

## AGREEMENT

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between

Wiener Börse AG  
Wallnerstraße 8  
1014 Wien  
AUSTRIA

(hereinafter WBAG)

(hereinafter Applicant, Exchange Member, Trading Participant or  
Clearing and Settlement Participant):

### PREAMBLE

The Ministry of Finance, in agreement with the Ministry of Economic Affairs, has granted by notification of 3 April 1998 the license to operate and manage Wiener Börse as securities exchange and general commodity exchange pursuant to Article 2ff Stock Exchange Act 1989 as amended, This empowers Wiener Börse AG as exchange operating company in the meaning of the Stock Exchange Act 1989, as amended, to operate and manage Wiener Börse as securities exchange and general commodity exchange. Under this license, WBAG is authorized to operate regulated markets and Multilateral Trading Systems. WBAG is furthermore authorized to operate the "Third Market" as a multilateral trading system ("MTF").

The Applicant wishes to apply for membership in Wiener Börse AG in its function as a general commodity exchange for the purpose of participating in trading in electric power products as well as in the clearing and settlement system for exchange transactions concluded in trading in these products.

WBAG has charged EXAA Abwicklungsstelle für Energieprodukten AG (hereinafter EXAA or Clearing and Settlement Agency) with the task of making available and operating the automated trading, clearing and settlement system smart.XTRADE (hereinafter Trading System) for trading in electric power products and for the clearing and settlement of exchange transactions concluded in trading in electric power products on Wiener Börse in its function as a commodity exchange and has moreover charged EXAA to act as the Clearing and Settlement Agency pursuant to Art. 26 par. 3 Stock Exchange Act for exchange transactions concluded in trading in electric power products on Wiener Börse in its function as a commodity exchange.

The requirements for obtaining membership status and participating in trading in electric power products are set out in Articles 14ff Stock Exchange Act 1989, Federal Law Gazette No. 555/1989, as amended, as well as in the General Terms and Conditions of Business of Wiener Börse AG defined pursuant to Art. 13 Stock Exchange Act, and in particular, in the General Terms and Conditions of Business of the Exchange Operating Company, Wiener

Börse AG,” and in the “Rules for the Participation in Trading in Electric Power Products and in the Clearing and Settlement of Exchange Transactions concluded in Trading in Electric Power Products on Wiener Börse in its Function as a General Commodity Exchange – Participation Rules Electric Power”.

The Applicant has furnished proof by submitting the required documents, agreements and declarations to WBAG of the fact that at the time of the signing of this Agreement, the Applicant meets the requirements for obtaining membership status on Wiener Börse in its function as a general commodity exchange as stipulated in the Stock Exchange Act and the Exchange Terms of Business as well as for the participation in the trading in electric power products and/or the clearing and settlement of electric power products and also is equipped with the required technical infrastructure and connections to the trading and/or clearing and settlement system for participating in trading and/or clearing and settlement. Therefore, in accordance with Article 14 par. 2 Stock Exchange Act, WBAG as exchange operating company, and the Applicant hereby enter into the following

## **AGREEMENT**

regarding membership in Wiener Börse as a general commodity exchange and the participation in trading in electric power products and/or participation in the clearing and settlement of exchange transactions concluded in trading in electric power products.

### **I.**

By virtue of this Agreement concluded with WBAG in its function as exchange operating company, the Applicant shall become a member of the general commodity exchange of WBAG pursuant to Article 14 par. 2 Stock Exchange Act entitled to participate in exchange trading in electric power products, specifically in:

- Trading in spot market products for electric power (spot market electric power – day ahead);
- Clearing and settlement of exchange deals concluded in the trading in spot market products for electric power<sup>1</sup>.

The commencement of participation in trading in spot markets products and/or in clearing and settlement will be mutually agreed in separate contracts by the contractual parties.

