

# General Terms and Conditions to the Agreement on Non-Display Data Usage of Deutsche Börse AG (Non-Display Agreement)

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## Contents

	Page
I Scope of Applicability	2
1 Definitions	2
2 Scope of and Changes to the Non-Display Agreement	5
3 Granting of Licence	6
4 Rights to the indices and other works/products	7
5 Notification of Non-Display Data Usage	8
6 Market Data Fees	9
7 Audit	10
8 Service Facilitators	11
9 No Warranty by Deutsche Börse AG for the Information distributed	11
10 Confidentiality and Data Protection	11
11 Use of MD+S interactive by the Customer	12
12 Liability	12
13 Term and Termination	13
14 Transfer of Rights and Obligations under the Non-Display Agreement	14
15 Contacts	14
16 Final Provisions	14
II Supplemental Provisions regarding the Usage of Taiwan Futures Exchange Information	16
17 Scope of Applicability	16
18 Restrictions of the Licence	16
III Supplemental Provisions regarding the Usage of BSE India Information	16
19 Scope of Applicability	16
20 Restrictions of the Licence	16
IV Supplemental Provisions regarding the Usage of BMV® Group Information	17
21 Scope of Applicability	17
22 Non-Display Data Usage of BMV® Group Information	17

V	Supplemental Provisions regarding the Usage of ISS STOXX Indices	17
23	Scope of Applicability	17
24	Granting of Licence and Restrictions	17
VI	Supplemental Provisions regarding the Usage of Nodal Information	18
25	Scope of Applicability	18
26	Licence Restrictions	18

## I Scope of Applicability

The following General Terms and Conditions in Sections 1 to 16 shall apply to each form of Non-Display Data Usage, unless otherwise stipulated in the Supplemental Provisions.

### 1 Definitions

#### **Affiliated Company**

Third-party company which is directly or indirectly controlled by the relevant party, which directly or indirectly controls the relevant party or which is jointly directly or indirectly controlled, together with the relevant party, by the same parent company. Control is, in particular, deemed to exist in the event of a direct or indirect shareholding of more than 50 percent.

#### **Audit**

Inspection of the Customer of Deutsche Börse AG to ensure full compliance with the contractual obligations.

#### **After Midnight Information**

Delayed Information which is available at the earliest on the day after that on which the Information was generated (i.e. after 24.00 o'clock local time at the location of the relevant exchange).

#### **CFD Data Usage**

Usage of Real-time Data for the purpose of calculation and provision of prices for trading in (i) contracts for difference (CFDs), (ii) spread betting and/or (iii) binary options, even where the calculation of the prices is performed by a Service Facilitator. If the prices provided for the trading in (i) contracts for difference, (ii) spread betting and/or (iii) binary options are unchanged Information, this does not represent CFD Information Usage, but Onward Dissemination of Information to third parties. The CFD-Data Usage requires the prior conclusion of a Market Data Dissemination Agreement with Deutsche Börse AG.

#### **Customer**

The Customer is the natural and/or legal person who concludes the Non-Display Agreement with Deutsche Börse AG and is invoiced for the Market Data Fees.

#### **Customer Category**

For the purpose of charging fees, Customers of Deutsche Börse AG are placed into categories for the respective Usage Types based on their Information Usage or their customer characteristics. These are called Customer Categories. The Customer Categories are explained in greater detail in the Price List.

#### **Delayed Data**

Delayed Data means Information made available 15 minutes after publication.

**Device**

Any terminal, application, platform and/or other system or device capable of accessing, receiving, processing, displaying and/or otherwise using the Information. Each set of login credentials (e.g. Access ID) that enables a Device access to the Information, is regarded as one Device. If a Device has the ability to access the Information multiple times simultaneously, each instance, i.e. each simultaneous access possible, should be counted as a Device

**Display Data**

Display Data means the Information provided or used through the support of a monitor or a screen and that is human readable.

**Display Data Usage**

Display Data Usage is accessing Information for the purposes of displaying it.

**Indirect Customer**

A third party that has access to Information from the Customer (Service Facilitator, Affiliated Company).

**Indirect Customer Obligations**

Shall have the meaning ascribed to such term in Section 3.4.

**Information**

Market Data, quotes, prices, turnover figures, indices and other data marketed by Deutsche Börse AG, which are sourced by the Customer either directly or indirectly. Data derived from Information is still deemed to be Information if (i) the Market Data, quotes, prices, turnover figures, indices or other data originally marketed by Deutsche Börse AG can be determined through calculation or automated processes and/or (ii) the alteration is formed in a way that the derived data can be used instead of the Market Data, quotes, prices, turnover figures, indices or other data originally marketed by the Deutsche Börse AG (i.e. as substitute). In case of doubt Deutsche Börse AG determines at its sole discretion whether derived data is Information within the meaning of (i) and/or (ii) above.

**Information Product**

Set of Information as specified in the Price List to the Non-Display Agreement.

**Market Data**

Market Data means the data trading venues, SIs, APAs and CTPs have to make public for the purpose of the pre-trade and post-trade transparency regime. Therefore, market data includes the details set out in Annex I of RTS 1 and Annex I and Annex II of RTS 2.

**Market Data Fees**

Fee charged to the Customer for the right to use the Information and is the Non-Display Data Licence Fee. For the avoidance of doubt, any variable Fees for Display Data Usage by the Customer are charged to the relevant Vendor.

**MD+S interactive**

Online system of Deutsche Börse AG for authorized users of the Customer which contains a contract management area that is to be used for notifications in accordance with the Non-Display Agreement and other purposes.

**Non-Display Data**

Non-Display Data means all the Information which does not meet the definition of Display Data.

