› eex group

GENERAL CONDITIONS APPLICABLE TO EEX GROUP DATASOURCE PRODUCTS

11.01.2020

~~V2.1~~V.3

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Document History

Version	Date	Changes
1	25.06.2019	
2	01.11.2019	Material changes throughout the document – see Markup version
2.1	14.02.2020	Redactional changes throughout the document
3	01.09.2020	- Removal of unused definition - Clarification brought to the following definition • Derived Data • Internal and External Usage • Reverse Engineering • User - Review and clarification of the following topics ~~termination~~ ~~- liability~~ • Use of EEX Group DataSource – Section 3.1.3 and 3.1.4. • Rights and obligations related to the External Usage – Section 4.2.1. Invoicing – Section 4.2.2.7 and 4.2.2.8 • Other Obligation – Section 4.2.4 • Warranties and liabilities – Section 4.6 -

The following General Conditions shall apply to purchases of EEX Group DataSource Products on webshop.eex-group.com (the "**Website**") or through any other means, and to any form of EEX Group DataSource Product Usage.

By purchasing any EEX Group DataSource Product, you agree to be bound by these General Conditions, which may be supplemented by Specific Conditions, to be entered into either via the Website or any other written or electronic means. Specific Conditions may deviate from these General Conditions and – in the event of conflict – shall take precedence over these General Conditions.

The EEX Group DataSource Products are provided by the European Energy Exchange AG, a privately owned stock corporation established under the Laws of the Federal Republic of Germany, having its registered office at Augustusplatz 9, 04109 Leipzig/ Germany, and being registered with the Commercial Register at the Local Court Leipzig, registration number HRB 18409 (hereinafter referred to as "EEX AG").

In these General Conditions, the term "Contracting Party" refers to the party registered in the Account for the purchase of EEX Group DataSource Products. It shall be a legal entity acting within the scope of its activities.

EEX AG and the Contracting Party shall be individually referred to as "**Party**" and collectively as "**Parties**".

1. Definitions

Account
Account which allows a representative of the Contracting Party to purchase EEX Group DataSource Products.

Affiliated Company
Third-party-company which is directly or indirectly controlled by the Contracting Party, which directly or indirectly controls the Contracting Party or which is jointly directly or indirectly controlled, together with the Contracting Party, by the same parent company. With regard to the Contracting Party, it means any entity directly or indirectly Controlling, Controlled by or under common Control with the Contracting Party (including its successors and assigns). Control is, in particular, deemed to exist in the event of a shareholding of more than 50 percent.

Additional Data
Additional Data shall be results of mathematical calculations based on commercial data or Transparency Data. Additional Data includes, in particular, indices

API
Application Programmable Interface, i.e. a communication channel based on formatted standardized messages to be used by the Contracting Party in order to send or retrieve Data from trading systems. As an interface, it has to be linked to Application(s) developed by the Contracting Party.

Application
Software program to be developed at its own option by the Contracting Party or any other third party, enabling it to access and to give access to the API.

Audit
Inspection of the Contracting Party or its Subscriber(s) to ensure full compliance with their obligations.

Contracting Party
The Party registered in the Account for the purchase of EEX Group DataSource Products. It shall be a legal entity acting within the scope of its activities.

DataSource Service Agreement or Agreement
Consists of these General Conditions and the Order Recap as well as the paper form agreement and the Specific Conditions, if any, including all annexes attached thereto and amendments.

Delayed Data
Data which is available for use with a time delay of more than 15 minutes after its creation.

Derived Data

Data created or derived by the Contracting Party or any other User from an EEX Group DataSource Product, if (i) the quotes, prices, turnover figures, indices or other data originally marketed by EEX AG can no longer be determined through calculation or automated process or (ii) the alteration is formed in a way that the derived data cannot be used instead of the quotes, prices, turnover figures, indices or other data originally marketed by EEX AG (i.e. as substitute). Derived Data shall not be considered an EEX Group DataSource Product.

Device

Data terminal which enables the receipt and/or the reproduction of EEX Group DataSource Product.

EEX Group DataSource Product

Quotes, prices, turnover figures, indices and other data marketed by EEX AG. Data created or derived from an EEX Group DataSource Product is still deemed to be an EEX Group DataSource Product if (i) the quotes, prices, turnover figures, indices or other data originally marketed by EEX AG 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 quotes, prices, turnover figures, indices or other data originally marketed by EEX AG (i.e. as substitute). In case of doubt, EEX AG determines at its sole discretion whether such data is an EEX Group DataSource Product within the meaning of (i) and/or (ii) above.

EEX Group DataSource Product Usage

Any use of an EEX Group DataSource Product, irrespective of whether such usage occurred with or without authorization or by mistake. Therefore, an EEX Group DataSource Product Usage shall even exist when the Contracting party has no knowledge of the usage.

Effective Date

A DataSource Service Agreement regarding exclusively Internal Usage will be effective when – following acceptance of the General Conditions by the Contracting Party – EEX AG accepts the order by email confirming that the order was successfully paid and that the EEX Group DataSource Product(s) is/are available to be delivered. A DataSource Service Agreement involving External Usage will be effective on the date on which the DataSource Service Agreement is signed in paper form or entered into by any other means, unless another date is specified in the DataSource Service Agreement, in which case the specified date shall be the Effective Date.

End of Day Data

Aggregated trading data delivered at the end of each trading day via sFTP Access or any other means.

Essential Contractual Obligations

Essential Contractual Obligations are those whose infringement jeopardizes the contractual purpose, or whose fulfilment enables proper implementation of the Agreement in the first place and on the compliance of which the other Party may regularly rely.

External Usage

~~The use of an EEX Group DataSource Product, in changed or unchanged form, for~~ <u>O</u>~~t~~he <u>onward dissemination of an EEX Group DataSource Product, in changed or unchanged form, or of Derived Data</u> ~~to Users.~~ ~~or any other external usage, irrespective of whether the onward dissemination occurred with or without authorization or by mistake. Therefore, a usage of an EEX Group DataSource Product shall even then exist where the Contracting Party or Subscriber, as the case may be, has no knowledge of the onward dissemination.~~

Historical Data
Market Data until the 31 December of the previous year.

Internal Usage
The use of an EEX Group DataSource Products, in changed or unchanged form, takes place internally if the EEX Group DataSource Product is exclusively used by the recipient of the EEX Group DataSource Product concerned itself or its employees without any external onward dissemination to third parties or any other external usage. <u>The right of Internal Usage allows for the creation of Derived Data, but not its dissemination.</u>

~~**ISV**~~
~~Independent Software Vendors~~

~~**ISV Access**~~
~~The access granted by EEX AG to ISV to Test and Development Environment under the terms of the relevant Specific Conditions.~~

Licensed EEX Group DataSource Product
EEX Group DataSource Product for which the Contracting Party has been granted a usage right. The type and scope of usage permitted to the Contracting Party is determined by the DataSource Service Agreement.

Personal Data
As defined under Article 4 of the General Data Protection Regulation (EU) 2016/679 ("GDPR"), ~~Personal Data means any information relating to an identified or identifiable natural person ("Data Subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.~~

Order Recap
Page on the Website or any other means showing the recap of the order of EEX Group DataSource Product at the end of the order process.

