

# MTS ALPHA

## Terms & Conditions

JULY 2020 VERSION



# Foreword and Interpretation

EuroMTS is entitled, by virtue of its management of a wholesale screen-based trading system for financial instruments as well as certain licensing agreements, to distribute the data of the MTS Markets (as defined below) to third parties in accordance with the terms of such respective licensing agreements.

These Terms set out the general terms and conditions governing the grant of a licence to permit the use of MTS Alpha as provided by EuroMTS Limited as Licensor. Data, as selected on the Order Form, shall be made available to Participants via an NSP.

Please also refer to the relevant policies applicable to your subscription set out in the Schedules (as amended by EuroMTS from time to time) for further rules and guidance, which together with these Terms and the Order Form constitute the licence Agreement.

## 1. Definitions

1.1 In the Agreement, the following words shall have the following meanings:

Affiliates	means any of the Participant group undertakings, as construed in accordance with Sec. 1161 of the Companies Act 2006.
Agreement	means these Terms, the Order Form (including Charges) and the Schedules.
Audit Rights	has the meaning set out in Clause 14.
Commencement Date	means the date agreed by the parties in the executed Order Form.
Data	means the information contained in MTS Alpha and described in the Policy Schedule.
Charges	means the list of charges payable for MTS Alpha as set out in the Order Form and amended in accordance with these Terms from time to time.
Derived Data	means data that is the output of calculations or analysis performed by or on behalf of the Participant using Data as an input, provided that such Data used to calculate the Derived Data does not, in the Participants good faith judgment, remain identifiable in (except by chance or appenstance), and may not be readily extracted or reverse-engineered from, the Derived Data.
Participant	means the party listed as such in the Order Form and authorised to access the Data.

Force Majeure Event	means any cause beyond a party's reasonable control affecting the performance of its obligations hereunder including but not limited to fire, flood, explosion, accident, war, strike, embargo, governmental or regulatory requirement, civil or military authority, act of God, and industrial disputes.
Intellectual Property Rights	means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in designs, rights in computer software, database rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
Licence	means the licence granted in Clause 2 and stipulated in the Order Form.
Licensor	EuroMTS Limited, a corporation incorporated under the laws of England and Wales, with company number 03615752, and registered office at 10 Paternoster Square, London EC4M 7LS, England.
Minimum Term	shall be twelve (12) months from the Commencement Date, unless agreed otherwise in the Order Form.
MTS Markets	means those financial markets operated by the Licensor and its licensors as listed on the Licensor's website from time to time.
Network Service Provider	means a third party network service provider (NSP), authorised as such by Licensor, who is providing Participants with network connectivity to MTS Markets.
Order Form	means a validly executed MTS Alpha Order Form accepted by the Licensor.
Policy Schedule	means the MTS Alpha Policy Schedule containing Licensor's policies (as amended by the Licensor from time to time).
Schedules	means one or more schedules to these Terms, including the Policy Schedule, as published by the Licensor from time to time.
Terms	means these MTS Alpha Terms & Conditions.
Terms of Use	means those terms of use of the Data as set out in the Policy Schedule.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes and e-mail.
- 1.10 Any words following the terms including, include, in particular or for example or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.

## 2. Grant of Licence

- 2.1 Upon acceptance by the Licensor of a validly executed Order Form, the Licensor grants to the Participant, a non-exclusive, non-assignable, limited right worldwide Licence to use, store and process the Data in accordance with the terms and conditions of the Agreement.
- 2.2 The Participant will receive the Data via an NSP and such Licence granted under Clause 2.1 shall be subject to the NSP having in place a valid and binding licence with the Licensor, which has not been terminated and/or suspended at any time. Participant shall have a valid and binding agreement with an NSP for accessing the Data.
- 2.3 The Participant shall, inter alia, use such Data and pay to the Licensor such Charges, in accordance with the terms and conditions of this Agreement, and nothing in the Agreement shall be construed as granting any rights to use, store, reproduce, make available and redistribute (subject to Clause 2.5) the Data or reproduce excerpts of the Data in any way, other than in accordance with the terms and conditions of this Agreement. The Participant shall obtain the Licensor's express prior written consent for any usage which is not expressly covered in this Agreement.

For the avoidance of doubt, the Participant shall not do anything with the Data and has no rights in respect of the Data other than as expressly granted in this Agreement. Rights to create, store or distribute any Derived Data are specified in the Policy Schedule.

