

**› eex group**

# MiFID Instrument Data Agreement

Version dated  
29.10.2021  
Leipzig

Ref. 0001A

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## 1. General Information

European Energy Exchange AG, with registered seat at Augustusplatz 9, D-04109 Leipzig, Germany (**“EEX AG”**), creates in relation to each trading day a file comprising information as to the instruments which (i) have been traded on that trading day on EEX and (ii) are to be reported pursuant to Article 58 Directive 2014/65/EU (**“MiFID Instrument File”**).

Under this Agreement, EEX AG offers third parties (**“Participants”**) access to the MiFID Instrument File where no reporting obligation exists under Article 58 Directive 2014/65/EU (or the German implementing law, respectively) on EEX AG’s part in relation to these particular Participants.

## 2. Order Form

### 2.1 Participant and Contact Details

Participant Data	
Company Name & Form	Public IP <sup>1</sup>
Legal Entity Identifier (LEI) <sup>2</sup>	VAT-ID

IT Representative <sup>3</sup>	
Company Name & Form	Name/Department
Email Address	Telephone

Contact Person	Invoice Recipient
Name/Department	Name/Department
Street/POB	Street/POB
Postcode, City & Country	Postcode, City & Country
Email Address	Email Address
Telephone	Telephone

<sup>1</sup> The whitelisting of public IP address(es) is mandatory to establish the connection to EEX AG's FTP server and web application. Please contact [reporting-services@eex.com](mailto:reporting-services@eex.com), if your list of IPs exceeds the defined field size.

<sup>2</sup> For further information regarding the issuance of LEIs, please consult the web page of the Regulatory Oversight Committee (ROC) of the Global Legal Entity Identifier System (GLEIS) at [www.lei.org](http://www.lei.org). Only LEIs with entity status "active" are accepted.

<sup>3</sup> Contact details of the Participant's IT used to provide certificate instructions and login credentials for web applications and the FTP server.

## 2.2 Subscription to MiFID Instrument Data Service

The Participant requests EEX AG to provide the following data after entry into force of the Agreement:

Data Component	Provision Requested
<b><u>MiFID Instrument File</u></b> Provision of the <b>MiFID Instrument File</b> to the Participant <b>on an FTP server</b> for individual download.	<input type="checkbox"/>

**Optional:** The Participant **delegates the FTP access** to the following entity:

Service Provider	
Company Name & Form	Name/Department
Email Address	Telephone
Public IP	

## 2.3 Conclusion of the Agreement

With this order form, the Participant requests the conclusion of this Agreement with EEX AG pursuant to the provisions stipulated below. The Agreement shall be concluded on the date the Participant receives a notification of acceptance by EEX AG ("**Notification of Acceptance**"). EEX AG will accept the request and provide the Notification of Acceptance without undue delay, provided that this order form has been duly completed and signed by the Participant.

## 2.4 Requested Commencement Date of the Provision of the Services

The provision of the Services by EEX AG shall commence on the date specified under Section 3 (Terms and Conditions). The Participant hereby requests to commence the provision of the Services:

- ☐ As soon as possible;
- ☐ As of \_\_\_\_\_.

We herewith request the conclusion of this Agreement, which comprises the General Information (Section 1), this order form (Section 2) and the general terms and conditions (Section 3).

We accept the terms and conditions (Section 3 below). We specifically acknowledge that EEX AG is about to issue new general terms and conditions, which will amend this Agreement in accordance with Section 3.7. This Agreement replaces all prior Agreements relating to the Services.

Place	Company Stamp and Legally Binding Signature(s)
Date	
Name(s) of Signatory(-ies) in Block Letters:	

This order form shall be submitted via e-mail to: [reporting-services@eex.com](mailto:reporting-services@eex.com).

## 3. Terms and Conditions

### 3.1 Services

EEX AG shall provide the Participant with access to the MiFID Instrument File. Access is provided in the manner outlined in Section 3.5. EEX AG shall use reasonable efforts to ensure that the data included in the MiFID Instrument File is correct, complete and that the MiFID Instrument File is available to the Participant on the Business Day following the respective trading day to which the MiFID Instrument File relates (**“Services”**). Any further responsibility of EEX AG for the correctness, completeness and timeliness of the MiFID Instrument File shall not be considered part of EEX AG's contractual obligations. **“Business Day”** shall mean every working day except for Saturdays and public holidays under TARGET2.

### 3.2 Usage Right

The Participant may use the MiFID Instrument File in its ordinary course of business, provided that the MiFID Instrument File is not made publicly available or otherwise onward disseminated to third parties.

### 3.3 Technical Details

EEX AG reserves the right to utilize any of the available connectivity channels to provide access to the MiFID Instrument File. Currently, access is provided by way of an FTP server. It is the responsibility of the Participant to fulfill the technical requirements to access the FTP server to download the MiFID Instrument File. Whitelisting of public IP address(es) is mandatory to establish the connection to EEX AG's FTP server.

