

# MASTER TERMS OF SERVICE

Last Modified: October 16, 2023

These Master Terms of Service, together with the [Uniform Subscriber Agreement](#) and any other documents expressly incorporated by reference (collectively, the “Terms of Service or “Terms”) form a binding agreement between you or the entity you represent as listed in the Order Forms (the “Client”) and Barchart.com, Inc. (“BARChart”). These Terms govern the Client’s use of BARChart’s integrated market data and information services as specified in one or more Order Forms.

## 1. Definitions.

- 1a. “End User Data” means all non-public data related to or originating from any individual or entity utilizing BARChart Services provided by Client or an End User to BARChart to enable the provision of certain Services.
- 1b. “End User” means any individual or entity permitted by BARChart or Client to access and use the BARChart Services.
- 1c. “Information Providers” means any exchange or other entity that provides Information to BARChart
- 1d. “Information” means prices, news and other data created or obtained by BARChart from the Information Providers and other sources and delivered to Client and End Users via the Services as described in an Order Form.
- 1e. “Intellectual Property Rights” means patents, trademarks, trade and service names, copyrights, database rights, and other intellectual property rights, whether or not they are registered, anywhere in the world.
- 1f. “Order Form” means the document executed by Client and BARChart that specifies the details of the Services.
- 1g. “Privacy Policy” means the BARChart Privacy Policy located at <https://www.barchart.com/terms#privacy-policy>.
- 1h. “Third-Party Service” means all services, materials, and information in any form or medium, relating to the BARChart Services, that are not proprietary to BARChart.

**2. Services.** BARChart shall provide the services set forth in one or more Order Forms (the “Services”), which are made part of these Terms.

## 3. License Grant.

- 3a. BARChart grants to Client a non-exclusive, non-transferable right and license to use the Services only as described on the Order Form and pursuant to these Terms.
- 3b. Except as set forth on an Order Form: (i) Client may not redistribute, license, or sell any product using the Services which is not substantially different from the Services without the prior express written consent of BARChart; and (ii) Client may not sell a raw data stream derived from the Information or any part of the BARChart Services without written consent of BARChart.
- 3c. If Client elects to display delayed data, Client agrees to display a notice on all Information disseminated by the Client indicating that the BARChart Information is delayed according to the rules of each Information Provider. The Client shall identify BARChart as the source of the Information and the Client shall provide BARChart with hypertext or other computer link to BARChart’s disclaimer website page.

- 3d. BARCHART shall provide to Client documentation and updates related to the Services as they are prepared by BARCHART from time to time.
- 3e. Any enhancements or modifications by BARCHART to the BARCHART Services provided hereunder will be fully supported by BARCHART through its assigned representative.
- 3f. If applicable to the Services set forth in the Order Form(s), each End User shall agree to the BARCHART End User License Agreement.

#### **4. Proprietary Rights.**

- 4a. Client acknowledges and agrees that as between Client and BARCHART, BARCHART holds all right, title and interest in and to the Intellectual Property Rights in:
  - i. the Information and the format by which BARCHART transmits Information for BARCHART proprietary datasets;
  - ii. the Services provided to Client hereunder; and
  - iii. any new data products created from the processing of Information and Services provided by BARCHART (“Derived Products”).
- 4b. The Information and Services provided by BARCHART hereunder are to be used exclusively for the purposes described in the Order Form. Unless otherwise provided under these Terms or an Order Form, none of the Information may be copied, sold, transferred, assigned, sub-licensed, published or conveyed to any third party without the prior express written consent of BARCHART.
- 4c. Any Derived Products created from the Information and Services or BARCHART proprietary data sets, including but not limited to indexes, benchmarks, swaps, or other methodology products, may be subject to a separate Derived Data License (“DDL”) from BARCHART or another third party. No use, creation or distribution of such works shall be permitted without the prior express written approval of BARCHART.
- 4d. Client agrees to hold and use the proprietary aspects of the Services in the same manner as it deals with its own proprietary information and trade secrets and will not divulge, directly or indirectly, in whole or in part, to any firm, individual (other than its employees and representatives), or third parties any proprietary data or information relating to the Services, or the programs and technology embodied therein except as required by law.
- 4e. Client grants BARCHART a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Client related to the operation or functionality of the Services.
- 4f. Client grants BARCHART the right to use Client trademarks, service marks, trade names, logos, domain names, or other indicia of source, affiliation, or sponsorship, on its website and in marketing and promotional materials.
- 4g. If applicable to the Services, Client may have co-branding rights as specified on the applicable Order Form. Any co-branding will be subject to BARCHART’s design guidelines and will include BARCHART’s company name and logo.

