

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

Effective as of 2 August 2010

## Contents

	Page	
1	Scope of Applicability and Definitions	2
2	Scope of and Changes to the Non-Display Agreement	4
3	Granting of Licence	4
4	Rights to the Information and to Original Created Works	5
5	Notification of Non-Display Information Usage	5
6	Remuneration	6
7	Audit	7
8	Service Facilitator	7
9	No Warranty by Deutsche Börse AG for the Information distributed	7
10	Confidentiality and Data Protection	8
11	Use of MD+A interactive by the Contracting Party	8
12	Liability	9
13	Term and Termination	9
14	Transfer of Rights and Obligations under the Non-Display Agreement	10
15	Contacts	11
16	Final Provisions	11

# 1 Scope of Applicability and Definitions

The following General Terms and Conditions shall apply to each form of Non-Display Information Usage in electronic trading systems, as well as regarding the creation of Original Created Works.

## 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.

## Information

Quotes, prices, turnover figures, indices and other data marketed by Deutsche Börse AG, which are sourced by the Contracting Party either directly or indirectly, as well as data derived therefrom, from which originally disseminated quotes, prices, turnover figures, indices or other data can be determined through calculation or automated processes.

## Information Product

Bundling of Deutsche Börse AG Information as specified in the Price List.

## MD+A interactive

Online system of Deutsche Börse AG for authorized users of the Contracting Party 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 Information Usage

Non-Display Information Usage includes the following categories of usage:

- (i) Usage of Real-time Information for the creation of Original Created Works.  
This does not include the processing of Real-time Information by software (e.g. Microsoft Excel) which is subject solely to the permanent access of a particular user and which, in connection with the displayed Real-time Information, merely enables individual calculations and/or the individualized display of Information.
- (ii) Usage of Real-time Information in electronic trading systems for the purpose of generating orders or executing transactions in an automated and/or semi-automated manner. This includes, for instance, the use of Real-time Information for algorithmic trading, program trading or the automated monitoring of trading activities.

A Non-Display Information Usage shall also be deemed to exist if in connection with the above-described categories of usage a display of Real-time Information occurs. As far as in connection with a Non-Display Information Usage a display or an Entitlement for display of Real-time Information 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 Information Usage.

## Non-Display Agreement

Agreement consisting of the Agreement on Non-Display Information 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+A interactive, as well as the MD+A interactive Terms of Use.

## Non-Display Licence Fees

Fixed remuneration which is charged from the Contracting Party in accordance with the provisions of the Non-Display Agreement for the licence regarding Non-Display Information Usage.

#### **Original Created Works**

Any work/product (i) which is created by electronic systems from or using Real-time Information; and (ii) upon the display of which the Information processed can no longer be identified; and (iii) which has not been created for the initial purpose of substituting Information; and (iv) where the Information processed cannot be re-engineered by an automated process. Original Created Works include, for instance, indices, quotes, VWAPs (Volume-Weighted Average Prices), portfolio evaluation services and analytic reference figures which have been calculated from or using Real-time Information.

#### **Real-time Information**

Information which is available for use with a time delay of less than 15 minutes of its creation.

#### **Service Facilitator**

External service provider who/which is employed by the Contracting Party or its Affiliated Companies for the fulfillment 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.

