



Euroclear Market Data Policy

December 2020

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Introduction

This Euroclear Market Data Commercial Policy (“**Commercial Policy**”) is entered into between Euroclear Bank SA (“**Data Supplier**”) and Recipient (defined below).

Hereafter individually referred to as a ‘**Party**’ and collectively as the ‘**Parties**’.

Data Supplier collects, processes, generates, assembles and disseminates Information (defined below).

Commercial Policy states the terms upon which Information is provided and governing its Display, Use, Redistribution and the creation of Derived Data (defined below). It applies to all Recipients. This Commercial Policy may be amended or updated from time to time without notice.

1. Definitions

Unless the context otherwise requires, capitalised terms used in this Commercial Policy have the following meanings:

Affiliate: means in respect of a particular legal entity, any entity which directly or indirectly Controls, is Controlled by or is under common Control with, such legal entity. “**Control**” (as a verb or noun) means (i) the direct or indirect ownership of at least fifty percent (50%) of the total voting securities of every class or other evidences of ownership interest of an entity or (ii) the power, in law or in fact, to exercise alone or jointly, a decisive influence on the appointment of the majority of the directors of a company or on the orientation of its management policy.

Application: means any system, network, database, software product or other means of Displaying, Using or Redistributing Information.

Confidential Information: means the, Information, any information about the business, clients, and suppliers of Data Supplier and any other information which by its nature should reasonably be considered as confidential.

Data Supply Agreement means all the following contractual documents together: (i) the Framework Terms and Conditions between Data Supplier and Licencee; (ii) any Product Schedules (including the Specific Terms and Conditions specified therein) attached to these Framework Terms and Conditions; (iii) any applicable Order Form; (iv) all other documents incorporated into and referred to in any of (i) or (ii) above or entered into between you and us pursuant thereto; (v) each of these as may be amended, restated or supplemented from time to time)

Data Sets: means any particular set of Information licensed by Data Supplier.

Data Supplier: means Euroclear Bank NV/SA, a company organized under Belgian law with principal offices at 1, Boulevard du Roi Albert II, 1210 Brussels, Belgium

Derived Data: means any data derived from Information which has been (wholly or in part) Manipulated to such degree that it:

(a) cannot be reverse-engineered such that it can be so identified; and

(b) is not capable of Display or Use substantially as a substitute for Information or otherwise competes with Information of Data Supplier and/or its Affiliates.

Display: means to display Information on-screen, and to receive, access, load and/or store such Information solely as required for such display, where no durable copy of such Information is retained or saved, irrespective of the means of transmission or access.

Documentation: means the Documentation relating the Data Sets and/or Information on Data Supplier’s website.

Euroclear Group: means Data Supplier's ultimate parent company, the Data Supplier and any of its and their Affiliates.

Framework Terms and Conditions: means the framework terms and conditions entered into between a Licensee and Data Supplier for the supply of Information, which governs the Product Schedules and Order Forms entered into between such Recipient and Data Supplier.

Gross Negligence: means a standard of care which is falling so far below the ordinary professional standard of care that it would reasonably be considered as reckless behaviour or extreme carelessness.

Index Creation: means the Use of Information in the creation and ongoing calculation in real-time, delayed, snapshot or end of day of tradeable or non-tradeable metrics or indices used, or intended to be used, as a tradable instrument in the nature of a security, or to measure, track, link to, or report the performance of a financial product or contract.

Information: means any market data and information including, without limitation, quotes, prices, volume, time stamps, and other data and information in respect of, amongst other things, indices and the securities, bonds, futures contracts, option contracts, commodities and other instruments, which is (i) contained in the applicable Data Set(s) and (ii) supplied to the Recipient either directly or indirectly. It also includes data derived in any manner from Information which does not constitute Derived Data.

Intellectual Property: means all intellectual property rights in any part of the world which shall include, without limitation, patents, utility models, registered and unregistered trade and service marks, business and trade names, rights in domain names, registered designs, unregistered rights in designs (including, without limitation, in relation to semiconductor products), copyrights and neighbouring rights, database rights, trade secrets, know how, inventions, technical or commercial knowledge, manufacturing or business processes methods and procedures and in each case rights of a similar or corresponding character and all applications and rights to apply for or for the protection of any of the foregoing.

Internal Use: means the Display of Information exclusively by employees, contractors of a particular legal entity.

Licensee: means the licensee of Information from Data Supplier in an Order Form, Product Schedule or Framework Terms and Conditions.

Manipulate: means to perform calculations on, and/or adapt, combine or aggregate Information (wholly or in part) with other data or information.

