



Derived Data License Agreement

SAMPLE



The European
Money Markets
Institute

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THIS AGREEMENT (the “**Agreement**”) dated [●] (the “**Effective Date**”) is made by and between:

(1) The European Money Markets Institute, an international not-for-profit Association (Identification number 1768/99) with its address at 56, Ave des Arts, 1000 Brussels (“**EMMI**”)

And

(2) [●], a company incorporated under the laws of [●] whose registered office is located at [●], [include other relevant ID data such as national company number], with its address at [●] (“**Licensee**”)

together the “Parties” and each a “party”.

WHEREAS, EMMI has developed benchmarks which are calculated on the basis of data provided by contributing banks. EMMI is responsible for setting these rates to be provided to licensees daily.

WHEREAS, the Parties state that on (date) the Licensee signed with EMMI a License Agreement which gives an access to the Data Package.

WHEREAS, the Licensee wishes to use the Data Package for creation and distribution of the Derived Data according to this Agreement. EMMI wishes to grant a license to the Licensee the above usage of the Data Package.

NOW, THEREFORE, in consideration of the conditions and covenants set forth herein, the Parties agree as follows:

1. Definitions and interpretation

1.1 **Definitions:** in this Agreement, the following words and expressions shall have the following meanings:

- i) **Affiliate** means an entity controlled by, controlling or under common control with the Licensee and includes the Affiliates listed in Schedule 3 of this Agreement. For the purposes of this Clause, control means the power to direct or cause the direction of the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise.
- ii) **Agreement** means this Agreement and includes the schedules.
- iii) **Business day** means any day (other than a Saturday or Sunday) when the Trans-European Automated Real Time Gross Settlement Express Transfer system (TARGET) is open.

- iv) **Confidential Information** means all information disclosed by one party ("Disclosing Party") to another party ("Receiving Party") which is marked as or has been otherwise indicated to be confidential or which would be regarded as confidential by a reasonable business person (including, without limitation, models, software and computer outputs), save to the extent that such information (i) is already in the public domain at the time of disclosure, (ii) enters the public domain other than by a breach of any obligation of confidentiality, (iii) was already in the possession of the Receiving Party without any obligation of confidentiality. For the avoidance of doubts Confidential Information includes, but is not limited to:
- a) the terms of this Agreement;
 - b) technical processes and formulas, source codes, object codes, product designs;
 - c) sales, cost and other unpublished financial information; and
 - d) product and business plans, projection and marketing data.
- v) **Data Package** consists of the live data (data available within the first 24 hours of their publication by EMMI) provided by EMMI and/or the delayed data (data available after 24 hours since the original publication by EMMI).
- vi) **Derived Data** is any data that is created by the Licensee, in whole or in part from the Data Package as a result of combining, processing, changing, converting or calculating the Data Package or any portion thereof with other data where the resultant data (1) does not bear resemblance to the underlying Data Package; (2) cannot be readily reverse-engineered, disassembled or decompiled such that a third-party may access the Data Package via the Derived Data; (3) cannot be used in a manner which recreates the Data Package or (4) cannot be used to create other data that is a reasonable facsimile for the Data Package. A description of the creation and use of the Derived Data, provided by the Licensee, is attached as Schedule 2.
- vii) **EMMI Contributor** means a person that provides information to EMMI for inclusion in the Data Package.
- viii) **EMMI Trademarks** means the trademarks, services marks, names, business names and trade names which are owned by EMMI.
- ix) **Fees** means the amounts listed in Schedule 1 of this Agreement.
- x) **Force Majeure Event** means any cause or event beyond the reasonable control of the affected party including without limitation strikes, lock-outs or other industrial disputes (whether involving the workforce of the party so prevented or of any other party), acts of God, war, riot, civil commotion, malicious damage, pandemics, compliance with any law or governmental order, regulation or direction, terrorism act, breakdown of plant or

machinery, failure of telecoms links, unavailability of the internet or any utility, fire, flood, or storm or failure to perform by suppliers or sub-contractors.

