be undone, and the resulting loss of competitive advantage and goodwill to Plaintiff will therefore continue indefinitely.*

**ANSWER TO ¶ 110:** UBS denies the allegations set forth at Paragraph 110 of the Complaint.

111. *In addition to monetary damages, Plaintiff therefore seeks both preliminary and permanent injunctive relief to protect its data and sensitive business information from being disclosed to StatPro, and to protect its legitimate business interests and goodwill.*

**ANSWER TO ¶ 111:** UBS denies the allegations set forth at Paragraph 111 of the Complaint.

112. *Plaintiff repeats and realleges the allegations set forth above as though fully set forth herein.*

**ANSWER TO ¶ 112:** UBS repeats and restates its answers set forth in the preceding Paragraphs as if fully set forth herein.

*113. Section 4 of the Global Agreements expressly forbids UBS from causing the licensed data to be “distributed, published, copied, broadcasted, reproduced, ported or otherwise routed to any third party in any way not authorized” in the agreement.*

**ANSWER TO ¶ 113:** UBS admits that Paragraph 113 quotes a portion of Section 4 of the Global Agreements, respectfully refers the Court to the Global Agreements for the complete and accurate terms and conditions thereof, and otherwise denies the allegations set forth at Paragraph 113 of the Complaint.

*114. On February 14, 2018, Bloomberg demanded that UBS cease and desist sharing, making available, and/or allowing access to current and historical Bloomberg data by any third party, and that UBS ensure that all such third parties delete and purge any such Bloomberg data.*

**ANSWER TO ¶ 114:** UBS admits that on or about February 14, 2018 Bloomberg sent UBS a cease and desist letter, respectfully refers the Court to the referenced letter for its complete and accurate content and context, and otherwise denies the allegations set forth at Paragraph 114 of the Complaint.

*115. To date, UBS has refused to confirm that it has complied with these demands.*

**ANSWER TO ¶ 115:** UBS denies the allegations set forth at Paragraph 115 of the Complaint.

*116. On July 2, 2018, UBS represented to Bloomberg that it intends to replace Bloomberg as a supplier of market data to UBS Delta by August 2018, which strongly suggests that UBS will imminently begin work on migrating UBS Delta to a different data provider.*

**ANSWER TO ¶ 116:** UBS admits that on July 2, 2018, UBS informed Bloomberg that it intended to replace Bloomberg as a supplier of market data to UBS Delta by August 2018, and otherwise denies allegations set forth at Paragraph 116 of the Complaint.

*117. In light of its conceded violations of the Terminal Agreements and the Global Agreements, UBS’s refusal to confirm compliance with Bloomberg’s demands set forth above raises the reasonable inference that UBS: (i) has not ceased and desisted from making Bloomberg data available to third parties, and has continued to allow third parties to have access to Bloomberg*

*data, (ii) has not ensured that third parties have deleted and purged any such Bloomberg data in their possession, and (iii) has not implemented any steps to safeguard against the disclosure of Bloomberg's data to one or more competitors to Bloomberg in connection with its data migration.*

**ANSWER TO ¶ 117:** UBS denies the allegations set forth at Paragraph 117 of the Complaint.

*118. Without appropriate safeguards, there is an inherent risk and considerable likelihood that Bloomberg's proprietary data—including both data values and information regarding the scope and organization of the data—may be disclosed or disseminated to one or more competing market data providers during the process of migrating UBS Delta from Bloomberg to an alternate source of market data.*

**ANSWER TO ¶ 118:** UBS denies the allegations set forth at Paragraph 118 of the Complaint.

*119. By allowing competing data providers to have access to proprietary Bloomberg data in connection with the replacement of Bloomberg data with data from competing providers as a source of data for UBS Delta, UBS would allow the licensed data to be distributed to one or more third parties without authorization in violation of the Global Agreements.*

**ANSWER TO ¶ 119:** UBS denies the allegations set forth at Paragraph 119 of the Complaint.

*120. In light of UBS's past misuse of Bloomberg data, and in light of UBS's refusal to identify the steps it plans to take (if any) to safeguard Bloomberg's data during the replacement process, Bloomberg has a reasonable fear of imminent harm through improper disclosure of its proprietary data to competitors.*

**ANSWER TO ¶ 120:** UBS denies the allegations set forth at Paragraph 120 of the Complaint.

*121. UBS's breach of the Global Agreements and the 2005 Addendum through the imminently threatened disclosure of proprietary data to competing market data providers threatens to cause Plaintiff irreparable and ongoing harm, including through the irreversible improvement of the products and/or services of one or more of Bloomberg's competitors.*

**ANSWER TO ¶ 121:** UBS denies the allegations set forth at Paragraph 121 of the Complaint.

*122. Plaintiff's remedy at law for such impermissible disclosures of proprietary data to competitors would be inadequate to compensate it for the harm that will have been done. The use of Bloomberg's data and information about Bloomberg's data to improve competing products and services cannot be undone, and the resulting loss of competitive advantage and goodwill to Plaintiff will therefore continue indefinitely.*

**ANSWER TO ¶ 122:** UBS denies the allegations set forth at Paragraph 122 of the Complaint.

123. *In addition to monetary damages, Plaintiff therefore seeks both preliminary and permanent injunctive relief to protect its data and sensitive business information from being disclosed to competitors, and to protect its legitimate business interests and goodwill.*

**ANSWER TO ¶ 123:** UBS denies the allegations set forth at Paragraph 123 of the Complaint.

### **GENERAL DENIAL**

UBS denies any wrongdoing and, except as expressly admitted in response to Paragraphs 1 through 123 above, denies all allegations in the Complaint. UBS avers that at all times relevant its actions have been consistent with and permitted by the agreements in force between it and Bloomberg. UBS avers that at all times relevant Bloomberg has been aware of the use to which Bloomberg data is put in UBS Delta and for over twelve years did not have any objection thereto. UBS specifically denies that Bloomberg is entitled to any of the relief prayed for against UBS in the Complaint. UBS expressly reserves the right to amend and/or supplement this Answer and UBS's defenses.

