**CAUTION: The following agreement was prepared jointly by BDEW, EFET, Energy UK, Eurelectric and Eurogas (together the “Joint Energy Associations Group” or “JEAG”) and LEBA exercising all reasonable care. It is designed as a basic document to facilitate REMIT data reporting. It is not intended to serve as an all-encompassing document for use by all parties under all circumstances. Parties should carefully consider the full scope of regulatory and commercial terms that may be applicable to their particular circumstances and may elect to enter into more detailed agreements. Any parties using this agreement are encouraged to consult their own counsel. Neither the JEAG nor LEBA, nor any of their respective members or counsel shall be liable or responsible for this agreement’s use.**

**REMIT Reporting Agreement – Trade Data (Tripartite)[[1]](#footnote-2)**

THIS AGREEMENT is dated as of [●] and is made BETWEEN:

(A) [●] (the "**OMP**");

(B) [●] (the “**RRM**”); and

(B) [●] (the "**Market Participant** "),

(together the “**Parties**” and each a “**Party**”).

WHEREAS:

1. The Market Participant is a market participant as defined in Article 2(7) of REMIT.
2. The purpose of this Agreement is to enable the Market Participant to satisfy its obligations under Article 8 of REMIT[[2]](#footnote-3) and Article 6(1) of the Implementing Acts[[3]](#footnote-4) to provide a record of its wholesale energy market transactions, including orders to trade to ACER.
3. The OMP operates an organised market place as defined in Article 2(4) of the Implementing Acts which the Market Participant uses to carry out Wholesale Energy Market transactions.
4. The RRM is registered with ACER as a registered reporting mechanism. The Market Participant wishes to use the RRM to fulfil its Reporting Obligation[[4]](#footnote-5).
5. This Agreement constitutes a data reporting agreement for the purposes of Article 6(1) of the Implementing Acts.

IT IS AGREED as follows:

# **Interpretation**

## ***Definitions***. The terms defined in Clause 20 (*Definitions and Construction*) and elsewhere in this Agreement (including the Recitals) will have the meanings therein specified for the purpose of this Agreement (including the Recitals).

## ***Inconsistency***. This Agreement shall take precedence over any other agreements in place between the Parties, including (without limitation) any general OMP or RRM terms of business or client agreements in the event of any conflict but only in so far as those other agreements relate to the subject matter of this Agreement.

# **Reporting Services and RRM Services**

## The Market Participant and the OMP each hereby requests, appoints and authorises the RRM to submit all of the details set out in Table 1 of the Annex to the Implementing Acts in respect of each of the Standard Contracts and Orders to Trade (the “**Trade Data**”) set out in Clause 2(b) to ACER on the Market Participant’s behalf.

## Unless otherwise agreed in writing between the Parties, the RRM shall report the following Trade Data concluded or placed by the Market Participant after the REMIT Reporting Start Date to ACER by the Standard Contract Reporting Deadline:

### Standard Contracts[[5]](#footnote-6) entered into by the Market Participant through the OMP for the supply of electricity or natural gas (“**Relevant Standard Contracts**”);

### matched and unmatched Orders to Trade placed through the OMP, which are made visible via the OMP’s electronic brokerage screen, if any (“**Relevant Orders**”); and

### Any Lifecycle Data, where such Lifecycle Event is concluded through the OMP (“**Relevant Lifecycle Data**”),

(together the **“Relevant Trade Data”**).[[6]](#footnote-7)

## The RRM shall provide the Market Participant [(and, upon reasonable request, the OMP)] with copies of, or access to, Relevant Trade Data, and any other data, sent by the RRM on the Market Participant’s behalf to ACER (and, if applicable, any relevant NRA) in order to enable the Market Participant to comply with its obligation to take reasonable steps to verify the completeness, accuracy and timeliness of the data which it submits through third parties.[[7]](#footnote-8)

## If unique reference(s) need to be generated for inclusion in the Relevant Trade Data, the Parties agree that the OMP shall generate such unique reference(s) in respect of [all Relevant Standard Contracts and Relevant Orders / Relevant Orders only][[8]](#footnote-9), unless agreed otherwise between the Market Participant and the OMP in writing, in accordance with the MoP and the TRUM. Where the OMP generates the unique reference(s) in respect of Relevant Standard Contracts and Relevant Orders, the OMP shall notify the Market Participant of such unique reference(s)[[9]](#footnote-10).

