

Confidential

XBID-DSA License

Attachment 3A

Escrow Agreement

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Cover Sheet for the Escrow Contract

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Escrow Agreement

Contract number: _____ [will be added by Deposix]

amongst

APX Power B.V.

and

APX Commodities Ltd.

and

Belpex NV

and

EPEX Spot SE

and

Nord Pool Spot AS

and

OMI, Polo Español, S.A.

and

Gestore dei Mercati Energetici S.P.A.

and

Deposix Software Escrow GmbH

and

Deutsche Börse AG

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This escrow agreement (hereinafter referred to as the “**Contract**”) is made by and between:

On the one hand:

- (1) APX Power B.V., a company organised and existing under the laws of the Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, the Netherlands, and registered with the Commercial Register in Amsterdam under the number 50969390 and VAT n° NL 822972360, hereinafter referred to as “**APX**”;

and

- (2) APX Commodities Ltd., a company organised and existing under the laws of England and Wales, having its registered office at 18 King William Street, London, England, EC 4N 7BP United Kingdom, and registered with the Companies House in the United Kingdom under the number 03751681 and VAT n° GB728415527, hereinafter referred to as “**APX UK**”;

and

- (3) BELPEX NV, a company organised and existing under the laws of Belgium, having its registered office at Boulevard de l’Impératrice 66, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises under the number 874 978 602 (RPR Brussels) and VAT n° BE 0874 978 602, hereinafter referred to as “**Belpex**”;

and

- (4) EPEX Spot SE, a European Company (Societas Europaea) organised and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereinafter referred to as “**EPEX Spot**”,

and

- (5) Nord Pool Spot AS, a company organised and existing under the laws of Norway, having its registered office at Vollsveien 17 B, 1366 Lysaker, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° 984 058 098 MVA, hereinafter referred to as “**NPS**”;

and

- (6) OMI, Polo Español, S.A., a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with the Commercial Register in

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Madrid under section 8, Hoja: M-506799 and VAT n° ESA86025558, hereinafter referred to as "**OMIE**";

and

- (7) Gestore dei Mercati Energetici S.P.A., a company organized and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilsudski 122/124, Rome, Italy, and registered in the Companies' Register of Rome under the number RM 953866, under Italian tax code and VAT n° 06208031002, hereinafter referred to as "**GME**",

each of the parties (1) – (7) hereinafter individually being also referred to as the "**Licensee**" and collectively as the "**Licensees**" or the "**PXs**";

and on the other hand:

Deposix Software Escrow GmbH, a company organized and existing under the laws of Germany, having its registered office at Innere Wiener Str. 11a, D-81667 München, Germany, and registered in the Commercial Register Handelsregister HRB under the number 142266 and VAT n° DE221510123, hereinafter referred to as "**Deposix**";

and on the other hand:

Deutsche Börse AG, an Aktiengesellschaft (AG) organized and existing under the laws of Germany, having its registered office at Mergenthalerallee 61 65760 Eschborn, Germany, registered in the Commercial Register Handelsregister HRB under Nr. 32232 and VAT n° DE114151950, hereinafter referred the to as "**Licensor**" or "**DBAG**".

Each Licensee, Licensor and Deposix hereinafter individually being also referred to as "**Party**" and collectively as "**Parties**".

Preamble

- A) Licensor and Licensees have entered into the XBID-DSA License under which DBAG has granted a license for amongst others the XBID Solution as described in Appendix A (hereafter the "Software").
- B) The Source Code of the Software is the intellectual property of the Licensor, and as such a trade secret of Licensor. The Licensor strives to protect this trade secret.
- C) The Licensees use the Software of Licensor based on the terms of the XBID-DSA License. Since availability and operativeness of the Software are critical to the Licensees' business operations, it may become necessary under certain circumstances for the Licensees to gain access to particular parts of the Software, notably the Source Code thereof.
- D) Licensor and Licensees have therefore decided to enter into this Contract together with Deposix, where Deposix provides to the other Parties services in the context

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of the deposit of the Deposit Material and that grant Licensees access to the Deposit Material in case one of the Release conditions detailed in this Contract is met.