**Non-Display Data Usage**

Non-Display Data Usage is accessing, processing or consumption of Real-time Data for purposes other than Display Data Usage, Onward Dissemination to third parties or CFD Data Usage. The particular Customer Categories of a Non-Display Data Usage are specified in the Price List to the Non-Display Agreement which shall be modified from time to time.

A Non-Display Data Usage shall also be deemed to exist if in connection with the Customer Categories specified in the Price List to the Non-Display Agreement a Display Data Usage of Real-time Data occurs. As far as in connection with a Non-Display Data Usage a Display Data Usage or an Entitlement of Real-time Data for Display Data Usage occurs, such Information usage is additionally via the relevant Vendor to be reported and remunerated to Deutsche Börse AG in addition to the Non-Display Data Usage.

**Non-Display Agreement**

Agreement consisting of the Agreement on Non-Display Data Usage concluded online, these General Terms and Conditions to the Non-Display Agreement, the Price List to the Non-Display Agreement, the entries in MD+S interactive, as well as the MD+S interactive Terms of Use. The Non-Display Agreement covers the use of all Information Products offered by Deutsche Börse AG for Non-Display Data Usage.

**Non-Display Data Licence Fees**

Remuneration which is charged to the Customer in accordance with the provisions of the Non-Display Agreement for the licence regarding Non-Display Data Usage.

**Onward Dissemination**

Accessing and disseminating Information onwards to third parties. The Onward Dissemination requires the prior conclusion of a Market Data Dissemination Agreement with Deutsche Börse AG.

**Real-time Data**

Real-time Data means Information delivered with a delay of less than 15 minutes after publication.

**Service Facilitator**

External service provider who/which is employed by the Customer or its Affiliated Companies for the fulfilment of the contractual rights and obligations under the Non-Display Agreement.

**Third-Party Rights Holder**

Third-party legal entity which owns the original copyrights and other intellectual property rights to specific Information.

**Unit of Count**

The Unit of Count is the unit used to measure the level of use of Information to be invoiced to the Customer and that is applied for fee purposes.

**Usage Type**

The Usage Types are Non-Display Data Usage, Display Information Usage, CFD Information Usage and Onward Dissemination.

**Vendor**

Customer of Deutsche Börse AG which on the basis of a Market Data Dissemination Agreement, is licensed to disseminate Information on to the Customer and its Affiliated Companies, as well as to third parties.

**Vendor Service Agreement**

Agreement between a Vendor and the Customer or an Affiliated Company which governs the use of Information.

## 2 Scope of and Changes to the Non-Display Agreement

- 2.1 The Non-Display Agreement governs the Non-Display Data Usage by the Customer and its Affiliated Companies which the Customer has notified via MD+S interactive in advance. Within the scope of the Non-Display Agreement, its provisions shall prevail over the contractual stipulations between the Customer or its Affiliated Companies, and the Vendors.
- 2.2 The Non-Display Agreement exclusively governs Non-Display Data Usage. Any other form of usage of Information (including Display Data Usage in connection with Non-Display Data Usage) shall be subject only to the contractual terms of the Vendor Service Agreement with the Vendor via which the Customer and its Affiliated Companies notified via MD+S interactive in accordance with Section 2.1 receive the Information. Furthermore, the Non-Display Agreement does not govern the technical connection to the CEF<sup>®</sup> systems of Deutsche Börse AG, Values API and/or other data feeds.
- 2.3 If the Customer has entered into a Market Data Dissemination Agreement with Deutsche Börse AG, Non-Display Data Usage will not require the conclusion of a Non-Display Agreement but the conclusion of a Non-Display Data Usage licence under the Market Data Dissemination Agreement. The same shall apply if an Affiliated Company of the Customer has entered into a Market Data Dissemination Agreement with Deutsche Börse AG, concluded a licence for Non-Display Data Usage under the Market Data Dissemination Agreement and has under such Market Data Dissemination Agreement notified via MD+S interactive the Customer as Affiliated Company.
- 2.4 Deutsche Börse AG proposes amendments to this Non-Display Agreement to the Customer by informing the Customer of the amendments by e-mail or in writing no later than 90 calendar days before the proposed date on which the amendments enter into effect. Before the proposed effective date, the Customer may accept, reject or remain silent in relation to the proposed amendments. If the Customer remains silent within a period of 30 calendar days from receipt of the notification that Deutsche Börse AG proposes amendments to this Agreement, the Customer will be deemed to have approved the amendments. If the Customer objected to the amendments within 30 calendar days from receipt of the notification, the proposed amendments will not enter into effect. Deutsche Börse AG will expressly mention this effect when proposing amendments to the Customer. Any objection must be submitted to the following e-mail address: [mds.agreements@deutsche-boerse.com](mailto:mds.agreements@deutsche-boerse.com). For the avoidance of doubt, amendments with respect to the Market Data Fees are subject to Section 2.5 below while the process of this Section 2.4 applies. Deutsche Börse AG shall be entitled to terminate the entire Non-Display Agreement of the objecting Contracting Party with at least 30 calendar days' notice effective at the time the amendments take effect.
- 2.5 The Market Data Fees set out in the Price List to the Non-Display Agreement may be amended by Deutsche Börse AG in accordance with the procedure stipulated in Section 2.4 being given at least 90 days' notice of the changes in written or electronic form.
- 2.6 In deviation to Section 2.4 Deutsche Börse AG is entitled to make changes to the contractual documents with immediate effect if they relate to the introduction of new Information Products and/or the renaming of existing Information Products (without changing the content). Deutsche Börse AG is obliged to inform the Customer of the changes according to sentence 1 immediately by e-mail or in writing.
- 2.7 The Customer shall ensure that the provisions of the Non-Display Agreement applicable to Affiliated Companies and/or Service Facilitators are reflected in a contractual agreement with Affiliated Companies and/or Service Facilitators. The Customer represents and warrants that each of the Affiliated Companies and/or Service Facilitators is bound by all terms and conditions of the Non-Display Agreement that are applicable to Affiliated Companies and/or Service Facilitators and the specific

licence obtained. An obligation incumbent upon the Customer and any other provision applicable to the Customer shall apply to the Affiliated Company and/or Service Facilitator to the same extent as it applies to the Customer, provided, however, that the obligation to pay Market Data Fees shall apply solely to the Customer unless otherwise expressly agreed. An Affiliated Company's and/or Service Facilitator's breach of the Non-Display Agreement shall also constitute a breach of the Non-Display Agreement by the Customer and the Customer shall be fully liable for such breach.