## If either:

### the RRM does not, or reasonably expects that it will not, report the Relevant Trade Data by the Standard Contract Reporting Deadline; or

### the OMP does not, or reasonably expects that it will not, provide the RRM with the Relevant Trade Data in time for it to be reported to ACER by the Standard Contract Reporting Deadline,

### the RRM or the OMP, whichever is applicable, will notify the Market Participant (and, in respect of (i), the OMP) in writing, giving details explaining the reason(s) for such notification as soon as reasonably practicable and the Market Participant (and, in respect of (i), the OMP) will be entitled to appoint a third party to make such report on the Market Participant’s behalf.

### Other than in this instance, or as otherwise agreed between the Parties in writing, the Market Participant will not report or arrange the reporting of the Relevant Trade Data to ACER.

## Each of the OMP and the RRM shall ensure that when reporting, or procuring the reporting of, information to ACER or any applicable NRA on behalf of the Market Participant, the Market Participant shall be identified by its Market Participant Registration Code.

## In complying with each of their respective obligations under this Agreement the OMP and the RRM each shall have regard to the guidance set out in the TRUM, the MoP and, in the case of the RRM, the RRM Requirements.

# **OMP Obligations**

## Subject to the other provisions of this Agreement, the OMP agrees to submit all of the Relevant Trade Data in its possession, or generated by its systems, or which it could reasonably be expected to have in its possession or to be generated by its systems, in respect of each Relevant Order or Relevant Standard Contract [(with the exception of Lifecycle Data that is not Relevant Lifecycle Data)][[10]](#footnote-11) to the RRM as soon as reasonably practicable and, in any event, so as to enable the RRM to submit the Relevant Trade Data to ACER by the Standard Contract Reporting Deadline.

# **Market Participant Obligations**

## The Market Participant agrees it will deliver to the OMP and the RRM the Static Data as set out in the Annex to this Agreement in a timely manner and keep it up-to-date, notifying the other Parties as to any changes in a timely manner to enable the OMP and the RRM to perform their respective obligations throughout the life of this Agreement.

## The Market Participant agrees that it shall provide the OMP and the RRM with any data reasonably requested by the OMP or the RRM that the OMP (and any party to whom the OMP has delegated any of its obligations under this Agreement in whole or in part, including for this purpose the RRM) does not already have, or could not reasonably be expected to have, in its own systems (including, without limitation, the beneficiary entity ID) in time for the RRM to report it by the Standard Contract Reporting Deadline.

## The Market Participant agrees and acknowledges that if it fails to comply with Clauses 4(a) and (b) and the OMP is unable to report all of the Relevant Trade Data as a result, the OMP shall submit the Relevant Trade Data in its possession to the RRM and the RRM shall submit that Relevant Trade Data to ACER by the Standard Contract Reporting Deadline.

## The Market Participant represents that the information it delivers under Clauses 4(a) and (b) shall be, at the time of delivery, true, accurate and complete in every material respect.

## The Market Participant acknowledges that the OMP and the RRM may rely on the Static Data or any other data provided by the Market Participant in connection with this Agreement without investigation, provided that each of the OMP and the RRM, respectively, has taken reasonable steps to verify that such data has come from the Market Participant.

# **RRM Transition**

## Should the RRM at any time cease to be registered as a reporting mechanism or cease to be able to access ARIS, the RRM and the OMP shall provide reasonable assistance to the Market Participant in transitioning to a replacement registered reporting mechanism.

## If either the OMP or the RRM becomes aware of a possible suspension or cessation of the RRM’s access to ARIS, or otherwise reasonably anticipates that the RRM will cease to be registered with ACER as a reporting mechanism or will cease to be able to access ARIS for any reason, it shall notify the Market Participant (and, in the case of the RRM, also the OMP) in writing as soon as reasonably practicable. In these circumstances, the OMP and the RRM each shall provide reasonable assistance to the Market Participant in transitioning to a replacement registered reporting mechanism.

# **RRM Systems Representations**

## The RRM represents and warrants to the other Parties (which representations each shall be deemed to be repeated continuously throughout the term of this Agreement) that it:

## owns all right, title and interest in and to the Software (or is otherwise authorised to license it as set forth in this Agreement), and has full power and authority to license any third party software incorporated into or provided in conjunction with the Software pursuant to the terms of this Agreement;

## has scanned the Software using up to date anti-virus software to check that the Software does not contain any commonly known virus, worm or other code or routines designed to disable, damage, impair, or erase the Software or other software or data;

## shall at all times maintain a business continuity and disaster recovery plan in an effort to minimise the risk of any interruption in the delivery of the RRM Services;

## shall notify the Market Participant and the OMP as soon as reasonably practicable in the event of any intrusion or security breach affecting the Software or the RRM Services or any unauthorised use or disclosure of confidential information; and

## has in place appropriate information security policies, processes and procedures to safeguard the security and integrity of any software, hardware, data centre and equipment used to host the Software and provide the RRM Services.