- 2.4 The Participant may provide the Data to their Affiliates provided the Order Form includes permission by the Licensor for such. For the purposes of the Agreement, the Participant shall be responsible for the payment of all applicable Data Charges, if any, associated with any such use by its Affiliates and shall procure that each of its Affiliates complies fully with clauses 2, 3, 4, 11, 12, 13, 14, and 16, of this Agreement as if it were the Participant, such that the Participant agrees it shall be liable for any breach by a member of its Affiliates as if that breach had been committed by the Participant itself. The Participant shall advise the Licensor as soon as possible if it becomes aware of any breach of the relevant provisions of this Agreement by any Affiliate, it shall remedy the breach as soon as possible and act accordingly to the Licensor instructions.
- 2.5 The Participant shall have in place sufficient controls to prevent the dissemination of Data external to the Participant and its Affiliates and shall not use the Data for any purpose contrary to any law or regulation in the jurisdictions in which the Participant operates. For the avoidance of doubt, the Participant by signing this Agreement undertakes to make every effort to comply with the European Securities and Markets Authority Guidelines on systems and controls in an automated trading environment for trading platforms, investment firms and competent authorities issued on February 24<sup>th</sup>, 2012. The Participant usage of the Data shall be in full compliance with the provision of the market rules of each relevant MTS Market and of the membership documentation agreed upon between the company managing the relevant MTS Market and the Participant. Further, the Participant's use of the Data shall at all times be subject to the Policy Schedule and not do anything which may damage the reputation of the Licensor or the Data.
- 2.6 In addition to the Licensor's rights under this Agreement, the Participant further acknowledges that the Licensor has the right to, (and require an NSP to, where relevant) discontinue the supply of Data to any Participant who does not agree to or comply or act in accordance with the terms of clause 2 of this Agreement and the Terms of Use of the Policy Schedule. In such cases:
  - a) the Licensor shall, where practicable to do so, provide ten (10) days' prior notice of any permanent discontinuance or of any temporary suspension of the Data in writing to the Participant concerned; and
  - b) such notice shall state the relevant date of disconnection or temporary suspension or any period of discontinuance (if relevant) and any conditions relating to such disconnection, temporary suspension or period of discontinuance.
- 2.7 If any temporary suspension or discontinuance has been affected on an indefinite basis, the Licensor shall inform the Participant as soon as any such restriction on the supply of the Data is lifted.

### 3. Supply of Data

- 3.1 Notwithstanding the Licensor's reasonable commercial endeavours, the Licensor does not warrant or represent the accuracy, timeliness, completeness, performance or fitness for a particular purpose of the Data nor that the supply of Data will be free of interruption and where any interruption occurs, the sole remedy (if any) is provided herein.
- 3.2 Subject to Clause 3.1, where there is interruption to the supply of the Data, the Licensor shall use reasonable endeavours to;
- a) give the Participant appropriate notice of any interruption in situations where the Licensor is aware of a scheduled interruption;
  - b) where possible, to give an estimate of the period of time it shall take to remedy the interruption; and
  - c) remedy such interruption as soon as is reasonably practicable after the Licensor has become aware of such interruption.
- 3.3 Licensor reserves any right to determine the form and contents of the Data and, in particular, to modify and supplement from time to time the technical, functional, administrative and operative methods of supply of the Data, wherever necessary for complying with provisions of law or due to a change in the organisation of the MTS Markets or modifications or supplements to the technical specifications. The Licensor shall communicate to the Participant its decision to proceed with such modifications or supplements with notice of at least sixty (60) days notice, unless such modifications or supplements are a consequence of the compliance with provisions of law. In the event of modifications or supplements pursuant to this article 3.3, the Participant shall have the right to withdraw from the Agreement by providing notice to the Licensor within and no later than the following forty (40) days.

### 4. Term

- 4.1 The Agreement shall come into force on the Commencement Date and shall continue in force unless terminated in accordance with Clause 5.

### 5. Termination of Agreement

- 5.1 Either party may terminate this Agreement at any time except for during the Minimum Term, by giving the other party three (3) months' written notice that it wishes to do so.
- 5.2 Either party may terminate the Agreement forthwith at any time by giving the other party written notice if that other party:

