

Services Agreement

between

European Commodity Clearing Aktiengesellschaft

and

EEX Power Spot GmbH

Services Agreement

between

European Commodity Clearing Aktiengesellschaft

corporate seat at Neumarkt 9-19, 04109 Leipzig

represented by the Management Board Chairman, Dr. Hans-Bernd Menzel,

having sole representational authority and being released from the restrictions of Sec. 181 of the German Civil Code (BGB)

- hereinafter referred to as "**ECC**" -

and

EEX Power Spot GmbH,

corporate seat at Neumarkt 9-19, 04109 Leipzig

represented by the Management Board Chairman, Dr. Hans-Bernd Menzel,

having sole representational authority and being released from the restrictions of Sec. 181 of the German Civil Code (BGB)

- hereinafter referred to as "**EEX SPOT**" -

- hereinafter referred to jointly as "**Contracting Parties**" -

Preamble

- (A) European Energy Exchange Aktiengesellschaft ("**EEX**") operates an electronic exchange in Leipzig for energy and other products, also including spot trading of electricity.
- (B) ECC is a subsidiary of EEX and operates a clearing house for energy and other products.
- (C) EEX intends to carve out and transfer the spot electricity trading to EEX SPOT by way of the spin-off according to Sec. 123 para. 3 of the German Reorganisation Act (*Umwandlungsgesetz*). EEX and EEX SPOT concluded a Spin-off and Transfer Agreement on 27 August 2007 in this respect. The goal is the establishment of an independent exchange for spot electricity trading.
- (D) Also after the spin-off, some supporting services and assistance functions shall continue to be provided by EEX to EEX SPOT. To this effect, a Services Agreement (*Geschäftsbesorgungsvertrag*) shall be concluded between EEX and EEX SPOT.
- (E) Concurrently, this Management Agreement (*Geschäftsführungsvertrag*) shall be concluded between ECC and EEX SPOT. According to this agreement, ECC will provide further supporting services and assistance functions to EEX SPOT.
- (F) The Contracting Parties are aware that the spin-off of services and assistance functions that are important for the execution of exchange operations is subject to the rules set forth in Sec. 1 para. 3 of the German Stock Exchange Act (*Börsengesetz*). Therefore, the contractual agreement is decisively influenced by the requirements of the stock exchange regulations imposed on a spin-off under the German Stock Exchange Act. In particular this includes that EEX SPOT contractually assures the required instructing authority for itself and incorporates the transferred functions and activities into its internal control procedures.

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Now therefore, the Contracting Parties agree the following

Section 1 Subject-Matter of the Agreement

(1) ECC shall provide the following services to EEX SPOT:

1. Administrative services
2. IT services
3. Risk management services

The scope of the assigned tasks is laid down in **Annex 1 (List of Services)**.

- (2) ECC shall fulfill all the statutory and contractual obligations which EEX SPOT must comply with in connection with the transferred spot trading of electricity, for example, based on the requirements of stock exchange regulations, insofar as EEX SPOT has provided written notification of these obligations to ECC, observing a notice period of 14 days.
- (3) Changes of the quality and performance standards, which are relevant for or have been prescribed by EEX SPOT, in particular if these become necessary based on amended statutory framework conditions, shall be taken into consideration by ECC and, upon the request of EEX SPOT, shall be adjusted accordingly. The contract shall also be adjusted if the change desired by EEX SPOT is based on stock exchange regulations. A refusal by ECC to amend the contract according to Section 1 clause 3 sentence 2 of this Agreement justifies an extraordinary termination right without notice for EEX SPOT according to Section 16 clause 3 of this Agreement. In the event of an adjustment of a service, the remuneration for this service shall be re-negotiated between the parties and shall be adapted to the amended service respectively.
- (4) ECC warrants that it holds all necessary permits to perform the services under this Agreement.

Section 2 Personnel

In principle, ECC shall provide the contractual services with its own employees. The employment contracts concluded between ECC and the employees instructed to perform the services shall not be affected by the performance of the services. Should any employee of ECC claim that his employment contract has been transferred to ECC SPOT, ECC shall hold EEX SPOT harmless for any damage incurred by EEX SPOT as a result thereof.