# **Additional ACER Requests**

## Each Party shall provide reasonable assistance to the other Parties to this Agreement in complying with any request for further information from ACER or any relevant NRA, including the provision of any reportable information which is in the possession of that Party and not in the possession of the requesting other Party (or any Third Party Service Provider or any other person to whom that other Party has delegated any of its obligations under this Agreement, in whole or part).

## The OMP shall, upon request from ACER or any relevant NRA, make available to ACER or any relevant NRA such information as it has in its possession relating to Orders to Trade placed by the Market Participant with the OMP’s voice operated services and not appearing on the OMP’s electronic trading screen[[11]](#footnote-12). The OMP shall provide a copy of any such information to the Market Participant at the same time as it makes it available to ACER or a relevant NRA, provided that the OMP is not prevented from doing so by ACER or the relevant NRA.

# **Responsibility for Data**

## No Party shall be responsible for failures in the completeness, accuracy or timely submission of any data which are attributable to another Party.

## The OMP acknowledges that under this Agreement it shall:

### be responsible for the completeness, accuracy and timely submission of any data which it submits to the RRM, ACER or any NRA on behalf of the Market Participant whether or not it delegates some or any part of that function or the performance of its obligations hereunder to a Third Party Service Provider or other person; and

### remain responsible for the failures of any Affiliate, any Third Party Service Provider or other person to whom the OMP has delegated any of its obligations (in whole or in part) to provide the Reporting Services under this Agreement.

## The RRM acknowledges that under this Agreement it shall:

### be responsible for the completeness, accuracy and timely submission to ACER in the required reporting format of any data which has been provided to it by the Market Participant or the OMP which is, or reasonably could be expected to be, in its possession and under its control that it is required to submit to ACER on behalf of the Market Participant in performance of its obligations hereunder; and

### remain responsible for its own failures, or the failures of any other person to whom it has delegated any of its obligations (in whole or in part) to provide the RRM Services under this Agreement.

# **Errors**

## In relation to Error Reports, the RRM shall:

### receive and store all Error Reports and any other relevant communications from ACER (in so far as these are generated by ARIS or otherwise issued by ACER at any time) in respect of the Market Participant;

### notify the Market Participant and the OMP as soon as reasonably practicable upon receipt of any Error Reports; and

### make all Error Reports and any other relevant communications from ACER available to the Market Participant and the OMP as soon as reasonably practicable.[[12]](#footnote-13)

## Notwithstanding Clause 9(c) below, and without prejudice to any enhanced service otherwise agreed to be provided by the RRM, the Market Participant acknowledges and agrees that neither the OMP nor the RRM is obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Trade Data, whether that information derives from the Market Participant or any other person but excluding:

### in the case of the OMP, itself and each Affiliate of the OMP; and

### in the case of the RRM, itself and any other party to whom it delegates all or any part of the performance of its obligations hereunder. [[13]](#footnote-14)

## Subject to Clause 9(b) above, if any Party becomes aware of an error in any Relevant Trade Data reported to ACER (whether as a result of receiving an Error Report or otherwise) in accordance with this Agreement, it will notify the other Parties and all Parties will use reasonable efforts, acting in good faith and a reasonable manner, to rectify such error and resubmit the relevant correct data.

## In the event of a breach of any of the Parties’ Reporting Obligations, each Party shall use its reasonable endeavours to rectify such breach and shall cooperate and communicate with ACER and any relevant NRAs as may be required in relation to such breach.

# **Use of Third Parties**

## The Parties agree that they each may utilise the services of a Third Party Service Provider to facilitate the submission of Relevant Trade Data to ACER or to assist in any other performance by them of their respective obligations under this Agreement (including but not limited to utilising any platform, system, interface or other technology developed by any such Third Party Service Provider for such purpose). If any Party appoints a Third Party Service Provider, it will notify the other Parties in writing of such appointment as soon as reasonably practicable. Where any Party has discretion in selecting a Third Party Service Provider, it will use reasonable care in the selection of that Third Party Service Provider and in the on-going monitoring by that Party of the services provided by such Third Party Service Provider in connection with this Agreement.

## Where the Third Party Service Provider is an affiliate of the Party appointing it, the provisions of Clauses 12 (*Liability*) and 14 (*Confidentiality and Ownership of Data*) apply in respect of such Third Party Service Provider as if such Third Party Service Provider was the Party appointing it.

