

# Agreement on Assignment as TOP Liquidity Provider

between

Deutsche Börse AG  
Mergenthalerallee 61  
65760 Eschborn

- in the following  
“DBAG“ -

and

---

- in the following  
“TOP Liquidity Provider“-

- in the following separately and/or jointly also referred to as “Contracting Party/-ies“ -

## Preamble

The TOP Liquidity Provider intends to improve in the future the order book quality in the trading of instrument group DAX1 at the Exchange Trading Place “Xetra” of the Frankfurter Wertpapierbörse (FWB) – Market Identifier Code “XETR” – (“Xetra”). This shall be achieved by actively using orders with the execution condition top-of-the-book (“TOP-Orders”) while at the same time observing an appropriate ratio of order transactions to executed trades.

This agreement regulates the TOP Liquidity Provider’s support on the part of DBAG.

## **§ 1 Rights and Obligations of the TOP Liquidity Provider**

The TOP Liquidity Provider provides TOP-Orders on Xetra via the Enhanced Transaction Solution. For entering such TOP-Orders, the TOP Liquidity Provider shall be obliged to only use sessions with the highest throughput offered by DBAG (such throughput currently amounting to 150 transactions per second) and to inform DBAG no later than five exchange days in advance of the identification numbers of such sessions (“TOP-Sessions”).

## **§ 2 Rights and Obligations of DBAG**

- (1) DBAG shall be obliged to grant to the TOP Liquidity Provider in the trading of instrument group DAX1 on Xetra (a) credits for executions of TOP-Orders and (b) discounted fees for excessive system usage, in each case as agreed in the “Price List for the Utilization of the Exchange EDP of FWB Frankfurt Stock Exchange and of the EDP XONTRO” in its respective current version, provided that, during the invoiced month in the trading of instrument group DAX1 on Xetra, (1) TOP-Orders are only entered during TOP-Sessions and (2a) the TOP Liquidity Provider has executed a number of at least 1,000 TOP-Orders or (2b) the executed TOP-Orders amount to a percentage of at least 1% of the total number of executed orders of the TOP Liquidity Provider.
- (2) DBAG shall configure for the TOP Liquidity Provider a throughput in transactions per second applicable to the TOP-Sessions in total (“TOP-Throughput”). DBAG shall be authorised to reduce such TOP-Throughput in transactions per second (“Limited TOP-Throughput”) if the TOP Liquidity Provider, in the trading of instrument group DAX1 on Xetra via the TOP-Sessions during the past calendar month, has fallen below a specified average number of executed TOP-Orders per exchange day (“Critical TOP-Order Number”).

The initial configuration, as well as any further changes to such parameters which are determined uniformly for all TOP Liquidity Providers – TOP-Throughput, Limited TOP-Throughput, Critical TOP-Order Number – shall be notified by DBAG by way of circular no later than eight exchange days prior to the beginning of the calendar month in which they take effect. Specific changes with regard to the TOP-Throughput arising from this concept shall be notified to the respective TOP Liquidity Provider giving at least eight exchange days prior notice.

The TOP-Throughput applicable for a TOP Liquidity Provider with regard to the TOP-Sessions in total shall be spread equally among the TOP-Sessions. The resulting calculated throughput per TOP-Session shall, in any case, be limited to the standard value for such TOP-Sessions (which currently amounts to 150 transactions per second); it may, however, be reduced to a smaller value depending on the configured TOP-Throughput and the number of TOP-Sessions individually specified by the TOP Liquidity Provider.

## **§ 3 Validity, Duration and Termination of the Contract**

- (1) This contract shall become effective on \_\_\_\_\_ and shall be concluded for an indefinite period of time.
- (2) The contract shall be terminated automatically as soon as the TOP Liquidity Provider’s admission as trading participant at FWB is revoked.

- (3) Each Contracting Party shall be entitled to terminate the contract at any time to the end of a calendar month giving five exchange days prior notice.
- (4) The Contracting Parties' right to terminate the contract without prior notice for good cause shall remain unaffected.
- (5) Termination must be made in writing to become effective.

#### **§ 4 Liability**

- (1) The Contracting Parties shall only compensate for damages to the following extent – irrespective of the legal reason (i.e. impairment of performance, tortuous act):
  - (a) In the case of intent or gross negligence, the Contracting Parties shall be liable to the full extent.
  - (b) In the case of simple negligence, the Contracting Parties shall only be liable for infringement of essential contractual obligations.
  - (c) To the extent the Contracting Parties are obliged to compensate for futile expenses, regulations of (a) and (b) shall apply accordingly.
  - (d) The legal liability for damages arising out of death or injury to body or health and pursuant to the Product Liability Act shall remain unaffected.
  - (e) The Contracting Parties shall not be liable for damages arising from any other reasons.
- (2) Defense of contributory negligence shall remain unaffected.