### 3 Granting of Licence

3.1 Subject to payment of the respective Market Data Fees and the respective selections made in MD&S interactive with respect to the licence scope (in accordance with Section 2), the Customer is hereby granted a non-exclusive and non-transferable licence for

- a) the Non-Display Data Usage notified in accordance with Section 5;
- b) the involvement of Service Facilitators (subject to the terms as stipulated under Section 8); and the Customer may onward disseminate Licensed Information to Affiliated Companies (subject to the Usage Type stipulated in (a) above and the additional requirements stipulated in Section 5).

With respect to individual Information Products, licence restrictions may apply (e.g. the supplemental provisions for the usage of BSE India Information, Section III).

3.2 Whether a Non-Display Data Usage of a specific Information Product is permitted, not permitted or permitted with restrictions only is set out in the Price List to the Non-Display Agreement.

3.3 Subject to payment of the respective Market Data Fees and Section 5.1, Deutsche Börse AG grants the Customer a non-exclusive and non-transferable right for the term (as agreed with respect to the individual licence) to sub-licence to its Indirect Customer the usage of Licensed Information as follows:

- a) When onward disseminating Licensed Information to Affiliated Companies, the usage rights as stipulated in Section 3.1 (a) shall apply;
- b) When making available Licensed Information to Service Facilitators, the usage rights as stipulated in Section 8 shall apply.

3.4 The Customer shall not make any use of the Information other than for usages expressly permitted in this Non-Display Agreement; in particular, the Customer shall not, except as expressly permitted in this Non-Display Agreement,

- a) access, download, store, commercialise or use Information which is not covered by any licence granted by Deutsche Börse AG;
- b) market, distribute, publish or otherwise make Information available to third parties;
- c) transfer the right to use the Information in whole or in part to third parties;
- d) onward disseminate Information to third parties other than Affiliated Companies and/or Service Facilitators.

The Customer shall oblige each Indirect Customer to which it makes available Information as follows: the Indirect Customer shall (i) comply with all laws, rules and regulations applicable to accessing and using such Information (including any restrictions imposed by Third-Party Rights Holders), (ii) cease all use of and delete and/or purge all Information upon the termination of its relationship with the Customer to receive the services, except to the extent such Indirect Customer may be required by applicable law or regulation to keep copies of the Information, but provided that no other access to or use of the

Information occurs, (iii) not use the Information for any purpose other than that of the licence(s) granted herein and (iv) use the redistributed Information only internally (except as may be expressly permitted in this Agreement ((i)-(iv), the “**Indirect Customer Obligations**”). The Customer shall promptly notify Deutsche Börse AG if the Customer has reason to believe that any Indirect Customer to which the Customer has provided Information has violated any Indirect Customer Obligation.

Having obtained a sub-licence as stipulated in Section 3.3 above, the Customer shall reflect the provisions of this Section 3.4 in its bilateral legally binding agreement with his Indirect Customer when sub-licensing. For the avoidance of doubt, Section 3.4 first sentence, shall apply *mutatis mutandis* for all Indirect Customers, and the Customer is required to mirror this provision in its bilateral relationship with its Indirect Customer. If an Indirect Customer is entitled to further onward disseminate Information, all requirements applicable to the Customer with respect to the relationship between the Customer and their/its Indirect Customer shall apply *mutatis mutandis* for the Indirect Customer who is entitled to further onward disseminate Information.

## 4 Rights to the indices and other works/products

- 4.1 The Customer acknowledges that Deutsche Börse AG is the sole owner of all copyrights and further intellectual property rights regarding such Information which does not originate from Third-Party Rights Holders (e.g. Spot Market Germany (Frankfurt/Xetra<sup>®</sup>)).
- 4.2 The Customer also acknowledges that the copyrights and further intellectual property rights to Information originating from Third-Party Rights Holders (e.g. STOXX Ltd., Regional Exchanges Germany or Markit Indices Limited) belong to the respective Third-Party Rights Holder and that Deutsche Börse AG has the distribution rights to such Information.
- 4.3 Deutsche Börse AG grants licences solely with respect to the usages explicitly stipulated in this Non-Display Agreement. Usages not explicitly covered by this Non-Display Agreement are not licensed and are, therefore, potentially subject to a licence by a Third-Party Rights Holder. With respect to usage rights granted under this Non-Display Agreement, Deutsche Börse AG will inform the Customer about any limitation in the licences granted by Deutsche Börse AG (e.g. in the Supplemental Provisions below). The Customer acknowledges and agrees that it is the Customer's responsibility to determine which licences, approvals, consents and authorisations from Third-Party Rights Holders are required in respect of other relevant business activities conducted (e.g. issuance of financial products) in connection with information, trademark or other usage (apart from the use of Information in the manner envisaged in this Non-Display Agreement) and the Customer represents and warrants that it has obtained and shall at all times maintain all such licenses, approvals, consents and authorisations. For the avoidance of doubt, Deutsche Börse AG does not license trademark rights and the Customer is required to obtain licenses to such rights directly from the Third-Party Rights Holder
- 4.4 Deutsche Börse AG does not claim intellectual property rights to indices and/or other works/products (e.g. risk ratios, VWAPs, analytical reference figures) which have been created within the frame of a Non-Display Data Usage provided that the latter do not represent Information within the meaning of the definition in Section 1.

