

# General Terms and Conditions to the Cloud Stream Agreement of Deutsche Börse AG

Version 1\_2

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## Preamble

Deutsche Börse AG is the parent company of Deutsche Börse Group, a group of affiliated companies within the meaning of Sec. 15 et seqq. German Stock Corporation Act (*Aktiengesetz*; hereinafter “**Deutsche Börse Group**”). DBAG licenses and provides access to the market data either generated at the Deutsche Börse Group trading venues (such as the Frankfurt Stock Exchange, Eurex Deutschland or 360T) or made available by third-party licensors.

The licensing of the actual market data is subject to a Data License Agreement. Contracting Parties may gain access to the licensed data either by connecting to the Consolidated Exchange Feed (“**CEF**”) or by accessing Cloud Stream. CEF is a consolidated high performance data feed through which DBAG distributes its market data which makes available the data in real-time. Cloud Stream is a service from DBAG that enables Real-time Data distribution via a cloud-based IT solution. It enables Contracting Parties to access Real-time Data through a convenient and an easy-to-connect API without the need for physical connectivity to different data access points. Contracting Party can technically access Cloud Stream via the public internet.

This Cloud Stream Agreement is a modular agreement consisting of several documents which all form an integral part of the aforementioned agreement. The Cloud Stream Agreement consists of the document headlined Cloud Stream Agreement, the General Terms and Conditions (the document at hand), the Price List, the Order Form and the MD+S interactive Terms of Use (collectively, the “**Agreement**”). Subject to Section 1.4, the Parties may enter into Order Forms in order to determine (i) the scope of the Information Products, (ii) the specific access fees as well as (iii) the number of accesses required. Purpose of this Agreement is to stipulate the requirements applicable to the access to the Cloud Stream.

For the avoidance of doubt, this Agreement does not grant any right, license or title to the data made available on Cloud Stream and Contracting Party is required to enter into a Data License Agreement in addition to this Agreement with respect to the usage of the data made available via Cloud Stream. Therefore, Contracting Party shall, as a prerequisite for the service provision under this Agreement, enter into the respective Data License Agreement. Furthermore, DBAG’s obligations under this Agreement shall not include the provision of telecommunication or network services necessary to access the Cloud Stream. Such services shall be Contracting Party’s sole responsibility. DBAG does not provide a cloud service to Contracting Party which enables Contracting Party to store, access its data or make it available to third parties.

All capitalized terms used above and below in these GTC are defined or referenced in **Annex 1**.

## 1. Scope of the Agreement

- 1.1 The Agreement governs the technical access of the Contracting Party to Cloud Stream, particularly the technical requirements for the Cloud Stream Access, the mutual rights and obligations deriving from the technical access to the Cloud Stream as well as the term of the technical access to Cloud Stream.
- 1.2 For the avoidance of doubt, this Agreement does not govern the receipt and the use of Information Products the Contracting Party obtains via a Cloud Stream. Contracting Party acknowledges and agrees that any usage of Information Products or Information made available via Cloud Stream requires the prior conclusion of a Data License Agreement. Contracting Party agrees that DBAG or a third-party licensor, whatever case may be, are the sole owner of the respective Information made available via Cloud Stream.
- 1.3 Conclusion of a Cloud Stream Agreement is a compulsory requirement for the technical access of the systems of a natural person or a legal entity to a Cloud Stream. Every individual natural or legal person with own access to Cloud Stream shall enter into a separate Cloud Stream Agreement. For the avoidance of doubt, this shall also apply to Affiliates (even if other Affiliates of the same group may have already entered into a Cloud Stream Agreement).
- 1.4 Contracting Party may order access to Cloud Stream based on the selections made in the Order Form. Contracting Party may specifically select in the Order Form the Information Products which shall be made available via Cloud Stream. For the avoidance of doubt, DBAG does not grant any license, usage rights or title with respect to Information Products selected by Contracting Party in the Order Form. Any selection made by Contracting Party with respect to Information Products only serves the purposes to (i) grant access to individual Information Products Contracting Party is entitled to and (ii) to determine the Cloud Stream Access Fee. Contracting Party represents and warrants that it only selects Information Products in the Order Form for which Contracting Party has obtained a license.
- 1.5 The selection, ordering and termination of the Information Products as well as the Cloud Stream Accesses shall be made by using the Order Form which (individually) forms an integral part of the Agreement. The submission of an Order Form by Contracting Party shall constitute a binding offer to the conclusion of an agreement. An agreement is only concluded once DBAG accepted Contracting Party's offer either by explicitly stating the acceptance towards Contracting Party or in an implied (*konkludent*) manner if DBAG grants access to Cloud Stream. The corresponding credentials for the access will be provided by DBAG based on the details provided in the aforementioned form.
- 1.6 DBAG's obligations under this Agreement shall not include the provision of telecommunication or network services necessary to access the Cloud Stream. Such services shall be Contracting Party's sole responsibility. For the avoidance of doubt, DBAG does not provide a cloud service to Contracting Party which enables Contracting Party to store, access its data or make it available to third parties.