Processor
A Processor is a natural or legal person, authority, institution or other body that processes personal data on behalf of EEX AG.

Property Right

Any intellectual property right throughout the world, in all media, now existing or created in the future, for all versions and elements, in any languages, and for the entire duration of such rights, arising under any applicable law, contract, or otherwise, and whether or not registered, registerable or perfected, including, but not limited to (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trademarks, service marks, trade names, internet domain names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other confidential information; (g) design rights, whether registered or unregistered; (h) *sui generis* right on databases ("~~Intellectual~~ Property Rights") and any other (property) rights and/or legal protection by law, regulation or contract such as, but not exclusively, protection granted through unfair competition legislation.

Real-Time EEX Group DataSource Product

EEX Group DataSource Product which is available for use with a time delay of less than 15 minutes after its creation. This corresponds to EEX Group DataSource Product provided by EEX AG via its API and delivered less than 15 minutes after its creation by EEX AG.

Remuneration

The remuneration to be paid to EEX AG in compensation for the use of a Licensed EEX Group DataSource Product.

Reporting

Transmission of information relevant for the invoicing which the Contracting Party is required to perform.

Reverse Engineering

Process of extracting the underlying data/information used by EEX AG to calculate the EEX Group DataSource Product. ~~Process to extract the construction elements from an EEX Group DataSource Product by examining the structures to map the EEX Group DataSource Product as exactly as possible.~~

Scientific Establishment

Contracting Party who is a university, higher education institution or research establishment and has not as substantial source of revenue commercial activities, such as consulting.

Services

Access to EEX Group DataSource Product, including API, Excel Tool, EEX Group DataSource Desktop and/or ISV granted by EEX AG to the Contracting Party once purchased on the Website or by any other means.

Service Provider
External service provider who/which provides services to the Contracting Party. ~~and shall then comply with the obligation as under this DataSource Service Agreement.~~

Specific Conditions
Specific terms and conditions to be entered into between EEX AG and the Contracting Party relating to the provision of certain EEX Group DataSource Products to the Contracting Party or types of External Usage of the EEX Group DataSource Product by the Contracting Party.

Subscriber
A third party to which the Contracting Party disseminates an EEX Group DataSource Product or a Derived Data in the course of Commercial Usage.

Third-Party Rights' Holder
Third-party legal entity which owns the original copyrights and other intellectual property rights to a specific EEX Group DataSource Product.

User
Any Affiliated Company of the Contracting Party, a Service Provider, a Subscriber and employees thereof to whom/which the Contracting Party has provided ~~an~~ ~~authorized~~ access to an EEX Group DataSource Product.
~~Any entity or person who/which has access to an EEX Group DataSource Product irrespective of whether such access occurred with or without authorization or by mistake (e.g the Contracting Party itself, Subscribers, Affiliated Companies, Service Providers, employees thereof, or any other third party). This means any company, organization or individual that has access to the DataSource Product, whatever the means. The lowercase term "user" in the Agreement shall be deemed to be a reference to "User".~~

Vendor
Contracting Party of EEX AG which onward disseminates an EEX Group DataSource Product to Subscribers.

~~Vendor~~ Subscriber Service Agreement
An agreement between the Contracting Party and its Subscribers which governs the use of a Licensed EEX Group DataSource Product.

White Labelling
Offering of products and services of the Contracting Party under the name, logo, brand and/or layout of a third party.

2. General provisions

2.1 Use of the Website

All personal information that the Contracting Party provides when using the Website will be processed by EPEX SPOT SE as the operator of the Website in accordance with the EPEX SPOT SE Privacy Policy. Such information will also be processed by us in accordance with ~~our~~EEX AG Privacy Policy as further outlined in Sections 4.3.4 and 4.3.5.

By placing an order through this Website, you warrant that you are at least eighteen (18) years old and that you are capable of entering into legally binding contracts on behalf of your company.

2.2 Making a purchase/Conclusion of the DataSource Service Agreement

Once the Contracting Party has submitted its order, EEX AG will send an email to the email address the Contracting Party has provided, acknowledging receipt of the order and setting out details of the ordered EEX Group DataSource Product(s). This email does not constitute an acceptance of the order - only an acknowledgement that EEX AG has received it. Once EEX AG has acknowledged receipt of the order, EEX AG will check the availability of the EEX Group DataSource Product.

The information on the Website does not constitute a binding offer to sell EEX Group DataSource Products described on the Website. A DataSource Service Agreement between the Contracting Party and EEX AG regarding exclusively Internal Usage will be concluded and effective when - following the acceptance of the General Conditions – EEX AG accepts the order by email confirming that the order was successfully paid and that the EEX Group DataSource Product(s) is/are available to be delivered to the Contracting Party.

If the Contracting Party has ordered an EEX Group DataSource Product for the purpose of External Usage, the conclusion of the DataSource Service Agreement may have to take place bilaterally, following the submission of the order via the Website.

In the event that the EEX Group DataSource Product the Contracting Party has ordered is unavailable, EEX AG will inform the Contracting Party thereof within seven (7) days of receiving the order and payment. EEX AG will, where possible, give the Contracting Party the option to order a different EEX Group DataSource Product of the same type or alternatively, to cancel the order. Should the Contracting Party opt to cancel the order, a full refund will be made.

2.3 ~~Our~~ ~~R~~right to refuse or cancel an order

EEX AG reserve the right to decline the order, or any part thereof, in ~~our~~ its sole discretion, at any time, even after EEX AG acknowledged receipt of the order or EEX AG received payment from the

Contracting Party. If EEX AG declines the order after payment, EEX AG will refund to the Contracting Party any payment made.

The Contracting Party may not purchase any EEX Group DataSource Product from this Website for any use not specified in the DataSource Service Agreement. Without prejudice to Section 2.3, first sentence, EEX AG shall be entitled to cancel any order placed by the Contracting Party that EEX AG believes has been made for a purpose other than the ones specified in the DataSource Service Agreement. In such event, EEX AG reserves the right to refuse or cancel all subsequent orders from the Contracting Party. EEX AG also reserves the right to reject orders from any customer with whom EEX AG has an ongoing legal dispute regarding a prior order. EEX AG may cancel any order if EEX AG suspects any fraudulent activity and may refuse to process orders from customers with a previous fraudulent order history.

2.4 Prices

All prices shown on this Website are in Euros and exclusive of sales tax at the applicable rate. These prices reflect annual fees. Where a DataSource Service Agreement starts in the course of a calendar year, the amount to be actually paid for that calendar year will be calculated on a pro rata basis.

The price of the DataSource Products may vary on the sole discretion of EEX AG or upon bilateral agreement of the Parties, according to the terms of the DataSource Service Agreement.

