

ACER XML Service – Terms and Conditions for NYMEX Customers

VERSION 2.0 SEPTEMBER 2021

New York Mercantile Exchange, Inc. ("**NYMEX**") Customers with reporting obligations under REMIT are eligible to benefit from NYMEX's ACER XML Service. NYMEX will undertake commercially reasonable efforts to convert Customer REMIT Data into the xml format required by ACER for reporting data under REMIT and will undertake commercially reasonable efforts to make it available for download by the Customer from a secure FTP folder location ("**ACER XML Service**"). These terms and conditions ("the **Terms and Conditions**") set out the basis on which NYMEX will offer the ACER XML Service to Customers.

NYMEX is a US designated contract market registered with the Commodity Futures Trading Commission. NYMEX is registered with ACER as an Organised Market Place under REMIT. While NYMEX agrees to provide REMIT Data to Customers pursuant to the ACER XML Service, Customers are solely responsible for transmission of REMIT Data to ACER.

Capitalized terms used herein have the meaning given to them in the Terms and Conditions.

ACER XML SERVICE TERMS AND CONDITIONS

1 DEFINITIONS

1.1 In these Terms and Conditions, the following terms shall have the following meanings:

- a) **ACER** means the Agency for the Cooperation of Energy Regulators or its successor from time to time;
 - b) **ACER XML** means the XML format required by ACER for reporting data under REMIT as specified by ACER from time to time;
 - c) **ACER XML Service** has the meaning given in the first paragraph of this Agreement;
 - d) **Affiliate** means an undertaking in the same group as NYMEX;
 - e) **Applicable Law** means any applicable law, regulation, guidance or direction issued by any competent Regulatory Authority;
 - f) **Authorized Person** means an individual who is authorized by the Customer to commit the Customer to these Terms and Conditions and any amendments to them and to instruct or notify NYMEX of any other matter specified in these Terms and Conditions;
 - g) **Business Day** means a day (other than a Saturday or Sunday) on which banks are ordinarily open for the transaction of normal business in New York;
 - h) **Customer** means a person which is a NYMEX customer and which completes a Reportable Transaction / Order and is required to report data relating to such Reportable Transaction / Order to ACER pursuant to REMIT;
 - i) **Fees** means fees payable by the Customer to NYMEX for providing the ACER XML Service as set forth in the Fee Schedule (located on the Site) as such fees may be modified by NYMEX from time to time;
 - j) **Fee Schedule** means the fee schedule available on the Site setting out the Fees payable to NYMEX under these Terms and Conditions;
 - k) **Force Majeure** means any event which occurs due to reasons outside of the control of NYMEX (including, but not limited to, any natural, systems, facilities, technological, political or other cause and whether in respect of a third party service provider, affiliate of NYMEX, ACER, a third party or otherwise) and which cannot be overcome by reasonable diligence and/or without unreasonable expense by NYMEX;
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- l) **Implementing Regulation 1348/2014** means Commission Implementing Regulation (EU) No 1348/2014 laying down implementing technical standards with regard to the format and frequency of reports to ACER, dated 17 December 2014, as amended from time to time;
- m) **Losses** means all losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees);
- n) **Organised Market Place** or **OMP** has the meaning given to it in Article 2(4) of Implementing Regulation 1348/2014;
- o) **Regulatory Authority** means any applicable governmental or regulatory authority with jurisdiction over any of the parties under Applicable Law;
- p) **REMIT** means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency and any implementing legislation or guidance issued by ACER thereunder, as amended from time to time;
- q) **REMIT Data** means the data held by NYMEX and its Affiliates in respect of Reportable Transactions/ Orders executed or placed on NYMEX, which the Customer is required to report to ACER pursuant to REMIT requirements;
- r) **ACER XML Service Registration Form** or **Registration Form** means the ACER XML Service Registration Form under which the Customer may register for the ACER XML Service, completion of which constitutes the Customer's agreement to these Terms and Conditions, as may be amended from time to time in accordance with these Terms and Conditions;
- s) **Reportable Transaction/Order** means each type of contract described in Article 3 of Implementing Regulation 1348/2014 and order to trade as has been mandated for reporting by ACER and / or under REMIT and which occur on NYMEX;
- t) **Reporting Obligation** means, in respect of the Customer, the obligation to report REMIT Data in relation to each of its Reportable Transactions / Orders in accordance with Article 6(1) of Implementing Regulation 1348/2014;
- u) **Site** means the CME Group website, located at www.cmegroup.com.

