 

# EPEX SPOT

# Indirect Member Trading Agreement

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| The undersigned:  EPEX SPOT SE, a European company (*societas europaea* or SE) incorporated and existing under the laws of France, with a capital of EUR 6,167,858.60, whose registered office is at 5 boulevard Montmartre, 75002 Paris, France, registered in the Companies Register of Paris under number B 508 010 501, as represented by Ralph DANIELSKI, in his capacity as Chairman of the Management Board,  hereinafter “**EPEX SPOT SE**”,  the Party on the one hand,  and  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a capital of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose registered office is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, registered in the Companies Register of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in their capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  hereinafter the “**Exchange Member**” or the “**Indirect Trading Member**”,  and  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a company incorporated and existing under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, with a capital of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, whose registered office is at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, registered in the Companies Register of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ under number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, as represented by \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, in their capacity as \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  hereinafter the “**Exchange Member**” or the “**Direct Trading Member**”, acting on the name and for the account of the Indirect Member as its Contractual Representative  the Parties on the Second hand,    hereinafter together referred to as the “**Parties**” and individually as the “**Party**”.  Whereas  The business of EPEX SPOT SE is to operate and ensure the proper functioning of a market called “EPEX SPOT” pursuant to the Rules and Regulations of the said market. EPEX SPOT SE does not act as *del credere*.  The Rules and Regulations of EPEX SPOT provide for a Trading Membership on EPEX SPOT either as Direct or as an Indirect Trading Member.  The Indirect Trading Member has approached EPEX SPOT SE on the purpose to trade on EPEX SPOT via the Direct member as its Contractual Representative.  During the Application process, the Indirect Trading Member and the Direct Trading Member have been granted in due time with the full documentation composing the Rules and Regulations (among others, the Trading Agreement, the Exchange Rules, the Operational Rules, the Code of Conduct and the Definitions) enabling them to draw the best attention to the documentation, and to read it carefully.  Any and all queries deemed by the Indirect Trading Member and the Direct Trading Member as “determining” for contracting with EPEX SPOT pursuant to Article 1112-1 of the French Civil Code have been raised and answered.  The Indirect Trading Member and the Direct Trading Member have no more pending questions or objections on the Rules and Regulations, understand clearly their respective rights and obligations arising from the same and therefore, have all necessary elements in order to enter into the hereby Trading Agreement and filling in the related documents deriving from to the Admission Process.  Now, therefore, the Parties agree as follows.   1. Purpose   The purpose of this Indirect Member Trading Agreement (hereinafter the “**Agreement**” or the “**Trading Agreement**”) is to define:   * the types of contracts that the Indirect Trading Member is authorized to trade; * the terms on which the Indirect Trading Member, via the Direct Member as its Contractual representative, will carry on its trading business and the resulting relations with EPEX SPOT SE.  1. Contents of this Agreement - Obligations of the Indirect Trading Member and of the Direct Trading Member   The Trading Agreement is part of the Rules and Regulations of EPEX SPOT, which consist of:   * this Trading Agreement; * the Exchange Rules, the Operational Rules and the Code of Conduct of EPEX SPOT. These documents apply to the Contracts that the Indirect Trading Member is authorized via the Direct Member as its Contractual Representative, to trade pursuant to this Trading Agreement, as last published.   In the event of any inconsistency, the Exchange Rules, Operational Rules and Code of Conduct of EPEX SPOT shall prevail over the Trading Agreement, except for the following Articles:   * Governing law – Article 11, * Jurisdiction and dispute resolution – Article 14.   By signing this Trading Agreement, both the Indirect Trading Member and the Direct Trading Member agree to comply with the Rules and Regulations of EPEX SPOT at all times and to fulfil all applicable duties and obligations provided under the Rules and Regulations of EPEX SPOT.   1. Appointment of the Direct Trading Member by the Indirect Trading Member     The Indirect Trading Member hereby irrevocably appoints the Direct Trading Member as its Contractual Representative to place Orders on the trading platform in the name and for the account and at the risks of the Indirect Trading Member. The Direct Trading Member and EPEX SPOT SE hereby accept such appointment.  