Order Form: means an order form entered into between a Licensee and Data Supplier under which Data Supplier grants a Licensee a licence to Use Information, create, use and Redistribute Derived Data and, where applicable, Redistribute Information.

Permitted Recipient Contract: means the contract between a Licensee and a Recipient which governs the Redistribution of Information to such Recipient.

Product Schedule: means the product schedules entered into between a Licensee and Data Supplier for the supply of certain categories of Information, which govern the Order Forms entered into under such Product Schedule between such Licensee and Data Supplier.

Recipient: means any person:

- (a) who has access to Information;
- (b) who Displays, Uses or Redistributes Information; and/or
- (c) to whom Information has been Redistributed.

Redistribute: means the act (by any party) of providing any third party access to Information (or Derived Data, as the context requires), irrespective of the means of dissemination or provision of access.

Use: means to Display, entitle, process, consume, adapt, re-arrange, Manipulate, extract, copy, reutilise, edit, package, reproduce and/or internally disseminate Information, irrespective of the means of transmission or access.

2. Construction

2.1. In this Commercial Policy:

- (a) headings are for convenience only and do not affect the interpretation;
- (b) words importing the singular include the plural (and vice versa), expressions in the masculine include the feminine (and vice versa), references to persons shall include natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundation and trusts, in each case whether or not having a separate legal personality (and vice versa) and references to the Parties or any other person shall include its respective successors in title, permitted assigns and permitted transferees;
- (c) references in this Commercial Policy to sections, are, unless otherwise stated, references to sections of this Commercial Policy;
- (d) any reference to the requirement for a communication, approval, licence, consent or notice is to a written communication, approval, licence, consent or notice. Written communications, licences, approvals, consents and notices may be sent or served by email; and
- (e) a reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

2.2. In the event of a conflict between provisions of this Commercial Policy and any applicable Framework Terms and Conditions, Product Schedule and Order Form, the Framework Terms and Conditions, Product Schedule and Order Form shall take precedence.

2.3. In the event of a conflict between provisions of this Commercial Policy and any applicable Permitted Recipient Contract, the Permitted Recipient Contract shall take precedence.

3. Recipient's use of Information

3.1. By accessing Information, Recipient confirms that it accepts the terms of this Commercial Policy and that it agrees to comply with them. If Recipient does not agree to the terms of this Commercial Policy, Recipient must not receive or make any use of Information.

3.2. Recipient acknowledges and agrees to the following clauses in this section 3.2.

3.2.1. Recipient shall only Display Information:

- (a) for Recipient's Internal Use;
- (b) in relation to its receipt and use of the relevant Licensee's services and not for any other purpose;
- (c) at all times in compliance with this Commercial Policy and the Documentation; and
- (d) at all times in compliance with all laws, decrees, regulations and governmental, regulatory and court orders applicable to Recipient's Display of Information.

3.2.2. Recipient shall not:

- (a) Use Information, including, without limitation, in an Application or for Index Creation;

- (b) create, use and/or Redistribute Derived Data;
 - (c) Redistribute Information to any third party (other than its auditors, other professional advisors, any regulatory, governmental or tax authority, or any other person, where and to the extent that it is required to do so pursuant to a law, decree, regulation or governmental, regulatory or court order or similar instruction, in each case on an information only (on a non-reliance basis) and on a confidential basis); nor
 - (d) transfer in any way Information, or a representation of it, to any other location, including, without limitation, any other group company or branch office.
- 3.2.3. Information does not:
- (a) constitute investment advice; Recipient should consult its own financial advisors before investing in financial instruments on the basis of any Information.
 - (b) intend to sign-post Recipient towards, or introduce it to, third parties for the purposes of it entering into transactions in financial instruments.
 - (c) contain credit ratings in the meaning of Regulation (EC) No 1060/2009 of 16 September 2009 on credit rating agencies.
 - (d) constitute benchmarks or input data to benchmarks in the meaning of Regulation (EU) 2016/1011 of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.
- 3.2.4. Data Supplier reserves the right to determine in its sole discretion the structure, format and/or content of Information, to revise such structure, format and/or content from time to time, and to suspend and/or terminate access to Information at any time without notice to Recipient.
- 3.2.5. Data Supplier has obtained or generated Information from both internal and, where applicable, external sources for general use and that such Information has not been prepared or compiled to meet any particular requirements Recipient may have.
- 3.2.6. Information is made available to Recipient 'AS IS' without any representation, warranty, liability (unless in case of fraud, Gross Negligence or wilful misconduct) or guarantee (whether express or implied) of any kind, including (without limitation) as to its satisfactory quality, availability, quantity, completeness, correctness, accuracy, timeliness, merchantability, compliance with any description, fitness for purpose or suitability or Display or that the access to or Display of Information by Recipient is lawful in any location. All warranties, terms or conditions implied by law with regard to Information are hereby excluded to the fullest extent permitted by law.
- 3.2.7. Recipient is solely responsible for checking that the Display of Information by Recipient is accurate, timely and complete and not misleading in any way.
- 3.2.8. The Display of or reliance upon Information by Recipient will solely be undertaken at its own risk and responsibility.
- 3.2.9. All Intellectual Property in Information shall remain vested in Data Supplier, the Euroclear Group, or in its licensors, as applicable. Recipient will have no rights in Information except as expressly set out in this Commercial Policy. Nothing in this Commercial Policy will be deemed to transfer any Intellectual Property to Recipient.