- xi) **Insolvency Event** means an event in which a person ceases or threatens to cease to carry on business, is liable to be found to be unable to pay its debts, has an administrator, receiver, administrative receiver or manager appointed over the whole or any part of its assets, enters into any composition with creditors generally, or has an order made or resolution passed for it to be wound up (otherwise than in furtherance of any scheme for amalgamation or reconstruction) or undergoes any similar or equivalent process in any jurisdiction.
- xii) **Intellectual Property Rights** means all intellectual property rights, including without limitation, copyrights, trademarks, trade or business names, patents, domain names, database rights, design and (utility) model rights, trade secrets, know-how and all other intellectual or industrial property rights (in each case whether registered or unregistered and including applications or rights to apply for them and together with all extensions and renewals of them).
- xiii) **Personnel** means employees, officers, agents and contractors of a party and of such party's Affiliates.
- xiv) **Sanctions** has the meaning set out in Clause 4.2.
- xv) **Term** means the Initial Term and any Further Term referred to in Clause 7.1.

1.2 Interpretations:

In this Agreement (unless the context requires otherwise):

- i) the singular shall include the plural and vice versa;
- ii) a reference to one gender shall include all other genders;
- iii) any reference to a statute, statutory provision or subordinate legislation ("legislation") shall (except where the context requires otherwise) be construed as referring to: (a) such legislation as amended and in force from time to time and to any legislation which (either with or without modification) re-enacts, consolidates or enacts in rewritten form any such legislation; and (b) any former legislation which it re-enacts, consolidates or enacts in rewritten form provided that in the case of those matters which fall within (a) above, as between the Parties, to the extent that it is not a breach of relevant legislation, no such amendment or modification shall apply for the purposes of this Agreement to the extent that it would impose any new or extended obligation, liability or restriction on, or otherwise adversely affect the rights of, any party;
- iv) any reference to "in writing" or "written" shall include written or produced by any legible and non-transitory substitute for writing; and shall, include electronic form;

- v) any reference to "persons" includes a natural person, partnership, company, body corporate, association, organisation, government, state, foundation and trust (in each case whether or not having separate legal personality);
- vi) any reference to a "company" shall be construed so as to include any company, corporation or other body corporate, wherever and however incorporated or established;
- vii) any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- viii) no rule of interpretation or construction may operate to the detriment of any party only because that party was responsible for the preparation of this Agreement; and
- ix) the Clause headings in this Agreement are included for convenience only and do not affect the interpretation of this Agreement.

1.3. Precedence: if there is any conflict between the body of this Agreement (Clauses 1 to 13.10) and the schedules, the body of this Agreement will prevail.

2. Derived Data License

2.1 License to use the Data Package

- i) EMMI grants to the Licensee a non-exclusive, non-transferable and fee-bearing licence during the Term to use the Data Package subject to the terms and conditions of this Agreement for creation and distribution of the Derived Data. The Licensee may create and distribute the Derived Data only in such a way that the Data Package will not be distributed, neither incorporated, or could not be determined or reverse engineered by any third party. The grant of rights in this Agreement shall apply for Licensee's Affiliates listed in Schedule 3 and Licensee shall be responsible for the Affiliates' obligations. The Licensee shall promptly inform EMMI about any changes in the list of Affiliates indicated in Schedule 3.
- ii) According to the terms of this Agreement, the Licensee may use the Data Package solely for the purpose of creation of the Derived Data and shall not be entitled to grant any sub-licences under the Licence.

2.2 Cost of equipment

- i) The Licensee is responsible for acquiring and paying for all telecommunications services, software and equipment and other arrangements necessary to enable the Licensee to create and distribute the Derived Data;
- ii) EMMI is not responsible for the installation, operation and maintenance of all telecommunications services, software and equipment and other arrangements necessary for the creation and distribution of the Derived Data.

3. Intellectual Property Rights

3.1 Data Package

EMMI shall retain all rights, including Intellectual Property Rights, in the Data Package. Nothing in this Agreement may be understood or construed as abandonment, revocation, assignment or denial by EMMI, or any EMMI Contributor, of any rights that any of them may own in or with respect to the Data Package or any component of the Data Package.