The Indirect Trading Member may terminate the appointment of the Direct Trading Member on the date mentioned in the termination request, subject to i) notifying EPEX SPOT SE of its request with at least thirty (30) days prior notice and ii) approval of such request by EPEX SPOT SE. EPEX SPOT SE shall approve or refuse this termination request within fifteen (15) days upon its receipt. The lack of response by EPEX SPOT SE within the aforesaid time period shall be considered as a refusal of the termination.  Upon approval by EPEX SPOT SE of the termination request, the Indirect Trading Member, the newly appointed Direct Trading Member as its Contractual Representative and EPEX SPOT SE shall enter into a new Trading Agreement.  This Trading Agreement will be automatically terminated on the agreed date, without prejudice to the entry into force after the termination date, of the new Trading Agreement between the Indirect Trading Member, its new direct member as Contractual Representative and EPEX SPOT SE as the case may be.  In accordance with the Rules and Regulations of EPEX SPOT, EPEX SPOT SE shall, upon admission of the Indirect Trading Member, grant the Direct Member appointed as its Contractual Representative access to a portfolio for the placement by the latter of the Orders in the name and for the account of the Indirect Trading Member.  Following the matching of the Orders placed by the Direct Trading Member as Contractual Representative, a Contract for each instrument these Orders relate to is created in the name and for the account of the Indirect Trading Member. The Indirect Trading Member hereby expressly acknowledges to be bound by all obligations, among others financial arising out of such Contracts entered into by the Direct Trading Member appointed by it jointly and severally with the Direct Member. Such fees and charges as applicable under the Rules and Regulations of EPEX SPOT respectively to Indirect Member and Direct Member will be separately and directly invoiced to the relevant Exchange Member.   1. Authorizations   Subject to the provision of all essential supporting documents for its admission and membership on EPEX SPOT and to the respect of its obligations arisen from the provisions of Article 2, the Indirect Trading Member is authorized to access trading on EPEX SPOT spot power exchange market indirectly via its Contractual Representative only and for the Market Segments and Areas that it has chosen in this Trading Agreement or in subsequent amendments.  The Indirect Trading Member can modify its choice of Market Segments and Areas by, together with its Contractual Representative, notifying EPEX SPOT SE in writing. The change will become effective subject to necessary confirmations of technical setup by third parties and the subsequent registration of such a change by EPEX SPOT, as formalized by a notice in writing to the Exchange Member as an amendment to the Trading Agreement.  The list of Market Segments and/or Areas on which Contracts can be traded may evolve, in which case EPEX SPOT SE will notify Exchange Members accordingly.   1. Amendments   The Parties may modify the terms of this Trading Agreement by means of a written amendment or supplemental agreement (hereafter the “**Amendment**”). Such Amendment shall then prevail over the provisions of this Trading Agreement and shall enter into force on the date agreed by the Parties.  Without prejudice to Article 7.3.2 (iii), EPEX SPOT SE reserves the right to modify the provisions of the Trading Agreement, Exchange Rules, Operational Rules and Code of Conduct in its sole and absolute discretion, subject to giving prior written notice to the Exchanges Members under the conditions set out in the Exchange Rules.   1. Membership application package   The membership application package, electronic or otherwise, is made up of different administrative and technical forms that must to be filled in and returned to EPEX SPOT by the Exchange Member. These forms, as amended from time to time, shall form part of the Trading Agreement.   1. Term and termination   **7.1 Effective date – term**  The entry into force of this Trading Agreement is contingent upon the fulfilment of the conditions contained in the Rules and Regulations of EPEX SPOT.  This Trading Agreement shall remain in force for an indefinite period of time as from its effective date.  **7.2 Suspension of the Trading Agreement**  This Trading Agreement shall be automatically suspended:   * in the event of Force Majeure as defined in the Operational Rules; * if the Exchange Member's status is temporarily withdrawn by EPEX SPOT SE or the competent authorities; * if the conditions to be an Exchange Member, as mentioned in the Rules and Regulations of EPEX SPOT, are not met.   Suspension of the Trading Agreement will affect all Parties, whatever is causing the Exchange Member suspension decision.  **7.3 Termination**  7.3.1 This Trading Agreement shall be automatically terminated:   * if the motives for suspension persist for more than three (3) months or if such motives are final by nature at the time they occur or become final within the aforementioned time period, subject to specific provisions for Force Majeure Events; * if EPEX SPOT SE decides to withdraw one only or both Exchange Member's status subject to the terms and conditions provided in the Exchange Rules.   7.3.2 This Trading Agreement may be terminated:   * (i) by either Party, by written notice given by registered letter with acknowledgement of receipt (a) if one Party breaches any of its obligations under this Agreement and fails to remedy such breach within thirty (30) calendar days as of receipt of a written notice sent by registered letter with acknowledgement of receipt and without prejudice to any claim for damages in respect of such breach;(b) in case the Force majeure Event lasts for more than three (3) weeks from, or is final on, occurrence. * (ii) by EPEX SPOT SE, if one of the Exchange Member does not comply with the Rules and Regulations of EPEX SPOT, by sending the Exchange Members a registered letter with acknowledgement of receipt with immediate effect; * (iii) Except when a change to the Rules and Regulation or the Trading Agreement is made necessary by mandatory law, regulation or decision of a regulatory authority and /or if such a change does not have a material adverse effect on the Exchange Member, either Exchange Member entitled to terminate the Trading Agreement by written notification to EPEX SPOT SE sent at the latest at 6 pm CET the day before the entry into force of such amendment. The termination will be effective simultaneously with the entry into force of the amendment. * (iv) by either Party, at any time, by sending the other Parties a registered letter with acknowledgement of receipt, with a notice period of three (3) months: in case of termination by EPEX SPOT SE, as provided for in the Rules and Regulations, EPEX SPOT SE shall justify its decision; * (v) by EPEX SPOT SE, in the authorized cases and under the conditions provided in the Exchange Rules.   Upon termination of this Trading Agreement, for whatever reason and by whichever Party, all sums owed by one Party to the other under this Trading Agreement become due and payable at the date of the termination.   1. Force Majeure   In the event of Force Majeure, the obligations of the Parties shall be suspended throughout the duration of the event.  Either Party may terminate the Trading Agreement pursuant to Article 7.3.2 (i) (b). Such termination shall not entitle either Party to compensation. In this case, the Parties are no longer bound by their obligations, except for the confidentiality and outstanding payment obligations.   1. Interpretation, severability, no waiver, entire agreement   In case of conflict of interpretation between clause headings and clauses themselves, the headings shall be deemed null and void.  If any provision of this Trading Agreement is deemed or ruled to be invalid under any applicable law or regulation or following a final decision of a competent court, the other provisions thereof shall remain in full force and effect.  The Parties mutually agree that the fact that one Party tolerates a breach does not grant any other Party with any vested rights. Such tolerance shall not be construed as a waiver of such rights.  This Trading Agreement constitutes, together with and as part of the Rules and Regulations, the entire agreement between the Parties and supersedes all prior oral or written agreements with respect to its subject matter.  No Exchange Member is entitled to assign or transfer the Trading Agreement in any way, whether free of charge or for consideration, without the prior written consent of EPEX SPOT SE.  Confidentiality Without prejudice to and notwithstanding the provisions of the Operational Rules, each Party undertakes to treat as confidential and to refrain from disclosing to any third party the Confidential Information.  The recipient hereby expressly undertakes that it shall:   * + 1. not disclose, convey or transfer Confidential Information in any form whatsoever, without the express prior written consent of the disclosing Party;     2. not use the Confidential Information in any way or for any purpose other than for the Permitted Purpose, unless such other use is previously and specifically authorized in writing by the disclosing Party;     3. not incorporate Confidential Information into data, documents, databases or any media other than those necessary for the Permitted Purpose, without the express prior written consent (including by e‑mail) of the disclosing Party; should such media necessary for the Permitted Purpose be intended for publication or disclosure, such publication or disclosure shall be subject to the prior written consent (including by e-mail) of the disclosing Party;     4. not copy or reproduce Confidential Information in any form whatsoever, except as may be strictly necessary for the Permitted Purpose;     5. not share nor disclose in any manner whatsoever any Confidential Information with any person or entity, including any affiliate, holding company or subsidiary of the Party, subject to the provisions of Paragraphs 47 and 59 to 63 of the Operational Rules.   