## 5 Notification of Non-Display Data Usage

- 5.1 The Non-Display Data Usage by the Customer or one of its Affiliated Companies notified via MD+S interactive in accordance with Section 2.1 is to be notified to Deutsche Börse AG in advance via MD+S interactive. In this respect, the Customer shall specify in MD+S interactive in particular:
- a) which Information Products will be employed for Non-Display Data Usage;
  - b) in which of the categories set out in the Price List to the Non-Display Agreement a Non-Display Data Usage shall take place;
  - c) when the Non-Display Data Usage will start;
  - d) from which Vendors/service providers the Customer and/or its Affiliated Companies notified via MD+S interactive in accordance with Section 2.1 will receive the Information; and
  - e) which Service Facilitator will support the Non-Display Data Usage of the Customer of Deutsche Börse AG and/or its Affiliated Companies notified via MD+S interactive in accordance with Section 2.1;
  - f) the number of Devices intended for Non-Display Data Usage
  - g) upon request by Deutsche Börse AG, the Customer shall provide a list of third parties for whom the Customer provides services based upon Non-Display Data Usage. In the event such a list was already provided in the past, this list of third parties shall be updated (if a change occurred) or confirmed in MD+S interactive at least once a year.

Based on the information in MD+S interactive, Deutsche Börse AG determines a licensing proposal for the selected Information. The Customer of Deutsche Börse AG chooses the scope of the Information to be licensed by submitting the proposed licensing suggestion to Deutsche Börse AG. An essential prerequisite for the correctness of the licensing proposal is the provision of complete and accurate information. The Customer of Deutsche Börse AG shall be responsible if a proposed licensing offer results in over-licensing or under-licensing because of incomplete or incorrect information. To this extent, the Customer of Deutsche Börse AG is responsible for checking the completeness and accuracy of the information it provides.

Accessing Information for the purpose of Non-Display Data Usage of up to 30 Devices per Information Product shall be controlled by the Customer and the number of Devices per Information Product shall be specified in MD+S interactive. At the request of Deutsche Börse AG, the Customer shall provide evidence of the number of Devices per Information Product (e.g. extract from the entitlement system); the right to audit the Customer continues to exist regardless of this. If access to Information for Non-Display Data Usage is uncontrolled or if the number of Devices is not specified, the price level for an unlimited number of Devices applies to the Non-Display Data Usage by the Customer.

The selected Information Products will be licensed and become subject matter of the Agreement upon confirmation by Deutsche Börse AG. The confirmation by Deutsche Börse AG does not require a specific form and can be issued, for instance, by entitling the Customer to use the Information Products ordered or displaying the confirmation in MD+S interactive.

Deutsche Börse AG reserves the right to request further information from the Customer regarding the intended Information Usage.

- 5.2 If changes to the number of Devices affect the licensing of Information, the changes must be reported to Deutsche Börse AG via MD+S interactive within 90 calendar days. Deutsche Börse AG must be informed without delay of any other changes to the actual or intended Non-Display Data Usage, as well as to the Affiliated Companies notified via MD+S interactive in accordance with Section 2.1, pursuant to Sections 5.1 or 2.1, as appropriate. The information must otherwise be updated or confirmed at least once a year. For the termination of individual Information Products Section 13.3 shall apply.
- 5.3 The aforementioned notification duties vis-à-vis Deutsche Börse AG shall not affect any other notification duties deriving from a Vendor Service Agreement.



## 6 Market Data Fees

- 6.1 The licence for Non-Display Data Usage of Real-time Data is subject to Non-Display Data Licence Fees in accordance with the Price List to the Non-Display Agreement.
- 6.2 The Customer undertakes to pay the Market Data Fees (Non-Display Data Licence Fees) in accordance with the Price List to the Non-Display Agreement which shall be modified from time to time. The current version of the Price List to the Non-Display Agreement may be viewed and downloaded on the Internet at [www.mds.deutsche-boerse.com/mds-en/real-time-data/agreements](http://www.mds.deutsche-boerse.com/mds-en/real-time-data/agreements) and forms an integral part of the Non-Display Agreement.
- 6.3 All amounts and Market Data Fees payable under the Non-Display Agreement are specified exclusive of any applicable tax including, but not limited to, value added tax, sales tax or any other similar tax, levy or duty. All amounts and Market Data Fees are due without any deduction of taxes (e.g. withholding tax or similar duties). If and to the extent that the Customer is obliged to pay for any such tax, the amount of the Market Data Fees shall be increased by an amount necessary to compensate for the tax (including any amount necessary to "gross-up" for tax levied on the increase itself) and thus the net amount received by Deutsche Börse AG will be equal to the fee as specified in the invoice. The Customer shall notify and provide evidence that the applicable regulations have been observed. Deutsche Börse AG will, in good faith and to a reasonable extent, cooperate and support the Customer in reducing or obtaining an exemption from the withholding tax to be borne by the Customer in accordance with the applicable double taxation treaty or any other applicable law or regulation.
- 6.4 The fee liability commences on the start date specified by the Customer in MD+S interactive for the Non-Display Data Usage, irrespective of actual Non-Display Data Usage by the Customer or its Affiliated Companies notified via MD+S interactive in accordance with Section 2.1. The Market Data Fees will be invoiced to the Customer monthly in advance. The Market Data Fees paid is not partly refundable upon termination of the Non-Display Agreement during the relevant month.
- 6.5 All invoices shall be due and payable immediately. If the Customer fails to effect payment within 30 days of receipt of the invoice, default interest will become due at a rate of 9 percentage points above the German base rate. The right of Deutsche Börse AG to obtain compensation for further default damages shall remain unaffected.
- 6.6 At the request of Deutsche Börse AG, the Customer shall provide Deutsche Börse AG with details of a credit card account via which Deutsche Börse AG can debit the Customer with the invoice amounts when they fall due.
- 6.7 In the event of incorrect or incomplete representations in the notifications regarding Non-Display Data Usage to be made under Section 5.1 as well as in the event of failure to make notifications, the Market Data Fees that Deutsche Börse AG did not receive due to improper notifications shall be paid upon the time of feasibility to access the Information retroactively. For such Market Data Fees to be paid retroactively, Deutsche Börse AG shall be entitled to demand interest pursuant to Section 6.5 as of the point in time at which interest would have accrued in the case of correct notifications in MD+S interactive. In case of wilful or grossly negligent failure to make correct and complete notifications regarding the Non-Display Data Usage in accordance with Section 5.1, or to make notifications at all, Deutsche Börse AG shall be entitled to charge an exceptional fee in addition to the Market Data Fees to be paid retroactively in accordance with the first sentence of this section, which shall equal a maximum of the Market Data Fees to be paid retroactively including interest.