#### **5. End User Data.**

- 5a. If applicable to the Services set forth in the Order Form, Client or End User may, directly or indirectly through Third-Party Services, provide End User Data to BARCHART to enable the provision of Services containing End User Data. As between BARCHART and End User, End User owns all End User Data and is solely

responsible for the content, accuracy, quality, integrity, legality, reliability, and appropriateness of End User Data. Client will secure and maintain all rights in End User Data necessary for BARCHART to provide the Services specific to the End User Data without violating the rights of any third party or otherwise obligating BARCHART to Client or any third party. BARCHART does not have and will not assume any obligations with respect to End User Data or to End User's use of the Services other than as expressly set forth in these Terms, BARCHART's Privacy Policy, the End User License Agreement, or as required by applicable law.

5b. BARCHART shall have a non-exclusive, world-wide, royalty-free, fully paid up, transferable, perpetual and irrevocable license, to:

- i. provide End User Data to third-parties designated by such End User, including BARCHART clients;
- ii. collect, store, and analyze End User Data and data derived therefrom and other information relating to use of various aspects of the Services and related systems and technologies; and
- iii. during and after the Term, use End User Data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and other BARCHART offerings, whether offered currently or in the future.

5c. Certain BARCHART Services may integrate with and permit End Users to link accounts with Third-Party Services. BARCHART may exchange End User Data with such third parties, either directly or through a third-party data aggregator, for the purpose of providing the Services.

5d. BARCHART MAY USE AND DISCLOSE ALL DATA AND OTHER INFORMATION RELATING TO THE PROVISION, USE AND PERFORMANCE OF VARIOUS ASPECTS OF THE SERVICES AND RELATED SYSTEMS AND TECHNOLOGIES (INCLUDING, WITHOUT LIMITATION, "END USER DATA" AND DATA DERIVED THEREFROM) IN CONNECTION WITH ANY LEGAL BUSINESS PURPOSE, INCLUDING WITHOUT LIMITATION CREATING DERIVED PRODUCTS, DURING AND AFTER THE TERM OF THESE TERMS OF SERVICE PROVIDED THAT BARCHART AGGREGATES, DE-PERSONALIZES AND ANONYMIZES THE DATA AND MAKES NO DIRECT REFERENCE TO CLIENT, ITS END USERS OR CUSTOMERS AND PROVIDED BARCHART COMPLIES WITH ALL APPLICABLE LAWS AND REGULATIONS. BARCHART DOES NOT HAVE THE RIGHT TO USE ANY IDENTIFYING DATA FOR SUCH PURPOSES WITHOUT END USER'S EXPRESS CONSENT.

**6. Information Security.** BARCHART utilizes administrative, physical, and technical safeguards designed to protect Client Data from unauthorized access, disclosure, acquisition, destruction, use, or modification. BARCHART will comply with applicable laws and regulations in its collection, receipt, access, use, storage, disposal, and disclosure of Client Data. Client implements adequate security procedures to prevent unauthorized access to and distribution of the BARCHART Information or corruption of the BARCHART feed.

## **7. Term and Termination.**

7a. These Terms are effective as of the purchase of Services through an Order Form and continue in effect until the completion of the Services under all Order Forms, unless earlier terminated pursuant to this Section 7.