- a) is declared insolvent, or bankrupt or a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that party;
  - b) makes a UK voluntary arrangement with its creditors or becomes subject to an administration order;
  - c) has a receiver appointed over any of its property or assets, or an encumbrancer takes possession;
  - d) goes into liquidation or is voluntarily wound-up; or
  - e) takes or is subject to any action similar to that specified in Clauses 5.2(a) to 5.2(d) in any jurisdiction.
- 5.3 Either party may terminate this Agreement and suspend its performance of all or any obligations under it immediately and without liability for compensation or damages if the other party fails to comply in all material respects with any of its express obligations under this Agreement (including with respect to the Participant payment of Charges to the Licensor or dissemination of the Data outside the Participant and its Affiliates) and does not remedy such failure, if capable of remedy, within 30 days of receiving notice from the other party requiring it to do so.
- 5.4 In addition to its rights hereunder, if the Participant is in breach of any of the material terms of the Agreement, the Licensor has the right to suspend, immediately, the provision of any Data in whole or in part without penalty, including the right to require an NSP to suspend the supply of Data to the Participant, until such breach or breaches are remedied and if not so remedied until termination of the Agreement.
- 5.5 Termination of this Agreement shall not release any party from any liability which at the time of termination has already accrued, nor affect in any way the survival of any other right, duty or obligation of the parties which expressly survives such termination.
- 5.6 Notwithstanding termination of this Agreement for any reason, the Participant shall retain the Data for its administrative purposes.

## 6. Charges

- 6.1 The Participant shall pay the applicable Charges shown in the MTS Alpha Order Form.
- 6.2 The Data Charges are payable quarterly in advance, and calculated as at the first business day of each calendar month..
- 6.3 All charges are subject to Value Added Tax at the prescribed rate, and any other tax, duty or levy imposed by legislation.

- 6.4 All Data Charges are payable by the Participant within 30 days of the date of the Licensor's invoice, and time of payment shall be of the essence. The Licensor may add interest on overdue payments at HSBC Bank plc base rate (as applicable from time to time) plus three per cent, calculated on a daily basis, such interest to be compounded at the end of each calendar month.
- 6.5 The Participant shall indemnify the Licensor against any claims, actions or proceedings, brought by its Affiliates against the Licensor and any liability, costs or expenses (including any reasonable legal costs and any other reasonable expenses) included therewith.
- 6.6 The Participant hereby agrees and acknowledges that nothing in this Agreement shall limit the right of the NSP to receive fees in respect of any agreement between the Participant or its Affiliates and the NSP. The NSP may apply additional charges for certain products or services.
- 6.7 Adjustment/Modification of Data Charges
- 6.8 Notwithstanding Clause 9, the Licensor reserves the right to adjust the basis of calculation of the Charges once every calendar year by giving to the Participant not less than sixty (60) days' prior written notice, provided, however, that any such adjustment shall only take effect from the first subsequent month following the expiry of such notice period. If as a result of such adjustment, the Charges are to be increased by more than ten percent (10%), the Participant may terminate this Agreement by giving the Licensor written notice within 30 (thirty) days of the date of the Licensor's notice referred to in this Clause 6.7. This Agreement will terminate from the date such increase would have come into effect.

## 7. Notices

- 7.1 Any termination, adjustment, modification or amendment notices under these Terms may be delivered by hand with receipt acknowledged, or by registered post or courier with signed evidence of receipt, or by email. Notices shall be effective on confirmed date of receipt at the designated address if delivered by hand, registered post or courier, or return email.

## 8. Assignment

- 8.1 Neither party may assign or transfer any rights or obligations under this Agreement without the other party's prior written consent.



## 9. Variations

9.1 The Licensor may amend either:

- a) these Terms at any time on a minimum of sixty (60) days written notice; or
- b) any Schedule that forms part of this Agreement at any time on a minimum of thirty
- c) (30) days written notice.

Subject to Clause 6.7, in the event that the Participant considers any such amendment to be unfavourable, it may terminate this Agreement on the date the amendment comes into effect, provided it gives the Licensor notice in writing, such termination to be effective on the date the amendment in question is to come into effect.

9.2 Except as provided in Clause 9.1, this Agreement may only be amended in writing by duly authorised representatives of the parties.

## 10. Waiver and Entire Agreement

10.1 Failure by a party to exercise any right or remedy under this Agreement will not constitute a waiver of that party's rights or remedies.

10.2 This Agreement is the parties' entire understanding of the contract between them with respect to the subject matter and supersedes all prior agreements, representations and proposals, oral or written.

10.3 Each party confirms that:

10.3.1 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement, no party shall be under any liability or shall have any remedy in respect of misrepresentation or untrue statement unless and to the extent that a claim lies under this Agreement; and

10.3.2 in entering into this Agreement it has not relied on any representation or warranty or undertaking which is not contained in this Agreement, or any document referred to in it.

## 11. Intellectual Property Rights

11.1 The Participant agrees that the copyright, database rights or other Intellectual Property Rights of whatever nature contained or subsisting in the Data shall remain the property of the Licensor and/or any MTS Market as applicable.