### **II.**

The Applicant hereby expressly confirms that at the time of the signing of this Agreement, the Applicant meets the requirements for obtaining membership status on Wiener Börse and for participating in the trading and/or clearing and settlement of electric power products as stipulated in the Stock Exchange Act (Articles 14ff). The Applicant hereby undertakes to immediately inform WBAG in its function as exchange operating company in

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<sup>1</sup> Please tick off applicable

writing of any changes that may affect its status as an Exchange Member or participation in the trading, and clearing and settlement of electric power products.

The Applicant undertakes to hand over, at any time it is requested to do so, all relevant materials and documents that prove that the Applicant meets the requirements stated in the Stock Exchange Act and in the Exchange Terms of Business, for membership in Wiener Börse as a general commodity exchange for participating in the trading and/or clearing and settlement of electric power products.

The requirements, conditions and rules for participating in trading in electric power products and for participating in the clearing and settlement of the exchange transactions concluded in electric power products as well as the obligations of the applicant as an Exchange Member and as a participant in trading and/or the clearing and settlement of exchange transactions concluded in electric power products (as a Trading Participant) are set out in the Stock Exchange Act and in the Exchange Terms of Business. The Exchange Terms of Business in their valid version at the time of the signing of this Agreement have been attached to this Agreement as Annex ./1.


The Applicant hereby acknowledges the Exchange Terms of Business pursuant to the documents compiled in Annex ./1; the Applicant hereby expressly agrees to acknowledge and comply with these Exchange Terms of Business and any future Exchange Terms of Business.

The Applicant hereby confirms and acknowledges - in the case of his participation in the clearing and settlement of the exchange deals concluded in the trading in spot market products for electric power - the tasks and powers of the clearing agency for transactions and price determination for balancing energy regulated in Art. 11 of the Federal Act, FLG I No 212/2000 as amended, and the General Terms of Business of the Balance Group Coordinators; the Applicant expressly agrees to acknowledge and comply with these Terms of Business and any future Terms of Business.

The Applicant hereby undertakes as an Exchange Member and as a participant in the trading and/or the clearing and settlement of electric power products to comply with all regulations relating to the legal transactions concluded on Wiener Börse in its function as a general commodity exchange especially those set out in the Stock Exchange Act, the Electricity Industry and Organization Act (hereinafter: EIOA) and the Exchange Terms of Business, all as amended.

The Applicant hereby acknowledges that WBAG and EXAA are under the statutory obligation to report and make available data on the Applicant to penal and regulatory authorities, in particular the securities supervisory authority and the Elektrizitäts-Control GmbH. The Applicant hereby releases, if necessary, WBAG and EXAA from any bond to secrecy they might be subject to regardless of the basis on which it is founded.

For the purpose of investigating and examining the membership requirements in Wiener Börse in its function as a general commodity exchange for participating in trading in spot market products for electric power and/or for

participating in the clearing and  settlement of exchange transactions concluded in the trading in spot market products for electric power on Wiener Börse in its function as a general commodity exchange, EXAA and a third party commissioned according to Art. 1 par. 5 of the “Rules for the Settlement of Exchange Transactions concluded in Trading in Spot Market Products for Electric Power on Wiener Börse in its function as a General Commodity Exchange - Settlement Rules Electric Power”, namely, Oesterreichische Kontrollbank Aktiengesellschaft (hereinafter: OeKB) shall cooperate. The institutions named above shall exchange any information throughout the course of the membership admission procedures necessary to determine if the admission and participation requirements are met. The Applicant hereby agrees to give the entities named above the information required.

The Applicant in the case of his participation in the clearing and settlement of the exchange deals concluded in the trading in spot market products for electric power hereby agrees to the transmission of data relating to a breach of the Clearing and Settlement Agreement within the clearing and settlement procedures on Wiener Börse in its function as a general commodity exchange in trading in spot market products for electric power under the provisions of the Exchange Terms of Business by the EXAA to OeKB and to the exchange operating company, as well as by OeKB to EXAA and the exchange operating company and by the exchange operating company to EXAA and OeKB for the purpose of monitoring compliance with the Clearing and Settlement Agreement. The Applicant hereby releases OeKB as a credit institution in the meaning of the Banking Act from the bond to maintain banking secrecy and data secrecy for the purpose of reporting suspicious facts relating to a breach of the Clearing and Settlement Agreement.

