

Note: This translation is for information purposes only. The German text shall prevail.

CLEARING AGREEMENT **Spot Market Products electric Energy**

concluded between

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna
FN 251990 z

(hereinafter referred to as 'CCP.A') and

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[company, registered office, commercial register number]

(hereinafter referred to as 'Clearing Member') as follows:

PREAMBLE

The Clearing Member is an Exchange Member of Wiener Börse AG in its function as a general commodity exchange and enters into this Agreement for the purpose of participating in the clearing of exchange transactions concluded in trading of spot market products for electric energy (hereinafter referred to as 'Electricity Exchange Transactions').

Pursuant to § 9 para. 3 Austrian Stock Exchange Act CCP.A is charged with the task of a Clearing House for the clearing of all Electricity Exchange Transactions concluded at Wiener Börse AG in its function as a general commodity exchange. Electricity Exchange Transactions are solely concluded between CCP.A, in its role as central contractual party, and the respective Exchange Member, in its role as a Clearing Member.

The Exchange Operating Company has commissioned EXAA Abwicklungsstelle für Energieprodukte AG (hereinafter referred to as 'EXAA') to provide and operate the trading system for trading electrical energy spot market products on the Vienna Stock Exchange as a general commodity exchange as well as a nominated electricity market operator (NEMO) for the purpose of the uniform Day-Ahead-Market-Coupling.

§ 1 Object of Agreement

- (1) CCP.A is the contractual counterparty of the Clearing Member for Electricity Exchange Transactions concluded by the latter through the trading systems and carries out the electronic clearing and risk management for these transactions. This Clearing Agreement replaces the Clearing and Settlement Agreement Electric Power, including all Annexes, between EXAA and the Clearing Member as of **Insert Date**.
- (2) The contracting parties confirm that they are aware of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A, that the current version of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A is available to the Clearing Member (*Annex ./1*) and that this Clearing Agreement is concluded on the basis of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A as amended. The contracting parties undertake to comply with the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A as amended at all times.
- (3) The Clearing Member participates pursuant to the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A in the clearing of Electricity Exchange Transactions.
- (4) Electricity Exchange Transactions executed via the trading system are solely concluded between CCP.A and the respective Clearing Member, if applicable considering the Market Coupling Counterparty within the scope of the uniform Day-Ahead-Market-Coupling.
- (5) The Clearing Member undertakes to fulfil the obligations derived from the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A, in particular to fulfil the Electricity Exchange Transactions, the financial obligations from the exchange and clearing membership in accordance with the Schedules of Fees of the Exchange Operating Company and CCP.A, the timely deposit of sufficient Clearing Collateral, the payment of the contribution to the Default Fund set by CCP.A, the establishment of the corresponding cash and securities account structure including any direct debit authorizations and pledge declarations, for the application of the standards of due care set out in the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A and for compliance with the objection procedure.
- (6) Clearing shall be conducted through automated clearing systems. Clearing Members receive technical access to the clearing systems based on this Clearing Agreement that shall be concluded with CCP.A. All costs for setting up the technical facilities for taking part in clearing and for connecting to the clearing systems including the data lines shall be borne by the Clearing Member.

§ 2 Commissioning Third Parties

- (1) CCP.A commissions vicarious agents, who undertake the tasks of the Settlement Bank or the Collateral Custodian (together referred to as 'Clearing Facilities') for the financial clearing of the Electricity Exchange Transactions and keeping the Clearing Collateral in accordance with the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A.
- (2) CCP.A is authorized to commission further vicarious agents, in particular for the operation of the clearing systems.