The recipient furthermore expressly undertakes that it shall:   * + 1. immediately notify the disclosing Party in writing in the event of any unauthorized use or disclosure of the disclosing Party’s Confidential Information, and to take all reasonable steps to mitigate any harmful effects the disclosing Party may suffer as a result of such breach of the above provisions;     2. immediately (and in any event within three working days) return all Confidential Information in any tangible form at the first written request of disclosing Party;     3. indemnify the disclosing Party in accordance with Paragraphs 64 to 67, under “Liability”, of the Operational Rules.   Notwithstanding the foregoing provisions and in addition to the provisions of Paragraphs 47 and 59 to 63 of the Operational Rules, the recipient may disclose the Confidential Information it has received in the following cases:   * + 1. if it can document in writing that the Confidential Information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the disclosing Party;     2. if the Confidential Information has come into the public domain through no fault or negligence of a Party to this Agreement, provided the recipient notifies the disclosing Party beforehand of such disclosure;     3. if, in the event of disclosure by the recipient to its representatives, the following cumulative conditions are met:  1. the representative has a need to know the Confidential Information in order to carry out its assignment, which must be related to the Permitted Purpose; 2. the representative is informed by the recipient of the confidential nature of the Confidential Information; 3. the representative is bound to respect the confidential nature of the Confidential Information on terms at least equivalent to the terms of this Agreement; 4. for the avoidance of doubt, the Parties confirm that the disclosure of Confidential Information in the circumstances described under (iii) of this Article does not affect the confidential nature of the Confidential Information so exchanged; 5. the recipient undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of Confidential Information by its representatives to whom such information is disclosed;    * 1. each Party is entitled to provide competent authorities with Confidential Information related to the Permitted Purpose and/or the Rules and Regulations only in response to a written information request (“the Request”), provided that the following cumulative conditions are fulfilled: 6. the Request is based on well‑identified legal grounds; 7. the competence of the authority issuing the Request to disclose the Confidential Information is based on well-identified legal grounds; 8. the scope of the Confidential Information covered by the Request is clearly identified/defined; 9. the Confidential Information covered by the Request is necessary for the purpose of such Request; 10. the disclosure of the Confidential Information covered by the Request is purposeful to meet this Request;     * 1. moreover, Confidential Information may be provided to the service providers or subcontractors of its choosing, i.e. the information received from the other Party that is strictly necessary to the provision of their services, subject to the provisions of Paragraph 46 of the Operational Rules;       2. If the recipient is requested to disclose all or any part of the Confidential Information pursuant to applicable law or regulation, or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body, or if the recipient considers itself to be under a legal obligation to disclose all or part of the Confidential Information, in which case the recipient undertakes to: 11. immediately and in any case prior to any disclosure (to the extent lawful), notify the disclosing Party of the existence of such request or legal obligation and of the surrounding conditions and circumstances; 12. consult with the disclosing Party on the advisability of taking available legal steps to resist or narrow such request or legal obligation (the costs of such legal steps would have to be borne by the disclosing Party) and/or to permit the disclosing Party to take such legal steps itself and for its own account, and to agree on the content and form of the information to be disclosed; and 13. if the disclosure of such Confidential Information is required and provided the requesting authority is not subject to any legal privilege, to use its best efforts to obtain an order or other reliable document ensuring that the portion of the Confidential Information to be disclosed shall be treated as confidential.   The disclosing Party makes no representation or warranty as to the completeness of the supplied Confidential Information and shall have no duty under the Rules and Regulations to update such Confidential Information. The disclosing Party shall however inform the other Party as soon as possible after becoming aware of any inaccuracy or incompleteness of the Confidential Information supplied that may affect the outcome of the Permitted Purpose.  The disclosing Party shall have no liability with respect to the use of any Confidential Information by the recipient, unless otherwise expressly agreed in a separate written agreement signed between the disclosing Party and the recipient.  