The Applicant hereby agrees that its name (company name), address and contact persons' names as well as telephone numbers, websites and e-mail addresses and other contact addresses (numbers) be passed on and/or disclosed to other membership applicants by the exchange operating company or on its behalf by EXAA for the purpose of expanding (promoting) the circle of exchange members.

### III.

WBAG has commissioned the EXAA Abwicklungsstelle für Energieprodukten AG (hereinafter “EXAA“ or “Clearing and Settlement Agent“) with the task of operating and making available the automated trading, and clearing and settlement system smart.XTRADE (hereinafter: Trading System) for trading in spot market products for electric power and for the clearing and settlement of exchange transactions concluded in trading in electric power products on Wiener Börse in its function as a general commodity exchange and has charged it with the function of clearing and settlement agent pursuant to Art. 26 par. 3 Stock Exchange Act for the clearing and settlement of exchange transactions concluded in trading in electric power products on Wiener Börse in its function as a general commodity exchange.

The exchange member participating in the trading in electric power products will be granted the technical access to the trading system via the Internet using the corresponding specific individually assigned access codes (Key Fobs) for the authorized traders of the Trading Participant for the purpose of placing orders via the Internet in the trading system. The Key Fobs remain in the ownership of EXAA; the Trading Participant hereby expressly acknowledges this right of ownership. The Trading Participant may give the individual access codes and Key



Fobs only to the respective authorized traders working for said Trading Participant. The access codes and Key Fobs may only be used by the authorized traders of the Trading Participant for the defined purpose of entering orders into the trading system via the Internet in accordance with the provisions of the Stock Exchange Act and the Exchange Terms of Business. The Trading Participant is under the obligation to take the necessary measures to prevent any unauthorized persons for using the access codes and Key Fobs contrary to their intended use. The Trading Participant does not have the right to give the access codes and Key Fobs to any other person who is not an authorized trader. All of the access codes and Key Fobs made available to the Trading Participant are to be returned immediately to EXAA upon termination of participation in trading in electric power products.

The exchange member participating in the clearing and settlement of the exchange deals concluded in the trading in electric power products will be granted the technical access to the clearing and settlement system via the Internet using the corresponding specific individually assigned access rights for the authorized other persons of the Clearing and Settlement Participant. The Clearing and Settlement Participant may give the individual access rights only to the respective authorized other persons working for said Clearing and Settlement Participant. The access rights may only be used by the authorized other persons of the Clearing and Settlement Participant for the defined purpose of access to the Clearing and Settlement System via the Internet in accordance with the provisions of the Stock Exchange Act and the Exchange Terms of Business. The Clearing and Settlement Participant is under the obligation to take the necessary measures to prevent any unauthorized persons for using the access rights contrary to their intended use. The Clearing and Settlement Participant does not have the right to give the access rights to any other person but the authorized other person. All of the access rights made available to the Clearing and Settlement Participant are to be returned immediately to EXAA upon termination of participation in the clearing and settlement of exchange deals concluded in the trading in electric power products.

All costs for the technical connections to the trading system are to be borne by the Applicant or Trading Participant as a participant in the trading of electric power products.

WBAG has the right to implement other trading and/or clearing and settlement systems for the trading and/or clearing and settlement of electric power products on Wiener Börse in its function as a general commodity exchange by giving due notice of the changeover.

The Exchange Member as a participant in trading, the clearing and settlement of electric power products is obligated to maintain the technical infrastructure and connections required at all times to ensure participation in trading, and clearing and settlement.