Section 3 Instruction and Information Rights, Documentation

- (1) In connection with the performance of the contract by ECC, EEX SPOT may issue instructions and other requirements to ECC at any time and without limitation, which ECC must carry out without undue delay and irrespective of any concurrent instruction rights of third parties. The instructions must be in writing. To this extent, facsimile and e-mail shall suffice. In urgent cases, the instructions may also be issued orally. Orally issued instructions must be confirmed in writing by EEX SPOT vis-à-vis ECC without undue delay. Any additional costs possibly incurred shall be borne by EEX SPOT.

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- (2) The Contracting Parties undertake to provide the information and data required for the performance of the services to the other party without undue delay. Upon written request by EEX SPOT, ECC shall provide EEX SPOT with complete and detailed documentation of the data processing and the processing interfaces of the IT systems implemented by ECC pursuant to Section 1 clause 1 no. 1 in conjunction with Annex 1, no. 1, within 14 days.
- (3) EEX SPOT may at any time request information from ECC about matters relating to any of the contractual services.
- (4) The reciprocal provision of data and information shall be carried out in accordance with the pertinent statutory and regulatory requirements as well as the data protection rules.
- (5) The documentation shall be provided in writing and – to the extent available – electronically in a form capable of being read by methods customary in the market. The documentation shall be kept up to date. Both Contracting Parties may make copies insofar as this is required for implementation of the Agreement or for statutory reasons.
- (6) The Saxon Stock Exchange Supervisory Office and the EEX SPOT trading surveillance office have the authority to exercise all the rights granted to them under the German Stock Exchange Act vis-à-vis ECC. In particular, ECC undertakes to allow the Saxon Stock Exchange Supervisory Office to exercise its regulatory auditing and control rights and to provide this authority with all the documents required in this respect.

Section 4 Control Obligation of ECC

- (1) ECC shall allow the activities assigned to it under this Agreement to be regularly controlled by its management. The control measures to be executed by ECC's management include in particular the examination of the services provided and the identification and elimination of defects. ECC shall submit quarterly reports to EEX SPOT on the control measures carried out.
- (2) If ECC identifies an error, it shall report and document this and the measures carried out to eliminate the error to EEX SPOT without undue delay.

Section 5 Services Settlement and Remuneration

- (1) The agreed services shall be paid for by EEX SPOT pursuant to **Annex 2 (Services Settlement and Remuneration)**.
- (2) Invoices shall be rendered immediately after the performance of the contractual services.
- (3) The respective accounts receivable shall be due and payable without deduction immediately after the rendering of the invoice unless a differing agreement had been made in writing. Recurring monthly payments according to this Agreement and its Annexes shall be due on the 15th day of the following month.
- (4) In all other respects, the payments shall be due without deduction within 30 days after receipt of the invoices. In the event of delayed payment, the Contracting Parties may bill the other Contracting Party with default interest at the statutory default interest rate. In deviation from the statutory provisions, default in payment does not occur until 30 days after payment due date.

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Section 6 Right to Exercise the Supervisory Function of EEX SPOT

- (1) The Contracting Parties hereby agree for the transferred business areas that
- (a) EEX SPOT has information, inspection, auditing and access rights as well as control and instruction authority,
 - (b) the internal auditing department of EEX SPOT, the auditors who are working at EEX SPOT on the basis of statutory regulations and
 - (c) the Stock Exchange Supervisory Authority as well as the agencies assigned with the audit by the Stock Exchange Supervisory Authority

each have information, inspection, auditing and access rights concerning all the documents, data carriers and systems at ECC, insofar as these concern the transferred areas. In particular, the inspection and auditing rights of the Stock Exchange Supervisory Authority and the agencies instructed with the audit by the Stock Exchange Supervisory Authority include the obligation of ECC to provide all the information and surrender all the documents which these parties require for their investigation. The auditing rights of the internal auditing department of EEX SPOT and the statutory auditors of EEX SPOT also include the production of copies of the pertinent documents and the access to all documents, data carriers and systems at ECC, insofar as these concern the transferred areas. This also makes it necessary that the persons who carry out internal auditing functions at ECC or who perform the external audits prescribed by statute or ordered by the authorities are not subject to an obligation of professional secrecy and/or are released from such an obligation vis-à-vis EEX SPOT and its auditors.

- (2) All the auditing rights continue to exist for two years after termination of the Agreement, beginning with the expiration of the business year in which the Agreement terminates. The Contracting Partners shall also keep the documents relevant to the spin-off carried out according to this Agreement available for the same period of time.