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This understood, the Parties agree as follows:

§ 1 Delivery of Deposit Material

- (1) Licensor agrees to deliver the Deposit Material and the Declaration one (1) week after final acceptance declaration of the Licensees according to the XBID-DSA Development, and thereby to transfer the electronic right of disposal or the physical property, as the case may be, to Deposix.
- (2) Licensor shall deliver the Deposit Material fixed on permanent, durable media (e.g. on CDs or DVDs) or electronically (e.g. by FTP - File Transfer Protocol), in a number of copies as defined in Appendix A *Deposit Material and technical verification*, and shall assure that the contents are readable either by man or machine and contain no viruses. Licensor shall deliver the Deposit Material to Deposix together with the filled-out *Inventory List*.
- (3) Licensor shall provide a listing of the files and material actually handed over by using the *Inventory list* together with the initial deposit and with any subsequent update of the Deposit Material.

§ 2 Entry inspection, technical verification

- (1) Following the receipt of the Deposit Material at Deposix, Deposix will conduct an entry inspection of the Deposit Material. This entry inspection includes verifying the completeness of the deposit by comparing the Deposit Material with the list in Appendix A *Deposit Material and technical verification* and by verifying that the conditions of § 1 (2) and § 6 are met. Deposix will then confirm in writing to the Licensor with copy to the Licensees the receipt of all components received as mentioned in the *Inventory List* which was received from Licensor together with the Deposit Material, or alternatively will correct the *Inventory List*.
- (2) Should Deposix determine that the Deposit Material does not conform to the list of the material in Appendix A *Deposit Material and technical verification* or to the conditions of § 1 (2) and § 6, Deposix will request Licensor to complete the deposit or to comply with the conditions of § 1 (2) and § 6 and inform in writing the Licensees of such request. In this case, Licensor shall complete the deposit immediately or comply immediately with the conditions of § 1 (2) and § 6 and latest within a time period of ten (10) working days.
- (3) Should Deposix determine that the Deposit Material conforms to the list of materials in Appendix A *Deposit Material and technical verification* and to the conditions of § 1 (2) and § 6, Deposix will sign the *Inventory List* and forward it to the Licensor and the Licensees. Licensor and Licensees shall then review the *Inventory List* and inform Deposix immediately if the deposit does not correspond to the Software which is in use by Licensees, or if it does not enable the continued use and maintenance of the Software by Licensees in case of a Release.
- (4) The execution of any additional technical verification has to be specified in Appendix A *Deposit Material and technical verification*. The technical verification will be documented in a protocol which Deposix will sign and forward to the Licensees.
- (5) Licensees are entitled to request a technical verification by Deposix of the Deposit Material at any given moment during the term of this Contract except for an explicit clause to the contrary in the License Agreement. The technical verification will be

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§ 6 Obligations for Licensor

- (1) Licensor agrees to actively support a compilation of the list of Deposit Material based on Appendix A *Deposit Material and technical verification* and the *Inventory List*.
- (2) Licensor warrants to the Licensees that the Deposit Material contains an accurate and complete reflection of the Source Code of the current production version of the XBID Solution at time of deposit.
- (3) Licensor must mark the Deposit Material prior to deposition with the name of Licensor, the number of this Contract and the name, version number and date of the Software. This applies for every single element of the Deposit Material, be it a document or an electronic data carrier or any other type of material.
- (4) Licensor must create a number of copies of the Deposit Material sufficient for his own needs prior to deposition. A violation of this duty is considered to constitute contributory negligence in terms of liability as set forth in § 13.
- (5) Updates or upgrades of the Deposit Material to be delivered by Licensor in accordance with the XBID-MSA, shall be deposited with Depositix in accordance with § 1.

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- (6) On request from Deposix or Licensee, Licensor must transfer the Deposit Material in full or in part anew to Deposix, if Deposix or Licensees fear the aging of the Deposit Material.
- (7) Licensor grants Deposix the simple, non-exclusive, non-transferable right, unlimited in scope, but limited in time to the duration of this Contract, to make use of the media and/or materials that are part of the Deposit Material in the context of this Contract, in particular to transfer the Deposit Material to Licensees in a Release Procedure, to copy it (where the right to create copies also extends to the software and other electronic content contained on the media) and to take other actions of a real or legal kind with regard to the Deposit Material as are necessary or sensible to the fulfillment of the obligations of Deposix as described in this Contract.
- (8) Licensor shall immediately notify Deposix if any of the contact information shown in Appendix C *Data Sheet* has changed. Licensor must also give immediate notification to Deposix if Licensor has stopped doing business or if an application to initiate a proceeding according to the insolvency code concerning Licensor's assets or a part thereof has been filed or if a proceeding has been opened. Furthermore, Licensor must inform Deposix immediately about any other information needed for performance of this Contract.