#### **IV.**

The exchange member is obligated to observe at all times the technical requirements, guidelines and instructions of WBAG as the exchange operating company and of EXAA as the operator of the trading and the clearing and settlement system and as the Clearing and Settlement Agent and to follow all instructions issued in this context by WBAG and/or EXAA. WBAG or on its behalf representatives of EXAA as the operator of the



trading and clearing and settlement system are authorized to examine the technical equipment of the exchange member at any time to check their proper functioning. WBAG has the right to immediately have an defects repaired at the expense of the exchange member if such defects may affect the trading and clearing and settlement system. In this context WBAG has the right to disconnect the exchange member from trading and/or clearing and settlement for the period of time required for the repair work. If it is not possible to repair the defects or if the exchange member refuses to follow the instructions of WBAG or EXAA, this shall constitute materials grounds on which the exchange member may be expelled from membership in Wiener Börse as a general commodity exchange and its participation in trading and/or the clearing and settlement of electric power products terminated.

The exchange member shall refrain from any actions or behavior (especially such relating to entering quotes) that may have a negative influence on the trading and/or the clearing and settlement system and could disrupt the smooth operation of the trading and/or the clearing and settlement system. The exchange member shall immediately notify EXAA as the operator of the trading system if trading and/or clearing and settlement is restricted or not at all possible due to technical disruptions. The emergency measures taken by WBAG in the case of trading and/or clearing and settlement disruptions (e.g. Trading Without System (TWS)) shall be binding for the exchange member. The same shall apply for all measures taken by WBAG to maintain or reinstate smooth trading and/or clearing and settlement procedures.

If an exchange member commits a breach of these obligations and fails to follow the respective instructions of WBAG or EXAA, then the exchange operating company has the right to expel the Exchange Member from membership in Wiener Börse in its function as a general commodity exchange and to terminate participation of the Exchange Member in trading, and the clearing and settlement of electric power products and rescind this Agreement with immediate effect on the grounds of a material breach of contract.

## V.

Pursuant to Art 17 par. 2 Stock Exchange Act, members of the Commodity Exchange must nominate either themselves, a member of the management board or an employee of the company as a trader.

The exchange member participating in the trading in electric power products undertakes to permit access to the trading system to those persons named in writing to WBAG who have the required knowledge and experience pursuant to Art. 20 par. 3 Stock Exchange Act as well as the necessary and required knowledge of the specific features of the transactions in trading of electric power products as well as knowledge on the use, the functions and technical features of the trading system.

The persons named to WBAG in writing who are authorized to place orders and conclude transactions on behalf of the Trading Participant in the meaning of Art. 20 par. 1 Stock Exchange Act, and if necessary also have the power of attorney, must furnish proof of their qualifications according to Art. 20 par. 3 Stock Exchange Act.

The exchange member participating in the clearing and settlement of exchange deals concluded in the trading of electric power products undertakes to permit access to the clearing and settlement system to those persons named in writing to WBAG who have the required knowledge and experience as well as the necessary and



required knowledge of the specific features of the transactions in the clearing and settlement of exchange deals concluded in the trading of electric power products as well as knowledge on the use, the functions and technical features of the clearing and settlement system.

**VI.**

The exchange member agrees to pay the membership fees to Wiener Börse in its function as a general commodity exchange and the fees for the participation in trading and/or the clearing and settlement system for electric power products as set out in the Schedule of Fees of WBAG in its valid version plus any applicable statutory value-added tax on the due dates fixed in the Schedule of Fees. The Schedule of Fees of WBAG valid at the time of the signing of this contract is attached to this Agreement as Annex ./2.

It shall not be permitted to refund fees in full or in part.

The exchange member shall bear the effective costs for the installation and maintenance of the technical infrastructure required for participating in trading/or and clearing and settlement.

In the event of delay in payment, default interest will be invoiced in the amounts stated in the Schedule of Fees running as of the due date.

**VII.**

Before the commencement of participation in trading and/or clearing and settlement in electric power products on Wiener Börse in its function as a general commodity exchange, the amount of collateral to be deposited by the exchange member participating in the clearing and settlement shall be defined. The exchange member shall be admitted to participation in trading, and clearing and settlement of electric power products as soon as the required collateral has been deposited as specified.

**VIII.**

This Agreement shall become effective upon signing by all contractual parties and shall be concluded for an indefinite period of time.