#### **§ 5 Transfer of Rights and Obligations**

- (1) The TOP Liquidity Provider shall not be entitled to transfer this agreement to third parties or cede rights arising out of this contract or in relation with it to third parties without the prior written consent of DBAG.
- (2) DBAG shall be entitled to cede the contract completely or partially to another company, provided that such company accepts the administration and operation of FWB or of the Regulated Unofficial Market at FWB. With the transfer of the contract, only the company taking over shall have all rights and obligations arising from this contract; DBAG shall be released from all obligations arising from this contract. In case DBAG makes use of the possibility to transfer the contract, DBAG shall have to notify the TOP Liquidity Provider giving at least six weeks prior written notice before the transfer becomes effective.

#### **§ 6 Confidentiality**

- (1) For the duration of this Agreement and for the time thereafter, the Contracting Parties shall keep confidential and protect against unauthorised access any information which they have been provided with by or which has become known to them in relation to the respectively other Contracting Party, its affiliated companies, its consultants or any third parties commissioned by it, in connection with the co-operation.
- (2) Each Contracting Party shall impose its confidentiality obligations on all such persons or companies commissioned by it with the provision of services pursuant to this Agreement. The Contracting Parties shall be authorised to disclose such information to companies affiliated with them within the meaning of § 15 of

the Stock Corporation Act and to their service providers to the extent that such disclosure is an operational requirement and that the recipients of such information are also obliged to ensure strict confidentiality of such information. Each Contracting Party shall be authorised to disclose such information to third parties, in particular to the public authorities, to the extent such disclosure is required due to existing law or a restraint of rulers. The other Contracting Party must be notified in writing prior to such disclosure; if such prior notification is not permitted by law, notification shall be submitted without delay upon removal of the cause of impediment. § 10 of the Stock Exchange Act shall remain unaffected.

(3) Any information

- which is accessible to the public and was already known to the receiving Contracting Party at the time of receipt or was published thereafter by the disclosing Contracting Party, or
- which was developed by the receiving Contracting Party independently and of its own accord, without knowing of or using any similar information of the other Contracting Party, or
- which was disclosed to the receiving Contracting Party by a third party which, to the best knowledge of the receiving Contracting Party, is authorised to such disclosure and is not obliged to keep such information confidential,

shall not be included in the obligation to confidentiality.

Companies affiliated with DBAG according to § 15 of the Stock Corporation Act shall be exclusively authorised to collect, process and use the information (a) to the extent such affiliated companies are obliged to keep confidential such information, and (b) to the extent this is required for the performance of the Agreement, for purposes of analysis or for the improvement of the service quality or service portfolio or in order to inform the customer, and (c) to the extent such information consists of personal data, (i) that the companies to which such personal data is disclosed have their registered office in a Member State of the European Union or in another State which is contracting party to the Agreement on the European Economic Area, or that such companies guarantee the observance of an appropriate data protection level and (ii) that the data is kept confidential according to § 5 of the Federal Data Protection Act (Bundesdatenschutzgesetz).

- (4) The TOP Liquidity Provider consents to receiving by electronic mail advertisements of DBAG and of companies affiliated with Deutsche Börse AG according to § 15 of the Stock Corporation Act. Such consent may be withdrawn at any time and free of charge by sending a message to the following e-mail address: [info@deutsche-boerse.com](mailto:info@deutsche-boerse.com).

**§ 7 Miscellaneous**

- (1) Supplements to this agreement have not been made. Modifications, amendments or cancellation of this contract must be made in writing. This shall also apply for a regulation which overrules the written form.
- (2) All issues in relation to this contract shall be subject to the jurisdiction of the Federal Republic of Germany.
- (3) Place of jurisdiction for all disputes with regard to this contractual relationship shall be Frankfurt am Main.
- (4) If individual provisions of this contract are invalid or lose their validity due to any circumstances occurring at a later point in time, the validity of the contract as a whole shall remain unaffected. The invalid provision

shall be replaced by an appropriate regulation which reflects the original intention of the Contracting Parties and which such Contracting Parties would have decided on if they had considered the invalidity or infeasibility of the provision when concluding the contract. This shall also apply for any omissions within the contract.

Frankfurt am Main, \_\_\_\_\_  
(date)

\_\_\_\_\_  
Deutsche Börse

\_\_\_\_\_  
Deutsche Börse

\_\_\_\_\_  
TOP Liquidity Provider

\_\_\_\_\_  
TOP Liquidity Provider