# **Market Participant Acknowledgement**

## The Market Participant acknowledges and agrees that:

## the OMP shall not be in breach of this Agreement if, and to the extent that, the performance of its obligations is prevented (which shall include rendering performance by the OMP impossible without unreasonable efforts) by a breach of this Agreement by the Market Participant or the RRM;

## the RRM shall not be in breach of this Agreement if, and to the extent that, the performance of its obligations is prevented (which shall include rendering performance by the RRM impossible without unreasonable efforts) by a breach of this Agreement by the Market Participant or the OMP; and

## the Reporting Obligation and, accordingly, the Reporting Services and the RRM Services, remain at all times subject to change as a result of further regulatory developments and guidance and the OMP and the RRM each agree to notify the Market Participant (and, in the case of the RRM, also to notify the OMP) as soon as reasonably practicable in writing upon becoming aware of any such change.

# **Liability**

## The OMP and the RRM shall, at all times, perform their respective obligations and exercise discretion under this Agreement with reasonable care, provided that no Party shall be required to do, or cause to be done, anything which is contrary to any law, rule or regulation or that such Party is otherwise prevented from doing by any law, rule or regulation.

## Notwithstanding any other provision of this Agreement but subject to the remaining provisions of this Clause 12 (*Liability*), the OMP and the RRM and each of their respective Affiliates and their respective directors, officers and employees shall not have any liability to each other or the Market Participant (or any person claiming under or through it) whether in contract, tort, breach of statutory or regulatory duty or otherwise, for any Losses arising directly from, or in connection with:

### the provision of, or the Market Participant's use of, the Reporting Services agreed to be provided by the OMP or the RRM Services to be provided by the RRM under this Agreement;

### any acts, omissions or failures of any third party, including but not limited to any Third Party Service Provider (including any decision by a Third Party Service Provider not to permit the OMP or the RRM to submit Relevant Trade Data via the Third Party Service Provider on behalf of the Market Participant);

### the OMP's or RRM’s performance of their respective obligations or exercise of their rights under this Agreement and/or the use by them of a platform, system, interface or other technology provided by any Third Party Service Provider;

### the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which the OMP or the RRM uses or intends to use in the performance of their obligations or exercise of their rights under this Agreement; or

### a third party accessing or intercepting any information or data of the Market Participant,

### except to the extent that such Losses are due to the gross negligence, wilful default or fraud of the OMP or the RRM (respectively), any of their respective Affiliates, any Third Party Service Provider or any other person to whom the OMP or the RRM (respectively) has delegated the performance of any of its obligations under this Agreement or any of their respective directors, officers, employees, contractors or agents.

## No Party shall be liable for any special, indirect or consequential loss or damage or for any direct or indirect loss of business, profits, anticipated savings or goodwill, save in the case of fraud or wilful misconduct.

## The Parties agree that this Clause 12 (*Liability*) represents a fair and equitable position. Nothing in this Agreement will exclude or limit any duty or liability which may not be excluded or limited under applicable law or regulation.

# **Force Majeure**

## If any Party is prevented from performing any of its obligations under this Agreement as a result of a Force Majeure Event, such obligation(s) shall be suspended for so long as that Force Majeure Event continues.

# **Confidentiality and Ownership of Data**

## Notwithstanding anything to the contrary in this Agreement or in any non-disclosure, confidentiality or other agreement between the Parties, each Party hereby consents to the disclosure of information:

### to the extent required or permitted under, or made in accordance with, the provisions of REMIT, the Implementing Acts and any applicable supporting law, rule or regulation and the guidance set out in the TRUM and the MoP (***"REMIT and Supporting Regulation"***) which mandate reporting and/or retention of Trade Data and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) REMIT and Supporting Regulation regarding reporting and/or retention of Trade Data and similar information issued by any regulatory authority or body or agency in accordance with which the other Party is required or accustomed to act and also to the extent required in accordance with the terms of this Agreement (***"Reporting Requirements"***); or

### to and between the other Parties, or any persons or entities who provide services to such other Parties, in each case, in connection with and in furtherance of compliance with their respective Reporting Requirements.

## Each Party represents and warrants to the other Party that any third party to whom it owes a duty of confidence in respect of the information disclosed has consented to the disclosure of that information.

## Any data or information provided by one Party to another Party pursuant to this Agreement shall be used by the receiving Party only for the purposes specified in this Agreement and for no other purpose without the prior written consent of the disclosing Party. Any such data or information and any intellectual property rights contained therein shall remain the property of the disclosing Party such that the receiving Party shall have no other rights in such information or data save as set out in this Agreement.