7b. In addition to any other express termination rights set forth in this Agreement:

- i. BARCHART may terminate this Agreement or any Order Form, effective on written notice to Client, if: (A) an Information Provider withdraws BARCHART's rights to access and use the Information as required to provide the Services; (B) Client ceases to be in good standing with all applicable regulatory agencies, including but not limited to the SEC, NASD, CFTC, NFA and state regulatory agencies, if applicable to the Services; or (C) Client loses approval from the Information Providers to redistribute the Information pursuant to this Agreement, if applicable to the Services;

- ii. either party may terminate this Agreement or any Order Form, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured three (3) business days after the non-breaching party provides the breaching party with written notice of such breach; or
  - iii. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- 7c. Other than as expressly provided in this Agreement, BARCHART shall not terminate Client's Services under any circumstances without sixty (60) days prior written notice to Client.
- 7d. Termination of this Agreement shall terminate all Order Forms currently in effect. The termination or expiration of an individual Order Form shall not have the effect of terminating any other individual Order Form or this Agreement, unless expressly agreed to by the parties in writing.
- 7e. If this Agreement or any Order Form is terminated under paragraph 7(b)(i)(A), Client's sole remedy is a refund for the pro rata fees representing the unutilized portion of the affected Services.
- 7f. If this Agreement or an Order Form is terminated for any reason, Client shall promptly (as directed by BARCHART) return to BARCHART any Information, documentation and/or equipment related to the affected Services then in its possession. Client shall also purge all machine-readable Information related to the affected BARCHART Services from its data storage facilities. Client shall, upon request, certify in writing to BARCHART, Client's compliance with this paragraph within seven (7) days of termination.
- 7g. If Client, or any of its employees, agents, affiliates or representatives, attempts to use or dispose of the Services in a manner contrary to the terms of this Agreement, BARCHART has the right, in addition to such other remedies as may be available, to injunctive relief enjoining such acts or attempts, it being acknowledged that legal remedies for any such breach are inadequate.

## **8. Fees and Payment.**

- 8a. Client shall pay to BARCHART the recurring fees as set forth in the Order Form, without setoff or deduction. Client shall also pay to BARCHART an installation fee set forth in the Order Form, if applicable. Client shall make all payments on or before the due date set forth in the Order Form.
- 8b. BARCHART may assess a late charge at an annual rate not exceeding 10% (0.83% per month) on all amounts payable under this Agreement which Client has not paid within thirty (30) days after receipt of invoice.
- 8c. BARCHART shall increase the recurring fees set forth in the Order Form by 3%, rounded to the nearest five (5) dollar increment, on an annual basis relative to the Effective Date of the Agreement.
- 8d. The Client shall be responsible for payment of all communication charges, if applicable, and all taxes, including, but not limited to, federal, state local use, property and sales tax, incurred in connection with the Services contemplated hereunder. The Client shall also be responsible for payment of any one-time or monthly communications charges relating to use of the Services.
- 8e. If fees, as set forth in the Order Form, are not paid within forty-five (45) days after receipt of invoice, BARCHART may suspend the Services until fees are paid in full. BARCHART must provide Client with at least five (5) days' notice before any suspension of Client's Services.

## **9. Authorization, Consent and Reporting.**

- 9a. If applicable, prior to commencing use of the Services, Client shall obtain approval to receive and disseminate the Information provided pursuant to this Agreement from the various Information Providers and any other applicable regulatory or governing agency, or other source of the Information to be provided hereunder. Client shall not violate the terms and agreements of the Information Provider or other source of the Information to be provided hereunder. BARCHART may terminate this contract should any of the Information Providers determine that any such violation has occurred and Client has failed to correct or remedy such violation within the applicable cure period, or should any of the Information Providers direct BARCHART to do so.
- 9b. Upon request by BARCHART, Client shall provide to BARCHART a copy of all reports required by the various Information Providers and other entities in connection with its dissemination of the market data information provided by BARCHART under this Agreement.
- 9c. Client agrees to indemnify and hold BARCHART and its affiliates harmless from and against any and all losses, damages, liabilities, costs, charges, and expenses, including reasonable attorneys' fees and such fees and/or penalties any of the Information Providers, exchanges or regulatory agencies may impose, arising out of any breach by Client of this paragraph.
- 9d. The provisions of this paragraph 9 shall survive any termination of this Agreement.