Section 7 Data Protection, Business Secrets

- (1) ECC shall protect the business secrets of EEX SPOT and observe all the obligations of professional secrecy existing in connection with customer data which are incumbent on EEX SPOT as an exchange.
- (2) ECC undertakes only to process personal data in terms of the German Federal Data Protection Act (*Bundesdatenschutzgesetz*) and other pertinent data protection regulations according to the provisions of the pertinent statutory regulations and to treat all the information relating to EEX SPOT's customers or the contractual relationship of the customers with EEX SPOT in accordance with the requirements of bank secrecy rules.
- (3) Data which is subject to data protection or the obligation of professional secrecy according to Section 7 clause 1 of this Agreement shall only be processed by ECC exclusively on the request and in the interest of EEX SPOT and its customers in accordance with **Annex 3 (Data Protection/Commissioned Data Processing)**. ECC may only use this data to the extent such use is required for the fulfilment of the contractual services and is in accordance with the pertinent statutory and supervisory regulations.

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- (4) In order to ensure the security and confidentiality of the data, ECC shall at all times take technical and organisational measures which satisfy the requirements of statute and the supervisory regulations. In particular, it shall protect the data against unauthorised or inadvertent destruction, accidental loss, technical defects, falsification, theft, unauthorised use and duplication, etc.
- (5) The envisaged technical and organisational measures must ensure a clear separation of the data subject to data protection or professional secrecy according to Section 7 clause 1 of this Agreement and the ECC data. If ECC offers the services which are the subject-matter of this Agreement to other enterprises, then it shall be ensured by way of special technical, staffing and organisational measures, that the confidentiality of the data remains assured also vis-à-vis the various outsourcing enterprises.
- (6) The Contracting Parties shall notify the respective other party without undue delay concerning the occurrence of a violation of the security and the confidentiality of the data or in the event of changes of the technical and organisational measures.
- (7) ECC shall provide a clear explanation to each of its employees on the importance of data protection (in particular the German Federal Data Protection Act) and the obligation of professional secrecy according to Section 7 clause 1 of this Agreement as well as the restrictions resulting from the processing and handling of data and shall oblige its employees to data secrecy according to Sec. 5 of the German Federal Data Protection Act. It shall document this obligation in appropriate written form.
- (8) The Contracting Parties undertake reciprocally to notify each other without undue delay of the results of the audits by the Data Protection Supervisory Authority and to rectify any deficiencies.

Section 8 Security Requirements

- (1) ECC shall ensure the required security measures for the proper execution of the assigned activities.
- (2) In connection with the provision of the contractual services, ECC is obligated to maintain a protection system against all adverse effects on IT security (viruses, Trojans, worms, intruders, etc.) which corresponds with the customary standards for protection against adverse effects on IT security. However, this refers to technical measures. Furthermore, every enterprise is responsible for organisational measures as well as the sensitising of its own employees in regards to critical IT security issues. To the extent that nevertheless adverse effects on the systems or networks arise at one of the parties in connection with the work, the parties shall make every effort to protect the party concerned against the resulting effects.
- (3) ECC must implement measures which allow a proper continuation of the business in case of emergency. For this purpose, it shall take appropriate precautions which allow a proper continuation of the assigned activities also in the event that the normal processing of the services is not possible at all. As soon as ECC determines that it is not able to provide the services, it shall notify EEX SPOT of this without undue delay.

Section 9 Storage of Data

ECC shall keep exact, complete and current records on the provision of the services which are the subject-matter of this Agreement and on the execution of the tasks according to this Agreement. This also includes the information and other records required by the supervisory authorities, the preparation and maintenance of which have been agreed in writing by the parties. The records may be filed or stored on a hard drive or other electronic data carrier as far as the complete and unfalsified reproduction of the data is ensured. ECC is obligated to store these documents for the period determined in Sec. 257 para. 4 of the German Commercial Code (HGB). Sec. 257 para. 3 and para. 5 of the German Commercial Code apply accordingly.