2 SCOPE OF SERVICES

- 2.1 The Customer agrees to receive the ACER XML Service as set out in these Terms and Conditions and the ACER XML Service Registration Form and agrees to comply with its obligations thereunder, as agreed and accepted by the Customer completing and submitting the ACER XML Service Registration Form to CME.
- 2.2 NYMEX agrees to provide the ACER XML Service as set out in these Terms and Conditions.

3 ACER XML SERVICE TO BE PROVIDED

ACER XML SERVICE

- 3.1 Under the ACER XML Service, NYMEX will undertake commercially reasonable efforts to (i) convert the Customer's relevant REMIT Data into ACER XML format and (ii) make it available for download by the Customer from a secure FTP folder. REMIT Data will be made available for download by the Customer on the day after the Reportable Transaction / Order to which it relates occurs (T+1 New York time).
- 3.2 The Customer understands and agrees that, under this ACER XML Service, NYMEX shall not verify the Customer's REMIT Data or report it to ACER. Customer acknowledges that reporting of the REMIT Data shall remain the sole responsibility of the Customer.

4 CUSTOMER REPRESENTATIONS

- 4.1 The Customer represents and warrants to NYMEX that it is and shall remain in compliance with any applicable requirements under REMIT.
- 4.2 The Customer understands and agrees that NYMEX shall not be responsible for the content or accuracy of the ACER XML or any REMIT Data provided by NYMEX and/or submitted to any person, including but not limited to ACER, by the Customer or any person on behalf of the Customer.
- 4.3 The Customer understands that NYMEX is a US designated contract market registered with the Commodity Futures Trading Commission. NYMEX is registered with ACER as an Organised Market Place under REMIT. The Customer acknowledges that NYMEX has no obligations as an Organised Market Place under REMIT to report REMIT Data to ACER or to any person under REMIT.

5 LIABILITY AND INDEMNITY

- 5.1 It is the Customer's legal responsibility under REMIT to comply with its obligations, including, but not limited to, the Reporting Obligation (subject to Article 11(2) of Implementing Regulation 1348/2014) in accordance with all Applicable Law and nothing in these Terms and Conditions shall alter this.
- 5.2 NYMEX MAKES NO REPRESENTATION OR WARRANTY NOT EXPRESSLY SET FORTH IN THIS SECTION 5, AND EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IN NO EVENT SHALL NYMEX BE LIABLE FOR LOSS OF PROFITS, LOSS OF USE, OR ANY OTHER INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. For the avoidance of doubt, NYMEX makes no warranties or representations regarding compliance of the ACER XML Service with the requirements of REMIT.
- 5.3 To the fullest extent permitted by Applicable Law, NYMEX, its Affiliates, and each of their respective directors, officers and employees shall not have any liability to the Customer or to any other person whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise for:
- (a) any Losses arising directly from, or in connection with:
- (i) NYMEX's provision of, or the Customer's use of, the ACER XML Service provided by NYMEX pursuant to these Terms and Conditions;
 - (ii) NYMEX's performance of its obligations or exercise of its rights under these Terms and Conditions;
 - (iii) the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which NYMEX uses or intends to use in the performance of its obligations or exercise of its rights under these Terms and Conditions;
 - (iv) a third party accessing or intercepting any REMIT Data or other information or data of the Customer; or
 - (v) the failure by any person (including but not limited to the Customer) to accurately report to ACER the REMIT Data which has been provided to the Customer under the ACER XML Service in accordance with these Terms and Conditions,
- except to the extent that such Losses are due to the gross negligence, willful misconduct or fraud of NYMEX, any Affiliate or the directors, officers or employees of NYMEX or an Affiliate.
- 5.4 The Customer agrees that NYMEX's liability under these Terms and Conditions for all Losses, whether arising in contract, tort (including negligence) misrepresentation (other than fraudulent misrepresentation), breach of statutory duty or otherwise shall be limited to \$50,000.
- 5.5 The Customer shall indemnify NYMEX, its Affiliates, and each of their directors, officers and employees, against any and all losses, liabilities, damages, claims, costs or expenses suffered or incurred by NYMEX arising out of or in connection with the provision by NYMEX of the ACER XML Service including but not limited to any losses or third party claims suffered by NYMEX arising out of or relating to these Terms and Conditions, save to the extent that the losses, liabilities, damages, claims, costs or expenses arise as a result of the gross negligence or willful misconduct of NYMEX.
- 5.6 No action arising out of any claimed breach of these Terms and Conditions may be brought by the Customer more than two (2) years after the cause of action has accrued.
- 5.7 NYMEX shall be released from its obligations under these Terms and Conditions to the extent that, and for so long as, performance of such obligations is delayed, hindered or prevented by Force Majeure.
- 5.8 Upon the occurrence of a Force Majeure event, NYMEX shall inform the Customer in writing, as soon as reasonably practicable. Upon the cessation of the Force Majeure event, NYMEX shall inform the Customer in writing, as soon as reasonably practicable.
- 5.9 The parties agree that this clause 5 represents a fair and equitable position. Nothing in these Terms and Conditions shall exclude or limit any liability which may not be excluded or limited under Applicable Law.

