

Agreement for XBID Preliminary Hosting Services

Confidential

Agreement for XBID Preliminary Hosting Services

between

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

Deutsche Börse AG

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This agreement for XBID Preliminary Hosting Services (the "**XBID-SA**") is made by and between:

On the one hand:

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

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° GB 728415527, hereinafter referred to as "**APX UK**";

and

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 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

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 Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereinafter referred to as "**EPEX Spot**";

and

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 Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° 984 058 098 MVA, hereinafter referred to as "**NPS**";

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and

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

and

Gestore dei Mercati Energetici S.P.A., a company organised 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 being also individually referred to as the "**PX**" and collectively as the "**PXs**",

and on the other hand:

Deutsche Börse AG, an Aktiengesellschaft (AG) organised 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 DE 114151950, hereinafter referred to as "**DBAG**".

Each PX and DBAG hereinafter individually being also referred to as "**Party**", and the PXs and DBAG hereinafter collectively being also referred to as "**Parties**".

Whereas

(A) The Parties are in the course of signing a Master Service Agreement governing the provision of several services with respect to a software ("**XBID Solution**") which enters into force with retroactive effect as of 1 March 2015 (Effective Date) (the "**XBID-MSA**"). Under the XBID-MSA the Parties have the possibility to conclude a specific agreement on the provisioning of hosting services by DBAG to the PXs ("**XBID-DSA Hosting**") and the Parties are currently negotiating the terms of such XBID-DSA Hosting;

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- (B) In order for DBAG to be able to provide such hosting services at the required point in time (which is still under negotiation by the Parties), if and when the XBID-DSA Hosting is concluded, DBAG needs to provide certain preliminary hosting services as set forth in this XBID-SA before the XBID-DSA Hosting is entered into (if any) (the “**Preliminary Hosting Services**”);
- (C) Parties wish to set forth in this agreement the specific terms and conditions under which DBAG shall provide the Preliminary Hosting Services, and set forth regulations for the case that a XBID-DSA Hosting is not concluded.

NOW THEREFORE, the Parties agree as follows:

Section 1 Subject Matter

1.1 Subject Matter

This XBID-SA Preliminary Hosting Services sets forth the specific rights and obligations of the Parties in respect of the Preliminary Hosting Services to be provided by DBAG. Preliminary Hosting Services includes the purchase of the hardware, hardware related software and other software hereto, the performance of certain setup services with regard to the XBID Infrastructure and other related services as listed in **Appendix 1 (Setup and Interim Hosting Services)**.

Section 2 Contractual Documents / Order of precedence

2.1 Contractual Documents

The provision of the Preliminary Hosting Services by DBAG is governed by the XBID-SA and unless set forth otherwise herein the following provisions of the XBID-MSA shall apply accordingly to this XBID-SA: Section 1, Section 4, Section 5, Section 6, Sections 8.2.3., Sections 9 to 18. All capitalised terms used in this XBID-SA shall have the meaning attributed to them hereunder or in the XBID-MSA. The same applies to any interpretation rules set out in the XBID-MSA.

2.2 Appendixes

[Redacted]

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

2.3 Order of precedence

If and to the extent that there is any inconsistency or conflict between any of the provisions in this XBID-SA, the Appendixes hereto or the XBID-MSA, the order of priority for the purposes of construction, is in the following descending order:

- a) the provisions of the main body of this XBID-SA unless the XBID-SA specifically states that the XBID-MSA overrules the XBID-SA, in which case the XBID-MSA will take precedence over the XBID-SA to the extent specified in the XBID-SA;
- b) the provisions of the Appendixes to this XBID-SA in descending order of their numbering;
- c) the provisions of the XBID-MSA (including the Exhibits and Attachments thereto) – to the extent applicable;
- d) any other document explicitly incorporated by reference into the XBID-SA.

Section 3 XBID-Infrastructure / Setup Services

3.1 XBID-Infrastructure

[REDACTED]

3.2 Setup Services

[REDACTED]

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Section 4 Preliminary Hosting Services

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[REDACTED]

Section 6 Liability

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 7 Start of the XBID-DSA Hosting

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Section 8 Miscellaneous

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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SIGNATORY PAGE – APX

for and on behalf of
APX Power B.V.
Name:
Title:
Date:

for and on behalf of
APX Power B.V.
Name:
Title:
Date:

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SIGNATORY PAGE – APX UK

for and on behalf of
APX Commodities Ltd.
Name:
Title:
Date:

for and on behalf of
APX Commodities Ltd.
Name:
Title:
Date:

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SIGNATORY PAGE – BELPEX

for and on behalf of
BELPEX NV
Name:
Title:
Date:

for and on behalf of
BELPEX NV
Name:
Title:
Date:

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SIGNATORY PAGE – EPEX SPOT

for and on behalf of

EPEX SPOT SE

Name:

Title:

Date:

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SIGNATORY PAGE – NPS

for and on behalf of

Nord Pool Spot AS

Name:

Title:

Date:

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SIGNATORY PAGE – OMIE

for and on behalf of
OMI Polo Espanol S.A.

Name:

Title:

Date:

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SIGNATORY PAGE – GME

_____ for and on behalf of

Gestore dei Mercati Energetici S.P.A.

Name:

Title:

Date:

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SIGNATORY PAGE – DBAG

for and on behalf of
Deutsche Börse AG

Name:

Title:

Date:

for and on behalf of
Deutsche Börse AG

Name:

Title:

Date:

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