- 3.2.10. Recipient will immediately notify Data Supplier in writing if it becomes aware of any copying or misuse of Information and will take such reasonable steps as Data Supplier may require to deal with the same.
- 3.2.11. Recipient will not use Data Supplier's name, logo, device, trademark or domain name (whether registered or unregistered) or of Euroclear Group without Data Supplier's prior written consent.
- 3.2.12. Recipient will safeguard Data Supplier's Confidential Information (which includes the Information) to the same extent that it safeguards its own confidential and proprietary information and in any event with not less than a reasonable degree of protection.
- 3.2.13. Recipient will immediately inform Data Supplier if it becomes aware of the possession, use or knowledge of any Confidential Information by any unauthorised person, and will provide such reasonable assistance as is required to deal with such event.
- 3.2.14. Recipient will be solely responsible for selecting and maintaining the necessary equipment to ensure it can receive Information. Data Supplier will have no responsibility or liability for any equipment, systems or networks through which Recipient accesses Information.
- 3.2.15. Recipient will notify Data Supplier soon as possible of any breach of security of Recipient's systems of which Recipient becomes aware to the extent that such breach may be reasonably likely to affect Information or Data Supplier.
- 3.2.16. Recipient will take all reasonable steps to maintain appropriate technical and organisational measures in respect of Information so as to prevent unlawful access to Information and against accidental loss or destruction of, or damage to Information.
- 3.2.17. Information may be transmitted via the internet or e-mail and that Data Supplier will have no liability for the provision of such Information via such means of communication.
- 3.2.18. Recipient shall not redistribute the Information unless it has prior entered into a Data Supply Agreement with the Data Supplier.
- 3.2.19. Recipient shall not actively Redistribute Information to any entity (including any of its Affiliates) falling under the categories set out below at the time of being approached. The entities within these categories are reserved for the Data Supplier:
 - (i) central securities depositories (CSDs) within the meaning of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;
 - (ii) global systemically important banks belonging to buckets 2 to 5 set out in the last available "list of global systemically important banks (G-SIBs)" published by the Financial Stability Board.
- 3.2.20. Recipient shall not mask or remove any copyright or other notices contained within or relating to Information.
- 3.2.21. Without prejudice to any other right or remedy available to Data Supplier, Data Supplier may recover damages from Recipient for any breach of sections 3.2.1 and/or 3.2.2) by Recipient or any third parties to whom Recipient provides access to Information (directly or indirectly). Such damages will be charged in accordance with Data Supplier's prevailing rates in force at the time of such breach and will accrue from the date on which such breach first occurs. Data Supplier will confirm on request if an intended Display by Recipient will result in liability for damages.

- 3.2.22. In the event of any termination or expiry of the relevant Framework Terms and Conditions, Product Schedule or Order Form, or upon grounded Data Supplier's or the relevant Licensee's request, Recipient shall immediately cease making any further use of the applicable Information and shall promptly delete and purge the Information from their computers, databases or other online data storage facilities, except to the extent that retention is required by applicable law.
- 3.2.23. Notwithstanding section 3.2.2, Data Supplier may audit Recipient and any third parties to whom Recipient provides access to Information (directly or indirectly) regarding Recipient's and such third parties' unauthorised Display or Use of Information, creation or use of Derived Data and/or Redistribution of Derived Data or Information.

4. Miscellaneous

4.1. Assignment

- 4.1.1. Recipient hereby allows Data Supplier to assign or otherwise transfer Data Supplier's rights and obligations under this Commercial Policy to another Euroclear Group company without Recipient's prior written consent.
- 4.1.2. Recipient cannot assign, transfer or otherwise dispose of any of Recipient's rights or obligations under this Commercial Policy without Data Supplier's prior written consent.