Section 10 General Contractual Obligations

- (1) The Contracting Parties shall fulfil their contractual obligations as prudent and reputable merchants.
- (2) If the contractual performance obligations result in an obligation for the other Contracting Party to cooperate, this party shall cooperate. To this extent, the Contracting Parties shall advise each other in good time concerning an obligation to cooperate. If the other party does not comply with its incumbent cooperation obligation in good time, then the other party's obligation to perform shall no longer apply if the service cannot be provided without the cooperation of the other party.

Section 11 Liability

- (1) To the extent that nothing to the contrary has been agreed in this Agreement, the parties have unlimited reciprocal liability for intentional wrongdoing and gross negligence.
- (2) In other cases not addressed in the preceding clause, the liability of the parties is limited to an amount of EUR 100,000 for each occurrence of damage, however to a maximum amount of EUR 500,000 per year.

Section 12 Breach of Third Party Rights

If one of the Contracting Parties breaches third party rights and this third party enforces its damage claim vis-à-vis the other Contracting Party, the breaching Contracting Party shall indemnify the other Contracting Party against any and all claims. The other Contracting Party shall inform the breaching Contracting Party without undue delay about such claims being enforced by third parties.

Section 13 Further Outsourcing of Services

- (1) ECC may have the services owed according to this Agreement performed by third parties ("**Sub-contractors**") if EEX SPOT has granted its written consent to this vis-à-vis ECC.
- (2) The permissible further outsourcing of services according to this Agreement requires a written agreement between ECC and the Sub-contractor, which guarantees that the Sub-contractor will fully perform the obligations of ECC according to this Agreement. This concerns, in particular, the regulations on data protection and the professional secrecy

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obligation under Section 7 clause 1 of this Agreement. ECC undertakes only to structure its contractual agreements with the Sub-contractor so as to be in line with the provisions of this Agreement.

- (3) In the event of outsourcing of services owed by ECC to Sub-contractors ECC remains liable vis-à-vis EEX SPOT under this Agreement.

Section 14 Public Communication

The Contracting Parties may only make public statements of any kind concerning their cooperation after the other party has granted its consent.

Section 15 Intellectual Property Rights

- (1) In the event of existing rights of licensors, the Contracting Parties are obligated to obtain the consent of the licensor for a co-use of their licensed items by the other Contracting Party. This applies in particular to the licensing of third party software.
- (2) Inventions which are made in connection with the contractual services are the entitlement of the Contracting Party whose employee is the inventor. This Contracting Party has the right to register the proprietary rights. To the extent that inventions are made jointly, these are the joint entitlement of the Contracting Parties. Each of the Contracting Parties is then entitled to exploit these inventions as if it were the sole holder of the right based on this invention.
- (3) If developments worthy of copyright protection result from the cooperation of the Contracting Parties or from the connection with the performance of the contractual services or if the parties achieve results protected by copyright, they are obligated to grant the respective other Contracting Party a non-exclusive right of use free of charge.
- (4) ECC guarantees that it holds or is licensed with all intellectual property rights required for the performance of the services under this Agreement. ECC shall hold EEX SPOT harmless for any damage incurred by EEX SPOT as a result of third party claims for infringement of intellectual property rights in connection with services under this Agreement.

Section 16 Contractual Term, Termination

- (1) The Agreement takes effect upon signing. It is concluded for an unspecified term.
- (2) The Agreement can be terminated with notice in writing by EEX SPOT with a notice period of three months to the end of the month and by ECC with a notice period of six months to the end of the month.
- (3) The right of extraordinary termination without notice for good cause remains unaffected. The prerequisite for extraordinary termination without notice is the existence of facts based on which, after taking all the circumstances of the particular case into consideration and after weighing the interests of both Contracting Parties, the continuation of the Agreement cannot be reasonably expected of the terminating party. Good cause exists particularly if