If an error is discovered in the price of any EEX Group DataSource Product the Contracting Party has ordered prior to its delivery to the Contracting Party, EEX AG will: (i) where the correct price is lower, refund the Contracting Party the difference or reduce the balance of the price payable to us; or, (ii) where the correct price is higher, contact the Contracting Party and offer the Contracting Party the option to either confirm the order at the correct price or cancel the order. EEX AG does not have an obligation to provide any EEX Group DataSource Product to the Contracting Party at a lower price where EEX AG has made a pricing error and notify the Contracting Party of the error before EEX AG has dispatched the order. In this regard, the price list of EEX AG available on the website of EEX AG shall take precedence over any price displayed during the order process or captured in the Order Recap.

2.5 Payment methods

Full payment is required to complete the order and before it can be delivered to the Contracting Party. EEX AG may accept the following payment methods:

- Bank transfer to the bank account details mentioned in the (pro forma) invoice.
- Other payment methods made explicitly available on the Website.

In the event that the sum due from the Contracting Party for the order cannot be debited or charged for whatever reason, the order will be cancelled. By making an offer to purchase ~~our~~ EEX Group DataSource Products, the Contracting Party authorizes us, to the extent permitted by applicable law,

to perform credit and anti-fraud checks on the Contracting Party and the payment mechanism that the Contracting Party has provided. These checks may be required, amongst other things, to authenticate the identity, to validate the credit or debit card, to obtain an initial credit or debit card authorization and/or to authorize individual purchases. The Contracting Party authorizes us to disclose Information provided by the Contracting Party, including personal information, to third parties such as banks and the providers of credit reports for the purposes of these checks, and acknowledge that such parties may keep a record of that information. The Contracting Party further agrees and acknowledge that EEX AG may make the information EEX AG receives from such checks available to third parties including fraud prevention and credit reference agencies. EEX AG reserves the right to put in place additional payment security systems from time to time.

EEX AG will prosecute any fraudulent activities relating to any attempt to reverse or seek a refund of a valid charge for an order that has been properly fulfilled and delivered to the Contracting Party.

2.6   Order tracking and delivery

Once the payment of the order has been confirmed, EEX AG endeavors to put the EEX Group DataSource Product(s) at its disposal on the dedicated Specification (Website, FTP or any other mean) or perform the Service within five (5) to ten (10) working days of confirming the order (working days exclude Saturdays, Sundays and public holidays).

3. EEX Group DataSource Product and Licensed EEX Group DataSource Product

3.1 Definition and scope

3.1.1 The exact scope of EEX Group DataSource Products is described in the specifications available at: https://www.eex.com/en/market-data/

3.1.2 The Contracting Party shall select the type of usage of the EEX Group DataSource Product during the ordering process, by filling in a questionnaire. The type of usage chosen will also be reflected in the DataSource Service Agreement. The EEX Group DataSource Product chosen by the Contracting Party will be licensed and become the subject matter of the DataSource Service Agreement (i.e. the Licensed EEX Group DataSource Product) upon confirmation by us via email. Obtaining the right of External Usage may require the signing of the relevant Specific Conditions through the process outlined in Section 2.2.

3.1.3 For the duration of the DataSource Service Agreement, the Contracting Party is granted a worldwide, non-exclusive and non-transferable right to access, store, edit, process, alter, manipulate, translate and package the Licensed EEX Group DataSource Product. Subject to its choice in accordance with Section 3.1.2 and as agreed upon in the DataSource Service Agreement, its usage right may involve the following types of usage:

  a. Internal Usage in derived or not derived format;
  b. External Usage:
    1) Commercial Usage: dissemination of EEX Group DataSource Product to Subscribers or Affiliated Companies for their exclusively Internal Usage and dissemination of Derived Data.

    2) Medial Usage: publication on the website or Any public and free of charge display of EEX Group DataSource Product (e.g. website, marketing documentation or reports) in changed or unchanged form, being understood that Section 4.2.1.4. is complied with. The right of Medial Usage does not include the right to disseminate Derived Data. any kind of published documentation, reports or studies thatof the Contracting Party provides free of charge to Subscribers or Users in changed or unchanged form, understood that Subscribers and Users may not download nor process the data and no more than 6 weeks of history is provided

      a.

2)3) Scientific Usage: usage for internal scientific purposes, which includes dissemination to students and other members of the Scientific Establishment for use free of charge as part of research projects, for the compilation of scientific papers, or the use as part of lectures or the like. With regard to scientific projects, the use is permitted only if the scientific project is funded by the Contracting Party in its capacity as a scientific institution or by third-party funds from public funding agencies or foundations. The source of supply (EEX Group) must be indicated for each use. The use for any commercial purpose shall be prohibited, which includes the use for contract research with a commercial purpose or expert opinions to the benefit of companies.

3.1.4   The right to process and , alter and manipulate the EEX Group DataSource Product includes the right to create Derived Data. For the avoidance of doubt, the right of External Usage includes the right of Internal Usage. , subject, however, to the limitation that Derived Data may be used only to the same extent as the EEX Group DataSource Product it is derived from. If a Derived Data is derived from several EEX Group DataSource Products, the EEX Group DataSource Product with the most limited usage right determines the scope of permissible usage of the Derived Data. The usage of a Derived Data shall be considered usage of the respective EEX Group DataSource Product.

3.2   Usage of Licensed EEX Group DataSource Product

3.2.1   The type of usage right chosen in accordance with Section 3.1 determines the scope of EEX Group DataSource Product Usage granted to the Contracting Party. Any use of Licensed EEX Group DataSource Products is only permitted in countries in which such use does not infringe applicable laws.

3.2.2   White-Labelling is permitted only with prior written approval by EEX AG.

3.2.3   Any EEX Group DataSource Product Usage not referred to in Sections 3.1.3 and 3.1.4 is strictly forbidden unless express prior written consent is granted by EEX AG. In particular, the DataSource Service Agreement does not create any right for the Contracting Party or any User, to use the EEX Group DataSource Product to create any tradable financial product listed on an exchange or any index (i.e. any numerical representation of the value or volatility of a market or market sector calculated from time to time on a standard basis, in order to reflect movements in the underlying constituents) to be used as reference price underlying such tradable financial products nor any other Index as defined by the Benchmark Regulation EU 2016/1011. Such usage is strictly forbidden. In addition, any Reverse Engineering of the EEX Group DataSource Product shall be prohibited. The Contracting Party shall reflect in writing these obligations in its contracts or relationship with Users.

3.2.4   Upon termination of the DataSource Service Agreement, the Contracting Party and its Users, shall no longer use the Licensed EEX Group DataSource Product in any manner.

3.2.5   Specific to dissemination of Licensed EEX Group DataSource Product to Affiliated
Companies

3.2.5.1   The Contracting Party shall notify EEX AG via the Website or any other written or
electronic means of its Affiliated Companies and provide EEX AG with its Affiliated
Companies' details (name, addresses, registration number and place of
registration) and Internet addresses (URLs).

3.2.5.2   The provisions of the DataSource Service Agreement shall apply mutatis mutandis
to Affiliated Companies of the Contracting Party, and the Contracting Party shall be
responsible for ensuring that its Affiliated Companies comply with the terms and
conditions of the DataSource Service Agreement.