## Other than as expressly provided for in this Agreement, any data or information provided by one Party to another Party shall be kept strictly confidential and the receiving Party shall protect such data and information from unauthorised use and disclosure to any third party in any manner whatsoever without the disclosing Party’s prior written consent.

## The RRM shall not have any rights in respect of any data made available by the Market Participant or the OMP beyond the purposes provided for in this Agreement.

# **Personal Data**

## Each Party shall, in connection with this Agreement:

### comply in all respects with all applicable data protection laws and regulations (together, the **“Data Protection Laws”**); and

### not, by any act or omission, intentionally place any other Party in breach of the Data Protection Laws.

## Where a Party acts as a processor in relation to personal data in relation to which another Party is the controller, that first Party shall:

### process those personal data only on in accordance with the instructions of the other Party; and

### implement appropriate technical and organisational measures to protect such personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

# **Amendment and Termination**

## Subject to Clause 16(b) below, any amendment to the terms of this Agreement must be agreed in writing between the Parties. Notices delivered in respect of this Clause 16 are subject to Clause 18 (*Notices*).

## Notwithstanding Clause 16(a) above, the OMP or the RRM may, by written notice to the other Parties, amend (in whole or part) this Agreement and any operational and procedural documents or processes under this Agreement, but in each case only to the extent that such amendment is necessary to comply with any change in law, rule, regulation or operational requirement of ACER or any relevant NRA. Any such amendment will only be effective if not rejected by written notice by the other Parties on or before the date that is [15] calendar days following the date on which the amendment notice is deemed to be effective in accordance with Clause 18 (*Notices*) (the **“Rejection Notice Deadline”**). If:

### a Party rejects an amendment by written notice by the Rejection Notice Deadline, this Agreement will terminate without such amendment taking effect on the date that is [30] calendar days following the date on which the notice of amendment is deemed to be effective in accordance with Clause 18 (*Notices*) or such earlier date as may be agreed in writing between the Parties[[14]](#footnote-15); or

### neither of the other two Parties rejects an amendment by written notice, the Parties will be deemed to have agreed to such amendment to this Agreement.

## Subject to Clause 16(b), amendments will be effective on the later of the date specified in the relevant notice and the date that is [30] calendar days following the date on which the notice of amendment is deemed to be effective in accordance with Clause 18 (*Notices*).

## A rejection notice from the Market Participant will only be effective if delivered to the other Parties on or before the Rejection Notice Deadline.

## If a Party delivers a rejection notice by the Rejection Notice Deadline, this Agreement will terminate on the date that is [30] calendar days following the date on which the rejection notice is deemed to be effective in accordance with Clause 18 (*Notices*), unless otherwise agreed in writing between the Parties.

## Any Party may terminate this Agreement either:

### immediately upon written notice in the event of the insolvency of any other Party; or

### in the case of persistent or material breach by one of the Parties to this Agreement on [30] calendar days’ notice following the date on which the termination notice is deemed to be effective in accordance with Clause 18 (*Notices*).

## Except as provided otherwise in this Clause 16, any Party may terminate this Agreement by giving 3 months’ prior written notice to the other Parties in accordance with Clause 18 (*Notices*).

## Any such termination shall have no effect upon any Party’s rights and obligations arising out of Relevant Standard Contracts concluded or Relevant Orders placed prior to termination.

## The provisions of Clauses 12 (*Liability*), 14 (*Confidentiality and Ownership of Data*), 17 (*Miscellaneous*), 19 (*Governing Law and Jurisdiction*), as well as this Clause 16 (*Amendment and* *Termination*) shall survive the expiration or termination of this Agreement.

# **Miscellaneous**

Each Party makes the following representations to the other Party on the date this Agreement is entered into and, in the case of the representations in Clauses 17(a)(ii) and (c), at all times until the termination of this Agreement:

## ***Consideration***. Each Party hereby agrees and acknowledges that it is entering into this Agreement in consideration of:

### the mutual representations, warranties and covenants contained in this Agreement; and

### other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties).

## ***Entire Agreement***. This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings (except as otherwise provided herein) with respect thereto. Each of the Parties acknowledges that in entering into this Agreement it has not relied on any oral or written representation, warranty or other assurance (except as provided for or referred to in this Agreement) and waives all rights and remedies which might otherwise be available to it in respect thereof, except that nothing in this Agreement will limit or exclude any liability of a Party for fraud.

## ***Partial Invalidity***. If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:

### the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or

### the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

## ***Counterparts***. This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts, each of which will be deemed an original.