3.2 Derived Data

EMMI acknowledges Intellectual Property Rights of the Licensee in the Derived Data. Nothing in this Agreement may be understood or construed as an abandonment, revocation, assignment or denial by the Licensee, or any information source, of copyright, confidentiality or any other Intellectual Property Rights which the Licensee may own in or with respect to the Derived Data.

4. Warranties and indemnity

4.1 EMMI warrants that:

- i) EMMI is duly organised, validly existing and in good standing in accordance with the legislation of the jurisdiction of its formation or organisation;
- ii) to the best of EMMI's knowledge the execution and performance of this Agreement by it does not conflict with or breach (i) any law or regulation in any jurisdiction to which it is subject, (ii) its constitutional documents or (iii) any other agreement, instrument, understanding or undertaking binding upon it, whether express, implied, written or oral.

4.2 The Licensee warrants that:

- i) the Licensee is duly organised, validly existing and in good standing in accordance with the legislation of the jurisdiction of its formation or organisation;
- ii) to the best of the Licensee's knowledge the execution and performance of this Agreement by it does not conflict with or breach (i) any law or regulation in any

- jurisdiction to which it is subject, (ii) its constitutional documents or (iii) any other agreement, instrument, understanding or undertaking binding upon it, whether express, implied, written or oral; and
- iii) the Licensee will comply with any applicable laws concerning the performance of this Agreement;
 - iv) neither the Licensee nor any of its Affiliates or any director, officer, employee, agent, or representative of the Licensee or any of its Affiliates, is an individual or entity that is, or is owned or controlled by a person that is: (a) the subject of any Sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control, the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant Sanctions authority (collectively, "**Sanctions**"), nor (b) located, organised or resident in a country or territory that is the subject of Sanctions (including, without limitation, Burma/Myanmar, Cuba, Iran, North Korea, Sudan and Syria).

4.3 Indemnity by the Licensee

The Licensee will indemnify EMMI, EMMI Personnel and EMMI Contributors (**EMMI Indemnified Parties**) against any and all losses, expenses and liability suffered by EMMI Indemnified Parties to the extent it arises directly or indirectly from:

- i) any breach by the Licensee of the terms of this Agreement;
- ii) any wilful, unlawful or negligent act or omission of the Licensee; or
- iii) any unauthorised use by the Licensee of the Data Package and/or the Derived Data, or unauthorised reliance by the Licensee on the Data Package and/or the Derived Data.

5. Fees

5.1 Fees

In consideration of the licence granted under Clause 2.2, the Licensee must pay EMMI the Fees as described in Schedule 1 of this Agreement. The Fees may be amended from time to time pursuant to Clause 5.3 hereof. These Fees have been implemented on a fair, reasonable and non-discriminatory basis.

5.2 Payment term and late payment

- i) The Licensee will pay Fees to EMMI within thirty (30) calendar days of receipt of an invoice.
- ii) Late payments of invoices will automatically incur interest at the legal interest rate for late payments for commercial transactions under Belgian law without the need to send

any notice. Any interest accrues from the due date to the date of payment, calculated on a daily basis.

5.3 Variation of fees

EMMI may amend the Fees at any time, by giving the Licensee not less than three (3) calendar months' notice and provided that any change to said Fees would take effect no more frequently than once per Initial Term or Further Term.

6. Taxes

6.1 Payment of VAT

Fees under this Agreement are exclusive of any applicable VAT or any other indirect taxes. VAT and any other indirect tax, including but not limited to transfer tax, GST, sales, duties, levies and customs, shall be borne by the Licensee. If VAT or any other indirect tax is or becomes chargeable on any Fee paid under or in connection with this Agreement, the Licensee shall also pay to EMMI an amount equal to the amount of the VAT or indirect tax at the same time the Fees are payable.

6.2 Claims and adjustments

- i) Each party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to the amount of VAT or any other indirect tax paid or payable pursuant to any supply made under or in connection with this Agreement.
- ii) If either party is entitled under this Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred by the other party in connection with this Agreement, the reimbursement or indemnity payment must not include any VAT or other indirect tax component of the cost or expense for which an input tax credit may be claimed.