#### **Vendor**

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

#### **Vendor Service Agreement**

Agreement between a Vendor and the Contracting Party 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 Information Usage by the Contracting Party and its Affiliated Companies. Within the scope of the Non-Display Agreement, its provisions shall prevail over the contractual stipulations between the Contracting Party or its Affiliated Companies, and the Vendors.
- 2.2 The Non-Display Agreement exclusively governs Non-Display Information Usage. Any other form of usage of Information (including the display or external dissemination of Information in connection with Non-Display Information Usage) shall be subject only to the contractual terms of the Vendor Service Agreement with the Vendor via which the Contracting Party and its Affiliated Companies obtain the Information. Furthermore, the Non-Display Agreement does not govern the technical connection to the CEF® systems of Deutsche Börse AG, Values API and/or other data feeds.
- 2.3 If the Contracting Party or an Affiliated Company has entered into a Market Data Dissemination Agreement with Deutsche Börse AG, Non-Display Information Usage will not require the conclusion of a Non-Display Agreement.
- 2.4 The terms of the Non-Display Agreement, including these General Terms and Conditions, may be unilaterally changed by Deutsche Börse AG subject to the Contracting Party being given at least 90 days' notice of the changes in written or electronic form. Messages in electronic form include e-mail messages to the e-mail address specified by the Contracting Party for this purpose, as well as messages via MD+A interactive. Unilateral changes of the terms of the Non-Display Agreement shall entitle the Contracting Party to terminate the Non-Display Agreement early by giving 30 days' notice, effective at the time the unilateral changes take effect.
- 2.5 For the Affiliated Companies of the Contracting Party, the provisions of the Non-Display Agreement shall apply mutatis mutandis. The Contracting Party guarantees the fulfillment of the obligations deriving from the Non-Display Agreement by its Affiliated Companies vis-à-vis Deutsche Börse AG. Prior to any Non-Display Information Usage by Affiliated Companies, Deutsche Börse AG must be notified via MD+A interactive in accordance with Section 5.

## 3 Granting of Licence

- 3.1 The Contracting Party and its Affiliated Companies are hereby granted a non-exclusive and non-transferable licence for the Non-Display Information Usage notified in accordance with Section 5.1 (a).
- 3.2 Whether a Non-Display Information Usage of a specific Information Product is permitted, not permitted or permitted with restrictions only is set out in the Price List.
- 3.3 Any onward dissemination of Information to third parties is prohibited without the express prior written approval of Deutsche Börse AG and, as a rule, requires prior conclusion of a Market Data Dissemination Agreement with Deutsche Börse AG.

## 4 Rights to the Information and to Original Created Works

- 4.1 The Contracting Party 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®)).
- 4.2 The Contracting Party 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, International Index Company Ltd. or Irish Stock Exchange Ltd.) 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 does not claim intellectual property rights to Original Created Works. Under the Non-Display Agreement, internal use, as well as external dissemination of Original Created Works by the Contracting Party or its Affiliated Companies is not subject to any restrictions or to any remuneration. With regard to Original Created Works, only the usage of Real-time Information for the creation of the Original Created Works is subject to remuneration.

## 5 Notification of Non-Display Information Usage

- 5.1 The Non-Display Information Usage by the Contracting Party or one of its Affiliated Companies is to be notified to Deutsche Börse AG in advance via MD+A interactive. In this respect, the Contracting Party shall specify in MD+A interactive in particular,
- a) which Information Products will be employed for Non-Display Information Usage;
  - b) whether the Non-Display Information Usage will be internal, or whether Original Created Works will be disseminated to third parties;
  - c) when the Non-Display Information Usage will start;
  - d) from which Vendors/service providers the Contracting Party will obtain the Information; and
  - e) which Service Facilitators will support the activities of the Contracting Party or its Affiliated Companies.

Deutsche Börse AG reserves the right to request further information from the Contracting Party regarding the intended Non-Display Information Usage.

- 5.2 Deutsche Börse AG must be informed without delay of any changes to the actual or intended Non-Display Information Usage, as well as to the Affiliated Companies notified, in accordance with Section 5.1 or 2.5, as appropriate.
- 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 Remuneration