### **FOR ITS DEFENSES**

Without admitting any wrongful conduct on its part, and without assuming any burden of proof, persuasion, or presentation and/or production of evidence that it would not otherwise bear—and without relieving Bloomberg of proving under the appropriate standard(s) of proof all elements of Bloomberg's claims—UBS asserts the following defenses, while reserving the right to rely on any affirmative or other defense or claim that may subsequently come to light, and expressly reserves the right to amend its Answer to assert such additional defenses.

### **FIRST DEFENSE**

Bloomberg's claims are barred, in whole or in part, because any and all actions taken by UBS were, at all times, lawful, proper and consistent with UBS's duties and obligations, including those set forth in the Global Agreements and the 2005 Addendum.

**SECOND DEFENSE**

The applicable contractual agreements divest this Court of jurisdiction over Bloomberg's claims because the documents provide that the parties "consent to the jurisdiction of the courts of the State of New York with respect to any legal proceedings that may result from a dispute as to the interpretation or breach of any of the [Agreements'] terms and conditions."

**THIRD DEFENSE**

Bloomberg's claims are time-barred, in whole or in part, under the applicable statute(s) of limitations. New York law provides a statute of limitations of six years for breach of contract claims, and Bloomberg pleads claims arising from conduct allegedly occurring as far back as 2005.

**FOURTH DEFENSE**

Bloomberg's claims are barred, in whole or in part, by laches due to Bloomberg's lack of diligence in pursuing its alleged claims despite Bloomberg's awareness, no later than 2005, of the facts forming the basis of its claims, which has caused unfair prejudice to UBS.

**FIFTH DEFENSE**

Bloomberg's claims are barred, in whole or in part, by the doctrines of estoppel, waiver, release and/or unclean hands as Bloomberg has been aware, since no later than 2005, of the facts forming the basis of its claims against UBS.

**SIXTH DEFENSE**

Bloomberg's claims are barred, in whole or in part, because it has not suffered injury in fact as a result of any alleged acts of, or failures to act by, UBS.

**SEVENTH DEFENSE**

Bloomberg's claims are barred because any recovery would result in unjust enrichment to Bloomberg.

**EIGHTH DEFENSE**

UBS denies that Bloomberg is entitled to recovery of attorneys' fees.

**NINTH DEFENSE**

Bloomberg's claims are barred because the interpretation of the Global Agreements on which Bloomberg bases such claims would violate applicable law and public policy.

**ADDITIONAL DEFENSES**

UBS hereby reserves and asserts all affirmative and other defenses available under any applicable federal or state law. UBS presently has insufficient knowledge or information upon which to form a belief as to whether it may have other, as yet unstated, defenses available. UBS reserves the right to assert additional defenses in the event that they would be appropriate.

**FOR ITS COUNTERCLAIMS**

Defendant-Counterclaim Plaintiff UBS, as and for its counterclaims, pursuant to Rule 13 of the Federal Rules of Civil Procedure, asserts against Plaintiff-Counterclaim Defendant Bloomberg, and alleges upon knowledge as to its own acts and upon information and belief as to all other matters, as follows:

**The Parties**

1. Based on the allegations in the Complaint, Bloomberg Finance L.P. ("Bloomberg") is a Delaware limited partnership with its principal place of business in New York, New York.
2. UBS AG ("UBS") is a Swiss joint-stock company with its principal place of busi-

ness in Switzerland. Pursuant to the International Banking Act of 1978, 12 U.S.C. § 3101 et seq., UBS operates a Federal Branch at 299 Park Avenue, New York, New York.

**Jurisdiction and Venue**

3. Based on the allegations in the Complaint, this Court has jurisdiction over these counterclaims pursuant to 28 U.S.C. § 1332(a)(2) because the dispute is between a citizen of the United States and a citizen of a foreign state and the matter in dispute exceeds the sum or value of \$75,000 exclusive of interest and costs.

4. Based on the allegations in the Complaint, venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2), or, in the alternative, pursuant to 28 U.S.C. § 1391(b)(3).

**The Global Agreements**

5. Bloomberg collects and compiles financial market data produced by other sources and, for a fee, provides access to and use of its compilations to licensees pursuant to standard form agreements drafted and copyrighted by Bloomberg.

6. Bloomberg's standard form agreements "allow[] an institution to access and use licensed data within that institution's own internal applications and systems" on either a "request-by-request" basis and/or through the "bulk delivery of specified data sets," (Compl. ¶¶ 3, 5), and further allow a licensee, "as part of and in the ordinary course of its business and to support the primary business of [the licensee]," to "use and disseminate to its customers and prospective customers a limited amount of Data directly related to the type and extent of the customer relationship between such customer and [the licensee]." (Compl. Ex. 1, ¶ 4(a); *see also* Compl. Ex. 2, ¶ 4(a)).

7. Bloomberg's standard form agreements also permit the licensee to use the licensed data for "the purposes of carrying out calculations which utilize the Data and display the

result (the ‘Resultant Data’), provided that the Data contained in the Resultant Data does not, in Licensor’s sole judgment, remain identifiable and may not be readily extracted.” (*Id.*) In other words, a licensee may use Bloomberg’s licensed data to perform its own analytics, and display the results to external parties, without violating the terms of the license, provided that such party cannot identify and readily extract from the display the underlying Bloomberg data.