7. Term and termination

7.1 Term

- i) This Agreement operates for a period ("**Initial Term**") of twelve (12) months from the Effective Date unless earlier terminated in accordance with this Agreement or otherwise.
- ii) This Agreement will automatically renew for further twelve (12) months periods (each a "**Further Term**") from the expiry of the Initial Term or any Further Term unless either party

gives the other not less than sixty (60) calendar days written notice prior to the expiry of the Initial Term or any Further Term of its intention not to renew.

7.2 Termination by EMMI

EMMI may terminate this Agreement immediately on notice to the Licensee if:

- i) the Licensee suffers an Insolvency Event;
- ii) any money which the Licensee must pay EMMI under this Agreement remains outstanding for more than sixty (60) calendar days after the date on which it became payable;
- iii) the Licensee is in material breach of this Agreement and has not rectified that breach within thirty (30) Business days of EMMI giving it written notice to do so. For the avoidance of doubt, a breach by the Licensee of the warranties and representations provided under Clause 4.2 is a material breach; the Licensee is in breach of Clause 2.1 of this Agreement and has failed to implement requirements set in Clause 2.1 within thirty (30) Business days after the receipt of EMMI's request in writing to do so;
- iv) the Licensee or any of its Affiliates or any director, officer, employee, agent or representative of the Licensee or any of its Affiliates is or will become subject to Sanctions;
- v) in accordance with Clause 12 (**Force Majeure**); or
- vi) EMMI will cease to make available the Data Package generally to the market for any reason, subject to EMMI providing at least ninety (90) calendar days prior notice of its intention to cease to make available the Data Package generally to the market.

7.3 Termination by the Licensee

The Licensee may terminate this Agreement immediately on notice to EMMI if:

- i) EMMI is in breach of a material term of this Agreement and has not rectified that breach within thirty (30) Business days of the Licensee giving EMMI written notice to do so;
- ii) EMMI is unable to provide the Data Package for five (5) consecutive Business days;
- iii) EMMI is unable to provide the Data Package due to technical difficulties which cannot be rectified within ten (10) Business days;
- iv) EMMI suffers an Insolvency Event; or
- v) in accordance with Clause 12 (**Force Majeure**);

7.4 Consequences of termination

Upon termination of this Agreement:

- i) all licences granted under this Agreement automatically terminate;

- ii) the Licensee must immediately cease using the Data Package for creation and distribution of any new Derived Data;
- iii) EMMI may retain the portions of any Fees paid by the Licensee under this Agreement calculated on a pro-rata basis for any Term then in effect up to the date of termination of this Agreement. The remainder of any amounts paid to EMMI by the Licensee (including any VAT) must be remitted to the Licensee by EMMI upon termination of this Agreement unless the Agreement is terminated by EMMI on the basis of Clause 7.2 i) – iv) in which case EMMI will be entitled to retain all Fees paid by the Licensee.

8. Liability

8.1 Implied warranties

- i) All express or implied representations, conditions, warranties and terms relating to the Data Package or this Agreement not contained in this Agreement are excluded from this Agreement to the maximum extent permitted by law.
- ii) Nothing in this Agreement excludes, restricts or modifies any condition, warranty, right or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.
- iii) If the law, or any similar legislation, implies or imposes a non-excludable condition or warranty which can be limited, the liability of EMMI or any EMMI Contributor to the Licensee for breach of that condition or warranty will be limited, as EMMI determines, to:
 - a) provision of replacement information; or
 - b) cost of providing replacement information.

8.2 EMMI's Liability

TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EMMI IS NOT LIABLE FOR (I) THE ACCURACY OR TIMELINESS OF THE DATA PACKAGE II) INACCURACY OF THE DERIVED DATA, CREATED ON THE BASIS OF THE DATA PACKAGE AND III) ANY DAMAGES SUFFERED BY THE LICENSEE OR ANY OTHER PERSON, ARISING FROM THE USE OF OR RELIANCE ON THE INFORMATION CONTAINED IN THE DATA PACKAGE.