- 6.1 Since April 2008 the licence for Non-Display Information Usage of Real-time Information is, in general, subject to remuneration and triggers Non-Display Licence Fees in accordance with the Price List. For the creation of Original Created Works which will be disseminated externally by the Contracting Party or its Affiliated Companies to third parties separate Non-Display Licence Fees will be charged for the related use of Real-time information. The subsequent external dissemination of the Original Created Works created on the basis of Real-time Information itself will not be subject to any further remuneration.
- 6.2 The Contracting Party undertakes to pay the remuneration (Non Display 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.deutsche-boerse.com/mda\\_e](http://www.deutsche-boerse.com/mda_e) and forms an integral part of the Non-Display Agreement. As far as the remuneration payment by the Contracting Party is subject to Value Added Tax, the statutory Value Added Tax shall be added to the remuneration set out in the Price List to the Non-Display Agreement in each case.
- 6.3 The fee-liability commences on the start date specified by the Contracting Party in MD+A interactive for the Non-Display Information Usage, irrespective of actual Non-Display Information Usage by the Contractual Party or its Affiliated Companies. The remuneration will be invoiced to the Contracting Party monthly in advance. The remuneration paid is not refundable upon termination of the Non-Display Agreement during the relevant month.
- 6.4 All invoices shall be due and payable immediately. If the Contracting Party fails to effect payment within 30 days of receipt of the invoice, default interest will become due at a rate of 8 percentage points above the German base rate. The right of Deutsche Börse AG to obtain compensation for further default damages shall remain unaffected.
- 6.5 The remuneration set out in the Price List to the Non-Display Agreement may be unilaterally changed by Deutsche Börse AG, observing the restrictions set out in Section 2.4.
- 6.6 At the request of Deutsche Börse AG, the Contracting Party shall provide Deutsche Börse AG with details of a credit card account via which Deutsche Börse AG can debit the Contracting Party with the invoice amounts when they fall due.
- 6.7 In the event of incorrect or incomplete representations in the notifications regarding Non-Display Information Usage to be made under Section 5.1 as well as in the event of failure to make notifications, the remuneration that Deutsche Börse AG did not receive due to improper notifications shall be paid retroactively. For such remuneration to be paid retroactively, Deutsche Börse AG shall be entitled to demand interest pursuant to Section 6.4 as of the point in time at which interest would have accrued in the case of correct notifications in MD+A interactive. In case of willful or grossly negligent failure to make correct and complete notifications regarding the Non-Display Information 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 remuneration to be paid retroactively in accordance with the first sentence of this section, which shall equal a maximum of the remuneration to be paid retroactively including interest.

## 7 Audit

- 7.1 Deutsche Börse AG shall be entitled to carry out an audit at the Contracting Party, its Affiliated Companies as well as at its Service Facilitators within the meaning of Section 8 in order to review the accuracy of the notifications under Section 5.1 regarding the Non-Display Information Usage by the Contracting Party and its Affiliated Companies, as well as the due compliance with the further obligations deriving from the Non-Display Agreement. The Contracting Party 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 Contracting Party itself, the sites of its Affiliated Companies or the sites of the Service Facilitators within the meaning of Section 8. 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 Contracting Party 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 Information Usage and the Non-Display Information Usage performed.

## 8 Service Facilitators

The Contracting Party may outsource the operation, the development, the hardware and other services related to Non-Display Information 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&A interactive following receipt of a Service Facilitator Application from the Contracting Party. The Service Facilitator Application is to be submitted online via MD&A interactive. For this purpose the Contracting Party shall notify Deutsche Börse AG via MD&A 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 Contracting Party remains fully liable vis-à-vis Deutsche Börse AG for the fulfillment of the contractual obligations under the Non-Display Agreement.

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

The purpose of the Non-Display Agreement is to grant the Contracting Party rights regarding Non-Display Information 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 Contracting Party and the Affiliated Companies 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 information provided by the Contracting Party under the Non-Display Agreement as confidential, and may not make such information available to third parties. 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.
- 10.2 As an exception to Section 10.1, Deutsche Börse AG may provide the Vendor from which the Contracting Party or an Affiliated Company, as the case may be, obtains information for Non-Display Information 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 Contracting Party.
- 10.3 Within the frame of the Non-Display Agreement between Deutsche Börse AG and its Contracting Party individuals associated with the Contracting Party 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+A interactive by the Contracting Party

