

part of eex group



EEX Service Provider Form

10.5.2019
Leipzig

Ref. 01

**Agreement on the Access to EEX Market Data or a Service Provider of a Multi-Member-Frontend System
(the “Agreement”)**

-hereinafter referred to as “**Service Provider**” –

and

European Energy Exchange AG, as the operator of European Energy Exchange and all affiliates, having its registered office at Augustusplatz 9, 04109 Leipzig, Germany

-hereinafter referred to as the “**EEX**”-

- hereinafter jointly referred to as the “**Parties**” –

- separately hereinafter referred to as “**the Party**” –

Preamble

The multi-member-frontend-system provider is a provider of a server which is used by one or more Trading Participants for the technical connection to the electronic trading EDP Eurex® (“**Service Provider**”). Electronic trading EDP Eurex® means the electronic trading EDP Eurex® of European Energy Exchange for trading at the European Energy Exchange including the option of its utilization in OTC trading and for entering OTC concluded transactions for settlement purposes.

The Service Provider is already technically connected to the electronic trading EDPEurex® via a separate agreement with Deutsche Boerse AG. This Agreement shall provide the legal framework for the Service Provider to allow his customers who are admitted trading participants at EEX (“**Trading Participants**”) to access the electronic trading EDP Eurex® of EEX via the existing technical connection of the Service Provider and to access Market Data of EEX. “**Market Data**” is all data provided via the electronic trading EDP Eurex® of EEX regarding the products tradable at the European Energy Exchange. This Agreement shall enable the Service Provider to render one or more of the following services for Trading

Participants:

- Connection for the trading of EEX products and/or
- Insourcing of trading functions or clearing functions or back office functions respectively.

Contact details please provide the following.

Registered Company address:
Address:

On-boarding process point of contact:
Email:
Contact number:

Eurex ID if applicable. If you hold an existing Eurex ID please provide here:

§ 1 Scope of the Agreement

EEX grants the Service Provider during the term of this Agreement a non-transferable right (without the right to sublicense this right), to allow its customers, which are Trading Participants of EEX to access the electronic trading EDP Eurex® of EEX via its existing technical connection. Additionally, EEX as the owner of the Market Data grants the Service Provider during the term of this Agreement a non-exclusive and non-transferable right (without the right to sublicense this right), to access the Market Data in the production environment of the respective electronic trading system.

§ 2 Access to Market Data via the Electronic Trading EDP Eurex® of EEX

EEX shall provide access to Market Data through the electronic trading EDP Eurex® of EEX. EEX is obliged to make all technically possible and economically reasonable efforts to ensure the correctness and completeness of these Market Data.

§ 3 Other Duties of the Contractual Parties

(1) The Service Provider shall be obligated to comply with the configuration parameters set forth by EEX and with the Implementation Regulations of European Energy Exchange Concerning Technical Equipment as available under <https://www.eex.com/blob/75762/855e4ec36bd2cfb2d68ba3efab28ebe7/technical-implementation-regulation-e-final-data.pdf>. EEX shall inform the Service Provider in due time of changes to the configuration parameters and the Implementation Regulations via its circulars.

(2) EEX is, upon request by the Service Provider, obligated to be available and to support the Service Provider in case of technical questions or breakdowns regarding the access to Market Data during the trading hours of the European Energy Exchange.

(3) The Service Provider shall be obligated to provide staff in a sufficient number and qualification during the trading hours of the network of EEX, such staff being necessary for fulfilment of the Agreement, and to ensure availability via telephone. Furthermore, when concluding the Agreement, EEX shall be informed about a contact person of the Service Provider or a third party commissioned by him.

(4) The Service Provider is obligated to contribute to the service provision. For this purpose, he shall, upon request, inform EEX or the third parties commissioned by him about all information necessary for fulfilment of the Agreement and shall submit all necessary declarations without undue delay.

(5) The Service Provider is obliged, in case of technical irregularities or breakdowns, to follow the instructions of EEX. When giving instructions, EEX is obligated to consider the justified interests of the Service Provider.

(6) The Service Provider is obligated to permit any qualified staff of the market surveillance department of EEX to check the integrity of all trades registered or executed via the connection of the Service Provider to the markets of EEX. This may also include the permission of access to such staff to the premises of the Service Provider or the third party commissioned by him, to the extent this is necessary for surveillance purposes of the EEX staff. In case the Service Provider does not fulfil its contribution duties, EEX may hold back its services. Other rights of EEX shall be unaffected thereby. The rights of EEX under this paragraph shall be limited to the extent granted under the German Exchange Act.

(7) Provided that the Service Provider has –in addition to the technical connection of Trading Participants –also assumed the insourcing of trading, back office respectively clearing functions or/and the automated further processing of the received Market Data of one or more trading participants, he shall only exclusively be authorised to an automatic transfer of the received Market Data, to the extent this is necessary for administration and settlement/clearing of the transactions of the respective Exchange participant concluded at the European Energy Exchange.

(8) The Market Data accessed from the electronic trading EDP Eurex® of EEX may be used by the Service Provider only for his purposes within the operation of the Multi-Member-Frontend System; a storage, making copies (except backup copies), utilization, processing or other application of the Market Data of EEX for purposes other than those set forth in this Agreement is not allowed.

(9) Market Data from the private broadcast stream, including reports and raw data may only be disclosed to the Trading Participant to whom the private broadcast stream, the reports and raw data in the electronic trading EDP Eurex® of EEX have been assigned. A transfer of the Market Data of EEX or the provision of the Market Data to third parties which participate in the multi-member frontend system, or other Trading Participants, or other third parties, is not allowed.