3.2.6   Specific to External Usage of Licensed EEX Group DataSource Product with Service
Providers

3.2.6.1   For the avoidance of doubt, the Service Provider may only access the Licensed
EEX Group DataSource Product for the strict purpose and for the duration needed
for the performance of its obligations. All services and/or products provided via a
Service Provider shall be clearly branded as services and/ or products of the
Contracting Party or an Affiliated Company of the Contracting Party, covered by
this DataSource Service Agreement. Service Providers are not allowed to
distribute Licensed EEX Group DataSource Product under their own logo, brand
and/or name, not even in the form of co-branding together with its logo, brand
and/or its name.

3.2.6.2   The External Usage of Licensed EEX Group DataSource Products with Service
Providers is permitted only if expressly approved by EEX AG in writing. The
Contracting Party shall in this regard provide to EEX AG the Service Provider's
details (name, addresses, registration number, place of registration), Internet
addresses (URLs) and the services rendered by the Service Providers to the
Contracting Party or its Users. The details may also be registered in Its Account
section and, the case may be, in the DataSource Service Agreement. Changes to
Service Providers shall be submitted promptly and, the case may be, give raise to
an amendment to the DataSource Service Agreement. In any event, the Licensed
Data Source Product may not be disseminated to any Service Provider prior to the
express approval by EEX AG.

3.2.6.3   The Contracting Party shall be responsible for ensuring that its Service Providers
comply with the terms and conditions of the DataSource Service Agreement.

4. Rights, obligations, warranties and liabilities of the Parties and other Users

4.1 Rights and obligations of EEX AG

4.1.1   Obligations of EEX AG regarding the provision of Services

4.1.1.1   EEX AG shall use reasonable efforts (i) to ensure that the Licensed EEX Group DataSource Product made available to the Contracting Party, as well as the Services provided to the Contracting Party have been and will continue to be developed with due care and skill in a professional manner and is accurate, current and complete and that the sources of the Licensed EEX Group DataSource Product are reliable and (ii) to promptly correct or complete any errors or omissions EEX AG may be aware of and then retransmit the corrected or completed Licensed EEX Group DataSource Product to the Contracting Party and (iii) to ensure that the Licensed EEX Group DataSource Product will continue to be provided to at least the same standard in terms of quality, quantity and timeliness as at the date when it was formally accepted by the Contracting Party as meeting the coverage, timeliness, accuracy levels and specifications as agreed between us.

4.1.1.2   The EEX Group DataSource Product are offered by EEX "as is" and "as available". The use of the licensed EEX Group DataSource Product by the Contracting Party, its Affiliated Companies and Subscribers or any other Users should be as their own risk.

4.1.1.3   EEX AG shall provide the Contracting Party with the Licensed EEX Group DataSource Product of as good quality and quantity (including, but not limited to, in terms of consistency, accuracy, timeliness and comprehensiveness) as the EEX Group DataSource Product EEX AG makes available to other third parties having access to the same EEX Group DataSource Product as the Contracting Party.

4.1.1.4   EEX AG reserves the right to suspend the provision of the Licensed EEX Group DataSource Product ~~due to~~for technical reasons.

4.1.2   Audit

4.1.2.1 EEX AG shall be entitled to carry out an Audit at the sites of the Contracting Party, its Affiliated Companies, Service Providers and White Labelling partners for purposes of the verification of compliance with the DataSource Service Agreement, in particular in relation to the Remuneration of the three (3) years prior to the Audit. The Contracting Party shall be obliged to ensure that EEX AG or the auditors instructed by us, as the case may be, receive access to the relevant documents and the technical infrastructure at its site or the site of its Affiliated Companies, Service Providers and White Labelling partners, as well as the sites of Subscribers. EEX AG may additionally request from the Contracting Party relevant documents as well as electronic data files for the purpose of further examination which the Contracting Party undertakes to provide.

4.1.2.2 The aforementioned Audit right of EEX AG remains for a time period of two (2) years after termination of the DataSource Service Agreement. The Contracting Party has to ensure that EEX AG may exercise its Audit right also at the sites of its Affiliated Companies, Service Providers and White Labelling partners as well as its Subscribers during a period of at least two (2) years after (a) termination of the DataSource Service Agreement or (b) an earlier termination of the service agreement with the relevant Service Provider or the Vendor Subsriber Service Agreement with the relevant Subscriber, as the case may be.

4.1.2.3 Notwithstanding any other rights under the DataSource Service Agreement, if the Contracting Party refuses the conduct of a duly announced Audit and, therefore, fail to comply with its obligations under Section 4.1.2, or if the Contracting Party, in spite of a written demand by EEX AG or one of its instructed auditors, does not (i) provide access to relevant documents at its site or the site of its Affiliated Companies, Service Providers, White Labelling partners or Subscribers, or do not (ii) deliver requested relevant documents or electronic data files, EEX AG shall, until the due performance of the obligations, deriving from Section 4.1.2, at its choice, be entitled to:

a. preliminarily estimate an assumed supplementary payment on the basis of appropriate criteria (e.g. reports of the past or reports by comparable companies, as the case may be) in accordance with its reasonably exercised discretion and invoice such estimate as an on-account payment; and/or

b. suspend the delivery of the Licensed EEX Group DataSource Product or the license for the EEX Group DataSource Product Usage until the proper compliance with the obligations under Section 4.1.2.

4.1.2.4 As far as the documents necessary for the correct determination of the billing basis do not exist at the sites of the Contracting Party, its Service Providers, White Labelling partners or Subscribers, as the case may be, EEX AG shall have the rights under Section 4.1.2.3 mutatis mutandis.

4.1.2.5 The Contracting Party shall bear the audit costs if the audit reveals that the Contracting Party did not comply with the DataSource Service Agreement and that the Remuneration owed deviates from the amount actually paid.

4.2 Rights and obligations of the Contracting Party and other Users

4.2.1 Rights and obligations related to the External Usage of EEX Group DataSource Product

4.2.1.1 The Contracting Party shall:
   a. ensure that dissemination of the Licensed EEX Group DataSource Product, other than in the form of Medial or Scientific Usage, to Subscribers is subject to the conclusion of a binding ~~Vendor~~ Subscriber Service Agreement between the Contracting Party and the relevant Subscriber.
   ~~b.~~ Through that Subscriber Service Agreement, procure that all ~~Users~~ Subscribers use the Licensed EEX Group DataSource Product only in compliance with the DataSource Service Agreement; and ~~in particular the Contracting Party shall:~~
   ~~c.~~b. ensure that its Users may take notice ~~from~~ of all changes to the DataSource Service Agreement which are relevant to them before such changes enter into effect.~~; and~~
   d. ~~maintain effective control mechanisms for the prevention of unauthorized use of Licensed EEX Group DataSource Products by Users.~~

4.2.1.2 The Contracting Party shall be deemed to satisfy their obligations under Sections 4.2.1.1 of the Agreement if they include a provision in the Subscriber Service Agreement and/or terms of use limiting Subscribers' use to their own personal, noncommercial use only.