§ 3 Use of Data

- (1) The Clearing Member hereby explicitly agrees to the use of personal data connected with its exchange or clearing membership, and to the transmission of these data by CCP.A, the Exchange Operating Company, EXAA and the Clearing Facilities to any other entities mentioned for the purposes of fulfilling the tasks specified in the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A.
- (2) The Clearing Member hereby explicitly agrees to the transmission of data and information obtained under this Clearing Agreement or the *General Terms and Conditions Spot Market Products in electric Energy* by CCP.A to EXAA, the Clearing Facilities and the Exchange Operating Company, by the Clearing Facilities to CCP.A, EXAA and the Exchange Operating Company, by the Exchange Operating Company to CCP.A, EXAA and the Clearing Facilities, by EXAA to CCP.A, the Exchange Operating Company and the Clearing Facilities and by all of the aforementioned to courts and authorities, in particular, the Austrian Financial Market Authority, the Austrian Central Bank, the European Securities and Markets Authority and Energie-Control Austria for the purpose of monitoring compliance with this Clearing Agreement, the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A and legal provisions as well as the execution of clearing.
- (3) The Clearing Member hereby releases CCP.A, the Exchange Operating Company, EXAA and the Clearing Facilities from the obligation to maintain data secrecy and, in case of the Clearing Facilities, also from banking secrecy pursuant to § 38 Austrian Banking Act (*Annex .3* and, optionally, *Annex .8a*) for the purposes of admission and ongoing determination of the fulfilment of the requirements for the participation in clearing pursuant to § 10 para. 2 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A, carrying out the clearing and the notification of indications of a violation of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A or this Clearing Agreement as well as other reporting and notification obligations towards courts and public authorities, in particular the Austrian Financial Markets Supervision, the Austrian Central Bank, the European Securities and Markets Authority and Energie-Control Austria.

§ 4 Structure of Cash and Securities Accounts for the Financial Clearing, Physical Fulfilment as well as Clearing Collateral and Default Fund

- (1) The Cash Settlement Account for the financial clearing opened by the Clearing Member at the account-holding bank in conformity with the requirements of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A, including the SEPA – B2B – Direct – Debit – Mandate, results from the form which is enclosed with this Clearing Agreement as *Annex .2*. The type and content of the Clearing Collateral provided by the Clearing Member in accordance with the requirements of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A, including the Cash and Securities Collateral Accounts as well as the pledge declarations, result from the forms which are enclosed with this Clearing Agreement as *Annexes .4 and .6 to .8a*.
- (2) The Clearing Member has set up a Cash Settlement Account for the financial clearing at an Austrian bank or a credit institute in the EEA (account-holding bank), which guarantees the processing of direct debits and credits with value date T + 1 (using the SEPA – B2B – Direct – Debit – Mandate). The minimum requirements listed in *Annex .2* shall be met.
- (3) The precondition for the participation of the Clearing Member in the clearing inter alia is that the required Clearing Collateral in accordance with § 23 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A is duly provided. The Clearing Member may provide the required Clearing Collateral in one or more of the following ways:
 - a) EUR cash deposits on a pledged Cash Collateral Account with a Collateral Custodian, and/or
 - b) Transfer of EUR deposit to a dedicated account of CCP.A (transfer of ownership by way of security), and/or
 - c) EUR bank guarantees in the EEA or Switzerland (provided the Clearing Member is a non-financial counterparty), and/or
 - d) Securities on a pledged Securities Collateral Account with a Collateral Custodian.
- (4) As a further precondition for the participation of the Clearing Member in the clearing, the contribution to the Default Fund according to § 28 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A shall be provided using a transfer of ownership by way of security to an account of CCP.A or in the form of a EUR deposit on a pledged Cash Collateral Account with a Collateral Custodian. The contribution to the Default Fund shall serve exclusively as collateral for the liabilities of the Clearing Member resulting from its Commodity Exchange Membership and its Clearing Membership and from its Electricity Exchange Transactions as well as all liabilities deriving from the Exchange and Clearing Membership including taxes and fees as well as to cover open liabilities in the event of a default of another Clearing Member that cannot be fully covered by that Clearing Member's Clearing Collateral, its contribution to the Default Fund and the allocated own funds of CCP.A pursuant to § 34 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A.