## **10. Representations and Warranties.**

- 10a. Client represents and warrants that it is in good standing with all applicable regulatory agencies, including but not limited to the SEC, NASD, CFTC, NFA and state regulatory agencies. If applicable, the Client further represents that it has received independent approval from the various Information Providers to redistribute the information to be provided hereunder.
- 10b. Client shall comply with all terms and conditions of this Agreement, the Order Forms, all applicable laws, rules, and regulations, and all BARCHART guidelines, standards, and requirements. Client represents and warrants that it is not currently nor will it engage in the operation of any unlawful transactions or business and that it will not use or permit anyone to use the Services for any unlawful purposes.  
  
Client represents and warrants that in utilizing Barchart's SMS services, it has the requisite consent of the end user and that the information sent does not contain advertising, marketing, or a solicitation. Client shall comply in all respects with the Telephone Consumer Protection Act, the Telemarketing Sales Rule, and any state or federal law, rule, regulation, guidelines, orders, and requirements governing the transmission of telephonic communications. Client agrees to indemnify, defend, and hold Barchart and its affiliates harmless from any and all claims, suits, or proceedings arising from any actual or alleged violation of the Telephone Consumer Protection Act, the Telemarketing Sales Rule, or any federal or state laws, rules, and regulations governing telephonic marketing, advertising, or the transmission of telephonic communications.
- 10c. BARCHART possesses the requisite license, authority, concessions and permissioning to collect, compile, process and redistribute the market data and information described in the Order Form.
- 10d. BARCHART represents and warrants, that the Services provided hereunder will substantively conform to the description set forth in the Order Form and the Services will be performed with diligence in a commercially reasonable manner. BARCHART further represents and warrants that to the best of its knowledge, the Services provided to the Client under this Agreement, do not infringe upon the rights of any third party.

## **11. Warranty Disclaimers and Limitation of Liability.**

- 11a. THE SERVICES PROVIDED HEREUNDER ARE PROVIDED "AS IS" AND EXCEPT AS SET FORTH

IN PARAGRAPH 10, BARCHART AND ITS AFFILIATES, INFORMATION SOURCES OR ANY OF THEIR RESPECTIVE LICENSORS, SPECIFICALLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE. BARCHART AND ITS AFFILIATES, INFORMATION SOURCES OR ANY OF THEIR RESPECTIVE LICENSORS, SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. BARCHART MAKES NO WARRANTY OF ANY KIND THAT THE INFORMATION, SERVICES OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CLIENT'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OF CLIENT'S OR ANY THIRD PARTY'S SOFTWARE, SYSTEM, OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. CLIENT EXPRESSLY AGREES THAT USE OF THE SERVICES IS AT THE CLIENT'S SOLE RISK.

- 11b. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL BARCHART BE LIABLE TO CLIENT OR TO ANY THIRD PARTY UNDER ANY TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOST PROFITS, LOST OR CORRUPTED DATA, COMPUTER FAILURE OR MALFUNCTION, INTERRUPTION OF BUSINESS, OR OTHER INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE SERVICES OR ANY BREACH OF ANY PROMISE OR WARRANTY HEREUNDER.
- 11c. NOTWITHSTANDING ANYTHING CONTAINED TO THE CONTRARY HEREIN, BARCHART'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO AN AMOUNT NOT TO EXCEED THE FEES PAID TO BARCHART DURING THE TWELVE MONTHS PRECEDING THE INCIDENT GIVING RISE TO THE CLAIM, WHETHER ARISING FROM DELAYS, ERRORS, OMISSIONS OR INTERRUPTIONS AND ALL OTHER ACTIONS WHETHER SOUNDING IN TORT, CONTRACT, WARRANTY, NEGLIGENCE OR OTHERWISE.
- 11d. Paragraph 11 shall survive the termination of this Agreement.