- 11.2 The Licensor agrees that the copyright, database rights or other Intellectual Property Rights of whatever nature contained in the Derived Data shall remain the property of the Participant and or any Affiliates.
- 11.3 When the Participant reproduces excerpts from the Data (strictly in accordance with Clause 2), it shall attribute the source of the Data to the Licensor. Any reference to any trade or service mark of the Licensor by the Participant in documents shall acknowledge the rights of the Licensor as applicable.
- 11.4 Nothing in this Agreement shall be construed as transferring, granting or conferring (either directly or indirectly, other than as explicitly transferred, granted or conferred hereunder), to the Participant any right, title or agreement of use in respect of any Intellectual Property Rights contained or subsisting in the Data.
- 11.5 The Licensor represents and warrants that:
- a) it owns or has the right to licence the Intellectual Property Rights contained or subsisting in any Data from the relevant MTS Market;
  - b) it has the legal right and full power and authority to execute and perform its obligations under this Agreement including the right to supply the Data to the Participant for the purposes specified in this Agreement;
  - c) this Agreement constitutes a valid and binding Agreement enforceable against the Licensor in accordance with its terms; and
  - d) the Data and its use by the Participant as specified in this Agreement shall not infringe any Intellectual Property Rights of any third party.
- 11.6 This Clause 11 survives termination of the Agreement.

## 12. Liability

- 12.1 Neither party shall be liable to the other for any indirect, special or consequential loss or incidental damage arising out of this Agreement including (without limitation and whether direct or indirect) loss of profit, business revenue, anticipated savings, wasted expenditure loss of good will or loss of data.
- 12.2 Subject to Clause 12.1 above, the liability of the Licensor for direct loss or damage (except in relation to death or personal injury) arising from the Licensor's total or partial failure to perform any obligation under this Agreement shall, in respect of any one incident or series of incidents attributable to the same cause, be limited in aggregate to the sum of the previous twelve months Charges paid by the Participant, save where such loss or damage arises solely and directly by the wilful default or fraud of the Licensor.
- 12.3 The Participant acknowledges that in using the Data it relies solely on its own skill, knowledge and judgment.

## 13. Force Majeure

- 13.1 Neither party shall be liable to the other for any delay or failure to fulfil any obligation under this Agreement to the extent such delay or failure was due to a Force Majeure Event.
- 13.2 Either party may terminate this Agreement on notice in writing to the other if due to a Force Majeure Event a party is unable to fulfil its obligations under this Agreement for more than 30 calendar days. Neither party shall have any liability to the other in respect of termination of this Agreement as a result of such a Force Majeure Event.

## 14. Verification

- 14.1 The Participant shall allow the Licensor and their agents and employees once per calendar year at all reasonable times during normal business hours as pre-agreed in writing between the parties, on at least sixty (60) days notice to have access to, and to audit its products and services, its accounts, records, control systems and other documents relating to, among others, the creation of Derived Data and distribution of the Data and Derived Data, (such rights for the Licensor, "Audit Rights"). The Participant has the right once per audit, on reasonable grounds, to object to one individual appointed to carry out the audit, but not to object to the audit itself.
- 14.2 If the Licensor's investigation in terms of Clause 14.1 discloses that the Charges paid by the Participant over the period being investigated were more than 5% inaccurate, the reasonable cost of the Licensor's investigation shall be paid by the Participant.
- 14.3 The Licensor's Audit Rights (whether exercised at the site of the NSP or Participant) shall at all times be exercised in accordance with the information industry best practices. In particular, they shall represent minimum disruption of Participant's business operations and shall comply with the Participant's security, health & safety and confidentiality requirements.

## 15. Severability

- 15.1 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of all other provisions (and, if applicable, the remainder of the provision in question) shall not be affected.

## 16. Confidentiality

16.1 The parties shall keep confidential all information relating to this Agreement unless such information has become public knowledge otherwise than in breach of this clause or disclosure is required by law or a party's regulatory body or disclosure is made in confidence to their professional advisers. This Clause 16.1 survives termination of this Agreement.

## 17. Rights of Third Parties

17.1 No term of this Agreement is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement.

17.2 The parties to this Agreement may by written agreement rescind or vary any term of this agreement without the consent of any third party (which, for the avoidance of doubt, includes the Affiliates).

## 18. Choice of Law

18.1 This Agreement shall be governed by, and construed in all respects in accordance with the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.

## 19. Order of Precedence

19.1 Where there is a conflict between any of: i) these Terms; ii) the Schedules; and iii) the Order Form, the prevailing terms shall be those contained in the following documents in prevailing order:

- a) The Order Form.
- b) The Terms;
- c) The Schedules;



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