## 2. Service Provision

- 2.1 DBAG shall make available licensed Information Products to Contracting Party via Cloud Stream based on the individual order of Contracting Party according to the service portfolio stipulated in the Order Form. Subject to the conclusion of a Data License Agreement, Contracting Party may access the Cloud Stream.
- 2.2 Subject to Section 4 and this clause, Cloud Stream shall, in general, be available 24 hours basis on a Business Day. For the avoidance of doubt, the respective Information Product made available via Cloud

Stream is only available and updated if the relevant trading venue or other source(s) of the Information is open for business and/or trading. DBAG provides commercially reasonable efforts to hold Cloud Stream available for an average of 99% on a yearly basis excluding the planned maintenance hours.

- 2.3 The Cloud Stream services are based on cloud services provided by different Cloud Service Providers. Depending on the Cloud Service Provider further provisions may apply.
- 2.4 On a Business Day, a help desk service of DBAG will be available to the Contracting Party in English and German. The help desk is not responsible for questions that are not related Cloud Stream (e.g. questions in relation to the Data License Agreement or to trading).
- 2.5 DBAG shall provide Contracting Party with sufficient documentation explaining inter alia the requirements, technical details and message layouts by providing a user's manual for the Cloud Stream ("**Cloud Stream User Manual**") accessible via MD+S interactive. DBAG reserves the right to make updates and changes to the Cloud Stream User Manual from time to time.
- 2.6 DBAG will render the agreed services in accordance with the terms of this Agreement and in compliance with generally acknowledged and proven technical standards. Any technical or other specifications or standards shall be binding only if expressly agreed within the respective order form. Dates or periods of time shall be binding on DBAG only if designated as binding by DBAG.
- 2.7 DBAG is entitled to use subcontractors in order to fulfil its obligations agreed between the Parties; however, DBAG shall remain fully liable for the fulfilment of its obligations hereunder, irrespective of any subcontracting.
- 2.8 DBAG strives to provide its services under this Agreement without any interruption. However, DBAG does neither represent nor warrant that the service provision will be free from any interruptions. In particular, DBAG cannot exclude that its systems or systems which are provided by third-parties (such as Cloud Service Providers) may temporarily malfunction. In these circumstances, DBAG is entitled, in accordance with the exercise of equitable discretion (*billigem Ermessen*) pursuant to Section 315 of the German Civil Code (*Bürgerliches Gesetzbuch*) to limit its service provision. DBAG endeavours to resume the ordinary service provision as soon as practically possible.

### 3. Obligations of the Contracting Party

- 3.1 Contracting Party shall remain responsible for its own hardware components and software components, in particular the local networks, interfaces and input devices (hereinafter referred to as „**Contracting Party System**“) which it uses to access Cloud Stream. Contracting Party shall be responsible for the operation of the Contracting Party System.
- 3.2 Contracting Party shall be responsible for and shall carry out the acquisition, installation, configuration as well as the operation and maintenance of such internet connection. DBAG does not warrant for the availability and performance of an internet connection. Contracting Party shall ensure that the bandwidth of its internet connection is sufficient for accessing the Cloud Stream. Errors in the internet connectivity and other related issues such as communication with the internet service provider shall be handled by Contracting Party.
- 3.3 Contracting Party shall without undue delay (*unverzüglich*) inform DBAG in the following events:
  - a) of any faults of or errors in the transmission of Information Products via Cloud Stream;

- b) about any corporate restructurings (e.g. merger, separation, change in the controlling shareholders, etc.);
- c) if Contracting Party identifies irregularities with respect to the permitted scope of use.

3.4. Contracting Party shall not use, or facilitate or allow others to use the Cloud Stream:

- a) for any illegal or fraudulent activity;
- b) to violate the rights of others;
- c) to threaten, incite, promote, or actively encourage violence, terrorism, or other serious harm;
- d) for any content or activity that promotes child sexual exploitation or abuse;
- e) to violate the security, integrity, or availability of any user, network, computer or communications system, software application, or network or computing device;
- f) to distribute, publish, send or facilitate the sending of unsolicited mass email or other messages, promotions, advertising, or solicitations (or "spam").