8. Bloomberg’s standard form agreements also contain certain restrictions on the licensee’s use and dissemination of Bloomberg’s data compilations. As pled by Bloomberg in its Complaint, the licensee’s use and dissemination of Bloomberg data to the licensee’s customers and prospective customers cannot be done “in a manner that would tend to obviate the customers’ need to purchase their own Bloomberg license.” (Compl. ¶ 6).

9. For the past twenty years, UBS and Bloomberg have been parties to agreements governing the provision of certain financial market data by Bloomberg to UBS, including: (i) a 1998 Bloomberg Per Security Data License Agreement; and (ii) a 1998 Bloomberg (Bulk Data) Data License Agreement (collectively, the “1998 Agreements” and with the “2005 Second Addendum” (defined below), the “Global Agreements”). Such agreements permit UBS to use and disseminate licensed data consistent with the terms and conditions summarized described above.

10. UBS pays Bloomberg over \$100 million a year for the supply of financial data and associated services. The data received by UBS pursuant to these contracts is essential to the global business of UBS and the services that UBS provides to its public and private clients throughout the world.

11. Pursuant to Section 2(b) of the Global Agreements, such Agreements are “automatically renewed for successive two-year periods unless Licensee [UBS] or Licensor [Bloomberg] elects not to renew by giving not less than 60 days’ prior notice to the other.”

12. Since 1998, and through the present, at no point in time has either party ever given notice of an election not to renew the Global Agreements.

13. Barring an election not to renew by the Licensee or Licensor, the Agreements “shall remain in full force and effect” and may only be terminated by Bloomberg in the event of a breach by UBS. Specifically, pursuant to Section 2(a)(ii) and 2(c) of the Global Agreements, as amended, Bloomberg has the right to terminate the Global Agreements “in the event of a breach by Licensee of any of the provisions of [the] Agreement[s]” after giving the Licensee notice and opportunity to cease the activity which causes the breach.

14. Upon termination of a Bloomberg standard license agreement, it is typically required that the licensee use its best efforts promptly to delete or purge any and all licensed data from its systems. This requirement does not apply to “Resultant Data,” which a licensee may continue to maintain and use. In 1998, when the Global Agreements originally were negotiated and executed, UBS and Bloomberg agreed to an amendment of Bloomberg’s standard license agreement with regard to the deletion and purging provision. Specifically, it was agreed that:

Notwithstanding anything to the contrary set forth in this paragraph, upon termination of this Agreement . . . . [UBS] shall not be required to delete, purge or cease permitted use of the Data for the period of twenty-four months commencing on the date of the termination of this Agreement at no fee; provided that [UBS] does not update or maintain the Data using information obtained from third parties or commingle the Data in any way, including without limitation in any display of the Data, with information obtained from third parties.

15. The foregoing provision remained in force, uninterrupted, since 1998. At all times, UBS has complied with its obligations under the Global Agreements (as amended) and denies that it has breached any provision of these Agreements as alleged by Bloomberg.

**UBS Delta**

16. UBS Delta, previously known as CreditDelta, is an award-winning portfolio anal-

ysis and risk management system, developed and maintained by UBS, which enables clients to measure risk and performance across asset classes. One of the key aspects of UBS Delta is its reporting functionality, which provides clients with risk, exposure, actuarial, performance and statutory reporting. While raw financial data is sourced by UBS from outside data vendors for use within UBS Delta, the analytics provided by UBS Delta are solely the intellectual property of UBS.

17. Clients of UBS Delta work with UBS Delta staff to design individualized reports to be generated on a frequency and in a format designed to meet that particular client's internal and reporting needs. Clients may also use the website search function on the UBS Delta interface to look up information about particular securities. It is estimated that approximately 90% of client usage of data through UBS Delta is via its reporting function and 10% via website searches.

18. UBS Delta is used by institutional investors including insurance companies, asset managers, pension schemes, hedge funds, private banks and family offices, custodians and consultants. UBS Delta has approximately 105 clients, including various UBS internal groups. In fact, the largest customer of UBS Delta is UBS itself. It is believed that generally, if not universally, UBS Delta clients also have their own subscriptions directly with Bloomberg for access to Bloomberg data.

**The 2005 Second Addendum**

19. In 2005, the 1998 Agreements between UBS and Bloomberg were amended with respect to the right to use and redistribute certain Bloomberg market data in connection with UBS Delta (the "2005 Second Addendum").

20. Since the inception of UBS Delta in 1998, UBS Delta has used certain Bloomberg

data. The 2005 Second Addendum granted UBS the right to use and redistribute to UBS Delta clients a limited number of Bloomberg data fields listed on “Exhibit C” to the Addendum (the “Exhibit C Data”).

21. Pursuant to the terms of the 2005 Second Addendum, the Exhibit C Data was permitted to be used “within certain Licensee-developed applications (‘the Licensee Applications’), whereas such Licensee Applications are designed to facilitate transactions with Licensee.” (2005 Second Addendum, paragraph 8). Bloomberg was the primary drafter of the 2005 Second Addendum.

22. The Exhibit C Data largely consists of certain reference and identifying information for equities, commodities, asset-backed securities, and corporate and government securities. For example, for equities and equity indices, UBS may use within its UBS Delta application data fields such as: ask price, bid price, currency, last trade, name, security type, CUSIP number and volume. A list of the fields allowed to be used and redistributed through the UBS Delta application is contained in Exhibit 3 to the Complaint. These data fields are a very limited subset of the data that Bloomberg makes available to the financial markets.

23. It was intended and understood by both parties that Paragraph 8 of the 2005 Second Addendum permitted the use and redistribution of the Exhibit C Data to UBS Delta clients. This was the purpose of the 2005 Second Addendum.