4.2.1.3 Should a User use any Licensed EEX Group DataSource Product in an unauthorized manner, the Contracting Party shall notify EEX AG thereof immediately and shall ensure by taking appropriate measures (if necessary by suspending the supply of the EEX Group DataSource Product) that the unauthorized use of the Licensed EEX Group DataSource Product ceases immediately, at the latest within 30 days as of knowledge thereof. In the case of extraordinary grave violations, EEX AG shall be entitled to demand an immediate cessation of the supply of the Licensed EEX Group DataSource Product to the User in question. The right of EEX AG to seek Contracting Party liability shall remain unaffected.

4.2.1.2 ~~Moreover, the External Usage of Licensed EEX Group DataSource Products may also be subject to the signature by the Subscribers and Service Providers of a Compliance Declaration according to which they commit to make use of the Licensed EEX Group DataSource Product according to the terms of the DataSource Service Agreement. The above mentioned rights and obligations of the Parties will then also apply to the Declaration of Compliance.~~

4.2.1.4 If the Contracting Party is entitled to provide access to the contents of the Licensed EEX Group DataSource Products on websites or the like, the Contracting Party shall take appropriate technical precautions to prevent any unauthorized downloading. Appropriate technical measures shall include, in particular, using flash technology, encrypted JAVA scripts or generating copy-protected PDF files. This shall apply to Delayed Data and Real-time Data in any case, even if they are not freely accessible.

4.2.1.3~~4.2.1.5~~ The Contracting Party shall use reasonable efforts to, or upon request from EEX, validate the accuracy and the completeness of the data disseminated against the Licensed EEX Group DataSource Product provided by EEX AG.

4.2.2 Remuneration

4.2.2.1 The Contracting Party undertakes to pay the Remuneration in accordance with the terms of the DataSource Service Agreement. As far as the payment of the Remuneration by the Contracting Party is subject to Value Added Tax, the statutory Value Added Tax shall be deemed added to the Remuneration set out in the DataSource Service Agreement. The Remuneration is due without any deduction of taxes (e.g. withholding tax or others) and shall exclusively apply for the relationship between EEX AG and the Contracting Party for the purpose of the DataSource Service Agreement. It does not represent a guideline or recommendation for the fees which the Contracting Party agree in turn with its Subscribers. The Contracting Party shall be completely free regarding its price structure.

4.2.2.2 The Remuneration for Commercial Usage varies according to a System of tiered prices taking into account the number of Subscribers of the Contracting Party. The tiered pricing scale will be reflected in the DataSource Service Agreement.

4.2.2.3 The DataSource Service Agreement shall indicate a certain number of Subscribers. The Contracting Party may disseminate the Licensed EEX Group DataSource Product to a higher number of Subscribers, in which case the Remuneration will be adjusted to the relevant tier of the pricing scale
a. as of 1 January of the following calendar year for any increase in Subscribers occurring before 31 August of the running calendar year; or
b. as of 1 January of the year thereafter for any increase in Subscribers occurring between 1 September and 31 December of the running year.

4.2.2.4 The Contracting Party shall immediately inform EEX AG of the number of Subscribers whenever a higher tier of the pricing scale is met.

4.2.2.5 The tiered pricing scale and the timeframe for adjustment outlined above serve to allow for some flexibility on the part of the Contracting Party while also taking into account the administrative burden associated with such flexibility. EEX AG reserves the right to adjust the Remuneration as of the month an increase of Subscribers meets a higher tier of the pricing scale.

4.2.2.6 The Contracting Party shall bear the risk that the number of Subscribers indicated by the Contracting Party is not reached or decreases at a later stage. However, the Contracting Party may, by 31 October of each calendar year the latest, notify to EEX AG a lower number of Subscribers (current or anticipated as of 1 January of the following calendar year), in which case the Remuneration will be adjusted to the relevant tier of the pricing scale as of 1 January of the following calendar year.

4.2.2.7 The Remuneration will be charged from the Contracting Party as of the Effective Date according to the terms of the DataSource Service Agreement, either during the ordering process (upfront payment) or upon receipt of invoices. All invoices shall be due and payable within twenty-one (2114) days. If the amounts invoiced are not paid in full within twenty-one (2114) days of receipt of an invoice, the due amounts are increased, by right and without the need for a formal notice to pay, by a one-time recovery fees of forty (40) Euros and any additional recovery costs as duly documented, in addition to interests for late payments, applicable for each day after the due date, at a rate of eight (8) percentage points above the basic interest rate (Section 288 para. 2 German Civil Code). These recovery fees and interests for late payments are due as from the day following the payment due date mentioned on the invoices. The right of EEX AG to obtain further compensation for further default damages shall remain unaffected.

4.2.2.74.2.2.8 All invoices will be sent to the Contracting Party will be donesent via electronic form to theby -email to the address storedprovided in-into his the Account. EEX AG reserves the right to send invoices via letter. in exceptional circumstances.

4.2.2.84.2.2.9 Moreover, if, after the expiration of the 21 fourteen (14) days' deadline, the Contracting Party fails to pay an outstanding invoice within a further deadline of fourteen (14) days set or not in a written demand for payment, EEX AG shall at its choice be entitled to:
  a. suspend the supply of the Licensed EEX Group DataSource Product and/or the license for the EEX Group DataSource Product Usage until all outstanding invoices are settled in full, and/or
  b. terminate the DataSource Service Agreement for cause in accordance with Section 5.1.6.

4.2.2.94.2.2.10   The Remuneration specified in the DataSource Service Agreement may be unilaterally changed by EEX AG by a maximum of 10% per calendar year without providing the Contracting Party with the right of extraordinary termination if:

  a.   the content of the Licensed EEX Group DataSource Product has been expanded;

  b.   in the opinion of EEX AG, the value of the Licensed EEX Group DataSource Product has increased;

  c.   the costs for making the Licensed EEX Group DataSource Products available have increased; or

  d.   the structure of the Remuneration shall be changed partially or in total.; or

  e.   an adaptation of the Remuneration is necessary in order to adapt the fee level of EEX AG to the respective fee level of other international exchanges or other comparable data providers.

4.2.2.104.2.2.11   Adjustments of the Remuneration shall be made by EEX AG according to its reasonably exercised discretion, taking adequately into account the legitimate interests of the Contracting Party. Remuneration changes will be announced with at least sixty (60) days' notice. Unilateral changes of the Remuneration by EEX AG not falling under the cases listed above shall entitle the Contracting Party to terminate with thirty (30) days' notice the EEX Group DataSource Products affected or, alternatively, the entire DataSource Service Agreement, effective at the time the unilateral Remuneration changes take effect.

4.2.3   Reporting

4.2.3.1   When disseminating EEX Group DataSource Products to Subscribers, the Contracting Party shall ensure by appropriate technical and administrative measures in its business that the number of Subscribers can be reported to EEX AG.

4.2.3.2   The Contracting Party's ability to prepare proper, that is, in particular, correct and complete, reports is to be proven upon request by EEX AG at any time.

4.2.3.3   Irrespective of the type of usage right, every Contracting Party shall be obliged to inform EEX AG in writing as of 31 August of each calendar year of the manner in which, and the extent to which (number of Subscribers, if any), the Licensed EEX Group DataSource Products are used.