## ***No Waiver of Rights***. A failure or delay in exercising any right, power or privilege in respect of this Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege, whether in respect of a dispute between the Parties or otherwise. Relevant Trade Data reported to ARIS in accordance with this Agreement is provided without prejudice to any present or future dispute between the Parties in relation to such Relevant Trade Data.

## ***Third Party Rights.*** A person who is not a Party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of any term of this Agreement. Notwithstanding any term of this Agreement, the consent of any person who is not a Party to this Agreement is not required to rescind or vary this Agreement at any time.

## ***Transfer.*** No Party may transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the other Parties. Any purported transfer that is not in compliance with this Clause 17(g) will be void.

## ***Schedule.*** Contact details for each Party and any additional terms in respect of the Reporting Services or the RRM Services are set out in the attached Schedule 1.

# **Notices**

## ***Effectiveness***. Any notice or other communication in respect of this Agreement may be given in any manner described below to the address or number or in accordance with the electronic messaging system or e-mail details provided in Schedule 1 (as may be amended in accordance with Clause 18(b)) and will be deemed effective as indicated:

### if in writing and delivered in person or by courier, on the date it is delivered;

### if sent by facsimile transmission, on the date it is received by a responsible employee of the recipient in legible form (it being agreed that the burden of proving receipt will be on the sender and will not be met by a transmission report generated by the sender’s facsimile machine);

### if sent by certified or registered mail (airmail, if overseas) or the equivalent (return receipt requested), on the date it is delivered or its delivery is attempted;

### if sent by electronic messaging system, on the date it is received; or

### if sent by e-mail, on the date it is delivered,

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a business day with respect to the receiving Party or that communication is delivered (or attempted) or received, as applicable, after 16.00 CET on a business day with respect to the receiving Party, in which case that communication will be deemed given and effective on the first following day that is a business day with respect to the receiving Party.

## ***Change of Details***. Any Party may, by written notice to the others, change the address, facsimile number, electronic messaging system or e-mail details at which notices or other communications are to be given to it.

# **Governing Law and Jurisdiction**

## ***Governing Law***. This Agreement shall be exclusively governed by and construed in accordance with the laws of England and Wales.

## ***Jurisdiction[[15]](#footnote-16)***. With respect to any suit, action or proceedings relating to any dispute arising out of or in connection with this Agreement (***"Proceedings"***), each Party irrevocably:

### submits to:

#### the non-exclusive jurisdiction of the English courts if the Proceedings involve a court that is covered by the Brussels Regulation or the 2007 Lugano Convention; and

#### the exclusive jurisdiction of the English courts if the Proceedings involve a court that is not covered by the Brussels Regulation or the 2007 Lugano Convention;

### waives any objection which it may have at any time to the laying of venue of any Proceedings brought in any such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over such Party; and

### agrees, to the extent permitted by applicable law, that the bringing of Proceedings in any one or more jurisdictions will not preclude the bringing of Proceedings in any other jurisdiction.

## ***Waiver of Immunities***. Each Party irrevocably waives, to the extent permitted by applicable law, with respect to itself and its revenues and assets (irrespective of their use or intended use), all immunity on the grounds of sovereignty or other similar grounds from (i) suit, (ii) jurisdiction of any court, (iii) relief by way of injunction or order for specific performance or recovery of property, (iv) attachment of its assets (whether before or after judgment) and (v) execution or enforcement of any judgment to which it or its revenues or assets might otherwise be entitled in any Proceedings in the courts of any jurisdiction and irrevocably agrees, to the extent permitted by applicable law, that it will not claim any such immunity in any Proceedings.

# **Definitions and Construction**

## **Definitions**

For the purposes of this Agreement:

***“2001 Brussels Regulation”*** means Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

***“2007 Lugano Convention”*** means the 2007 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters.

***“ACER”*** means the Agency for the Cooperation of Energy Regulators.

“***Affiliate***” means in relation to any company, its subsidiary undertakings and parent undertakings and the subsidiary undertakings and subsidiaries of such parent undertakings from time to time as such terms are defined in Section 1162 of the Companies Act 2006.

***“ARIS”*** means ACER’s REMIT Information System (or any replacement or successor, from time to time).

***“Brussels Regulation”*** means either the 2001 Brussels Regulation or the Recast Brussels Regulation, whichever applies.

***“Data Protection Laws”*** has the meaning given to it in Clause 15 of this Agreement.

***“Error Reports”*** means notifications generated by ARIS and sent to the RRM in response to a data submission made by the RRM on behalf of the Market Participant which identifies errors in a data submission.