## **12. Indemnification**

- 12a. BARCHART agrees to indemnify and hold the Client harmless from and against any third-party claim, suit, action, or proceeding (each, an "Action") to the extent such Action is based on or arises out of a claim that the Services provided infringe a third party's intellectual property right. BARCHART's obligations under this paragraph will not apply to a claim or award based on: (i) modifications Client makes to the Services, or services or materials Client provides or makes available as part of the Services; (ii) Client's use of a BARCHART trademark without BARCHART's express written consent; (iii) Client's use of the Services after notification from BARCHART to stop due to a third-party claim; or (iv) Client's unauthorized redistribution of the Information or Services to, or use for the benefit of, any third party.
- 12b. Client will indemnify, defend and hold BARCHART and its affiliates harmless from and against any Action brought against BARCHART (and its officers, directors, employees, agents, service providers, licensors, and affiliates) to the extent that such Action is based upon or arises out of a claim that: (i) any of Client's unauthorized use of the Information or Services infringes on a third party's intellectual property rights; or (ii) arises from Client's breach of this Agreement.
- 12c. If BARCHART reasonably believes that a claim against BARCHART may bar Client's use of the Services, it will seek, at its sole discretion, to either: (i) obtain the right for Client to keep using it; or (ii) modify or replace it with a functional equivalent and notify Client to stop use of the prior version of the Services. If these options are not commercially reasonable, BARCHART may terminate Client's rights to use the Services and refund any advance payments for the unused Term.

- 12d. Each party must notify the other promptly of a claim under this paragraph. The party seeking protection must: (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will: (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help; and (2) pay the amount of any resulting adverse final judgment or settlement.

### **13. Miscellaneous Provisions.**

- 13a. Neither party shall have any liability for any default resulting from force majeure, which shall be deemed to include any circumstances beyond its reasonable control, provided that such party shall give notice in writing to the other party within a reasonable time after occurrence of the force majeure event. Such circumstances shall include, but are not limited to, acts of the government, fire, flood, strikes, power failures, or communications line or network failures, provided that such network failures are not the fault of the defaulting party.
- 13b. These Terms and all Order Forms, together with any other documents incorporated herein by reference, constitute the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. BARCHART may modify these Terms at any time, after providing notice to Client. Failure of either party to insist at any time upon strict compliance with the terms of this Agreement or to seek remedy for any breach thereof shall not constitute or be construed as a waiver of any rights or remedies under the Agreement or of any such breach.
- 13c. In the event of any inconsistency between the provisions of these Terms and any provision in an applicable Order Form, the provision of such Order Form shall govern and control with respect to that Order Form only.
- 13d. These Terms shall be construed in accordance with and governed by and construed in accordance with the laws of the State of Illinois, U.S.A., without giving effect to any choice of conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Illinois, U.S.A. The prevailing party in any such disputes shall be reimbursed for all costs, expenses and reasonable attorneys' fees by the other party.
- 13e. ALL DISPUTES ARISING UNDER THIS AGREEMENT SHALL BE INSTITUTED EXCLUSIVELY IN THE COURTS OF THE STATE OF ILLINOIS IN EACH CASE LOCATED IN THE CITY OF CHICAGO, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUIT, ACTION, OR PROCEEDING. ANY ACTION, PROCEEDING, OR LITIGATION BROUGHT BY A PARTY PURSUANT TO THIS AGREEMENT OR ANY BREACH THEREOF MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CLAIM OR CAUSE OF ACTION AROSE, WHETHER OR NOT THE PARTY HAD ANY KNOWLEDGE OR NOTICE THEREOF.
- 13f. All notices relating to this Agreement shall be in writing addressed to the other party at their respective addresses as first set forth on the applicable Order Form or at such different addresses of which written notice has been given. All such notices shall be deemed duly given when sent by facsimile or hand delivered, or when actually received if by mail or other means.
- 13g. Neither party may assign or transfer any license granted hereunder without the express written consent of the other party, which consent shall not be unreasonably withheld.