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- (a) a party violates statutory obligations or despite written warnings, repeatedly violates its principal obligations under this Agreement;
 - (b) a party does not have the required permits for the activity it owes;
 - (c) (i) a party is insolvent or over-indebted within the meaning of sec. 17, 19 of the German Insolvency Act (*Insolvenzordnung*) and/or (ii) a petition for the commencement of insolvency proceedings has been filed against a party pursuant to sec. 13 of the German Insolvency Act. If a petition for the commencement of insolvency proceedings has been filed in respect of the assets of a party, then this party is obligated to notify the other party of this without undue delay;
 - (d) a party discontinues its business activities or a resolution on the liquidation of the business has been adopted; or
 - (e) a public supervisory authority orders the rescission or termination of this Agreement.
- (4) The ordinary and the extraordinary terminations require written form.
- (5) In the event of termination according to clause 2 or clause 3, ECC is obliged to perform its services under this Agreement up to the point in time when another service provider selected by EEX SPOT performs the services or EEX SPOT has taken over the originally outsourced services again itself. A termination does not affect the completion of the transactions which have already been initiated by ECC and ECC shall supervise the winding up and completion of the transactions which have not yet been finalised at this point in time. The provisions on remuneration shall remain in effect until the end of the provision of services according to this clause.
- (6) Upon the request of EEX SPOT, ECC shall assist EEX SPOT in the outsourcing of the service to a third party or transfer back to EEX SPOT itself. ECC shall receive the respectively agreed remuneration for these assisting services.

Section 17 Provisions upon Termination

- (1) Should this Agreement be terminated in the future, both Contracting Parties are obligated to return information, data, documents, material, items, etc., which were both handed out and collected and which exist in written, electronic or another form and can be attributed to the other party.
- (2) To the extent that information has real property character, this information shall be returned. Otherwise it shall be transmitted electronically to the other party in a format which is able to be read and converted by methods customary in the market and the copies shall be destroyed on all the party's own data storage media insofar as this is permitted according to statutory data protection provisions.
- (3) The parties may reciprocally request written confirmation that all the information and data in the possession of the other party has been returned and/or destroyed.
- (4) Information or data which must be stored for purposes of statutory archiving shall remain unaffected hereby. Such information or data shall be handled according to clauses 1 – 3 after expiration of the archiving period.

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Section 18 Written Form

- (1) There are no oral side agreements. Amendments and supplements to this Agreement including this provision must be in writing.
- (2) The general business terms and conditions of the Contracting Parties shall not be applicable in the relationship of the Contracting Parties among each other.

Section 19 Place of Jurisdiction

The place of jurisdiction for all legal disputes arising from this Agreement, its implementation or concerning the validity of this Agreement is agreed to be Leipzig.

Section 20 Arbitration

- (1) The Contracting Parties agree in common consent that in the event of disputes concerning the implementation or interpretation of this Agreement, proceedings shall be conducted before an arbitration tribunal according to the rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (German Institute of Arbitration). The decision rendered on the disputed issue in the proceedings shall be final. Further proceedings before the ordinary courts are excluded. The place of arbitration is Leipzig.
- (2) The arbitration tribunal shall comprise three persons. Each of the Contracting Parties may nominate one arbitrator. The presiding judge of the arbitration tribunal shall be determined by the arbitrators nominated by ECC and EEX SPOT. If no agreement can be reached on the presiding judge, this person shall be determined by the President of the Higher Regional Court (OLG) of Dresden.

Section 21 Applicable Law

This Agreement shall be governed exclusively by German law.

Section 22 Severability Clause

Should one of the provisions of this Agreement be or become invalid in whole or in part, this shall not affect the validity of all the remaining provisions of this Agreement and it shall continue to be applicable unchanged. The invalid provision shall be replaced by another permissible provision which economically and legally comes closest to the meaning and purpose of the invalid provision. The same shall apply if the Agreement does not contain a provision which in itself is required.

Section 23 Components

The components of this Agreement are the contract and its annexes. Annexes are:

Annex 1	List of Services
Annex 2	Services Settlement and Remuneration
Annex 3	Data Protection/Commissioned Data Processing

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to the Cooperation Agreement**

Leipzig, 6 March 2008

EEX Power Spot GmbH

European Commodity Clearing AG

Annex 1

List of Services

This Annex regulates the scope of the contractual services. The contractual services shall be provided within the scope of customary standards and shall be in accordance with the current state of technology.

1. Administrative Services of ECC

The administrative services include general administrative tasks and assistance as ancillary functions. In detail these are:

- a) Notifications under the German Foreign Trade Regulation (*Außenwirtschaftsverordnung*)
This service includes the preparation and submission of notifications required by statute as well as the monitoring of the respective inspections.
- b) Settlement and Collection of Transaction Fees
The service includes regular rendering of invoices for the exchange transaction fees to the trading participants, the collection of the transaction fees from these trading participants as well as remittance of the collected amounts. In addition this service includes the specification of sample invoices and the maintenance and testing of the IT technical implementation of new or changed sample invoices.