24. Pursuant to Bloomberg’s standard data license agreements, UBS already has the right to (i) use Bloomberg data within its own internal systems and applications; (ii) to disseminate to its customers a limited amount of Bloomberg data in the ordinary course of its business; and (iii) to display and disseminate any calculations it has performed using Bloomberg data (provided that the Bloomberg data does not remain identifiable and cannot be readily extracted).

25. Contemporaneous correspondence demonstrates that during the negotiation, the 2005 Second Addendum was specifically intended to provide UBS with the additional right to use and redistribute to UBS Delta clients a limited set of Bloomberg reference data together with the analytics provided by the UBS Delta product. During the negotiations of the 2005 Second Addendum, the parties specifically discussed this right of redistribution and that it would extend to permit redistribution of the Exhibit C Data to all UBS Delta clients regardless of whether such clients had their own direct Bloomberg subscriptions. It is understood by UBS, and has been represented by Bloomberg, that the 2005 Second Addendum is unique in this regard and may be the only such agreement that Bloomberg has with a subscriber. It is further understood by UBS that, given the unique nature of the 2005 Second Addendum, it was raised to and approved at the highest levels of Bloomberg management.

26. In connection with the negotiation of the 2005 Second Addendum, UBS provided detailed demonstrations to Bloomberg of the UBS Delta product. The purpose of such demonstrations was to show Bloomberg how Bloomberg data, including the Exhibit C Data, would be used in connection with the UBS Delta product and answer any questions Bloomberg had about that use.

27. The reporting and exporting functions of UBS Delta are fundamental aspects of the product. The reporting and exporting features of the product would have been evident in any demonstration of the product. Prior to 2018, Bloomberg had no less than three separate demonstrations of the UBS Delta product.

28. Following the demonstrations in 2004-2005, Bloomberg represented to UBS that it believed UBS Delta's intended distribution of data to customers would go beyond the "limited" distribution permitted under the 1998 Agreements and that, in this respect, UBS Delta

competed with Bloomberg's business. Accordingly, Bloomberg demanded that an additional "redistribution" fee would be required for the rights afforded under the 2005 Second Addendum. Further understanding that most of UBS Delta's clients were institutional clients with their own Bloomberg subscriptions, and given the broader UBS/Bloomberg contractual relationship, Bloomberg set the additional redistribution fee at "US \$300,000 per annum." (Compl. Ex. 3, ¶ 8). Since 2005, UBS has paid Bloomberg approximately \$4 million in connection with the additional rights granted pursuant to the 2005 Second Addendum.

29. During the course of the negotiation of the 2005 Second Addendum, Bloomberg first demanded that it be given the names of all UBS Delta clients to confirm whether or not they had Bloomberg subscriptions. Bloomberg was willing to provide a broader amount of data to be used and redistributed via UBS Delta if such use and redistribution was limited to UBS Delta clients that were also Bloomberg subscribers. However, during the negotiations, UBS made clear to Bloomberg that it would not provide its client list to Bloomberg, and it would not force UBS Delta clients to subscribe to Bloomberg. Given UBS's position, Bloomberg agreed that only a more limited set of data, *i.e.*, the Exhibit C Data, would be permitted to be used and redistributed via UBS Delta. For example, Bloomberg specifically excluded the right for UBS Delta to use and redistribute fixed income pricing data. Accordingly, UBS Delta contracted with another data provider for fixed income pricing data.

30. As a result of the discussions between the parties during the negotiation of the 2005 Second Addendum and the demonstrations of the UBS Delta product provided to Bloomberg by UBS, Bloomberg has been aware since 2005 of exactly how Bloomberg data, including the Exhibit C Data, is used in connection with UBS Delta and for over twelve years had no objection thereto.

31. Other terms within the 2005 Second Addendum confirm that the right to use Exhibit C Data within UBS Delta was expected to result in the display and redistribution of the Exhibit C Data to external third parties.

32. Specifically, Paragraph 11 of the 2005 Second Addendum expressly references, and provides Bloomberg with certain protections based on the fact, that “use, distribution and dissemination of the Licensee Applications [*i.e.*, UBS Delta] **and the Data from Exhibit C**” is “contemplated by this Second Addendum.” (Compl. Ex. 3, ¶ 11) (emphasis added). Under the standard data license agreements, including Paragraph 5(b) of the 1998 Agreements, Bloomberg grants licensees the ability to use the data that Bloomberg compiles from other sources and agrees to indemnify its licensees against any claim that the licensee’s use of the data “infringe[s] any copyright, trademark or other contractual, statutory or common law rights.” (Compl. Ex. 1, ¶ 5; Compl. Ex. 2, ¶ 5). Acknowledging that the 2005 Second Addendum contemplates UBS client-facing applications to involve the further “use, distribution and dissemination” of Exhibit C Data, Paragraph 11 of the 2005 Second Addendum requires UBS to obtain any necessary “approvals, consents and authorizations required for the use, distribution and dissemination of the Licensee Applications and the Data from Exhibit C as contemplated by this Second Addendum.” (Compl. Ex. 3, ¶ 11). Paragraph 11 further provides UBS will indemnify Bloomberg against, *inter alia*, any claim that UBS’s “use, distribution or dissemination of the Licensee Applications or the Data from Exhibit C under this Second Addendum infringes upon any intellectual property or proprietary rights of any third party.” (*Id.*).

33. Paragraph 10 of the 2005 Second Addendum further confirms that Bloomberg data would be visible to users of UBS-developed applications. It provides for Exhibit C Data to be identified as Bloomberg data through the insertion of “hyperlinks to the Bloomberg Professional

Service” and use of Bloomberg’s “name or logo for such purpose.” The purpose of this provision was to provide a means for UBS Delta clients, who do have their own Bloomberg subscriptions, to obtain additional information on specific securities outside of those data fields permitted to be displayed and redistributed through UBS Delta.