(10) The Service Provider is obligated to refrain from any improper utilization of the multi-member frontend system, in particular if it runs contrary to the regularity of the exchange trading, clearing and exchange transaction settlement at the European Energy Exchange and its Clearinghouse European Commodity Clearing AG. The Service Provider shall guarantee that it will forward to the Trading Participants involved, all Market Data submitted to the Service Provider by EEX.

(11) In case of material changes to the electronic trading EDP Eurex of EEX, EEX shall issue notices detailing such changes no less than 120 days in advance of the change being implemented. Notices regarding minor changes shall be issued at least 90 days prior to the implementation of the change. If such changes are not accepted by the Service Provider it may terminate the Agreement according to § 8 para 2.

§ 4 Confidentiality

(1) The Parties covenant, both during and following the term of this Agreement, to treat as confidential and not to disclose to third parties any and all data including Market Data and information to which they become privy during this contractual relationship and which relate to internal business information and the subject matter of the cooperation stipulated hereunder (other than either party's employees and consultants who have a need to know such data and information for the purpose of implementing this Contracts and are bound by a like confidentiality undertaking), provided such data or information had not already entered the public domain.

(2) This Agreement shall not preclude one of the Parties from disclosing any information required to be disclosed by valid court order or law or regulation, provided that the disclosing Party provides the other Party with immediate notice of such request for disclosure.

§ 5 Liability

(1) Any liability of EEX for breach of this Agreement shall be limited to wrongful intent and gross negligence. In particular, there shall be no liability for damages as a result of a partial or complete unavailability of electronic trading EDP Eurex® of EEX or the access to the Market Data unless the damage is attributable to wrongful intent or gross negligence on the part of the EEX.

(2) Service Provider shall pay damages -irrespective on which legal ground (e.g. default or tort) only within the following scope:

(a) In the event of wilful intent, Service Provider shall be fully liable;

(b) In the event of gross negligence and in the event of default regarding a guarantee, Service Provider shall be liable up to the amount of the foreseeable damage which should be prevented by the relevant due diligence.

(c) In the event of simple negligence, Service Provider shall only be liable in case of violation of a material obligation or when defaulting with an obligation which is so material that the attainment of the purpose of the agreement is jeopardized. In this case, Service Provider shall be liable for the damage which is typical and was foreseeable; its liability shall be limited to all damages within one contractual year on the yearly remuneration owed from the respective single agreement.

(d) Beyond sub paragraphs (a) to (c), Service Provider shall not be liable.

(3) The statutory liability of the Parties for the injury of life, body and health shall remain unaffected. (4) A Party shall not be entitled to bring any claim for breach of this Agreement, if and to the extent this Party has participated in causing the claim or has failed to mitigate damages resulting from any such breach.

(4) No Party shall be liable for damages caused by force majeure, riot, war and forces of nature or by other events it is not responsible for (e.g. strikes, lock-outs, traffic disruption, dispositions of domestic or foreign powers) as well as non-culpably caused technical problems, such as problems in connection with the computer system. Computer viruses and international attacks of "hackers" on the computer systems are considered as force majeure, provided that reasonable security measures, corresponding with good industry practices, have been taken.

§ 6 Applicable Law

This Agreement is subject to the laws of the Federal Republic of Germany. Sole place of jurisdiction shall be Leipzig. The EEX is authorized to sue the Service Provider also at its general place of jurisdiction.

§ 7 Relationship to Trading Participants

This Agreement does not affect the relationship between European Energy Exchange and its Trading Participants – such relationship being regulated by public law – in particular mandatory measures by European Energy Exchange vis-à-vis this Trading Participant.

§ 8 Term and Termination

- (1) This Agreement shall come into effect upon signing by the Parties and will be executed for an indefinite term.
- (2) This Agreement may be terminated by either Party to the end of each calendar month giving at least three months written notice.
- (3) The right of the Parties to terminate for good cause shall remain unaffected.
- (4) In event the Service Provider is in material breach of the Agreement, as notified in writing by EEX, Service Provider shall have 30 days to remedy prior to EEX holding back access to its systems/data.

§ 9 Miscellaneous

- (1) This Agreement shall exclusively govern the subject matter of contract. Deviating or ancillary agreements of the parties do not exist. The parties agree that this Agreement supersedes all earlier agreements between the parties in respect of the subject matter of the Agreement.
- (2) EEX and the Service Provider shall both be entitled to assign or transfer all rights and obligations under the Agreement to an affiliated company within the meaning of §§ 15 ff. of the German Stock Corporation Act. Upon assignment or transfer of the Agreement, only the assuming company shall be a party to the rights and obligations; EEX or Service Provider, being the transferring Party respectively, shall be released from all obligations under the Agreement. In case a Party intends to carry out such assignment, the Party shall inform the respective other Party giving six (6) weeks prior written notice. For the avoidance of doubt any affiliated company of the Service Provider may accede by written declaration as a party to this agreement and subsequent written consent by EEX. Upon accession any such party shall have the rights and obligations of a Service Provider under this Agreement.
- (3) In the event that any individual terms of this Agreement should be or become invalid or impracticable, this shall not affect the validity of the remaining terms hereof. Any invalid contractual provision shall be replaced either by the statutory provision or (in the event of absence of such a rule) such provision as the parties would in good faith have admissibly adopted if they had been aware of the invalidity or nullity of the term which it replaces. The same shall apply in so far as it may be determined that the contractual provisions are incomplete.
- (4) EEX shall be authorized to make amendments to this Agreement and/or several parts thereof at any time under due consideration of the interests of the Service Provider. Amendments to this Agreement shall be announced to the Service Provider six (6) weeks prior to their effectiveness. They shall be deemed to be approved unless the Service Provider submits a written objection to EEX within six (6) weeks after announcement of the amendment.

Service Provider

Date/Signature

Date/Signature

EEX

Date/Signature

Date/Signature