2. IT Services of ECC

These services include the provision of all the IT services required for the business operations, in particular:

- a) ECC organises the operation of the data processing centre premises used jointly by ECC, EEX SPOT and other enterprises.
- b) Data security technology: ECC monitors the data saving process and stores the data and restores the data if required. ECC provides the required server.
- c) File/directory/authorisation services: ECC administrates the system users and releases certain resources for persons and/or groups of persons, malfunctions are eliminated by ECC. ECC provides the required domains and data servers on which the domain services are reproduced.
- d) Network infrastructure: ECC allows the co-use of ECC's physical components, i.e., switches, routers, servers and PCs; provision and configuration concerning logical network separation, firewall (security policy), virus protection (centrally administrated server, PC and mail surveillance), software updates, PC group guidelines for resource use, active directory / DNS / DHCP / NTP services; ISDN dialling services for FPM and online banking; Internet connection, as well as active network monitoring for early detection of malfunctions.
- e) ECC undertakes to provide and maintain a joint long-term data memory, which is separated from ECC, with all the trading transactions in one central data base as a central unit for archiving and evaluation.
- f) ECC provides software development services for the further development and maintenance of special systems and programmes.

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- g) Maintenance of the internal IT components and their administration for connection of the systems of the German Stock Exchange in two separate networks with different functions and security levels, as well as as a basis for data storage from the trading systems by ECC.
- h) Provision of the EEX Framework System / Trading Information System (TIM) in which information relevant for invoicing is collected that is required for the generation of special settlement reports (*Abwicklungsreport*).
- i) ECC provides the physical infrastructure for the hosting and maintenance of a web presentation separated from ECC.
- j) ECC takes over programming services for the realisation and creation of market data information services and further develops these.
- k) ECC provides the market maker performance measuring system and option price calculation system in the respective updated version and undertakes to further develop these systems.
- l) E-mail system: ECC administrates the mailboxes and addresses and releases certain resources to persons and/or groups of persons. ECC provides a mail server and operates this mail server.
- m) Electronic fax system: ECC provides an electronic fax solution with which facsimiles can be distributed via a mail gateway to various recipient groups.
- n) ECC undertakes to eliminate all operational malfunctions of the IT systems named under a) to m) without undue delay.

3. Risk Management Services of ECC

The risk management services include:

- a) Assistance with all activities for the implementation of a functional monitoring system pursuant to sec. 91 para. 2 of the German Stock Corporation Act (*Aktiengesetz*).
- b) Assistance in the development of a risk strategy (determination of the capability and willingness to accept risks);
- c) Recording and analysis of risks (risk inventory) and continued monitoring of the risk situation; processing of the risk inventory into a standardised report to the management and quarterly update of this report; ad hoc reporting if the risk situation so requires;
- d) Recommendation of measures for the avoidance, reduction, shifting and compensation of risks;
- e) Coordination of adequate internal auditing (Person of Contact for audit planning and within the scope of the conduct of internal audits; follow-up of the settlement of measures from the internal audits).

Annex 2

Services Settlement and Remuneration

This Annex regulates the settlement of the contractual services provided by ECC and their remuneration by EEX SPOT. ECC has broken down the processes, determined the internal personnel requirements and calculated the resulting costs. This is the basis for the internal settlement formula according to which the internal settlement of accounts shall be carried out between the parties.

If ECC fulfils its contractual service obligations according to **Annex 1 (List of Services)**, these shall be paid for according to the settlement formula, unless a lump sum settlement according to this Annex has been agreed.

1. Administrative Services of ECC

- (1) Administrative services are a contractual service provided by ECC to EEX, EEX SPOT, EEX Derivatives. The contractual scope is shown in **Annex 1 (List of Services)**.
- (2) The services are provided solely by ECC personnel. Furthermore, ECC generates other expenses for administrative services within the scope of this task.
- (3) The basis for the remuneration of the service is the total amount of expenses of ECC for administrative services. These expenses, through the use of respective parts, are attributable to ECC, EEX SPOT and other enterprises for which ECC provides these services. In detail, this leads to the following remuneration by EEX SPOT to ECC:
 - a) 0.1 man years at € 47,100 per year
- (4) The adequacy of the remuneration specified under a) is examined annually. In this respect, the adequacy is to be assessed on the basis of the time keeping of the individual employees. In the event of a deviation of more than 10% (relating to 0.1 man years, this is 2 working days) the remuneration shall be adjusted accordingly. Furthermore, the remuneration shall be adjusted if the total personnel costs for the employees assigned to this project changes by more than 10%. The resulting difference shall be paid or refunded accordingly.