34. The 2005 Second Addendum contains a restriction on the use and dissemination of Exhibit C Data as follows: “Licensee may not use or disseminate [the Exhibit C Data] in any way which could, as determined in Licensor’s sole good faith discretion, either (i) cause the information so used or distributed to be used as a source of or substitute for the Data otherwise required to be supplied by Licensor or available from Licensor or (ii) compete with the business of Licensor or Licensor’s affiliates.” Paragraph 9 of the 2005 Second Addendum provides that Bloomberg “shall have the right to terminate [the Global Agreements]” if UBS “is shown to be in breach of this Second Addendum,” “pursuant to Licensor’s right to terminate under paragraphs 2(b) and 2(c).”

35. The restriction contained in the 2005 Second Addendum cannot, and was not intended to, void the very license provided under the 2005 Second Addendum or to prevent UBS Delta from using Bloomberg data, including the Exhibit C Data, in the manner that it had described and shown to Bloomberg through the demonstrations of UBS Delta.

36. The 2005 Second Addendum was referred to internally at UBS as the “Redistribution License.” It was understood that the redistribution rights afforded to UBS under these agreements were limited to the Exhibit C Data (largely reference data) and were further limited for use in connection with UBS Delta only. In other words, UBS understood that the limited redistribution rights provided for in the 2005 Second Addendum did not extend to Bloomberg data generally, or to other UBS groups, systems and applications. At all times, UBS has complied

with the restrictions against redistribution applicable to these other groups, systems and applications.

37. UBS Delta's standard Market Data Terms and Conditions, applicable to users of UBS Delta, includes a clause that provides:

Client acknowledges that any Market Data provided to Client under this Agreement is done so in connection with / to support the Services and is not intended to be, and must not be used as, a substitute for any third party market data offered by a Market Data Vendor.

38. UBS Delta's standard Market Data Terms and Conditions further restricted the use of such market data as follows:

By accessing and using the Services and pursuant to the UBS DELTA™ Terms of Use, Client agrees that . . . Client shall not Redistribute any Market Data Vendor's Market Data, or any UBS Delta Output Known to contain any Market Data Vendor's Market Data, except . . . where Client has a direct licence with that Market Data Vendor in respect of that relevant Market Data which permits the onwards redistribution of that Market Data taken from UBS Delta (subject to Client's compliance with the terms and conditions of such direct licence). . .

Client shall strictly comply with any restrictions on use or distribution of Market Data, including but limited to geographic restrictions, which may be contained in any such Market Data or otherwise notified to it from time to time or made available through the Services set out below . . . .

**2012-2013 Discussions Between UBS and Bloomberg**

39. In approximately late 2012, UBS was considering strategic options for UBS Delta, including a possible sale of all or part of UBS Delta. Because Bloomberg's data license agreements generally permit only the use of Bloomberg data by "entities that are 100% owned and controlled by Licensee," UBS consulted with Bloomberg on whether UBS could be permitted to maintain the data license for UBS Delta if UBS Delta was no longer 100% owned by UBS.

40. In connection with this inquiry, UBS and Bloomberg personnel exchanged a number of communications about UBS Delta. Bloomberg also requested, and was provided, an-

other demonstration of the UBS Delta product in UBS's London office. In Bloomberg's words in a January 2013 email: "It is 8 years since we saw Delta last, and we'd like to get a better feel of the product and how it has evolved over this time." The purpose of the demonstration was to show Bloomberg how Bloomberg data, including the Exhibit C Data, would be used in connection with the UBS Delta product and answer any questions Bloomberg had about that use.

41. In advance of the demonstration, Bloomberg expressed what it expected from the demonstration as follows: "We would like a general overview of the product, its features, how it has evolved since it first launched, the data fields that are displayed, view data-export function."

42. In connection with these discussions, Bloomberg further requested a list of data "fields that are displayed by UBS Delta to clients" and the list of the data fields that are consumed by the UBS Delta "engine room." Bloomberg also asked whether the displayed data was downloadable, and whether UBS had appropriate third-party agreements for such distribution. UBS responded to Bloomberg's inquiries. Among other information provided, UBS confirmed the data fields displayed to clients, that data in UBS Delta was downloadable, and that UBS had the proper third-party agreements in place.

43. It was understood by Bloomberg that a limited set of data within UBS Delta (*i.e.*, the Exhibit C Data) was available for "display" and was "downloadable."

44. In short, during 2013, UBS again confirmed how it was using the Exhibit C Data in connection with UBS Delta pursuant to the 2005 Second Addendum. UBS participants in those discussions had no doubt that the agreement permitted external redistribution of certain data fields and that Bloomberg representatives acknowledged those redistribution rights expressly during the 2013 discussions. At no time, did Bloomberg object to or question UBS's right to use and redistribute the limited set of Exhibit C data via the UBS Delta product. Bloomberg con-

tinued to charge and accept the \$300,000 a year license fee from UBS for the rights afforded to UBS under the 2005 Second Addendum up and through 2018.

45. In 2013, the parties also discussed entering into a Third Addendum based in part on Bloomberg's suggestion that UBS use Bloomberg's fixed income pricing for UBS Delta. Thus, not only did Bloomberg not object to UBS's use of Bloomberg data for UBS Delta but it suggested that UBS expand its use of data for a corresponding additional fee.

**Bloomberg Enters the Portfolio Analytics Market**

46. As alleged in the Complaint, Bloomberg now offers its own "portfolio and risk analytics tool that allows users to analyze various risk metrics and generate various reports at an organizational level." The tool is called "PORT" or "PORT+"<sup>2</sup> and is made available through a user's Bloomberg Terminal. (Compl. ¶ 98).