§ 7 Obligations for Licensees

- (1) Licensees shall fulfill their duties to cooperate in the context of this Contract immediately and diligently.
- (2) Should Licensor not deliver the Deposit Material to Deposix in accordance with this Contract and within the periods set forth by Deposix, it is Licensees' task to enforce the deposit of the Deposit Material with Deposix in accordance with this Contract or the XBID-MSA.
- (3) Licensees shall notify Deposix immediately if any of the contact information defined in the Appendix C *Data Sheet* change. Licensees shall also immediately notify Deposix in writing about any other information which is required for the execution of this Contract.
- (4) Licensees shall furthermore notify Deposix if they have received a new release of the Software in use by Licensor but did not receive any notification by Deposix about new Deposit Material within six (6) weeks from receiving the software release.
- (5) Each obligation incumbent upon the Licensees provided by the Contract binds each Licensee individually. Thus, each Licensee is liable for its own commitment only and the Licensees shall, in no event, bear any joint and several liability.

§ 8 Fees, terms of payment

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§ 9 Rights to and handling of Deposit Material

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§ 10 Confidentiality

- (1) Deposix is obliged to keep all Confidential Information as defined in § 10 (2) as confidential perpetually, irrespective of the mode in which it was exchanged (be it in

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written, electronic, physical, verbal or any other form). Deposix furthermore agrees to not utilize said information or let it be utilized by third parties, and to ensure that connected companies (according to stock corporation law), their directors and officers, employees, consultants and other vicarious agents adhere to this clause in the same way.

- (2) In the context of this Contract, Confidential Information – independently of its initial date of publication – is exemplary defined as (but not limited to) all software plus its Source Code, every trade secret, all data or other, not publicly available or confidential information regarding products, processes, know-how, design, formulas, algorithms, drafts, results of development and research, computer programs or parts thereof plus its Source Code, interfaces, databases and other copyrighted work or any other information related to the business operation of the Parties or their employees, consultants, licensees or other persons attached to the Party.
- (3) Deposix acknowledges that all information made available by a Party in the context of this Contract represents to this Party a substantial value or goodwill and that therefore the Party who has made available this information could suffer substantial damage in case of a breach of these confidentiality provisions. Deposix, if receiving information, therefore agrees individually to make up for damages to an injured Party arising out of a willful or negligent breach of the confidentiality provisions of this Contract. The injured Party is entitled to compensation for all damages arising out of the breach of the confidentiality provisions of this Contract, whereas damages also include all consequential damages, material and immaterial damages, and lost profit.
- (4) All information made available according to this Contract by a Party is and remains the sole and exclusive intellectual property of this Party including all rights of use unless otherwise stated in a separate agreement between any of the Parties of this Contract. At disclosure of information to a Party obliged to secrecy, no rights of any kind are transferred, neither expressly or tacitly.
- (5) The above confidentiality clause does not apply if Deposix is obliged either by law, by a valid court decision or by a public agency to reveal information and if the beneficiary of this confidentiality clause is notified in writing of such obligation prior to the disclosure.
- (6) Deposix will assure conformance to the above confidentiality provisions through appropriate contracts with all employees, consultants and other third parties which a Party might employ for fulfilling its obligations arising out of this Contract.

§ 11 Effective date and term of this Contract

- (1) This Contract enters into force upon signing by all Parties with retroactive effect as of 1 March 2015 and remains in force for twenty (20) years.
- (2) This Contract ends if a Release to Licensees has been completed based on § 5, even if the term set forth in § 11 (1) of this paragraph has not yet expired.
- (3) This Contract may be terminated by Deposix at any time with immediate effect and without any termination fee being due - even if the term set forth in § 11 (1) has not yet expired - in case a Party obliged to pay defaults on payment in spite of two (2) notices to the Parties with a period of at least ten (10) working days each and in

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case no payment is received from the defaulting Party or any other Party within the set period.