- (5) The Clearing Member hereby confirms that CCP.A has a right of disposal with regard to the Clearing Collateral pursuant to § 4 para. 3 lit. a, b and d of this Agreement as well as to the contributions to the Default Fund, which serve as financial collateral in the form of a restricted right in property in the meaning of Article 2 no. 1 lit. c of the Directive 2002/47 EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements based on the fact that such collateral arrangements are provided for in its operating rules. For this purpose, the Clearing Member declares that¹
- as collateral provider it falls under § 2 para. 2 of the Austrian Financial Securities Act, which means that the provisions of the Austrian Financial Securities Act also apply to the provision and realization of Clearing Collateral, since on the one side of the Clearing Member, being a legal person, sole trader or partnership, and on the other side a financial market participant, CCP.A, is contractually involved.
 - as collateral provider it falls under one of the categories of § 2 para. 1 of the Austrian Financial Securities Act, so that this law is applicable to the provision and realization of Clearing Collateral.
- (6) To ensure the physical fulfilment of Electricity Exchange Transactions in the Control Areas, the Clearing Member must either be a Balance Responsible Party himself or have a valid contract with a Balance Responsible Party that enables him to take part in the clearing of CCP.A. *Annexes ./5 or ./5a* are to be used for this purpose.

§ 5 Duration of the Agreement

- (1) This Clearing Agreement may be terminated by the Clearing Member in accordance with § 12 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A at any time without stating reasons by written notice.
- (2) CCP.A is entitled to terminate the Clearing Agreement if there is a material reason in accordance with § 13 of the *General Terms and Conditions Spot Market Products in electric Energy* of CCP.A with immediate effect and without observing a deadline. The dissolution by CCP.A takes place in writing, stating the reasons.
- (3) The termination of the Clearing Agreement shall not release the concerned Clearing Member from the rights and obligations for already concluded Electricity Exchange Transactions in his name and for his account. The termination of the Clearing Agreement causes that one of the requirements of §§ 34 para. 1 and 36 para. 3 of the Austrian Stock Exchange Act as well as §§ 5 and 6 of the *Rules for Participation in Trading in electric Power* ceases to be given.
- (4) The contracting parties shall immediately notify the Exchange Operating Company and EXAA of any termination of the Clearing Agreement.
- (5) For an Exchange Member without a valid Clearing Agreement with CCP.A, no new orders from the Exchange Member may be entered in the trading system; the access to the trading system

¹ Please check as applicable.

for the Exchange Member to enter orders is technically interrupted by EXAA. All existing orders are to be deleted by the Exchange Member. If the deletion of the orders is not completed within a reasonable period set by EXAA for this in individual cases, EXAA will carry out the deletion on behalf of the Exchange Operating Company.

§ 6 Assignability

- (1) An assignment of rights or a transfer of obligations under this Clearing Agreement by the Clearing Member shall only be possible with the consent of CCP.A.

§ 7 Liability

- (1) Any liability of CCP.A and its vicarious agents for damages due to circumstances for which they are not responsible or for damages whose cause is outside of the sphere of CCP.A and its vicarious agents shall be excluded.
- (2) CCP.A and its vicarious agents shall not be liable to Clearing Members for losses, lost profits or damages, unless these losses, lost profits or damages are the result of willful conduct or gross negligent conduct. Liability for consequential damages shall be excluded in any case.
- (3) CCP.A and its vicarious agents shall not be liable to others, who are not themselves Clearing Members, for any losses, damages, consequential damages or lost profits that may occur as a result of, or in connection with the clearing of transactions.
- (4) CCP.A and its vicarious agents shall not be liable for damages caused by a disruption of operations due to force majeure, an epidemic, war and natural disasters or due to other events or incidents beyond their control (e.g. strike, lawful lockout, traffic disruption, official orders) or restraints/acts imposed by sovereign bodies.
- (5) The same shall apply to any damage suffered by a Clearing Member or Clearing Client due to technical problems, the partial or complete lack of usability of the IT system used by CCP.A or resulting from errors in the input of data in the course of clearing or in the administration of the records on the Clearing Collateral and the contributions to the Default Fund deposited, insofar as these damages has not been caused by wilful intent or gross negligent conduct of CCP.A and its vicarious agents.
- (6) With regard to the physical fulfilment of Electricity Exchange Transactions, CCP.A and its vicarious agents shall not be liable if errors or disruptions occur in the transmission network of the Transmission System Operator that make it impossible to supply or withdraw electric energy or to nominate a Schedule due to other unrepresented reasons. If due to legal or regulatory requirements a third party is involved in the scheduling process in a Control Area, neither CCP.A nor its vicarious agents shall be liable for errors or disruptions in the nomination of Schedules caused by this third party. CCP.A and its vicarious agents shall also not be liable in case the nomination of Schedules should be impossible due to the third party.