47. In August 2016, Bloomberg acquired Barclays Risk Analytics and Index Solutions Ltd. ("BRAIS"), which included the intellectual property of Barclay's "POINT." POINT is also a portfolio analytics product and, at the time, was considered the largest competitor of UBS Delta. It was the announced intent that the acquisition would allow Bloomberg to incorporate the sophisticated models and analytics from POINT into Bloomberg PORT+ to enhance the PORT+ product.

48. Institutional users of portfolio and risk analytics tools, which are often integrated into the internal systems of those users, cannot switch such products overnight. Indeed, transitioning to a new product can take months if not years. To enable Bloomberg time to incorporate the POINT intellectual property into its own product, and to help the clients of POINT transition

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<sup>2</sup> Certain publications refer to Bloomberg's portfolio and risk analytics tool as "PORT" and "PORT+" interchangeably. Bloomberg has represented they are distinct products and that only PORT+ is alleged to compete with UBS Delta. UBS's use of the term "PORT+" herein refers collectively to both products to the extent either offers portfolio and risk analytics in competition with UBS Delta.

to PORT+, Barclays agreed to continue to operate POINT for 18 months post-completion of the acquisition. In other words, Barclays' support for the POINT product was expected to end in approximately February 2018.

49. As reported in industry publications at the time of the sale, POINT customers expressed concerns over the acquisition, including the capability of PORT+ to support fully the functionality of POINT and the possibility of hikes in data prices as a result of the transaction. Based on the uncertainty of the integration, industry publications also reported that POINT customers were actively exploring options other than Bloomberg's PORT+.

50. The integration of the POINT intellectual property into PORT+ experienced multiple delays adding more uncertainty and restlessness among customers in the fixed-income portfolio analytics market.

51. As alleged in the Complaint, "Bloomberg has invested substantial resources to build and develop the PORT+ program." (Compl. ¶ 98).

**Sale of UBS Delta to StatPro**

52. StatPro Group plc ("StatPro") is a global software business and provider of cloud-based portfolio analysis and asset pricing services for the global asset management industry. StatPro's principal place of business is London, England. StatPro owns and operates a performance measurement and portfolio analytics platform known as "Revolution." As alleged in the Complaint, Bloomberg considers StatPro a competitor in the market for portfolio management software. (Compl. ¶ 109).

53. In April 2017, it was announced that StatPro had agreed to buy UBS Delta from UBS to enable StatPro to extend its risk and performance analytics service from the middle office to the front office of asset managers.

54. It was announced that the acquisition would be “phased over three to five years as StatPro incorporates UBS Delta’s functionality into its flagship product, StatPro Revolution” and that “[t]hroughout the transition, and until StatPro has fully integrated UBS Delta’s functionality, UBS will continue to operate and support UBS Delta for its clients.”

55. Similar to the transition process pursuant to which POINT was sold to, and incorporated by, Bloomberg, UBS continues to operate and fully support the UBS Delta product for its clients until StatPro’s Revolution has reached functional parity with UBS Delta and clients of UBS Delta can be migrated to StatPro’s Revolution. UBS also continues to own the intellectual property of UBS Delta until the final closing of the acquisition. During the transition period, UBS operates UBS Delta on UBS’s secure IT infrastructure and pursuant to contracts directly between UBS and UBS Delta clients. At the time of the announced sale, it was estimated that the transition process would take approximately three to five years from the announcement of the acquisition.

56. While StatPro is transitioning the intellectual property, analytics and calculations of UBS Delta into StatPro’s Revolution, Revolution has never used, and does not intend to use, the Bloomberg data provided under the Global Agreements to perform its various analytics and calculations. StatPro primarily sources market data from other market data vendors.

57. As part of the sale to StatPro, certain UBS employees, who were responsible for the maintenance and operation of UBS Delta, were transferred to StatPro but seconded back to UBS on a consultancy arrangement to continue to operate and support UBS Delta on UBS’s infrastructure. The same individuals employed by UBS to support UBS Delta prior to the contract of sale with StatPro remain at their same desks in the same London offices of UBS servicing the same UBS clients of the UBS Delta product. None of the UBS computers that they use are

linked to StatPro. UBS Delta exists on UBS infrastructure. The UBS Delta platform is not accessible from anywhere other than on UBS infrastructure.

58. Pursuant to the Global Agreements, UBS consultants are permitted access to Bloomberg data. Specifically, Paragraph 4(a) of the Global Agreements, as amended by a 1998 Amendment, provides that UBS “may permit its consultants to access the Data solely for the benefit of Licensee as permitted under the terms of this Agreement; provided that [UBS] shall be responsible for any breach by any such consultant of any of the terms and conditions of this Agreement and shall indemnify Licensor for any breach of this Agreement by such consultant.”

**Bloomberg’s Wrongful Termination of the 2005 Second Addendum**

59. Shortly after the announced sale of UBS Delta to StatPro, Bloomberg began inquiring about aspects of the sale, as well as the use of Bloomberg Terminals and Bloomberg data by UBS Delta during the transition period. As with prior inquiries by Bloomberg over the long course of the parties’ contractual relationship, UBS responded to each of Bloomberg’s inquiries.

60. Following these discussions—and notwithstanding that the parties had operated under a common understanding of the 2005 Second Addendum for over twelve years—in or around February 2018 (the same month Barclay’s was to cease supporting the POINT product purchased by Bloomberg) Bloomberg declared UBS in “breach” of the Global Agreements through its use of Bloomberg data in connection with UBS Delta. Bloomberg demanded that UBS Delta immediately cease using Bloomberg data and to delete and purge any historical data from its systems.

61. Bloomberg understood that compliance with such a demand would immediately impair the UBS Delta product and harm UBS Delta customers (including UBS itself) who rely on UBS Delta for internal and regulatory reporting.