### 3.4 Commencement and Provision of Services

EEX AG shall use reasonable efforts to whitelist the Public IP provided by Participant within fifteen (15) business days as of the Notification of Acceptance. EEX AG will inform the Participant once the provided public IP has been whitelisted and shall provide the Service as of that date (**“Commencement Date”**), provided that the public IP furnished by the Participant is correct. In the event that the relevant public IP changes, EEX AG shall use reasonable efforts to whitelist the new public IP within fifteen (15) business days as of the date the Participant provides the new public IP to EEX AG.

### 3.5 Service Provider

The Participant may delegate access to the FTP server to a third party (**“Service Provider”**) which may then access the FTP server on behalf of the Participant, provided (i) that the Service Provider may use the MiFID Instrument File solely for the benefit of Participant and not for any other purposes and (ii) that Participant shall be responsible for any acts or omissions by the Service Provider to the same extend as for own acts or omissions.



### 3.6 Term of the Agreement

The Agreement is concluded for an indefinite term. The Agreement may be terminated by each party with fourteen (14) calendar days' prior written notice. A termination by the Participant will only be effective if the MiFID instrument data termination form is used and duly signed.

Notwithstanding the foregoing, EEX AG reserves the right to terminate or suspend the provision of the Services to the Participant entirely or partly with immediate effect, and without prior notice,

- If any warranty granted by the Participant pursuant to this Agreement ceases to be true, or
- If the Participant is in material breach of any obligation under this Agreement or
- On occurrence of an insolvency event with respect to the Participant.

### 3.7 Master Data

The Participant shall notify EEX AG of any changes to the data provided in the Order Form ("**Master Data**") without undue delay.

### 3.8 Subcontractors

EEX AG may subcontract third parties for the performance of the Services or any part thereof, provided that EEX AG remains responsible for the performance of this Agreement.

### 3.9 Transfer of Agreement

EEX AG shall be entitled to transfer this Agreement with all rights and obligations deriving from it to any of EEX AG's Affiliates, in which case EEX AG shall be released from all obligations under this Agreement. The Participant shall be notified of any such transfer with a lead time of two (2) months. Affiliate shall mean any entity which is directly or indirectly controlled by EEX AG, which directly or indirectly controls EEX AG or which is jointly directly or indirectly controlled, together with EEX AG, by the same parent company. Control is, in particular, deemed to exist in the event of a shareholding of more than 50 percent.

### 3.10 Fees

As consideration for the provision of the Services under this Agreement, EEX AG charges fees as stipulated in the respective valid version of the List of Services and Prices of EEX AG which is available at [www.eex.com](http://www.eex.com). EEX AG further charges extra fees for (additional) individual services requested by the Participant pursuant to the List of Services and Prices of EEX AG. The full monthly fee is due for every commenced month, unless (i) the Services start within five (5) calendar days before the end of a month or (ii) the Services terminate within five (5) calendar days after the start of a month, in which case no fee shall be charged in relation to the respective month.

### 3.11 Invoicing

- (1) Invoices are issued by EEX AG once per quarter and due upon receipt. EEX AG reserves the right to submit invoices electronically to the email address of the invoice recipient according to the Agreement. It is the Participant's obligation to provide and update a valid invoice recipient by using the Agreement. EEX AG reserves the right to send the invoice to the email address of the contact person of the Agreement, if delivery to the email address of the invoice recipient fails.

- (2) Any due fees according to this Agreement are debited directly via the clearing member or the settlement agent as appointed paying agent of the Participant. Clearing member/settlement agent is the Participant's clearing member/settlement agent on the debit date.
- (3) Participants that are not a member at EEX shall be invoiced once per quarter. The invoiced amount shall be due and payable one (1) month after receipt of the respective invoice.

### 3.12 Amendment to the Agreement and Change of Services

EEX AG may amend this Agreement. Any amendment to this Agreement by EEX AG shall be electronically announced by EEX AG to the Participant at least ten (10) working days before such amendment becomes effective. The amendment shall be considered accepted by the Participant unless the Participant objects in writing to EEX AG until it becomes effective. EEX AG will advise the Participant thereof in the electronic announcement. In the event of an objection against an amendment of the Agreement, EEX AG reserves the right to terminate this Agreement.

### 3.13 Confidentiality

- (1) Each Party ("**Receiving Party**") shall keep confidential all commercial, financial, technical or other information, including (without limitation) information regarding methods, procedures or tools that is exchanged between or on behalf of the other Party ("**Disclosing Party**") in connection with this Agreement and that is marked as confidential by the Disclosing Party or which the Receiving Party should reasonably understand to be of a confidential nature ("**Confidential Information**"), provided that the Receiving Party may disclose Confidential Information to its Affiliates, Service Providers and to directors, officers, employees, financial advisors, auditors, accountants, legal counsel and consultants employed or otherwise retained by the Disclosing Party, its Affiliates or Service Providers ("**Authorized Recipients**"). Such disclosure may only be made to the extent necessary for the purposes of the implementation of this Agreement ("need to know basis"). For the avoidance of doubt, the Index Specifications and all data submitted by Contributor under Section 3 shall be considered Confidential Information. "**Affiliate**" shall mean with respect to each Party, any other entity which is directly or indirectly controlled by that Party, which directly or indirectly controls that Party or which is jointly directly or indirectly controlled, together with that Party, by the same parent company. Control is in particular deemed to exist in the event of a shareholding of more than 50 percent.
- (2) Such duty of confidentiality shall not apply to any information which
  - (a) at the time of disclosure is in the public domain;
  - (b) subsequently comes into the public domain, except through breach of this duty of confidentiality by the Receiving Party or any of its Authorized Recipients;
  - (c) was independently developed or acquired by the Receiving Party or any of its Affiliates without reference to or use of Confidential Information of the Disclosing Party;
  - (d) at the time of disclosure is already known to the Receiving Party or its Affiliates;
  - (e) subsequently comes into the possession of the Receiving Party from a third party which by disclosing such information is not in breach of a statutory, contractual or other obligation of confidence vis-à-vis the Disclosing Party; or
  - (f) by written communication by the Disclosing Party has been exempted from this duty of confidentiality.