- 6.8 Deutsche Börse AG may request from a Customer with main domicile of business within the European SEPA area (Single Euro Payments Area) to issue a SEPA debit advice for the payment of invoice amounts, so that all due invoices may be collected via SEPA.
- 6.9 Customers who require a purchase order number on their invoices must provide the purchase order number no later than 6 weeks before the relevant invoice is issued by Deutsche Börse AG. Any changes to the purchase order number must also be communicated to Deutsche Börse AG no later than 6 weeks before the relevant invoice is issued. Any issue arising due to a missing or incorrect purchase order number may not be used to delay or refuse payment of the invoice. Any bank charges incurred through the payment of the invoice shall be borne by the Customer and may not be deducted from the invoice total.

## 7 Audit

- 7.1 Deutsche Börse AG shall be entitled to carry out an audit either at the premises of the Customer or remotely in order to review the accuracy of the notifications under Section 5.1 regarding the Non-Display Data Usage by the Customer and its Affiliated Companies, as well as the due compliance with the further obligations deriving from the Non-Display Agreement. The Customer shall be obliged to ensure that Deutsche Börse AG or the auditors instructed by Deutsche Börse AG, receive access to the relevant documents and technical infrastructure at the site of the Customer itself, the sites of its Affiliated Companies or the sites of the Service Facilitators within the meaning of Section 8. The Audit will be conducted in accordance with the more detailed stipulations of the Audit Guideline to the Market Data Dissemination Agreement which can be viewed, printed and downloaded via the Internet at Deutsche Börse Market Data + Services -Agreements (deutsche-boerse.com). The aforementioned Audit right of Deutsche Börse AG shall remain valid for a period of 2 years after the termination of the Non-Display Agreement.
- 7.2 Upon request by Deutsche Börse AG the Customer shall provide Deutsche Börse AG with an overview of its company, in particular regarding the object of the company, the type of hardware and software environment used for the Non-Display Data Usage and the Non-Display Data Usage performed.
- 7.3 If the Customer is required to enter into a bilateral legally binding agreement in accordance with the terms of the Non-Display Agreement (e.g. Affiliated Companies, Service Facilitators), the Customer shall include, to the benefit of Deutsche Börse AG, (i) an Audit right which meets at least the standards of this Section in conjunction with the Audit Guidelines and (ii) an information right for the sole purpose of obtaining details relating to the usage of the Licensed Information and whether the usage is compliant with the terms of the Non-Display Agreement.
- 7.4 If the Customer fails to comply with its obligations under Section 7.1 second sentence and/or 7.2 in total, or if the Customer in spite of a written demand by Deutsche Börse AG or one of its instructed Auditors does not (i) provide access to certain relevant documents (e.g. Honesty Statements) or technical infrastructure (e.g. Entitlement System) at the site of the Customer itself, an Affiliated Company, the Service Facilitators or the White Labelling partners or does not (ii) deliver relevant documents or electronic data files in accordance with the provisions of the Audit Guideline or fails to comply with its obligations under Section 6.4 Deutsche Börse AG shall until the due performance of the obligations deriving from Section 7.1 second sentence, Section 7.2 and/r Section 6.4 at its choice be entitled a) to preliminarily estimate an assumed supplementary payment on the basis of appropriate criteria (e.g. licencing by comparable companies) in accordance with its reasonably exercised discretion and invoice such estimate as an on-account payment; and/or

- b) to suspend the delivery of Information or the licence for the Information Usage (Section 3) until the proper compliance with the obligations under Section 7.1 second sentence, 7.2 and/or 6.4; and/or
- c) to make the continuation of the Non-Display Agreement subject to the payment of reasonable monthly on-account payments (e.g. on the basis of the applicable flat-rate fees according to the Price List).

The on-account payments shall be credited if the payment obligations of the Customer are established after the performance of the Audit concerned.