The provisions of this Article shall remain in force for a period of five (5) years after termination of the Trading Agreement.   1. Governing Law   This Trading Agreement is governed by French law, which applies equally to substantive rules and procedural rules.   1. Safeguarding clause   The rights and obligations relating to the object of the Agreement shall be governed exclusively by the provisions of this Trading Agreement.   1. Language   The Parties have signed this Trading Agreement in three (3) originals. Any notice between the Parties shall be done in written (for EPEX SPOT SE, including per email), in English only. EPEX SPOT SE may issue notifications, notices, press releases, correspondence, documentation in another language (notably French, German, or Dutch) but in the event of any conflict between the English version of this Agreement and the Rules and Regulation and any other document into a foreign language, the English version shall prevail. Jurisdiction and dispute resolution In the case of any dispute arising out of or in connection with the validity, interpretation, performance, non-performance or termination of the Trading Agreement, the Chief Executive Officers of EPEX SPOT SE and the Exchange Members shall meet to attempt to resolve the dispute in good faith without recourse to legal proceedings, within fifteen (15) working days upon request of the most diligent Party or within any other time period agreed between the Parties.  Should the Parties fail to reach an agreement within fifteen (15) days or any other time period agreed between the Parties, all disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Agreement shall be submitted to the CMAP (Centre for Mediation and Arbitration of Paris, Paris Chamber of Commerce and Industry - 39 avenue Franklin D. Roosevelt, 75008 Paris, France) rules for mediation and, in the event that no settlement is thereby reached, to the CMAP rules for arbitration, the Parties having agreed to adhere to said CMAP Rules. When submitted to arbitration, such dispute shall be settled by three arbitrators appointed in accordance with the CMAP rules for arbitration. The language of arbitration shall be English.  Nothing in this Article shall preclude the Parties from claiming for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts. The claim of a Party before a judicial authority for such measures, or for the enforcement of any interim or conservatory measures ordered by the arbitration tribunal, shall not be deemed as a breach or waiver of the arbitration agreement 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.   1. Access to EPEX SPOT Market Segments   Pursuant to Article 5 the Exchange Members apply to be authorized to access trading for the following categories of contracts:   |  |  |  |  |  |  |  |  | | --- | --- | --- | --- | --- | --- | --- | --- | | **Day-Ahead** | |  | | **Intraday** | | | | | **auction** | |  | | **auction** | | **continuous** | | |  | DE-LU 60min Day-Ahead |  | |  | DE 15min Intraday |  | DE Intraday | |  | AT 60min Day-Ahead |  | |  | AT 15min Intraday |  | AT Intraday | |  | FR 60min Day-Ahead |  | |  | FR 30min Intraday*\** |  | FR Intraday | |  | CH 60min Day-Ahead |  | |  | CH 60min Intraday (IDA1/IDA2) |  | CH Intraday | |  | BE 60min Day-Ahead |  | |  | BE 15min Intraday |  | BE Intraday | |  | NL 60min Day-Ahead |  | |  | NL 15min Intraday |  | NL Intraday | |  | GB 60min Day-Ahead |  | |  | GB 30min Intraday (IDA1/IDA2) |  | GB Intraday | |  | GB 30min Day-Ahead ° |  | |  |  |  | DK Intraday | |  | DK 60min Day-Ahead |  | |  |  |  | FI Intraday | |  | FI 60min Day-Ahead |  | |  |  |  | NO Intraday | |  | NO 60min Day-Ahead |  | |  |  |  | SE Intraday | |  | SE 60min Day-Ahead |  | |  |  |  | PL Intraday | |  | PL 60min Day-Ahead |  | |  |  |  |  | |  | | |  | | | | | |  | | |  | | | | | |  | | |  | | | | | | **Capacity** | |  | |  | | **After-Market** | | | **auction** | |  | |  | | **continuous** | | |  | FR capacity market |  | |  | |  | BE After-Market \* | |  |  |  | |  | |  | NL After-Market \* |   ° *Admission is subject to GB Intraday Auction subscription at ECC.*  *\* Market segment is not available for Direct Clearing Participants (DCP)*  *\*\* After-Market admission is subject to respective Intraday Continuous subscription* |

We acknowledge and agree that this Contract is executed by digital/electronic signature, which shall be considered as an original signature for all purposes and shall have the same force and effect as an original signature. It is therefore a proof of the identity of the signatories and of their consent to the obligations and consequences of fact and law arising from the document signed digitally/electronically.

Done in three (3) originals.

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| **For the Indirect Trading Member** | | **For the Direct Trading Member** | |
| Place | Click or tap here to enter text. | Place | Click or tap here to enter text. |
| Date | Click or tap to enter a date. | Date | Click or tap to enter a date. |
| Name(s) | Click or tap here to enter text. | Name(s) | Click or tap here to enter text. |
| Signature(s) |  | Signature(s) |  |
|  | |  |  |
| **For EPEX SPOT SE** | |  |  |
| Place |  | Date |  |
|  |  |  |  |
| Name |  | Signature |  |