§ 8 Choice of Law, Jurisdiction

- (1) This Clearing Agreement shall be governed by, and construed in conformity with, Austrian law, with the exception of its conflict of laws provisions.
- (2) All disputes arising from or in connection with the fulfilment of Electricity Exchange Transactions including the issue of whether or not a transaction has been concluded between parties shall be decided by the Court of Arbitration of the Vienna Stock Exchange under exclusion of the regular courts of justice and in agreement with the decree of the Federal Ministry of Finance and of the Federal Ministry for Economic Affairs and Labor as accorded with the Federal Ministry of Justice on the implementation of Art XIII Introductory Law to the Code of Civil Procedure (Rules of Arbitration of Vienna Stock Exchange) Federal Law Gazette II No. 230/2000 in its function as the statutory compulsory court of arbitration.
- (3) All other disputes shall be decided by the competent commercial courts of Vienna as the only competent courts.

§ 9 Supplements, Severability

- (1) Should any individual provisions of this Clearing Agreement be or become fully or partially invalid or unenforceable, the validity or enforceability of the other provisions shall not be impaired.
- (2) Invalid provisions shall be replaced by such provisions, which come as close as possible to the intended economic effect. The same shall apply to the filling of any lacunae in this Clearing Agreement.

§ 10 Fees, Costs

- (1) The Clearing Member bears any charges and taxes arising in connection with the establishment of this Agreement. Each contracting party bears the cost of its own legal representation.

§ 11 Postal Addresses

- (1) Except in case of a change of address notified in writing, all notices intended for CCP.A shall be sent to:

CCP Austria Abwicklungsstelle für Börsengeschäfte GmbH
Strauchgasse 1-3
A-1010 Vienna

and any notices intended for the Clearing Member shall be sent to

[Company Name]
[Street]
[ZIP Code City Country]

§ 12 Language, Counterparts, Form, Annexes

- (1) This Clearing Agreement shall be executed in two copies in German (and, if necessary, in English). The German version is legally binding. Any translations into other languages are for information purposes only and are non-binding.
- (2) A list of authorized signatories from the Clearing Member must be enclosed with the signed agreement or one (individual) signed Annex.
- (3) Amendments of this Agreement, including a deviation from the requirement of the written form, shall only be valid if in written form.
- (4) The Annexes listed below form an integral part of this Agreement:

Mandatory Annexes:

- Annex ./1:* General Terms and Conditions Spot Market Products in electric Energy of CCP.A
- Annex ./2:* Form – SEPA – B2B – Direct – Debit – Mandate of the Clearing Member
- Annex ./3:* Form – Release of the Settlement Bank from Banking Secrecy
- Annex ./4:* Form – Confirmation of the transfer of cash deposits to an account of CCP.A
- Annex ./5²:* Form – Information on Physical Fulfilment: Balance Responsible Party
- Annex ./5a²:* Form – Information on Physical Fulfilment: Contract with a Balance Responsible Party

Optional Annexes, depending on the desired (further) type of clearing collateral to be provided:

- Annex ./6:* Form – Bank Guarantee Statement
- Annex ./7:* Form – Pledge Declaration for cash by the Clearing Member
- Annex ./8:* Form – Securities Collateral Account of the Clearing Member with the Collateral Custodian
- Annex ./8a:* Form – Pledge Declaration for Securities by the Clearing Member
- Annex ./9:* Form – Direct Debit Order by the Clearing Member

Place, Date

Corporate Signature **Clearing Member**

Place, Date

Corporate Signature **CCP Austria**

² Annexes ./5 and ./5a are alternative annexes within the meaning of § 11 para. 2 lit. f and g of the General Terms and Conditions Cash Market Products in electric Energy of CCP.A.