## 8 Service Facilitators

The Customer may outsource the operation, the development, the hardware and other services related to Non-Display Data Usage to a Service Facilitator. Such outsourcing to a Service Facilitator shall be permitted only if Deutsche Börse AG has expressly granted its consent hereto in writing, per e-mail or via MD+S interactive following receipt of a Service Facilitator Application from the Customer. The Service Facilitator application is to be submitted online via MD+S interactive. For this purpose the Customer shall notify Deutsche Börse AG via MD+S interactive in accordance with Section 5.1 all Service Facilitators with details as to firm names, addresses, internet addresses (URLs) as well as the services which are rendered by the Service Facilitator. In the event that such a Service Facilitator is commissioned, the Customer remains fully liable vis-à-vis Deutsche Börse AG for the fulfilment of the contractual obligations under the Non-Display Agreement. The Customer represents and warrants that each of the Service Facilitators is bound by and complies with all terms and conditions of the Non-Display Agreement that are applicable to Service Facilitators by way of entering into a legally binding contractual relationship with the respective Service Facilitator. An obligation incumbent upon the Customer and any other provision applicable to the Customer shall apply to the Service Facilitator to the same extent as it applies to the Customer, provided, however, that the obligation to pay fees shall apply solely to the Customer unless otherwise expressly agreed. A Service Facilitator's breach of the Non-Display Agreement shall also constitute a breach of the Non-Display Agreement by the Customer and the Customer shall be fully liable for such breach

## 9 No Warranty by Deutsche Börse AG for the Information distributed

The purpose of the Non-Display Agreement is to grant the Customer rights regarding Non-Display Data Usage in accordance with the more detailed information set out in Section 4. Deutsche Börse AG does not assume any responsibility vis-à-vis the Customer and the Affiliated Companies notified via MD+S interactive in accordance with Section 2.1 regarding the accuracy, the timely dissemination or the completeness of the disseminated Information.

## 10 Confidentiality and Data Protection

- 10.1 Deutsche Börse AG is obliged to treat all company-related information provided by the Customer under the Non-Display Agreement as confidential, and may not make such information available to third parties ("Confidential Information"). In this regard, Deutsche Börse AG shall, in particular, observe the provisions of the applicable data protection laws. Deutsche Börse AG will take the appropriate organizational measures, and shall subject its staff to appropriate obligations to ensure this duty of confidentiality is observed throughout the term of the Non-Display Agreement and thereafter. Information subject to this Section 10.1 does not include information that, at the time of its disclosure, a) is generally available to the public without the Non-Display Agreement having been breached; b) can be proven, with written or electronical documentation, to have been independently developed by the

receiving party without use of the confidential information; c) is disclosed to the receiving party by a third party having no obligation of confidentiality with respect thereto, or was already in possession of the receiving party at the time of the disclosure to the receiving party, in which cases the burden of proof lies with the receiving party; or d) was approved for disclosure by the other party in advance.

- 10.2 Each party shall be entitled to disclose Confidential Information subject to 10.1 on a need-to-know basis to its and its affiliates' employees, agents, independent contractors and advisors, provided that they are bound by provisions of confidentiality at least equivalent to the provisions of this Section or by professional secrecy obligations. A party may disclose the Confidential Information of the other party to the extent required by an order of a court of competent jurisdiction or applicable governmental, quasi-governmental, or regulatory body, provided, however, that the party, unless prohibited by law, regulation or court or regulatory order, a) promptly notifies the other party upon receipt of any correspondence that requests or demands disclosure of its confidential information; b) contests any request for disclosure, and failing that seeks to have access and use limited by a protective order; and c) provides the other party a reasonable opportunity to (i) contest and assist in opposing any requirement to disclose its information subject to Section 10.1, (ii) seek judicial protection against the disclosure, and (iii) have such required disclosure be made under a protective order. In addition Deutsche Börse AG may provide the Vendor from which the Customer or an Affiliated Company, as the case may be, receives information for Non-Display Data Usage, with details on the use of Information, provided that such statements are necessary for the purpose of the Vendor Service Agreement between the Vendor and the Customer. Deutsche Börse AG is entitled to disclose Audit findings regarding the use of Third Party Information marketed by Deutsche Börse AG to the respective Third-Party Rights' Holder. The latter implies that the Third-Party Rights' Holder has a legitimate interest in the Audit findings provided and will comply with the same confidentiality obligations as previously agreed by Deutsche Börse AG.
- 10.3 Within the frame of the Non-Display Agreement between Deutsche Börse AG and its Customer individuals associated with the Customer are required to provide Deutsche Börse AG with personal data like, for example, their name and their business address. This data is processed by Deutsche Börse AG staff for purposes of the contract implementation and customer services. When processing personal data Deutsche Börse AG will always comply with the requirements of the applicable data protection laws and regulations.

## 11 Use of MD+S interactive by the Customer

- 11.1 The Customer undertakes to use solely the online system MD+S interactive for the conclusion and the administration of the Non-Display Agreement.
- 11.2 The Customer is subject to the MD+S interactive Terms of Use for the online system MD+S interactive, the current version of which may be viewed and downloaded on the Internet at [www.mds.deutsche-boerse.com/mds-en/real-time-data/agreements](http://www.mds.deutsche-boerse.com/mds-en/real-time-data/agreements) and which form an integral part of the Non-Display Agreement.
- 11.3 Section 2.4 shall apply to changes to the MD+S interactive Terms of Use mutatis mutandis. In the event of urgent technical requirements, the period of notice specified in Section 2.4 can be reduced.

## 12 Liability

- 12.1 Under this Non-Display Agreement, Deutsche Börse AG's liability shall be unlimited in the following cases:

- a) for loss or damage occasioned by loss of life, bodily injury or injury to health that is at least negligently caused by Deutsche Börse AG, its legal representatives or vicarious agents;
- b) for any other loss or damage caused by intentional or grossly negligent acts or omissions of Deutsche Börse AG, its legal representatives or vicarious agents; and
- c) for loss or damage resulting from the breach of a warranty or a statutory requirement under the German Product Liability Act (*Produkthaftungsgesetz*).