Contracting Party shall indemnify, hold harmless and defend DBAG and their respective directors, officers, agents, representatives or employees (each a "DBAG Indemnified Party") against any and all claims, actions or demands of third parties against any DBAG Indemnified Party arising out of or related to any claim by a third party of Contracting Party's infringement of section 3.4 lit. a) to f).

## 4. Cloud Stream Change Management

4.1 Contracting Party acknowledges that the underlying cloud technology used for the provision of the Cloud Stream service is provided by a third-party service provider. Service interruptions may be caused by this service provider when maintenance works is being conducted or changes to the underlying cloud technology is being implemented. DBAG undertakes commercially reasonable efforts to agree with third-party service providers on maintenance hours which are intended to take place outside operating hours, or during operating hours, Monday to Friday between 22:00 and 6:00 CET/CEST. For the avoidance of doubt, DBAG does not warrant that maintenance works or the implementation of changes only take place during the aforementioned times. Maintenance hours of DBAG are also subject to the maintenance hours of the Cloud Service Provider.

4.2 DBAG may, in accordance with the exercise of equitable discretion (*billigem Ermessen*) pursuant to Section 315 of the German Civil Code (*Bürgerliches Gesetzbuch*) (i) implement changes in the underlying cloud technology and topology (such as operation system changes, hardware upgrades or data centre moves), (ii) extend or decommission the cooperation a Cloud Service Provider and (iii) amend the technical specifications of accessing Cloud Stream within an appropriate timeframe.

4.3 DBAG reserves the right to execute emergency maintenance works at any time without advance notification.

## 5. Liability

5.1 Under this Agreement, DBAG'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 DBAG, its legal representatives or vicarious agents;
- b) for any other loss or damage caused by intentional or grossly negligent acts or omissions of DBAG, 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*).

- 5.2 In all other cases (other than those listed in Section 5.1), DBAG shall only be liable for loss or damage resulting from the breach of a material contractual obligation (*wesentliche Vertragspflicht*) by DBAG, 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 Contracting Party 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, DBAG's liability shall be limited to compensating for foreseeable loss or damage typically arising at the time the service was provided under this Agreement.
- 5.3 Damages claims of the Contracting Party shall become time-barred after two (2) years as far as the Agreement does not provide for a shorter period and the claims do not derive from an injury of life, body, health or freedom or from wilful intent. The period 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.

## 6. Force Majeure

- 6.1 DBAG and the Contracting Party 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.

## 7. Remuneration

- 7.1 Contracting Party shall pay the Cloud Stream Access Fee as stipulated in the Price List.
- 7.2 DBAG will issue an invoice for the Cloud Stream Access Fee. All invoices will become due immediately. In the event that the Contracting Party does not pay within thirty (30) calendar days since receipt of the invoice, a default interest at a rate of nine (9) percentage points above the German base rate (*Basiszinssatz*) shall accrue. DBAG retains the rights regarding further damages resulting from overdue payments.
- 7.3 All amounts and Cloud Stream Access Fees payable under the Cloud Stream 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 Cloud Stream Access Fees are due without any deduction of taxes (e.g. withholding tax or similar duties). If and to the extent that the Contracting Party is obliged to pay for any such tax, the amount of the Cloud Stream Access 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 Contracting Party 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 with and support the Contracting Party in reducing or obtaining an exemption from the withholding tax to be borne by the Contracting Party in accordance with the applicable double taxation treaty or any other applicable law or regulation.

- 7.4 The fees for the Cloud Stream Accesses which the Contracting Party has ordered shall be paid by the Contracting Party irrespective of the duration of the technical access to the Cloud Stream concerned until the Cloud Stream Agreement has been terminated. The Cloud Stream Access Fee shall be paid regardless of whether the Contracting Party has concluded a Data License Agreement or is entitled to receive Information Products under such a Data License Agreement via different means than Cloud Stream.
- 7.5 DBAG retains the right to amend the Price List, particularly in order to compensate the increased costs for the provision of Cloud Stream concerned or the related services (such as, but not limited to the situation that a Cloud Service Provider increases its fee). Adjustments to the Price List will be made by DBAG according to its reasonably exercised discretion, taking into consideration the legitimate interests of Contracting Party and giving at least ninety (90) calendar days' notice. Within this period of notice, Contracting Party shall have the right to terminate the Cloud Stream Agreement with thirty (30) calendar days' notice commencing from the effective date of the proposed amendment. Notice shall be given in writing or in electronic form within the meaning of Section 10.