62. On February 14, 2018, Bloomberg sent a letter to UBS purporting to terminate both (a) the Bloomberg Terminal service subscriptions used by UBS Delta personnel; and (b) the license set forth in Section 8 of the 2005 Second Addendum. In the same February 14, 2018 letter, Bloomberg demanded that: “no later than May 15, 2018 [UBS] cease and desist using Bloomberg data within UBS Delta or any other applications made available to UBS customers or other third parties.” Bloomberg’s termination of the 2005 Second Addendum was premised on Bloomberg’s purported determination—not in good faith and therefore in violation of the express terms of the Global Agreements—that UBS had used the data in a manner that had breached the Global Agreements, although Bloomberg declined to specify how or which provision UBS had allegedly breached.

63. On February 20, 2018, UBS through its attorneys wrote to Bloomberg requesting that Bloomberg refrain from the threatened shut-down of services, advising Bloomberg that such a shut-down itself would breach the Global Agreements, and harm the mutual clients of Bloomberg and UBS. UBS further requested that Bloomberg identify the UBS conduct it contended breached the Global Agreements and the provisions allegedly breached. At all times, UBS believed (and continues to believe) that its use of Bloomberg data in connection with UBS Delta was permitted by the Global Agreements, including the 2005 Second Addendum.

64. Three months later, on May 15, 2018, Bloomberg wrote to UBS in furtherance of its February 14, 2018 letter. Bloomberg declined to identify any specific contractual provision allegedly breached by UBS but asserted that UBS breached the Global Agreements by “redistributing and/or making available significant amounts of Bloomberg data to unauthorized third party clients of UBS Delta” and “permitting a direct competitor (StatPro) to access or benefit from Bloomberg data in a manner which allows it to validate data received from other sources

and/or to generally improve its competing product.” UBS denies both such alleged breaches.

65. In its letter, Bloomberg again threatened an “interruption in service” to UBS and stated that UBS could avoid such interruption and “continue its redistribution of Bloomberg data” but only to “common customers of UBS and Bloomberg” and only if UBS agreed to a new “commercial structure” for the use of such data at a price higher than the negotiated \$300,000 per year. Bloomberg further expressed that it would be willing to transfer this arrangement to StatPro upon the final closing of the sale of UBS Delta to StatPro. This “common customer” arrangement was similar to the one proposed by Bloomberg, and rejected by UBS, in 2004-05.

66. On May 17, 2018, UBS responded to Bloomberg’s letter. Again, UBS requested Bloomberg identify the specific contract terms Bloomberg believed UBS breached: “While your May 15, 2018 letter states that UBS is in breach of ‘contractual terms,’ it does not identify the specific contract terms Bloomberg believes UBS has breached. For example, it appears that Bloomberg believes the use of Bloomberg data in the UBS Delta application causes UBS to be in breach of the Agreements, whereas it is our understanding that such use is permissible under the 2005 Second Addendum to the Data License Agreements. Please let us know if you disagree, and if so the specific manner of redistribution Bloomberg believes constitutes the breach. We want to work with you to resolve your concerns and providing specifics will assist us in doing so.”

67. In the weeks that followed, the parties continued to discuss a possible “commercial structure” to address Bloomberg’s purported concerns and to avoid an interruption of data service. During such discussions, and in its May 15, 2018 letter, Bloomberg repeatedly demanded specific information about the process by which UBS Delta was being transitioned to StatPro and the identities of all UBS Delta clients. Given the commercially sensitive nature of such in-

formation, demanded by a stated competitor of UBS Delta and StatPro and in the midst of Bloomberg's own transition process of incorporating POINT into PORT+, UBS declined information requests relating to the identity of UBS Delta clients or future plans for UBS Delta. Bloomberg's repeated demands for UBS Delta's client list also raised concerns under European privacy and client confidentiality laws given that most, if not all, UBS Delta clients are located in Europe. Accordingly, UBS consistently has informed Bloomberg that UBS will not agree to Bloomberg's demand for the client names and confidential information regarding UBS Delta and its clients, as to which Bloomberg has no right. Bloomberg has refused offers from UBS to utilize a neutral intermediary so that the information that Bloomberg seeks can be provided without disclosure of the identities of UBS Delta clients.

68. Although UBS has declined requests for certain client-specific information, UBS has continually responded to demands for information by Bloomberg and its counsel relating to the use of Bloomberg data by UBS Delta, to which UBS does not dispute Bloomberg is entitled, and has done so in response to tight, arbitrary deadlines of Bloomberg.

69. For example, in response to inquiries by Bloomberg, UBS repeatedly has confirmed to Bloomberg that UBS has not made Bloomberg data, or any information about Bloomberg data, available to alternate data providers in UBS's efforts to migrate UBS Delta off of Bloomberg data. UBS has further confirmed to Bloomberg that Bloomberg data is not being distributed to StatPro in connection with the transition of the UBS Delta intellectual property from UBS to StatPro.

70. UBS also permitted Bloomberg, and its consultant Deloitte & Touche, to conduct a monitoring exercise in UBS's London offices that involved no less than 11 days of in-person meetings or video-conferences, which required pulling UBS Delta employees from their day-to-

day responsibilities to respond to Bloomberg's inquiries. In connection with the monitoring exercise, Bloomberg and its monitoring agents executed a written agreement with UBS making clear that Bloomberg and its monitoring agents were not entitled to and would not be provided with the identities of UBS Delta client names and confidential information. Throughout the monitoring exercise, Bloomberg, through Deloitte, continually pressed to gain information well beyond the issue of contract performance, including detailed information about future plans and the contemplated architecture of the UBS Delta product under StatPro. UBS declined to respond to Bloomberg's inappropriate, out-of-scope requests for information. This extensive monitoring exercise has delayed the transition of UBS Delta from UBS to StatPro.