12.2 In all other cases (other than those listed in Section 12.1), Deutsche Börse AG shall only be liable for loss or damage resulting from the breach of a material contractual obligation (*wesentliche Vertragspflicht*) by Deutsche Börse AG, its legal representatives or vicarious agents. A material contractual obligation (*wesentliche Vertragspflicht*) is a contractual obligation that is an essential prerequisite for the proper performance of the contract and on the fulfilment of which the Customer would ordinarily rely and also be reasonably entitled to rely. If a material contractual obligation (*wesentliche Vertragspflicht*) is breached as a result of ordinary negligence, Deutsche Börse AG's liability shall be limited to compensating for foreseeable loss or damage typically arising at the time the service was provided under the Non-Display Agreement.

12.3 Damages claims of the Customer shall become time-barred after two years as far as the claims do not derive from an injury of life, body, health or freedom or from wilful intent. The deadline shall commence at the end of that year within which the claim has arisen and the Customer has gained knowledge about the circumstances constituting the claim and the identity of the debtor or without gross negligence could have gained knowledge.

12.4 Deutsche Börse AG and the Customer shall not be liable for any damage resulting from force majeure (e.g. riots, war or natural disasters) or other events beyond their control (e.g. strikes, lock-outs, traffic disruption, dispositions of domestic or foreign powers) as well as non-culpably caused technical problems, such as problems in connection with the computer system. Computer viruses and intentional attacks of "hackers" on the computer systems are considered as force majeure, provided that reasonable security measures have been taken.

## 13 Term and Termination

13.1 The Non-Display Agreement comes into force upon valid conclusion via the online system MD+S interactive.

13.2 The Non-Display Agreement is entered into for an indefinite period of time. Each party may terminate the Non-Display Agreement by giving 90 days' notice to the end of a calendar month.

13.3 The Customer shall be entitled to terminate individual Information Products with 90 days' notice to the end of a calendar month. In the event that no licensed Information Products for Non-Display Data Usage remain after a partial termination in accordance with the first sentence of this section, the partial termination shall be deemed a termination of the entire Non-Display Agreement.

13.4 Deutsche Börse AG shall be entitled to terminate individual Information Products by giving 90 days' notice to the end of a calendar month. In the case of such partial termination of the Non-Display Agreement by Deutsche Börse AG, the Customer shall in turn be entitled to terminate the entire Non-Display Agreement with 30 days' notice, effective at the time at which the partial termination by Deutsche Börse AG in accordance with the first sentence of this section becomes effective.

13.5 Each party shall be entitled to terminate the Non-Display Agreement for cause without notice period. A cause shall, in particular, be deemed to exist if:

- a) the financial situation of the other party has materially worsened; or
- b) the other party has culpably breached material contractual obligations and has not cured such breach within a reasonable deadline set in a written warning (in the event of extraordinarily serious violations of contractual obligations, no prior warning shall be necessary).

13.6 Any notice of termination of the Non-Display Agreement shall be submitted by mail, fax, e-mail or online via MD+S interactive.

## 14 Transfer of Rights and Obligations under the Non-Display Agreement

14.1 Each transfer of the Customer's rights and obligations deriving from the Non-Display Agreement shall require the prior written consent of Deutsche Börse AG. This shall not apply to the assignment of Service Facilitators, which does not affect the rights and obligations between the parties.

14.2 Deutsche Börse AG shall be entitled to transfer the Non-Display Agreement, together with all of the rights and obligations deriving from it to an Affiliated Company to which Deutsche Börse AG transfers its complete business activities or the business activities of Market Data + Services. Upon transfer of the Non-Display Agreement, only that Affiliated Company shall then be entitled and obliged under the Non-Display Agreement; Deutsche Börse AG shall be released from all obligations under the Non-Display Agreement.

## 15 Contacts

Unless the Non-Display Agreement provides for communication via MD+S interactive, all notifications and other communication within the frame of the Non-Display Agreement shall be addressed to the following contacts at the parties:

For Deutsche Börse AG:	Deutsche Börse AG Market Data + Services Data Services D-60485 Frankfurt am Main Tel.: +49-(0)69-2 11-1 24 42 Fax: +49-(0)69-2 11-1 39 42 E-mail: <a href="mailto:data.services@deutsche-boerse.com">data.services@deutsche-boerse.com</a>
For the Customer:	To the person or persons nominated by the Customer via MD+S interactive.

## 16 Final Provisions

16.1 The Non-Display Agreement shall be subject to the laws of the Federal Republic of Germany; the UN Convention on Contracts for the International Sale of Goods shall be excluded. Exclusive place of jurisdiction for all disputes deriving from or in connection with the Non-Display Agreement shall be Frankfurt am Main; however, Deutsche Börse AG shall also be entitled to sue the Customer at its general place of jurisdiction.

16.2 There are no verbal supplementary agreements to this Agreement. Unless a stricter form is prescribed by law, amendments and supplements to this Agreement and any waiver of a right under this

Agreement shall be at least in electronic form (ordinary electronic signature is sufficient). Furthermore, the above form requirement itself can also be revoked expressly and in electronic form (ordinary electronic signature is sufficient). Whenever this Non-Display Agreement requires written form for declarations, such declarations may also be transmitted electronically in accordance with this Section.

16.3 The invalidity or unenforceability of individual provisions or an omission of the Non-Display Agreement shall not affect the validity of the remaining provisions. An appropriate legally permissible provision shall apply in place of the invalid or unenforceable provision which corresponds as closely as possible to the economic content of the invalid or unenforceable provision. In the case of an omission, a provision shall apply which corresponds to that which the parties intended or would have intended had they been aware of the omission.

16.4 Unless provided otherwise, the following order of priority shall apply (in the order listed below) in the event of conflicts between the provisions of individual sections of the Non-Display Agreement:

- the Online Order Form;
- the Price List;
- the General Terms and Conditions to the Non-Display Agreement; and
- the MD+S interactive Terms of Use.