4.2.3.4   If the Contracting Party has not transmitted the outstanding report by 31 August of each calendar year, EEX AG shall at its choice be entitled to:

  a.   preliminarily estimate the Remuneration to be paid on the basis of appropriate criteria in accordance with its reasonably exercised discretion and to invoice the Remuneration so estimated as a payment made in advance; and/or

b.   suspend delivery of the Licensed EEX Group DataSource Product and/or the license for the EEX Group DataSource Product Usage until the proper delivery of the outstanding reports; and/or

c.   make the continuation of the DataSource Service Agreement dependent upon the payment of reasonable costs (full amount of advance) for an Audit;

The right to terminate the DataSource Service Agreement without notice under Section 5.1.6 shall remain unaffected.

4.2.3.5   The documents and data files which are important for the Reporting and the Audits shall be retained by the Contracting Party for a minimum of ~~five~~ three (3~~5~~) years and must be made available to EEX AG in the event of an Audit. The Contracting Party shall further ensure that also the Subscribers and Service Providers retain the documents and data files which are important for Audits for a minimum of ~~five~~ three (~~5~~3) years and make them available in the event of an Audit.

4.2.3.6   In the event of incorrect or incomplete representations in the Reporting, in particular regarding the number of Subscribers, as well as in the event of missing reports in spite of a Reporting obligation of the Contracting Party, the Remuneration missed by EEX AG due to the improper Reporting shall be paid retroactively. In this regard, EEX AG shall be entitled to demand interest pursuant to Section 4.2.2.7 as of that point in time when interest would have accrued in the case of correct Reporting.

4.2.3.7   In the case of incorrect or incomplete representations made willfully or gross negligently in the reports, in particular regarding the number of Subscribers, or in the case of a willful or gross negligent failure to report in spite of a Reporting obligation on the part of the Contracting Party, EEX AG shall be entitled to charge an exceptional fee in addition to the Remuneration to be paid retroactively in accordance with Section 4.2.3.6, which shall at maximum equal the Remuneration to be paid retroactively including interest.

4.2.4   Other Obligations of the Contracting Party

~~4.2.4.1~~   At the request of EEX AG, the Contracting Party shall provide us with an overview of its company, in particular regarding the object, corporate structure, experience in the fields of data dissemination and data security, and the hardware and software used (including user administration and security concepts). With regard to the information given to EEX AG by the Contracting Party, the confidentiality obligation of EEX AG deriving from Section 4.3 shall apply in full.

~~4.2.4.2~~   ~~The Contracting Party is strictly advised to validate the accuracy and the completeness of the Licensed EEX Group DataSource Product delivered via an automated data validation system.~~

4.2.4.34.2.4.1 The Contracting Party shall create an account in the log-in area of the Website. The Contracting Party shall be responsible for maintaining and updating its master data. Incorrect particulars shall be to its detriment.

4.2.4.44.2.4.2 The Contracting Party agrees that the email addresses indicated in its account as part of the registration may be used to transmit all notifications effected subsequent to the conclusion of the DataSource Service Agreement. Exceptions to this shall only include statements for which a specific form is provided for by law.

4.2.4.54.2.4.3 The Contracting Party is responsible to meet the technical requirements to receive the Licensed EEX Group DataSource Products.

4.2.4.64.2.4.4 To retrieve the provided files from the SFTP server, the Contracting Party must not establish more than four (4) concurrent connections and must not access individual files more than once every ten seconds. The Contracting Party will be automatically logged out of the SFTP server if any of the aforementioned criteria are exceed and after a general 5 minutes idle timeout or 30 minutes maximum session timeout. EEX AG is entitled to resort to further technical criteria in its SFTP market data specification ensuring the availability and stability of its services and block client access in the event of exceeding any of the set forth criteria.

4.2.5 Obligations of Users (to be procured by the Contracting Party)

4.2.5.1 Users:
a. shall use the Licensed DataSource Product only in compliance with the DataSource Service Agreement and shall, in particular, not use any Licensed EEX Group DataSource Product for the purposes of Reverse Engineering or to create any tradable financial product listed on an exchange or any index (i.e. any numerical representation of the value or volatility of a market or market sector calculated from time to time on a standard basis, in order to reflect movements in the underlying constituents) to be used as reference price underlying such tradable financial products nor any other Index as defined by the Benchmark Regulation EU 2016/1011;
b. shall not have any Property Right on the Licensed EEX Group DataSource Product;
c. may be requested to sign the Declaration of Compliance referred to in Section 4.2.1.3, prior to the use of the Licensed EEX Group DataSource Product

4.3 Confidentiality and data protection

4.3.1 The Parties shall keep confidential all information exchanged in the framework of the DataSource Service Agreement unless:

a. such information has become public knowledge otherwise than in breach of the DataSource Service Agreement;

b. to the extent disclosure is ordered by a state, provincial or federal agency, authority, court or tribunal of competent jurisdiction, including a securities regulatory authority, provided that such Party gives prompt notice to the other Party, if legally permitted or

c. disclosure is made in confidence to their professional advisors or service providers (who are subject to confidentiality obligations).

4.3.2 Any element of the EEX Group DataSource Product that is not readily accessible (in particular by means other than reverse engineering) shall be treated as "trade secrets" according to the Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, and the transposing German Law 'Gesetz zum Schutz von Geschäftsgeheimnissen'(GeschGehG), which the Contracting Party and Users also commit to comply with

4.3.3 Save as provided above, disclosure may only be made with the prior written consent of the other Party. It is agreed that (i) EEX Group DataSource Product is not considered as confidential information under the DataSource Service Agreement and (ii) all information and Data provided by or relating to the Contracting Party and its Authorized Distributors and Users of which EEX AG may become aware during the term of the DataSource Service Agreement shall be treated as confidential.

4.3.4 Within the frame of the preparation, negotiation or performance of the DataSource Service Agreement, the Parties may receive and/or collect Personal Data of employees or any other representative of the Parties, or any other natural persons (the "Data Subject").This includes among others their contact details (name, email and postal address, phone number, identification documents) and connection details ("Personal Data"). When the Personal Data is collected directly by EEX AG, any details related to the processing of such Personal Data, including the rights of Data Subjects, are available in EEX AG Privacy Policy. When the Personal Data is collected indirectly via the Contracting Party, the latter warrants that the collection and processing of Personal Data by it, including the transfer itself by it to EEX AG, has been and, up to the moment of the transfer, will continue to be carried out in accordance with all applicable data privacy laws and regulations. EEX AG can thus process Personal Data in accordance with EEX AG Privacy Policy. Moreover, the Contracting Party commits to comply with all applicable data privacy laws and regulations while processing the Personal Data provided by EEX AG. Notwithstanding Section 4.6, if EEX AG is held liable by a Data Subject for any breach of applicable data privacy laws and regulations due to the processing of Personal Data collected indirectly via the Contracting Party, based on the argument that EEX AG was not allowed to process such Personal Data in accordance with its Privacy Policy, the latter will indemnify EEX AG for any cost, charge, damages, expenses or loss it has incurred.