71. Given the continual threat of a shut-down of service unless UBS ceased exercising its negotiated contractual rights or agreed to different terms, in July 2018, UBS informed Bloomberg that it was replacing Bloomberg as a source of market data for UBS Delta during the transition of UBS Delta to StatPro.

72. This lawsuit by Bloomberg followed. Bloomberg alleges in the Complaint that UBS has used Bloomberg's proprietary data in a manner that would tend to obviate the customers' need to purchase their own Bloomberg license. UBS denies such allegations, avers that the use of Bloomberg data in and by the UBS Delta product is permitted by the agreements between UBS and Bloomberg, and further alleges that the use of and access to the limited Exhibit C Data fields is an incidental feature of UBS Delta, of which Bloomberg was fully aware and agreed to, and does not obviate the need for a Bloomberg subscription. By the UBS Delta terms and conditions, UBS Delta clients acknowledge that any market data provided to them in connection with UBS Delta must not be used as a substitute for any third party market data offered by market data vendors. UBS is not aware of any instance where a UBS Delta client has used the UBS Delta

product improperly to avoid obtaining or maintaining the client's own direct subscription for any third party market data.

73. Bloomberg's claim of injury is highly speculative. To date, as confirmed in its December 12, 2018 interrogatory responses, Bloomberg is not aware of a single Bloomberg subscriber that has cancelled or declined to renew a Bloomberg data license because that subscriber was able to access or export Bloomberg data through UBS Delta.

**FIRST CLAIM FOR RELIEF  
(BREACH OF CONTRACT)**

74. UBS repeats and realleges its allegations set forth above at Paragraphs 1-73, inclusive, as if fully set forth herein.

75. The Global Agreements are valid and binding contracts.

76. UBS has complied fully with its obligations under the Global Agreements.

77. UBS has paid to Bloomberg substantial consideration for the right to use and re-distribute certain Bloomberg data in connection with UBS Delta and for the continued right to maintain Bloomberg data for a period of 24 months following any termination of the Global Agreements.

78. By wrongfully terminating the 2005 Second Addendum, Bloomberg breached the terms of the Global Agreements, which require a "good faith" determination that UBS caused the Exhibit C Data to be used as a source or substitute for Bloomberg's data or competed with the business of Bloomberg or its affiliates before Bloomberg may validly terminate the Global Agreements. Such a determination cannot be made by applying an interpretation of the contract that invalidates the very purpose of the 2005 Second Addendum and contradicts the course of conduct by the parties for more than twelve years.

79. Bloomberg's determination was not made in good faith. It was motivated by Bloomberg's desire to harm UBS Delta, a stated competitor to Bloomberg's PORT+ product, and to interfere with the sale of UBS Delta to StatPro, a stated competitor to Bloomberg.

80. Bloomberg further breached the terms of the 2005 Second Addendum by threatening an "interruption in service" unless UBS agreed to renegotiate the terms of the 2005 Second Addendum immediately and before the end of the two-year renewal period for the Global Agreements. Specifically, Bloomberg breached the 2005 Second Addendum by demanding (a) a fee higher than the \$300,000/year set forth in the 2005 Second Addendum; and (b) a limitation of UBS's right to redistribute Exhibit C Data to only "common customers of UBS and Bloomberg." Bloomberg's conduct forced UBS to replace Bloomberg as a source of market data for UBS Delta.

81. As a direct and proximate result of the foregoing, UBS has suffered damages, including, but not limited to, expenses relating to the expedited process of finding an alternate data provider, the diversion of resources from (and resulting delay in) the transition of UBS Delta from UBS to StatPro, and the forfeiture of UBS's bargained-for right to use and redistribute certain Bloomberg data in connection with UBS Delta for \$300,000/year.

**SECOND CLAIM FOR RELIEF IN THE ALTERNATIVE  
(BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING)**

82. UBS repeats and realleges its allegations set forth above at Paragraphs 1-73, inclusive, as if fully set forth herein.

83. The Global Agreements are valid and binding contracts with which UBS has fully complied and performed its obligations.

84. The Global Agreements, which are expressly governed by the law of the State of New York, include an implicit covenant of good faith and fair dealing independent from the express rights and obligations contained therein.

85. Bloomberg breached this implicit covenant by acting arbitrarily and/or irrationally in 2018—after over 12 years of a course of conduct between the parties—by declaring that UBS’s exercise of rights expressly negotiated and granted to it under the 2005 Second Addendum was a breach of the Global Agreements, terminating the 2005 Second Addendum, and threatening to shut down services to all of UBS in order to terminate a limited data license valued by the parties at \$300,000/year.

86. As a direct and proximate result of the foregoing, UBS has suffered damages, including, but not limited to, expenses relating to the expedited process of finding an alternate data provider, the diversion of resources from (and resulting delay in) the transition of UBS Delta from UBS to StatPro, and the forfeiture of UBS’s bargained-for right to use and redistribute certain Bloomberg data in connection with UBS Delta.

**JURY DEMAND**

UBS demands a trial by jury on all issues so triable.

**PRAYER FOR RELIEF**

WHEREFORE, having answered fully the allegations of the Complaint and denying that Bloomberg is entitled to the requested relief, and for the reasons set forth herein, UBS respectfully seeks judgment as follows:

(a) Dismiss all claims in the Complaint on the merits, in their entirety, and with prejudice;

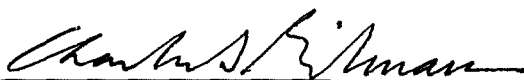
(b) Award UBS damages resulting from Bloomberg's conduct as alleged in UBS's Counterclaims;

(c) Award UBS its attorneys' fees and costs; and

(d) Grant UBS such other relief as the Court deems just, appropriate and proper.

Dated: New York, New York  
January 18, 2019

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