## II Supplemental Provisions regarding the Usage of Taiwan Futures Exchange Information

### 17 Scope of Applicability

17.1 The following Supplemental Provisions set out in Section 18 shall apply to the Usage of the Information Products Taiwan Futures Exchange (hereinafter "TAIFEX") Derivatives Market and TAIFEX Derivatives Market Domestic.

17.2 The Supplemental Provisions in Section 18 shall apply in addition to the General Provisions in Sections 1 to 16 but shall prevail over the latter provisions in cases of contradictions.

### 18 Restrictions of the Licence

18.1 The usage of Real-time, Delayed and/or After-Midnight TAIFEX Information for the purpose of index calculation is not permitted.

## III Supplemental Provisions regarding the Usage of BSE India Information

### 19 Scope of Applicability

19.1 The following Supplemental Provisions set out in Section 20 shall apply to the usage of the BSE India Information Products of the BSE Ltd.

19.2 The Supplemental Provisions in Section 20 shall apply in addition to the General Provisions in Sections 1 to 16 but shall prevail over the latter provisions in cases of contradictions.

### 20 Restrictions of the Licence

20.1 Pursuant to provisions of BSE Ltd. Deutsche Börse AG will not grant trading venues, central counterparties, central securities depositories and/or companies engaging in comparable businesses the right to use BSE India Information for purposes of trading, clearing and/or settling of derivatives (i.e. futures and options) admitted for trading at a trading venue or traded via a systematic internaliser outside of India.

20.2 The Customer shall not use BSE India Information for the creation of indices whereby the respective index in part (i.e. weightage of 25% or more on Indian securities) or in full is based on prices derived from securities listed in India for the purposes of the issuance, trading, clearing or settling of derivative financial products which are based on or benchmarked to such indices outside India. The aforementioned derivative financial products (a) refer to exchange-traded securities with a value that is reliant upon or derived from an index level (i.e. index futures contracts and index options contracts, swaps, warrants or CFDs), and (b) do not include exchange-traded funds (ETFs) or exchange-traded notes (ETNs).

20.3 In case of violations, Deutsche Börse AG reserves the right to suspend the licence for use of the BSE India Information, with immediate effect. Further rights of Deutsche Börse AG will remain unaffected.



20.4 Customer shall not use BSE India Information for the purpose of conducting gambling activities (such as leagues, schemes, competitions which may involve the distribution of prize monies or comparable activities) as a service to their Indirect Customers.

## IV Supplemental Provisions regarding the Usage of BMV® Group Information

### 21 Scope of Applicability

21.1 The following Supplemental Provisions set out in Section 22 shall apply to the usage of the BMV® Group Information (e.g. BMV® Indices, BMV® iNAVs, BMV® Spot Market and MexDer® Derivatives Market).

21.2 The Supplemental Provisions in Section 22 shall apply in addition to the General Provisions in Sections 1 to 16 but shall prevail over the latter provisions in cases of contradictions.

### 22 Non-Display Data Usage of BMV® Group Information

22.1 Both Real-time and Delayed use of BMV® Group Information for Non-Display purposes fall under Non-Display Data Usage. I.e. Market Data Fee applies for Non-Display Data Usage of Real-time and Delayed BMV® Group Information.

## V Supplemental Provisions regarding the Usage of ISS STOXX Indices

### 23 Scope of Applicability

23.1 The following Supplemental Provisions set out in Section 24 shall apply to the usage of all Information Products listed in the Price List under the heading(s) ISS STOXX Indices (the "**ISS STOXX Indices**").

23.2 The Supplemental Provisions in Section 23 and 24 shall apply in addition to the General Provisions in Sections 1 to 16 but shall prevail over the latter provisions in cases of contradictions.

### 24 Granting of Licence and Restrictions

24.1 Licences available under the Non-Display Agreement for ISS STOXX Indices is the licence for Non-Display Data Usage (except for Index Calculation, which is not permitted) only. For the sake of clarity, the licence is restricted to Information relating to ISS STOXX Indices which are originally disseminated by Deutsche Börse AG via CEF® Systems. For the avoidance of doubt, Deutsche Börse AG does not license trademark rights and the Customer is required to obtain licences to such rights directly from the respective Third-Party Rights' Holders, e.g. STOXX Ltd., ISS STOXX Index GmbH, etc.

24.2 The licence for ISS STOXX Indices does not cover usage of Information which refers to (i) all component level data, such as weightings, market capitalisation and free float, (ii) index adjustments relating to index components, such as data regarding corporate actions, index reviews and index changes, (iii) index updates and index reports and (iv) any potential third-party data that is not owned by the respective Third-Party Rights' Holder, e.g. STOXX Ltd. or ISS STOXX Index GmbH.

## VI Supplemental Provisions regarding the Usage of Nodal Information

### 25 Scope of Applicability

25.1 The following Supplemental Provisions set out in Section 26 shall apply to the usage of Nodal Information.

25.2 The Supplemental Provisions in Section 26 shall apply in addition to the General Provisions in Sections 1 to 16 but shall prevail over the latter provisions in cases of contradictions.

### 26 Licence Restrictions

26.1 In deviation to Section 3.1, the following usages with respect to Real-time Data are not permitted:

- a) Non-Display Data Usage with respect to the operation of a trading platform (Customer Category Trading Platform not permitted) and/or Index Calculation (Customer Category Index Calculation not permitted);
- b) The offering and/or dissemination of derived works/products, including, but not limited to, indices or benchmarks which have been created inter alia on the basis of Nodal Information (Customer Category Index Calculation not permitted); and
- c) advising, creating, issuing, selling, offering, trading, pricing, marketing, promoting, constructing or calculating any financial products.

26.2 The usage of Delayed Data and/or After Midnight Information for the purposes of Non-Display Data Usage as well as for the purposes of Section 26.1 lit. c) is not permitted.

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