4.3.5   In Accordance with Section 6 of ~~our~~ EEX AG Privacy Policy, Personal Data will be transferred to a Processor located in the United States of America and EEX AG has agreed with the relevant Processor on a standard protection clause as set out in Commission Decision of 5 February 2010 (notified under document C(2010) 593).

4.4 ~~Intellectual~~ Property Rights

4.4.1 Any ~~Intellectual~~ Property Rights in the Services which form the subject of the DataSource Service Agreement shall remain EEX Group's property.

4.4.2 Neither the DataSource Service Agreement nor the disclosure, access or use of any Licensed EEX Group DataSource Product shall affect the Property Rights or be construed as granting any Property Rights in the EEX Group DataSource Product to the Contracting Party or any other User.

4.4.3 For the avoidance of doubt and without prejudice to Section 3.1.4, the Property Rights in any Derived Data created by the Contracting Party or any other User, to the extent allowed under, and compliant with, the terms and conditions of the DataSource Service Agreement, shall rest with the creator of the Derived Data.

4.4.4 EEX AG grants the Contracting Party a free and non-exclusive, non-transferable and non-sublicensable right to use the "EEX AG" trademark of EEX AG, "EEX Asia" trademarks of EEX Asia Pte Ltd as part and for the duration of the DataSource Service Agreement. The Contracting Party undertakes to use these trademarks only in the manner and to the extent required as part of the DataSource Service Agreement and to refer to the trademark ownership each time the trademarks are mentioned by using the ® sign ("R in the circle") and a suitable indication (example: "Phelix is a registered trademark of European Energy Exchange AG.").

4.5 Reference

4.5.1 When distributing the Licensed EEX Group DataSource Product, in particular when combined with marketing measures, the Contracting Party shall name EEX AG as the source of the Licensed EEX Group DataSource Product as far as technically feasible, and as a minimum the reference: "Source: EEX Group"). A clearly visible reference to an accordingly designed footnote will be sufficient in this respect.

4.5.2 The Contracting Party shall ensure that the use of the Licensed EEX Group DataSource Product by the Contracting Party and its Subscribers shall be in a manner which ensures that EEX AG is named as the source where a Licensed EEX Group DataSource is displayed, and as a minimum: "Source: EEX Group"). A clearly visible reference to an accordingly designed footnote will be sufficient in this respect.

4.6 Warranties and liabilities of the Parties

4.6.1 ~~EEX AG does not provide any guarantee with regard to the fact that the EEX Group DataSource Product is made available at a given point in time, complete or free of errors. Under certain circumstances, there might be delays in the transmission of the EEX Group DataSource Product. EEX AG may not be held liable for any delays or failures of transmission and / or receipt.~~

4.6.2 4.6.1 Without prejudice to other provisions of the DataSource Service Agreement, especially ~~Clause~~Section 4.1.1.1. EEX AG (a) does not accept any liability for the accuracy, the completeness, correctness and timeliness of the EEX Group DataSource Product and (b) cannot guarantee that the EEX Group DataSource Product will be provided without interruption and with complete availability.

4.6.3 4.6.2 The EEX Group DataSource Product is exclusively made available for the purpose of information and does not constitute any investment counselling. None of the EEX Group DataSource Products establishes an offer to sell or advertisement regarding offers for the purchase of products which are traded on the exchange.

4.6.4 4.6.3 EEX AG shall be liable without limitation, provided that the cause of damage is based on wilful intent or gross negligence.

4.6.5 4.6.4 Furthermore, EEX AG shall be liable for the slightly negligent infringement of Essential Contractual Obligations. In this case, however, EEX AG shall be liable only for the foreseeable, contract-typical damage. EEX AG shall not be liable for the slightly negligent infringement of any obligations other than Essential Contractual Obligations.

4.6.6 4.6.5 The limitations of liability above shall not apply to any injury to life, body and health and any liability pursuant to the German Product Liability Act.

4.6.7 4.6.6 The Contracting Party shall be liable for any acts or omissions on the part of its Affiliated Companies or Service Providers to the same extent as for any acts or omissions on its own part.

4.6.8 4.6.7 Each Party represents, warrants and covenants that it has the legal right and full power and authority to execute and perform its obligations under the DataSource Service Agreement and to grant all rights and licenses granted by it under and in accordance with the terms of the DataSource Service Agreement.

4.6.9 4.6.8 EEX AG represents, warrants and covenant that the Services and the use or access of the Services in accordance with the DataSource Service Agreement do not and will not infringe any ~~Intellectual~~ Property Right or rights of privacy of any third party. Upon notice of any claim related thereto, or, if in ~~our~~EEX AG the reasonable opinion of EEX AG, such a claim is likely, EEX AG will have the right, at ~~our~~its option, to: (a) procure the right to continue to use the Licensed EEX Group DataSource Product; (b) modify the EEX Group DataSource Product so that it becomes non-infringing; or (c) remove the affected EEX Group DataSource Product.

4.6.104.6.9   By entering into the DataSource Service Agreement, the Contracting Party does not enter into any contractual relationship with Third-Party Rights' Holders; thus, the Contracting Party has no contractual claims for damages against them. As a matter of precaution, EEX AG and the Contracting Party both agree that the limitation of liability above shall apply to their benefit mutatis mutandis.

4.6.114.6.10   Damage claims of the Contracting Party shall become time-barred after threetwo (32) years as far as the Specific Conditions do not provide for a shorter period and the claims do not derive from an injury to life, body, health or freedom, from willful intent or from infringement of Essential Contractual Obligations. The deadline 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.

5. Term, termination and changes to the DataSource Service Agreement

5.1 Term and termination

5.1.1 The DataSource Service Agreement comes into force on the Effective Date. This also covers any amendment thereto.

5.1.2 A DataSource Service Agreement regarding exclusively Internal Usage will be effective when – following the acceptance of the General Conditions – EEX AG accepts the order by email confirming that the order was successfully paid and that the EEX Group DataSource Product(s) is/are available to be delivered to the Contracting Party. A DataSource Service Agreement involving External Usage will be effective on the date on which the DataSource Service Agreement is signed in paper form or entered into by any other means, unless another date is specified in the DataSource Service Agreement, in which case the specified date shall be the Effective Date. Only natural persons, duly authorized by the Contracting Party, and thus acting as its representatives, may connect to the Website, purchase Product(s), and sign, either electronically or on paper, DataSource Service Agreement, including accepting these General Conditions.

5.1.3 Unless otherwise specified in the DataSource Service Agreement, the DataSource Service Agreement runs until 31 December of the following calendar year. The DataSource Service Agreement shall be extended for one further calendar year each time unless it is terminated by the Contracting Party or EEX AG in accordance with Sections 5.1.4 or 5.1.5 respectively. The right to extraordinary termination under section 5.1.6 remains unaffected.

5.1.4 ~~The Contracting~~Each Part~~y~~ies~~y~~ shall be entitled to terminate individual Licensed EEX Group DataSource Products with two (2) months' notice, effective at the end of a calendar year. In case that after a partial termination in accordance with the first sentence there remains no Licensed EEX Group DataSource Product, the partial termination shall be deemed as a termination of the entire DataSource Service Agreement.