8.3 No consequential loss

In no event will either party be liable to the other party or third parties or will an EMMI Contributor be liable to the Licensee or third parties for loss of profit, loss of business or business opportunities, or any consequential, special or incidental damages or any damage resulting from a third party claim.

8.4 Benefit

The Licensee agrees that this Clause 8 is enforceable by and to the benefit of EMMI and each EMMI Contributor.

9. Confidentiality

- i) Neither party will disclose Confidential Information to any third party except as otherwise permitted in this Agreement.
- ii) Each party may only disclose Confidential Information to its professional advisors, Affiliates, directors, officers, employees, subcontractors and agents who (i) have a need to know and (ii) have been informed of the confidential nature of the Confidential Information divulged and who are under a duty of confidentiality that is at least as strict as the confidentiality obligations under this Agreement.
- iii) Notwithstanding any other provision of this License, neither party shall be in breach of this Agreement in case it discloses any Confidential Information pursuant to a legal obligation, a court order or a binding request from a regulatory (or other analogous) authority with jurisdiction, provided that (to the extent it is permitted to do so) the disclosing party gives all reasonable notice of such disclosure to the other party.

10. Audits

- i) The Licensee will keep complete and accurate books, records and related documentation concerning the creation and distribution of the Derived Data following provisions of this Agreement;
- ii) EMMI's Personnel and its authorised agents and advisors are hereby granted the right to examine, upon ten (10) Business days' notice, the Licensee's books, records and any and all computer equipment, devices, components and software used by the Licensee for the sole purpose of ascertaining the Licensee's compliance with this Agreement. The Licensee must cooperate with EMMI's Personnel and its authorised agents and advisors and comply any reasonable directions made by EMMI Personnel and its authorised agents and advisors for the purposes of an audit under this paragraph (ii);
- iii) Any audit conducted by EMMI Personnel and its authorised agents and advisors under paragraph (ii) will not unreasonably disrupt or interfere with the Licensee's business;
- iv) The Licensee shall not be audited more frequently than once per year unless EMMI has well-founded reasons for further Audits.

11. Dispute resolution

11.1 Prior to proceedings

This Clause 11 sets out the dispute resolution procedures which are to apply to all disputes arising under this Agreement. A party must not commence court proceedings relating to any such dispute before it has complied with this Clause 11, except:

- i) where a party seeks urgent injunctive relief; or
- ii) where the dispute relates to compliance with this Clause 11.

11.2 Conduct of Dispute resolution

- i) A party claiming that a dispute under this Clause 11 ("**Dispute**") has arisen must give written notice to the other party specifying the nature and the details of the Dispute ("**Dispute Notice**").
- ii) Upon the giving of a Dispute Notice, the parties must seek to resolve the Dispute by negotiations between an executive officer or senior manager who is qualified to resolve the dispute on behalf of each party.
- iii) If the Dispute is not resolved through such negotiations within ten (10) Business days after the giving of a Dispute Notice, or within such further period as the parties agree, then either party may by written notice to the other party require that the Dispute be submitted to a mutually agreed commercial dispute resolution service. Failing agreement of the parties within fourteen (14) Business days, either party may submit the dispute to CEPINA, the arbitration and mediation institute, or to the Brussels Enterprise Court.

12. Force Majeure

- i) With the exception of any payment obligations under this Agreement, neither party will be in breach of this Agreement and will not be liable to the other party or any other person for delay or failure to perform an obligation due to a Force Majeure Event. Where affected by a Force Majeure Event, the affected party will be granted a reasonable extension of time to perform the obligation and must use reasonable endeavours to resume performance of the obligation, unless the delay or failure exceeds thirty (30) days in which case either party may immediately terminate this Agreement on notice to the other party.

- ii) If any party is prevented or delayed in the performance of any of its obligations under this License by a Force Majeure Event, that party shall promptly notify the other party specifying the nature and extent of the circumstances giving rise to Force Majeure.
- iii) Force Majeure which affects the sub-contractor or supplier of a party shall be deemed to affect that party.