***"European Union"*** means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between Member States that are located in Europe.

***"Force Majeure Event"*** means any event which occurs due to reasons outside of a Party’s control (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 , third party or otherwise) and which cannot be overcome by reasonable diligence or reasonable efforts.

***“Implementing Acts”*** means the implementing regulation for REMIT EU No 1348/2014.

***“Lifecycle Event”*** means the modification or termination of aRelevant Standard Contract or Relevant Order, reportable in accordance with Article 7(1) of the Implementing Acts and the TRUM.

***“Lifecycle Data”*** means Trade Data concerning a Lifecycle Event.

***"Losses"*** means all losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees).

***“Market Participant Registration Code”*** is the unique code provided to the Market Participant by ACER when registering in accordance with Article 9 of REMIT and as referenced in Article 10(2) of the Implementing Acts.

***“MoP”*** means the manual of procedures document produced pursuant to the Implementing Acts by ACER establishing procedures, standards and electronic formats for reporting of information (covering both transaction reporting and reporting of fundamental data) referred to in Articles, 6, 8 and 9 of the Implementing Acts, including information on data submission channels, data validation rules and the XML-schemas to be used for such reporting, as initially published on 7 January 2015 (as amended, supplemented, varied or replaced from time to time).

***“NRAs”*** means national regulatory authorities for the purpose of REMIT.

***“Orders to Trade”*** has the meaning set out in the TRUM.

***"Proceedings"*** has the meaning given to it in Clause 19 (*Governing Law and Jurisdiction*).

***“Recast Brussels Regulation”*** means Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

**“*Relevant Lifecycle Data*”** has the meaning set out in Clause 2(b)(iii).

***“Relevant Orders”*** has the meaning set out in Clause 2(b)(ii).

***“Relevant Standard Contracts”*** has the meaning set out in Clause 2(b)(i)[[16]](#footnote-17).

***“Relevant Trade Data”*** has the meaning set out in Clause 2(b).

***“REMIT”*** means the regulation on wholesale energy market integrity and transparency EU No 1227/2011.

***“REMIT Reporting Start Date”*** means 7 October 2015, being 9 months after the date the Implementing Acts came into force in accordance with Article 12 of the Implementing Acts.

***“Reporting Obligation*”** means the obligation to report Trade Data under Article 8 of REMIT and the Implementing Acts, construed in accordance with the TRUM, the MoP and any other guidance or operational or procedural requirements produced by ACER or any applicable NRA, from time to time.

***“Reporting Services*”** means the services provided by the OMP pursuant to this Agreement.

***“RRM Requirements”*** means the document produced by ACER describing the requirements for the reporting of trade and fundamental data, the registration process of reporting parties, how ACER will assess that these requirements are fulfilled and providing an overview of the relevant legal framework, as initially published on 7 January 2015 (as amended, supplemented, varied or replaced from time to time).

**“*RRM Services*”** means the services provided by the RRM pursuant to this Agreement.

***“Software”*** means the software used by the RRM in connection with its electronic reporting systems including but not limited to programs, data files, databases, database content, mappings and other related information stored on computer media.

***“Standard Contract”*** means a contract concerning a Wholesale Energy Product admitted to trading at an OMP as defined in Article 2(2) of the Implementing Acts.

***“Standard Contract Reporting Deadline”*** means no later than the end of the working day following the conclusion of the contract or placement of the order (as applicable).

***“Static Data”*** means the data with respect to the data fields set out in Schedule 2 to this Agreement, as amended from time to time.

***"Third Party Service Provider"*** means a third party including, without limitation, a registered reporting mechanism appointed by the OMP to submit, or facilitate submission and delivery of Relevant Trade Data by the Standard Contract Reporting Deadline to ACER via ARIS.

***"Trade Data”*** has the meaning set out Clause 2(a).

***“TRUM”*** means the Transaction Reporting User Manual, as initially published on 7 January 2015 (as may be amended, varied, supplemented or replaced, in whole or part, for time to time).

***“Wholesale Energy Market”*** means any market within the European Union on which Wholesale Energy Products are traded.

***“Wholesale Energy Products”*** has the meaning given to it in Article 2(4) of REMIT

## **Construction**

### Unless this Agreement expressly provides to the contrary, any reference in this Agreement to:

### a Party or any other person includes its successors in title, permitted assigns and permitted transferees;

### a regulation includes any regulation, rule, official directive, request or guideline (whether or not having the force of law but, if not having the force of law, being of a type with which persons to which it applies are generally accustomed to comply) of any governmental, inter-governmental or supranational body, agency or department, or of any regulatory or other authority; and

### a law or regulation (including, without limitation, REMIT, the Implementing Acts and guidance related thereto, such as the TRUM, the MoP and the RRM Requirements) is a reference to that law or regulation as may be amended, varied, supplemented or replaced from time to time.