2. IT Services of ECC

- (1) IT services are a contractual service provided by ECC to EEX SPOT. The contractual scope is shown in **Annex 1 (List of Services)**.
- (2) The service is provided solely by ECC personnel and by material costs for hardware and software.
- (3) The basis for the remuneration for the service is the total amount of expenses of ECC for this service. These expenses, through the use of respective parts, are attributable to ECC, EEX SPOT and other enterprises for which ECC provides these services. In detail, this leads to the following remuneration by EEX SPOT to ECC:
 - a) 0.2 man years at € 81,600 per year
 - b) € 30,000 per year for material costs
- (4) The adequacy of the remuneration specified under a) is examined annually. In this respect, the adequacy is to be assessed on the basis of the time keeping of the individual employees. In the event of a deviation of more than 10% (relating to 0.2 man years, this is

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4 working days) the remuneration shall be adjusted accordingly. Furthermore, the remuneration shall be adjusted if the total personnel costs for the employees assigned to this project changes by more than 10%. The resulting difference shall be paid or refunded accordingly.

- (5) The adequacy of the remuneration specified under b) is examined annually. ECC determines the actual expenses in a final invoice as of the end of the year. In this respect, an adjustment of the remuneration shall be accomplished if the actual expenses deviate by more than 10% from the budgeted value. On the other hand, it shall be examined whether the allocation of the expenses to ECC, EEX SPOT and other enterprises for which ECC provides services applied in the planning is justified. An adjustment is accomplished if the justified allocation deviates from the applied allocation by more than 10%. The resulting difference shall be paid or refunded accordingly.

4. Risk Management Services of ECC

- (1) Risk management services are a contractual service provided by ECC to EEX SPOT. The contractual scope is shown in **Annex 1 (List of Services)**.
- (2) The contractual services are provided by ECC personnel.
- (3) The basis for the remuneration for the services is the amount of personnel costs of ECC. This amounts to:
- a) 0.1 man years at € 64,300 per year
- (4) The adequacy of the remuneration specified under a) is examined annually. In this respect, the adequacy is to be assessed on the basis of the time keeping of the individual employees. In the event of a deviation of more than 10% (relating to 0.1 man years, this is 2 working days) the remuneration shall be adjusted accordingly. Furthermore, the remuneration shall be adjusted if the total personnel costs for the employees assigned to this project changes by more than 10%. The resulting difference shall be paid or refunded accordingly.

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Annex 3

Data Protection/Commissioned Data Processing

Preamble

This Annex precisely specifies the obligations of the Contracting Parties under data protection law which result from the commissioned data processing described in detail in the Services Agreement between ECC and EEX SPOT (hereinafter "**Principal Agreement**"). It is applicable to all activities whereby employees of ECC (hereinafter "**Contractor**") or third parties instructed by the Contractor come into contact with personal data of EEX SPOT (hereinafter "**Principal**").

1 Definitions

1.1 Personal Data

Personal data is particular information on the personal or factual situation of a specific or specifiable natural person.

1.2 Data processing by Order

Data processing by order is the storage, amendment, transmission, blocking or deletion of personal data by the Contractor by order of the Principal.

1.3 Instructions

An instruction is usually provided by the service specifications in the Principal Agreement, if required, it can be amended, supplemented or replaced at any time by the Principal by way of a separate instruction issued in written form (Separate Instruction).

2. Subject-Matter of the Agreement

The Contractor processes the personal data on order of the Principal. This includes the tasks specified in the service specifications. Within the scope of this Agreement, the Principal has sole responsibility for compliance with the statutory requirements of data protection law, in particular for the legality of the transmission of data to the Contractor as well as for the legality of the data processing.