- 11.1 The Contracting Party undertakes to use solely the online system MD+A interactive for the conclusion and the administration of the Non-Display Agreement.
- 11.2 The Contracting Party is subject to the MD+A interactive Terms of Use for the online system MD+A interactive, the current version of which may be viewed and downloaded on the Internet at [www.deutsche-boerse.com/mda\\_e](http://www.deutsche-boerse.com/mda_e) and which form an integral part of the Non-Display Agreement.
- 11.3 Section 2.4 shall apply to changes to the MD+A 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 Deutsche Börse AG shall pay damages - irrespective of the legal grounds (e.g. default or tort) - only in the following scope:
- a) In the event of wilful intent, Deutsche Börse AG shall be fully liable.
  - b) In the event of gross negligence and in the event of default regarding a guarantee undertaking Deutsche Börse AG shall be liable up to the amount of the foreseeable damage which should be prevented by the relevant duty of care or the guarantee undertaking.
  - c) In the event of simple negligence, Deutsche Börse AG shall only be liable when defaulting with a cardinal obligation, i.e. an obligation which is so material that the attainment of the purpose of the agreement is jeopardized. In this case, Deutsche Börse shall be liable for the damage which is typical and was foreseeable.
  - d) Beyond lit. a) to c), Deutsche Börse AG shall not be liable.
  - e) As far as Deutsche Börse AG is obliged to compensate frustrated expenses, the stipulations at lit. a) to c) shall apply *mutatis mutandis*.
  - f) The statutory liability for the injury of life, body and health, as well as under the Product Liability Act, shall remain unaffected.
- 12.2 The objection of contributory negligence shall remain unaffected.
- 12.3 Damage claims of the Contracting Party 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 Contracting Party 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 Contracting Party shall not be liable for any damages 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+A 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 Contracting Party shall be entitled to terminate the licence for the Non-Display Information Usage regarding 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 Information 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 licence rights by giving 90 days' notice to the end of a calendar month, in particular the licence regarding the Non-Display Information Usage for particular Information Products. In the case of such partial termination of the Non-Display Agreement by Deutsche Börse AG, the Contracting Party 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+A interactive.

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

- 14.1 Each transfer of the Contracting Party'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 & Analytics. 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+A 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 & Analytics Front Office Data & Analytics 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:mda.frontoffice@deutsche-boerse.com">mda.frontoffice@deutsche-boerse.com</a>
For the Contracting Party:	To the person or persons nominated by the Contracting Party via MD+A interactive.

## 16 Final Provisions

- 16.1 The Non-Display Agreement shall be subject to the laws of the Federal Republic of Germany. 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 Contracting Party at its general place of jurisdiction.
- 16.2 There are no verbal supplementary agreements to this Agreement. Supplementary agreements to the Non-Display Agreement shall be effective only when made in writing.
- 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.

---

CEF<sup>®</sup>, Classic All Share<sup>®</sup>, CDAX<sup>®</sup>, DAX<sup>®</sup>, DAX plus<sup>®</sup>, DivDAX<sup>®</sup>, HDAX<sup>®</sup>, L-DAX<sup>®</sup>, L-MDAX<sup>®</sup>, L-SDAX<sup>®</sup>, L-TecDAX<sup>®</sup>, MDAX<sup>®</sup>, RDAX<sup>®</sup>, SDAX<sup>®</sup>, TecDax<sup>®</sup>, VDAX<sup>®</sup>, VDAX-NEW<sup>®</sup>, eb.rexX<sup>®</sup>, Eurex<sup>®</sup>, Eurex Bonds<sup>®</sup>, Eurex Repo<sup>®</sup>, GEX<sup>®</sup>, Newex<sup>®</sup>, REX<sup>®</sup> and Xetra<sup>®</sup> are registered trademarks of Deutsche Börse AG.

Scoach<sup>®</sup> is a registered trademark of Börse Frankfurt Smart Trading AG.

EEEX<sup>®</sup> is a registered trademark of European Energy Exchange AG.

iBoxx<sup>®</sup> is a registered trademark of International Index Company Ltd.

STOXX<sup>®</sup> is a registered trademark of STOXX Ltd.

Tradegate<sup>®</sup> is a registered trademark of Tradegate AG Wertpapierhandelsbank.