## 8. Term and Termination

- 8.1 The Agreement shall become effective on the Effective Date, in the absence of such indication upon signing by both Parties. The Agreement is concluded for an indefinite period of time.
- 8.2 The Parties may terminate the Agreement with effect to the end of a calendar month giving ninety (90) calendar days' notice. Contracting Party shall be entitled to terminate individual Cloud Stream Accesses with effect to the end of a calendar month giving ninety (90) calendar days' notice using the Order Form. In case that after a partial termination in accordance with the second sentence there remains no active Cloud Stream Access the partial termination shall be deemed as a termination of the entire Cloud Stream Agreement.
- 8.3 The Parties agree that with the termination of a Data License Agreement which governs the license for Information Products offered via Cloud Stream also this Agreement shall automatically terminate as of the effective date of the termination of the Data License Agreement if no other license is in place.
- 8.4 Each party may terminate a Cloud Stream Agreement for cause (*aus wichtigem Grund*) at any time, with immediate effect and for the following reasons:
- a) if a Party is in material breach of this Agreement and fail to remedy such breach within thirty (30) calendar days of written notice specifying the breach. Under the same conditions, DBAG may, without prejudice to the right to terminate the Agreement and without forfeiting its claim for payment of fees, suspend access to Cloud Stream until such breach has been remedied (if DBAG is the non-breaching Party);
  - b) in case of the other Party's bankruptcy, liquidation, winding up, assignment for the benefit of creditors or similar procedures; or
  - c) a Data License Agreement was terminated resulting in the situation that Contracting Party has no license for the Information Products made available via Cloud Stream;
  - d) Contracting Party lodges an objection to an amendment pursuant to Section 10;
  - e) a material change in the regulatory framework within the European Union or any other foreign jurisdiction occurs, which has a material adverse effect on the ability of DBAG to comply with its obligations under this Agreement;
  - f) a material change in the administrative practice of any competent authority responsible for the supervision of either (i) DBAG and/or its sub-contractor(s) or (ii) Contracting Party occurs, which has a material adverse effect on the ability of DBAG to comply with its obligations under this

Agreement; in particular, where such competent authority decides that one or certain provisions of the Agreement is not compatible with regulatory requirements.

8.5 In the event Contracting Party lodges an objection pursuant to Section 10, DBAG is entitled to terminate this Agreement with effect as of the effective date of the proposed amendment.

## 9. Transfer of Rights

9.1 Each transfer of the Contracting Party's rights and obligations deriving from the Agreement shall require the prior written consent (incl. via e-mail) of DBAG.

9.2 DBAG shall be entitled to transfer the Agreement with all rights and obligations deriving from it to an Affiliate. Upon transfer of this Agreement, only that Affiliate shall be entitled and obliged under this Agreement; DBAG shall be released from all obligations under this Agreement. DBAG shall announce the transfer at least ninety (90) calendar days prior to the intended effective date of the transfer. Contracting Party shall be entitled to terminate the Agreement with effect as of the transfer effective date with prior notice to be submitted at least four (4) calendar weeks prior to the transfer effective date.

## 10. Amendments to this Agreement

10.1 DBAG may propose amendments to this Agreement to the Contracting Party, by informing Contracting Party of the amendments no later than ninety (90) days before the proposed date of application of the amendments. Contracting Party may within thirty (30) days commencing from the reception of the announcement accept or reject the proposed amendments. Contracting Party may object the proposed amendment resulting in the situation that the proposed amendment will not enter into effect and DBAG is entitled to terminate in accordance with Section 8.4. lit. d). Contracting Party is deemed to have approved the amendments, if Contracting Party has not objected.

## 11. Dedicated Contact Persons

11.1 Contracting Party will provide a contact person within its respective organization who will act as an interface and contract manager. The details for customer's contact person will be specified in the Order Form. If Contracting Party changes its contact person during the term of this Agreement, it will notify DBAG without undue delay (unverzüglich). In this event, the Parties agree that DBAG may amend the contact information and circulate an updated version of the Order Form.

11.2 The Parties will inform each other immediately of events and developments that could potentially materially affect the interests of the Parties in connection with this Agreement. Where DBAG reasonably requests additional information from Contracting Party, it shall direct a request at Contracting Party's contact person who shall use reasonable efforts to answer such a request. All information or other notifications under a Cloud Stream Agreement shall be made to the following contacts of the Parties:

for DBAG: DBAG  
Market Data + Services  
D-60485 Frankfurt am Main  
Tel.: +49-69-2 11-1 34 40  
Fax: +49-69-2 11-1 44 79  
E-mail: data.services@deutsche-boerse.com

for Contracting Party: to the person specified in MD+S interactive.