5.1.5 ~~EEX AG shall be entitled to terminate individual contractual services with two (2) months' notice, effective at the end of a calendar year,~~

~~5.1.6~~5.1.5 Moreover, each Party shall be entitled to terminate the DataSource Service Agreement for cause without notice period in total or in part regarding certain Licensed EEX Group DataSource Products and/or types of use. A cause shall, in particular, deem to exist for EEX AG if the Contracting Party in spite of a written warning:

a. again makes incorrect statements on the invoicing basis; or

b. does not stop the violation of other material provisions of the DataSource Service Agreement within a deadline of at least 30 days set in the warning.

5.1.75.1.6   In the event of extraordinarily serious occurrences of incorrect statements on the invoicing basis or other violations of contractual obligations, no prior written warning shall be necessary.

5.1.85.1.7   Any notice of termination shall be submitted in writing and the notice shall be sent by registered mail, courier service or electronically, including via the Website; templates of termination notice may also be available there.

5.1.95.1.8   Should the DataSource Service Agreement only consists of these General Conditions, to terminate it, the Contracting Party just needs to agree with its termination by ticking the corresponding box on the Website and validate.

5.1.105.1.9   The Remuneration is not refundable upon termination of the DataSource Service Agreement by the Contracting Party for any reason or in case of breach of the DataSource Service Agreement.

5.2   Changes

5.2.1   Taking into due consideration the interests of the Contracting Party and what can reasonably be expected to be acceptable to the Contracting Party, EEX AG may unilaterally change Licensed EEX Group DataSource Products and/or the these General Conditions, including the scope of the usage right granted. Any change shall be conditional upon the Contracting Party being given at least sixty (60) days' notice of the changes in written or electronic form, including via the Website. Unilateral changes of the usage right and other material changes to the General Conditions shall entitle the Contracting Party to terminate the Licensed EEX Group DataSource Product affected with thirty (30) days' notice prior to the effective date of the changes. The same right of termination shall exist in the event of changes to the Licensed EEX Group DataSource Product that adversely affect the suitability of the Licensed EEX Group DataSource Product for the purposes intended by the Contracting Party.

5.2.2   The Remuneration may be changed unilaterally by EEX AG in accordance with Sections 4.2.2.9 and 4.2.2.10

5.2.3   Whenever the written form under this DataSource Service Agreement is required for declarations, such declarations may also be transmitted electronically, including via the Website.

6.   Other provisions

6.1   Force Majeure

6.1.1   Neither Party shall be responsible for delays or failures in performance resulting from any acts, situation or events beyond the reasonable control of such Party and not due to a default of the affected Party, which cannot be reasonably avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or permanently its obligations under the DataSource Service Agreement.

6.1.2   These events include, but are not limited to, natural disasters (storms, floods, weather damage, etc.), fires, total or partial labor strikes, epidemics, transport blockings, computer breakdowns, telecommunications disruptions, system unavailability and legally binding orders of a governmental or other competent authority.

6.1.3   In the event of Force majeure, the Party affected thereby shall notify the other Party thereof. Failures in performance resulting from Force Majeure may entitle the other Party to terminate the Agreement in accordance with Section 5.1.6.

6.2   Transfer of rights and obligations under the DataSource Service Agreement

6.2.1   Except as otherwise provided under the Specific Conditions, each assignment or transfer of its rights and obligations deriving from the DataSource Service Agreement shall require ~~our~~EEX AG prior written consent.

6.2.2   Any request for a transfer or assignment of its rights and obligations deriving from the DataSource Service Agreement must feature the relevant information about the transferee (name of the company, registered office and number, representative, contact details) as well as its commitment to fulfil all the obligations arising out of the DataSource Service Agreement.

6.2.3   EEX AG shall be entitled to transfer this DataSource Service Agreement with all rights and obligations deriving from it to any of ~~our~~EEX AG Affiliates and EEX AG shall therefore be released from all ~~our~~EEX AG obligations under this DataSource Service Agreement. The Contracting Party shall be notified of any such transfer with a lead time of two (2) months.

6.3   Subcontractors

EEX AG is entitled to appoint any subcontractor to fulfill its obligations under this DataSource Service Agreement.

6.4   Relationship between the Parties

Nothing in the DataSource Service Agreement shall be deemed to create a partnership or agency relationship between the Parties and each of them shall be considered an independent contracting Party.

6.5   Applicable Law / Legal venue

6.5.1   The DataSource Service Agreement is governed by the law of the Federal Republic of Germany, to the exclusion of the conflict of law provisions thereof. The United Nations Convention on Contracts for the International Sale of Goods shall not apply hereto.

6.5.2   Exclusive place of jurisdiction for disputes arising from or in connection with the DataSource Service Agreement shall be Leipzig.

6.6   Ancillary agreements / Safeguarding clause

6.6.1   Parties' rights and obligations regarding the object of the DataSource Service Agreement shall exclusively be governed by the provisions of the DataSource Service Agreement. Verbal ancillary agreements or assurances have not been made.

6.6.2   The language of the DataSource Service Agreement is English.

6.6.3   These General Conditions will apply to any DataSource Service Agreement entered into, and any purchases of EEX Group DataSource Products made, as from 1 November 2019. Furthermore, effective 1 January 2020, these General Conditions shall replace any previous version of General Conditions or Specific Conditions applicable to any agreement on the subject matter (e.g. Info-Products …)

6.6.4   The DataSource Service Agreement can only be amended (i) unilaterally by EEX AG in accordance with Sections 4.2.2.9, 4.2.2.10 and 5.2; (ii) by accepting new General Conditions online, or (iii) by means of an express written agreement signed by an authorized signatory of each Party, including electronically via the Website or any other electronic means.

6.6.5   The invalidity or unenforceability of individual provisions or an omission of the DataSource Service Agreement shall not affect the validity of the remaining provisions. An appropriate legally permissible provision shall apply in place of the invalid or unenforceable provision which corresponds as closely as possible to the economic content of the invalid or unenforceable provision. In the case of an omission, a provision shall apply which corresponds to that which the Parties intended or would have intended had they been aware of the omission.

6.6.6   The failure of either Party to require the performance of any term or condition of this DataSource Service Agreement shall not prevent any subsequent enforcement of such term or condition, nor shall it be deemed a waiver of any subsequent breach.

6.7   Notices

Any notice, request, consent, approval or communication under this DataSource Service Agreement ("notices") may be sent by any effective delivery method, including – but not limited to – registered mail, email, courier, via the Website or any other electronic means, or delivery in person to the addresses indicated in the contact details either on the Website or in these General Conditions. Notices also include the notices of change and termination and shall be effective from the date of actual receipt.

Whenever the written form under this DataSource Service Agreement is required for declarations, such declarations may also be transmitted electronically.

Customer Assistance

If you have any questions, comments or complaints about the Product(s) you have ordered, please contact us at:

European Energy Exchange AG
Attention: Information Services
9 Augustusplatz
04109 Leipzig – Germany
+ 49 (0) 341 2156 288

If you would prefer to send us an email, you can do so by clicking here.