6 TERMINATION

TERMINATION OF ACER XML SERVICE ONLY

- 6.1 The ACER XML Service will terminate immediately:
- upon the expiry of 30 Business Days' prior notice in writing provided by either NYMEX or the Customer to the other party; or
 - Automatically where the Customer is no longer a NYMEX customer, in which case Customer shall be required to notify NYMEX upon the occurrence of such event

FEES

- 6.2 The Fees payable by the Customer to NYMEX in respect of the ACER XML Service it receives under these Terms and Conditions are set out on the Site, as amended from time to time at NYMEX's sole discretion. The Customer agrees to pay such Fees as notified by NYMEX from time to time.
- 6.3 Notwithstanding any other provision in these Terms and Conditions, NYMEX shall provide the Customer with at least 30 days' written notice of any changes to the Fees payable by the Customer.

7 GENERAL PROVISIONS

- 7.1 A notice or other communication given under or in connection with these Terms and Conditions (a Notice) must, unless otherwise specified, be in writing (including in electronic form), in English and sent, in respect of the Customer, to such address as provided by the Customer in the ACER XML Service Registration Form, and in respect of NYMEX, to EuropeEnergy@cmegroup.com and legalnotices@cmegroup.com.
- 7.2 The Customer may, by written Notice to NYMEX (if applicable), substitute replacement details for its notified address set out in clause 7.1
- 7.3 NYMEX may, by written Notice to the Customer, substitute replacement details for its notified address set out in clause 7.1.
- 7.4 NYMEX may vary these Terms and Conditions by publishing such variation on the Site together with the date on which such variation takes effect and providing Notice to the Customer. The Customer will be deemed to be bound by any such variation from such date in the absence of notice of termination from the Customer.
- 7.5 NYMEX and the Customer acknowledge and agree that by entering into these Terms and Conditions, they do not rely on any statement, representation, assurance or warranty of any person (whether a party to these Terms and Conditions or not and whether made in writing or not) other than as expressly set out in these Terms and Conditions.
- 7.6 NYMEX and the Customer agree that the only rights or remedies available to either of them arising out of or in connection with these Terms and Conditions or their subject matter shall be solely for breach of contract except as otherwise provided for in these Terms and Conditions.
- 7.7 If any term of these Terms and Conditions is determined to be invalid or unenforceable under any controlling body of law, such invalidity or non-enforceability shall not in any way affect the validity or enforceability of the remaining terms or the validity or enforceability of those terms in any jurisdiction where they are valid and enforceable. The parties desire the terms and conditions herein to be valid and enforced to the maximum extent not prohibited by law, regulation or court order in a given jurisdiction and as such, any invalid or unenforceable terms and conditions will be reformed by the parties to effectuate the intent of the parties as evidenced on the Effective Date. Customer shall, in connection with these Terms and Conditions:
- comply in all respects with all applicable data protection laws and regulations (together, the Data Protection Laws); and
 - not, by any act or omission, place NYMEX in breach of the Data Protection Laws.
- 7.8 Customer may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of NYMEX.
- 7.9 These Terms and Conditions will be governed by the laws of the State of New York without regard to any choice-of-law provisions. The parties will submit to the exclusive jurisdiction of the state and federal courts situated in New York, New York to resolve any dispute arising out of or relating to these Terms and Conditions.