- (4) This Contract may be terminated by a Party at any time with immediate effect, even if the term set forth in clause § 11 (1) has not yet expired, in the case of another Party continuing to commit a material breach of the provisions of this Contract despite a written notice to cure within a reasonable period of time.
- (5) This Contract may be terminated by a written notice to the other Parties by Licensor and Licensee at any time with immediate effect and without any termination fee being due, even if the term set forth in clause § 11 (1) has not yet expired, in the case of termination of the XBID-DSA License between Licensees and Licensor.
- (6) The right to a statutory termination of this Contract is otherwise unaffected.
- (7) Licensor can only terminate this Contract with consent of the Licensees. By way of an exception to the foregoing Licensor may, in the event of material breach by Deposix terminate this Contract provided that 1/ it has notified in writing the Licensees of its intention to terminate for such reason one (1) week prior to such termination with indication of the motives of such termination and 2/ a new escrow agreement is in place in accordance with § 12 (4) prior to such termination. In the event Licensees or Deposix contest the existence of a material breach by Deposix, Licensor shall not be entitled to terminate the Contract as long as the dispute is not settled.
- (8) This Contract may be terminated by Deposix or the Licensees, even if the term set forth in clause § 11 (1) has not yet expired, and without special cause with a term of six (6) months to the end of month through written notice to the other Parties.

§ 12 Termination of this Contract

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- (6) This Contract is governed and construed in accordance with the laws of Germany to the exclusion of the conflict of law provisions thereof. The United Nations Convention on Agreements for the International Sale of Goods shall not apply hereto.
- (7) In the event of a dispute between Licensor and/or Licensees on the one hand and Deposix on the other hand arising out of, in relation to or in the framework of this Contract, such dispute shall be exclusively and finally settled by arbitration under the ICC Rules of Arbitration. The language of the arbitration proceedings and the award shall be English and the place of the arbitration shall be Brussels. The arbitral tribunal shall have 3 (three) arbitrators regardless of the number of Parties involved. All arbitrators shall be independent senior, respected professionals with outstanding experience. One of the appointed arbitrators shall have a strong German law background, one of the appointed arbitrators shall have a legal background in the energy sector and in particular the power exchanges’ business and one of the appointed arbitrators shall have a legal background in the information and communication technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations. Each arbitrator shall be appointed by the ICC Court of Arbitration, according to the ICC Rules of Arbitration. The award of the arbitration will be final and binding upon the Parties concerned.

Nothing in this § 14 shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts. The application of a Party to a judicial authority for such measures or for the implementation of any interim or conservatory measures ordered by the arbitration tribunal shall not be deemed as an infringement or a waiver of this arbitration clause and shall not affect the relevant powers reserved to the arbitration tribunal. Any order or provision issued by the judicial authority must be notified without delay to the arbitrators.

In the event of a dispute between Licensor and Licensees arising out of, in relation to or in the framework of this Contract the dispute settlement provisions of the XBID-MSA shall apply.

- (8) This Contract is open to accession by any other power exchange acceding to the XBID-MSA, by signature of the accession form in Appendix H *Form Accession Agreement New PX*.
- (9) This Contract consists of the main body of the contract and its Appendices A to H.

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Appendix A

Deposit Material and technical verification

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Appendix C

Data sheet

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Appendix D

Inventory list of Deposit Material received

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Appendix E

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Appendix G

Fee Schedule

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Initial of APX	Initial of APX UK	Initial of Belpex	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix
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Appendix H
Form Accession Agreement New PX

Initial of APX	Initial of APX UK	Initial of Belpe x	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix	Initial of New PX
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Agreement on accession to Escrow Agreement Deposix

On the one hand:

- (1) APX Power B.V., a company organised and existing under the laws of the Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, the Netherlands, and registered with the Commercial Register in Amsterdam under the number 50969390 and VAT n° NL 822972360, hereinafter referred to as "**APX**";

and

- (2) APX Commodities Ltd., a company organised and existing under the laws of England and Wales, having its registered office at 18 King William Street, London, England, EC 4N 7BP United Kingdom, and registered with the Companies House in the United Kingdom under the number 03751681 and VAT n° GB728415527, hereinafter referred to as "**APX UK**";

and

- (3) BELPEX NV, a company organised and existing under the laws of Belgium, having its registered office at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises under the number 874 978 602 (RPR Brussels) and VAT n° BE 0874 978 602, hereinafter referred to as "**Belpex**";

and

- (4) EPEX Spot SE, a European Company (Societas Europaea) organised and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereinafter referred to as "**EPEX Spot**";

and

- (5) Nord Pool Spot AS, a company organised and existing under the laws of Norway, having its registered office at Vollsveien 17 B, 1366 Lysaker, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° 984 058 098 MVA, hereinafter referred to as "**NPS**";

and

- (6) OMI, Polo Español, S.A., a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with the Commercial Register in Madrid under section 8, Hoja: M-506799 and VAT n° ESA86025558, hereinafter referred to as "**OMIE**";

and

- (7) Gestore dei Mercati Energetici S.P.A., a company organised and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilduski 122/124, Rome, Italy, and registered in the Companies' Register of Rome under the number