4.2. Entire Commercial Policy

The Commercial Policy constitutes the entire and only Commercial Policy between the Parties with respect to the subject matter hereof and supersedes and extinguishes any prior drafts, discussions, Commercial Policies, contracts, terms and conditions contained in any purchase order, undertakings, representations, warranties and arrangements of any nature whatsoever, whether or not in writing, relating thereto (save for any Framework Terms and Conditions, Product Schedule or Order Form in place between the Parties, which shall remain in full force and effect).

4.3. Severability

If any provision of this Commercial Policy is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Commercial Policy shall continue in full force and effect as if this Commercial Policy had been executed without the invalid, illegal or unenforceable provision. In the event of an invalidity so fundamental as to prevent the accomplishment of the purpose of this Commercial Policy, the Parties shall immediately commence negotiations in good faith to remedy this invalidity.

4.4. Benefit, amendments, no waiver, agency

- 4.4.1. No customer or other third party for which Recipient may be acting will, in that capacity, have or be entitled to assert any rights, claims or remedies against Data Supplier.
- 4.4.2. Recipient acknowledges, agrees and accepts that this Commercial Policy may be amended or supplemented unilaterally by Data Supplier from time to time without notice. Every time Recipient wishes to access Information, please check this Commercial Policy to ensure Recipient understands the terms that apply at that time. This Commercial Policy was most recently updated on 21 September 2020.
- 4.4.3. Failure, delay or time or indulgence given by Data Supplier in or before exercising any remedy or right under or in relation to this Commercial Policy shall not operate as a waiver of the same nor shall any single or partial exercise of any remedy or right by Data Supplier preclude any further exercise of the same or the exercise of any other remedy or right.

- 4.4.4. No waiver of any requirement of this Commercial Policy or of any remedy or right thereunder shall have effect unless given by notice in writing signed by Data Supplier. No waiver of any particular breach of the provisions of this Commercial Policy shall operate as a waiver of any repetition of such breach.
- 4.4.5. Nothing in this Commercial Policy will constitute, create or give effect to a joint venture, pooling arrangement, employer/employee relationship, principal/agency relationship, partnership or other co-operative entity between the Parties. Neither Party shall have the right to bind the other without the other Party's express prior written consent.

4.5. **Notices**

- 4.5.1. Unless expressly provided otherwise, all notices required or permitted under this Commercial Policy or required by statute, law or regulation will be deemed to be sufficiently given if delivered by hand, sent by prepaid post or facsimile transmission to Data Supplier at:

Euroclear Bank NV/SA

Address: 1, Boulevard du Roi Albert II

1210 Brussels/ Belgium

Attention: General Counsel and Head of Euroclear Information Solutions

E-mail: eis@euroclear.com

- 4.5.2. Any notice shall be deemed to have been served if delivered by hand, at the time of delivery to the address of the recipient; if sent by prepaid post, two (2) days after the date of posting; if sent by facsimile transmission, on successful transmission by the sender.
- 4.5.3. Unless specifically agreed otherwise, changes to Data Supplier's contact details will become effective upon fourteen (14) days prior written notice to Recipient.

5. **Governing law, jurisdiction, evidence**

5.1. **Governing law**

This Commercial Policy, any non-contractual obligations arising out of or in connection with this Commercial Policy and all disputes arising thereunder or in connection therewith are governed by and construed in accordance with Belgian law.

5.2. **Jurisdiction**

- 5.2.1. Recipient agrees that the competent courts of Brussels, Belgium have exclusive jurisdiction to settle any dispute arising out of or in connection with this Commercial Policy.
- 5.2.2. To the extent that Recipient is prohibited by law or regulation to submit to the jurisdiction of a foreign court, disputes arising out of or in connection with this Commercial Policy will be settled in accordance with the Rules of Arbitration of the International Chamber of Commerce by an arbitral tribunal consisting of three arbitrators appointed in accordance with those rules. The arbitrators' award will be conclusive, binding and enforceable.
- 5.2.3. The place of arbitration will Brussels, Belgium. The arbitral proceedings will be in the English language.
- 5.2.4. To the fullest extent permitted by applicable law, Recipient waives all sovereign and other immunity Recipient may be entitled to claim in respect of any disputes or proceedings and recognition and enforceability of judgements or awards in respect of this Commercial Policy.

5.3. **Evidence**

Data Supplier's books and records (regardless of how and by which means they are kept) are deemed to constitute sufficient evidence of Recipient's obligations towards Data Supplier and of any facts and events relied upon by Data Supplier.



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