The Exchange Member shall have the right to terminate this Agreement in writing by registered mail and to cancel exchange membership and its participation in the trading and the clearing and settlement of electric power products, observing the obligations assumed by the Exchange Member under the Stock Exchange Act and the Exchange Terms of Business and the respective periods of notice.

WBAG shall have the right to terminate this Agreement in writing by registered mail for the reasons and conditions set out in the Stock Exchange Act and in the Exchange Terms of Business regarding the loss of exchange membership and the termination of participation in trading and/or clearing and settlement of electric power products, and to expel the Exchange Member from membership in Wiener Börse in its function as general



commodity exchange and to terminate its participation in the trading and/or the clearing and settlement of electric power products. WBAG shall furthermore be empowered to terminate this Agreement in writing by registered mail with immediate effect for reasons constituting a material breach of contract. A material breach of contract in this context will be given if an Exchange Member does not fulfill (or no longer fulfills) the requirements and conditions set out in the Exchange Terms of Business and in this Agreement applicable to participation in trading and/or the clearing and settlement of electric power products, or if the Exchange Member fails to meet the obligations accorded in this Agreement or does not meet the payments stipulated in this Agreement, becomes insolvent in general or if insolvency proceedings have been initiated against it or if proceedings pursuant to the Austrian Company Reorganization Act have been opened or such proceeding have been opened pursuant to the national laws of the country in which the exchange member has its registered office or branch office.

**IX.**

This Agreement shall be subject to Austrian law (with the exception of the provisions of International Private Law), in particular, the Stock Exchange Act 1989, FGL 555, as amended, and the Exchange Terms of Business, as amended.

**X.**

WBAG shall be liable for damages only if its executive bodies, assistants or other persons acting on its instructions have caused these by willful conduct or gross negligence and such conduct is proven. Liability for consequential damages and for profits not realized shall be limited to cases of proven willful conduct. WBAG shall not be liable for damages it has not caused, nor for such damages caused by operating disruptions due to force majeure or other events for which it is not responsible. WBAG shall be liable for damages arising from disruptions of its operations only in the event that the disruptions have been caused by gross negligence. The same shall apply if WBAG closes down or restricts operations completely or partially on specific days or for specific periods.

Claims for damages against WBAG shall lapse under the statute of limitation within one year as of the date knowledge was obtained of the incident which gave rise to a claim for damages against WBAG, at the latest within two years of the occurrence of such incident.

**XI.**

The parties to this Agreement hereby agree to the exclusive jurisdiction of the Commercial Court of Vienna with respect to the ascertainment of the existence of this Agreement and also after its termination.

**XII.**

Should any of the individual ■ provisions of this contract become ineffective or cease to be valid, the remaining provisions will nevertheless continue to be binding. Null and void provisions shall be replaced by mutual consent by provisions that are best suited to meet the economic purpose intended. The same shall apply to cover any omissions in this contract.

**XIII.**

The Applicant shall bear all costs arising from the execution of this Agreement. Each of the parties to this Agreement shall bear the costs of their own legal counsel.

**XIV.**

Unless a change of address has been notified in writing, all notifications addressed to the exchange operating company shall be sent to:

- Wiener Börse AG Wallnerstraße 8A-1010 Vienna, AUSTRIA

and all notifications addressed to the Exchange Member shall be sent to

- .....



**XV.**

This Agreement will be signed in two German language counterparts. These shall be legally binding. Copies in languages other than German shall serve only information purposes.

Amendments to this Agreement and deviations therefrom shall require the written form:

NONCOMMITTAL TRANSLATION  
ONLY THE GERMAN VERSION HAS LEGAL FORCE

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Wiener Börse AG

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Place, Date

Official signature of member  
(with company seal and name of signatory in block letters)

Annexes:

.1 General Terms and Conditions of Business (Exchange Terms of Business) of Wiener Börse AG (WBAG) incl. the EXAA rules and regulations (Membership, Trading and Clearing and Settlement Rules) as an Annex to the Exchange Terms of Business.

.2 Schedule of Fees