13. General

13.1 Notices

- i) Written notices shall be sent to the address or facsimile number set forth below, or such other address (including email address) or facsimile number as either party may specify in writing to the other:
 - a) if to EMMI:

Address:	56, Ave des Arts, 1000 Brussels
Attention:	EMMI Subscription Team
Phone:	+ 32 2 431 52 00
Email:	subscriptions@emmi-benchmarks.eu
 - b) if to the Licensee:

Address:	[●]
Attention:	[●]
Phone:	[●]
Email:	[●]
- ii) Without limiting any other means by which a party may be able to prove that a notice has been received by another party, a notice is deemed to be received:
 - a) if sent by hand, when delivered to the addressee;
 - b) if by post, three (3) Business days from and including the date of postage in case of national mailing and one (1) week from and including the date of postage in case of international mailing;
 - c) if by facsimile transmission, on receipt by the sender of an acknowledgment or transmission report generated by the machine from which the facsimile was sent that the facsimile was successfully sent in its entirety; or
 - d) if by email, two (2) hours after the time sent (as recorded on the device from which the sender sent the email), unless the sender receives an automated message that the email has not been delivered.

13.2 Amendments

This Agreement may be amended only by written agreement of the parties.

13.3 Assignment

- i) The Licensee may assign its rights and obligations under this Agreement to any of its Affiliates by prior notice to EMMI.
- ii) The Licensee may not assign, novate, subcontract, or attempt to assign, novate or subcontract its rights, obligations or remedies under this Agreement without the prior written consent of EMMI, which consent shall not be unreasonably withheld.
- iii) EMMI may assign its rights or obligations under this Agreement upon providing in due time notice to the Licensee of the assignment;
- iv) EMMI may novate or subcontract its rights or obligations under this Agreement.

13.4 Survival

Clauses 1, 3, 4, 5, 6, 7.4, 8, 9, 10, 11, and 13 will survive the termination or expiry of this Agreement.

Clauses 4, 5 and 10 shall survive the termination of the contract only to the extent necessary for the enforcement of the parties' rights and obligations.

13.5 Waiver

No delay or failure by either party to exercise any of its powers, rights or remedies under this Agreement shall operate as a waiver of them, nor shall any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. Any waiver, to be effective, must be in writing.

13.6 Invalidity and severability

If any provision of this Agreement shall become illegal due to changes of laws or shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. If any provision of this Agreement is so found to be invalid or unenforceable but would be valid or enforceable if some parts of the provision were deleted, the provision in question shall apply with such modification(s) as may be necessary to make it valid and enforceable.

13.7 Further Assurances

Each of the Parties shall do or procure to be done all such further acts and things and execute or

procure the execution of all such other documents as may from time to time be reasonably required for the purpose of giving the other party the full benefit of the provisions of this Agreement.

13.8 Publicity

The Licensee must not make press or other announcements or releases about this Agreement and the transactions related to it without EMMI's approval (which may be granted conditionally or withheld in EMMI's absolute discretion) unless the announcement or release is required to be made by law or the rules of a stock exchange.

13.9 Relationship between the Parties

Nothing in this Agreement constitutes a relationship of employer and employee, principal and agent, partnership or joint venture between the parties or other form of association in which any party may be liable for the acts or omissions of the other party. A party does not have a right to:

- i) bind the other party in contract or otherwise at law;
- ii) pledge the credit of another party; or
- iii) hold itself out as a representative of the other party.

13.10 Governing law

This Agreement will be construed in accordance with and governed by Belgian law but excluding its conflicts of law provisions.

SIGNED as an agreement in two copies of which each party received one.

SIGNED by an authorised representative for **EMMI**
(identification number 1768/99)

Signature of authorised representative

Name of authorised representative

SIGNED by an authorised representative for the
Licensee

Signature of authorised representative

Name of authorised representative

Schedule 1 – Fees

The License Annual Fee – €36 800 per annum plus applicable taxes.

SAMPLE



Schedule 2 – Derived Data creation and use description

[TO BE FILLED IN BY THE LICENSEE]

SAMPLE



Schedule 3 – Affiliates and subsidiaries of the Licensee

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