11.3 The contact persons shall be deemed authorized to receive notice under or in connection with this agreement and any notices and communications between the Parties shall be addressed at least in copy to the respective contact person.

## 12. Miscellaneous

12.1 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 Agreement:

- the Order Form;
- the Price List;
- the GTC;
- the MD+S interactive Terms of Use;
- the Cloud Stream Agreement.

12.2 This Agreement will be governed by, and construed in accordance with, the laws of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). Place of jurisdiction for any dispute arising out of the Agreement will be Frankfurt am Main, Germany. However, DBAG shall have the right to bring an action against the Contracting Party at the latter's general place of jurisdiction.

12.3 Verbal supplements or amendments to the Agreement do not exist. 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 (simple electronic signature is sufficient). Furthermore, the above form requirement itself can also be revoked expressly and in electronic form (simple electronic signature is sufficient). Whenever this Agreement requires written form for declarations, such declarations may also be transmitted electronically in accordance with this Section.

12.4 Should individual provisions of the Agreement be invalid or become invalid, this shall not affect the validity of the remaining provisions. In place of the invalid provision an appropriate legally permissible provision shall apply which corresponds as closely as possible to the economic intentions of the parties. This applies accordingly if and to the extent where there is an omission in the Cloud Stream Agreement. Such omission shall be remedied by including into the Agreement a provision which corresponds to that what the parties intended or would have intended had they been aware of the omission.

12.5 Any processing of personal data shall be performed in accordance with DBAG privacy notice accessible via <https://www.mds.deutsche-boerse.com/mds-en/privacy-notice/privacy-notice-deutsche-boerse-ag>.

## Annex 1: Definitions

For the purpose of this Agreement, the terms listed below shall have the following meanings:

<b>Affiliate</b>	shall mean any legal entity that controls or is controlled by or is under common control with Contracting Party, either directly or indirectly through one or more intermediaries. For the purpose of this definition, control shall mean a) the power to direct or cause the direction of management or policies of an entity, either directly or indirectly, or b) direct or indirect ownership of at least fifty percent (50%) of an entity's equity interest.
<b>Agreement</b>	defined in the Preamble.
<b>Business Day</b>	shall refer to any business day in Frankfurt/Main, Germany.
<b>CEF</b>	shall have the meaning ascribed to this term in the Preamble.
<b>Cloud Service Provider</b>	shall refer to any service provider of a cloud service whose service is supported by Cloud Stream and whose service can be directly accessed by Contracting Party.
<b>Cloud Stream</b>	shall refer to a service from DBAG that enables Contracting Parties to access Real-time Data through an API without the need for physical connectivity to different data access points.
<b>Cloud Stream Access</b>	shall refer to the technical access enabling log-in to the API interface and subscription to a particular Information Product via this API.
<b>Cloud Stream Access Fee</b>	constitutes the remuneration charged per Cloud Stream Access (Section 7.1 of the GTC).
<b>Cloud Stream Agreement</b>	shall refer to the document headlined Cloud Stream Agreement.
<b>Cloud Stream User Manual</b>	shall have the meaning given in Section 2.5.
<b>Contracting Party System</b>	shall have the meaning given in Section 3.1.
<b>Effective Date</b>	shall mean the date set out on the front page of the document headlined Cloud Stream Agreement.
<b>Data License Agreement</b>	shall refer to one or more separate agreement(s) between Contracting Party and DBAG concerning the usage rights (license) of Information Products that are made available via Cloud Stream or in a different manner (e.g. Market Data Dissemination Agreement, Non-Display Agreement, etc).
<b>Deutsche Börse Group</b>	shall have the meaning ascribed to this term in the Preamble.
<b>GTC</b>	shall refer to the document at hand, the General Terms and Conditions to the Cloud Stream Agreement.
<b>Information</b>	shall refer to market data, quotes, prices, turnover figures, indices and other data marketed by DBAG, which are sourced by Contracting Party 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 DBAG can be determined through calculation or automated process 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 DBAG (i.e. as substitute). In case of doubt DBAG determines at its sole discretion whether derived data is Information within the meaning of (i) and/or (ii) above.
<b>Information Products</b>	shall mean bundling of Information as specified in the Order Form.
<b>Order Form</b>	shall mean the Order Form to the Cloud Stream Agreement.

<b>Parties</b>	shall refer to DBAG and Contracting Party collectively.
<b>Price List</b>	shall refer to the Price List to the Cloud Stream Agreement.
<b>Real-time Data</b>	shall mean Information delivered with a delay of less than 15 minutes after publication.