3. Obligations of the Contractor

3.1 The Contractor may only collect, process or use data within the scope of the instructions of the Principal.

3.2 The Contractor assures within its area of responsibility the implementation of and compliance with the agreed general and technical and organisational measures in accordance with sec. 9 of the German Federal Data Protection Act. In particular, the Contractor will structure its internal operational organisation so that it satisfies the special requirements of data protection. It shall carry out technical and organisational measures for adequate safeguarding of the Principal's data against abuse and loss, which comply with the stipulations of the German Federal Data Protection Act. In particular, these include

- refusal of the entrance of unauthorised persons to data processing facilities with which the personal data is processed and used (entrance control),
- prevention of capability of use of the data processing systems by unauthorised persons (admission control),

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- assurance that the persons authorised to use a data processing system are only able to access the data included in their access authorisation and that in the course of processing and use, and after storage of the personal data, the data is unable to be read, copied, modified or removed without authorization (access control),
- assurance that the personal data is not able to be read, copied, modified or removed without authorization during the electronic transmission or during its transport or its storage on data carriers and that it can be verified and determined at which positions a transmission of personal data by data transmission facilities is intended (transmission control),
- assurance that it can be verified and determined retroactively whether and by whom personal data has been entered or modified in or removed from the data processing systems (entry control),
- assurance that personal data, which is processed on order, is only able to be processed in accordance with the instructions of the Principal (order control),
- assurance that the personal data is protected against accidental destruction or loss (availability control),
- assurance that data collected for different purposes can be processed separately (separation control).

3.3 The Contractor shall provide the Principal, upon its request, a comprehensive and current data protection and security concept for this commissioned data processing.

3.4 The Contractor shall provide the Principal with the information required for the overview pursuant to sec. 4g para. 2 sentence 1 of the German Federal Data Protection Act.

3.5 Insofar as is required by the law, the Contractor shall appoint a data protection officer and shall notify the Principal of the contact details of the company data protection officer.

3.6 The Contractor shall report immediately to the Principal concerning serious disturbances of the operational process, in the event of suspicion of data protection violations or other irregularities in the processing of the Principal's data.

3.7 Orders by the Contractor to Sub-contractors may only be issued with the written approval of the Principal in accordance with the provisions of the Principal Agreement.

3.8 Data carriers which have been made available, as well as all copies or reproductions which have been made thereof, shall remain the property of the Principal. The Contractor shall safeguard these with care so that they are not accessible by third parties. The Contractor is obligated to inform the Principal at any time insofar as its data and documents are affected. The destruction of text and waste material in conformance with data protection rules shall be assumed by the Contractor on the basis of a separate order from the Principal. In special cases, which shall be determined by the Principal, a storage and/or delivery takes place.

4. Obligations of the Principal

4.1 The Principal has the duty of keeping the public processing procedures register (public domain register) pursuant to sec. 4g para. 2 sentence of the German Federal Data Protection Act.

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- 4.2 The Principal is also obligated to report any possible defects to the Contractor without undue delay and in a complete manner.

5. Requests by Persons Concerned to the Principal

If the Principal is obligated pursuant to applicable data protection laws vis-à-vis an individual person to provide information on the collection, processing or use of the data on this person, the Contractor shall assist the Principal in making this information available insofar as the Principal requests such assistance from the Contractor.

6. Control Right

After respective notification for inspection purposes, the Principal may verify in the business premises during normal business hours, without disruption of the operations, the adequacy of the measures implemented for compliance with the technical and organisational requirements under the pertinent data protection laws concerning commissioned data processing.

Upon written request, the Contractor undertakes to provide all the information which is required in order to carry out a comprehensive inspection of the commissioned processing to the Principal within a reasonable period of time.

7. Sub-contractor

If Sub-contractors are involved by the Contractor in accordance with preceding clause 3.7, the contractual agreements shall be structured so as to comply with the requirements of confidentiality, data protection and data security between the Contracting Parties of this Agreement. The Principal shall be granted the control and inspection rights pursuant to clause 6. Likewise the Principal also has the right, upon written request, to require information from the Contractor on the main contents of the contracts and the implementation of the Sub-contractor's obligations relating to data protection, if required, also by inspection of the relevant contractual documents.

8. Miscellaneous

Should the Principal's data be endangered at the Contractor by attachment or seizure, by insolvency or composition proceedings, or by other events or measures by third parties, the Contractor shall notify the Principal of this without undue delay. The Contractor shall inform all the parties responsible in this respect without undue delay that the Principal has jurisdiction for the data.