Initial of APX	Initial of APX UK	Initial of Belpex	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix	Initial of New PX
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RM 953866, under Italian tax code and VAT n° 06208031002, hereinafter referred to as “**GME**”,

each of the parties (1) – (7) hereinafter individually being also referred to as the “**Licensee**” and collectively as the “**Licensees**”;

and on the other hand:

- (8) Deposix Software Escrow GmbH, a company organized and existing under the laws of Germany, having its registered office at Innere Wiener Str. 11a, D-81667 München, Germany, and registered in the Commercial Register Handelsregister HRB under the number 142266 and VAT n° DE221510123, hereinafter referred to as “**Deposix**”;

and on the other hand:

- (9) Deutsche Börse AG, an Aktiengesellschaft (AG) organized and existing under the laws of Germany, having its registered office at Mergenthalerallee 61 65760 Eschborn, Germany, and registered in the Commercial Register Handelsregister HRB under Nr. 32232 and VAT n° DE 114151950, hereinafter referred the to as “**DBAG**”;

and on the other hand:

- (10) [NAME OF NEW PX], a company organised and existing under the laws of [COUNTRY], having its registered office at [ADDRESS], and registered with [REGISTER DETAILS] under the number [COMPANY NUMBER] and VAT n° [VAT NUMBER], hereinafter referred to as “**New PX**”,

hereinafter individually being also referred to as a “**Party**” and collectively as the “**Parties**”. Parties (1) to (7) are also referred to as the “**PXs**”.

WHEREAS:

- (1) On [DATE] the PXs and DBAG have entered into a license agreement under which DBAG has granted a license for amongst others the XBID Solution (the “**License Agreement**”);
- (2) The XBID Solution’s Source Code (including new releases which are to be deposited under Section 10.1 of the XBID-DSA License and necessary information on third party libraries used by the XBID Solution) of the XBID Solution has been deposited with Deposix pursuant to the escrow agreement entered into by the PXs, DBAG and Deposix on [DATE] (the “**Escrow Agreement**”);
- (3) New PX has acceded to the License Agreement and now wishes to become a party to the Escrow Agreement under the same rights and conditions as those granted to PXs.

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

Section 1. Accession to the XBID-MSA

Initial of APX	Initial of APX UK	Initial of Belpex	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix	Initial of New PX
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- 1.1 New PX declares to be fully aware of, to acknowledge and to accept the terms and conditions of the Escrow Agreement.
- 1.2 New PX hereby expressly accedes to the Escrow Agreement.

As of the date of entry into force of this Accession Agreement, the PXs, DBAG and Deposix hereby accept the accession by New PX to the Escrow Agreement and accept New PX as a party to the Escrow Agreement under the same conditions as those granted to the PXs under the Escrow Agreement.

Section 2. Entry into force and termination

The Accession Agreement shall enter into force as of signature by all Parties. The Accession Agreement is entered into for the duration of the Escrow Agreement. For the avoidance of any doubt, should the Escrow Agreement be earlier terminated, the Accession Agreement shall be terminated accordingly.

Section 3. Miscellaneous

- 3.1 If one or more of the provisions of this Accession Agreement is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Accession Agreement is not affected in any material manner adverse to any Party. In such event, the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- 3.2 Parties may not assign or transfer this Accession Agreement, partially or as a whole.
- 3.3 This Accession Agreement is governed by and construed in accordance with the laws of Germany.
- 3.4 Any dispute arising out of or in connection with this Accession Agreement shall be settled in accordance with the Escrow Agreement.

Initial of APX	Initial of APX UK	Initial of Belpex	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix	Initial of New PX
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In witness thereof, the Parties have caused their duly authorised representatives to execute the present Accession Agreement in [NUMBER (X)] original copies and each Party acknowledges having received its original copy.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Initial of APX	Initial of APX UK	Initial of Belpex	Initial of EPEX Spot	Initial of NPS	Initial of OMIE	Initial of GME	Initial of DBAG	Initial of Deposix	Initial of New PX
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Attachement 1

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