- (3) In the event that the Receiving Party is required by law or a legally binding order of any competent judicial, governmental, supervisory or regulatory authority to disclose Confidential Information, the Receiving Party must, to the extent reasonably practicable and legally permitted:
- (g) inform, as soon as possible, the Disclosing Party thereof so that the Disclosing Party may timely seek any appropriate remedy;
  - (h) in the event that such remedy is not sought or obtained, furnish only that portion of the Confidential Information, which is legally required to be disclosed; and
  - (i) use its best efforts to obtain reliable assurance that confidential treatment will be accorded to the Confidential Information.

### 3.14 Liability

- (1) The liability of EEX AG shall in any case be limited to the total of all fees paid by the Participant for the twelve (12) months preceding the first written notification of a direct damage. This limitation of liability shall not apply if the damage has been caused intentionally or by gross negligence or in cases of personal injury or death of a person resulting from the negligence of EEX AG.
- (2) Furthermore, EEX AG shall not be liable to the Participant for any of the following:
- actions taken or any failure that has arisen from or has been caused by force majeure events;
  - consequences of incorrect, incomplete, or invalid data provided by EEX AG;
  - any acts or omissions in relation to instructions from a Participant in relation to this Agreement after termination of this Agreement.
- (3) Each Party shall be liable – irrespective on which legal ground (e.g. default or tort) – only in the following scope:
- in the event of willful intent, gross negligence or a guarantee undertaking, each Party shall be fully liable;
  - in the event of simple negligence, each Party shall only be liable when defaulting with an Essential Contractual Obligation. In this case, however, the defaulting Party shall be liable only for the foreseeable, contract-typical damage;
  - Beyond lit. a) to c), neither Party shall be liable.
- (4) The limitations of liability outlined above shall not apply to
- any injury to life, body and health; and
  - any liability pursuant to the German Product Liability Act.

### 3.15 Force Majeure

Neither Party shall be responsible for delays or failures in performance resulting from any exceptional event or a set of circumstances beyond the reasonable control of such Party, which cannot be reasonably avoided or overcome, and which make it impossible for such Party to fulfil temporarily or permanently its obligations under this Agreement (“**Force Majeure**”). These events include (but are not limited to) natural disasters (storms, floods, weather damage, etc.), fires, total or partial labor strikes, epidemics, transport blockings, computer breakdowns, telecommunications disruptions, system unavailability and legally binding orders of a governmental or other competent authority. In the event of Force Majeure, the Party affected thereby shall notify the other Party thereof.

### 3.16 Representations and Warranties of the Participant

Each Participant hereby represents and warrants on a continuing basis to EEX AG that:

- its Master Data is accurate, complete and compliant with regulatory requirements;
- it has full capacity, capability and all authorizations, consents and approvals of all competent authorities necessary to enter into and perform its obligations under this Agreement;
- there are no actions, suits or proceedings or regulatory investigations pending or, to the Participant's knowledge, threatened against or affecting the Participant before any court or administrative body or arbitration tribunal that might affect the ability of the Participant to meet and carry out its obligations under this Agreement.

### 3.17 Applicable law

The Agreement shall be subject to, construed in accordance with and governed by the laws of Germany excluding the German laws on conflict of laws. The exclusive place of jurisdiction for all conflicts arising in connection with the Agreement shall be Leipzig.

### 3.18 Miscellaneous

- (1) If any of the provisions of this Agreement shall become or be held invalid or unenforceable, all other provisions hereof shall remain in full force and effect. The invalid or unenforceable provision shall be deemed to be automatically amended and replaced by a valid or enforceable provision which economically accomplishes as far as possible the purpose and the intent of the invalid or unenforceable provision. The same shall apply with regard to any unintentional loopholes in the regulations.
- (2) Except as may be expressly provided therein, the governing documents and any other relevant agreement between EEX AG and a Participant are solely for the benefit of EEX AG and the relevant Participant. No other party shall have or be entitled to assert any rights, claim or remedies against EEX AG. The Participant may not assign, resell, and sublicense any of its rights, duties or obligations without EEX AG's prior consent.
- (3) No waiver by EEX AG of any breach by the Participant of any term, condition or obligation hereunder shall be effective unless made in writing executed by EEX AG and no such waiver shall be deemed a waiver of the same or similar breach thereafter.