**THIS AGREEMENT has been executed by the Parties on the respective dates specified below with effect from the date stated at the beginning of this Agreement.**

……………………………………. …………………………………….

**OMP** **Market Participant**

……………………………………. …………………………………….

(ACER registration number, if available) (ACER registration number, if available)

By: ……………………………….. By: ………………………………..

Name: Name:

Title: Title:

Date: Date:

……………………………………

**RRM**

…………………………………….

(ACER registration number)

By: ………………………………..

Name: Title:

Title:

Date:

**Schedule 1**

# **Contact Information**

With reference to Clause 18 (*Notices*), the contact details for all communications in connection with this Agreement are:

## with respect to the OMP, ;

## with respect to the Market Participant, ; and

## with respect to the RRM, ,

in each case, as may be amended in accordance with this Agreement.

**Schedule 2**

**Static Data**

1. Data Field 1 - the ID of the Market Participant on whose behalf the record of transactions are reported including unique identification code as specified in the TRUM.
2. Data Field 4 - the ID of the Counterparty on whose behalf the record of transactions are reported including unique identification code as specified in the TRUM.
3. Data Field 8 – the ID of the Beneficiary of the contract including unique identification code as specified in the TRUM.
4. Data Field 10 – the trading capacity of the Market Participant (i.e. principal or agent).

1. This document is not intended for use with Organised Market Places that are exchanges. Each exchange may have its own form of reporting agreement, which will be common to all Market Participants that are exchange members. [↑](#footnote-ref-2)
2. Pursuant to Article 8(1) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (“**REMIT**”), market participants, or third parties acting on their behalf, shall provide ACER with a record of wholesale energy market transactions, including orders to trade. [↑](#footnote-ref-3)
3. Pursuant to Article 6(1) of Implementing Regulation (EU) No 1348/2014 (the “**Implementing Acts**”), market participants as defined in Article 2(7) of REMIT are required to report standard contracts executed on an Organised Market Place as defined in Article 2(4) of the Implementing Acts to ACER via that Organised Market Place (or through trade matching or trade reporting systems). Further, pursuant to Article 6(1) of the Implementing Acts, Organised Market Places are required, upon request, to provide Market Participants with a reporting agreement in respect of such standard contracts. [↑](#footnote-ref-4)
4. Trade Data must be submitted to ACER using a registered reporting mechanism. All data submitted to ACER via its reporting system ARIS must be generated by reporting entities as valid data that complies with ACER’s technical requirements for data generation. Data that does not pass the validation process or the integrity of which cannot be confirmed will be marked as invalid or rejected. If data is rejected, a receipt will be generated and provided to the RRM which submitted the data with an error message describing the reason for the failure. [↑](#footnote-ref-5)
5. This does not cover transactions that are subject to the backloading reporting requirement under Article 7(6) of the Implementing Acts. OMPs are not under any duty to offer reporting services in respect of these trades. It is open to the Market Participant and OMP to negotiate whether the OMP would be willing to assist them to report these trades and on what basis. [↑](#footnote-ref-6)
6. This does not include Lifecycle Data where the Lifecycle Event is not concluded through the OMP. Market Participants will need to make separate arrangements for this. . [↑](#footnote-ref-7)
7. This is required to enable the Market Participant to comply with its obligations under Article 11(2) of the Implementing Acts. The form of access or copies to be sent to the Market Participant will differ between RRMs depending on their particular system functionality and the commercial basis on which they offer their services. This wording is left deliberately wide to remain RRM neutral. [↑](#footnote-ref-8)
8. Delete as applicable. [↑](#footnote-ref-9)
9. The obligation on the OMP to provide the Market Participant with the unique reference in Clause 2(c) covers a situation where the transaction is executed or the order is placed through the OMP and subsequent Lifecycle Events occur OTC and would need to be reported separately but refer to the original trade reference details. [↑](#footnote-ref-10)
10. “**Relevant Lifecycle Data**” only includes Lifecycle Data where the Lifecycle Event is concluded through the OMP. In this case, the RMM would report it under Clause 2(b)(iii). It does not include other Lifecycle Data even where the original trade was concluded through the OMP. The wording clarifying that this Lifecycle Data is not covered by the current definition of Relevant Lifecycle Data in square brackets can be deleted if the Parties additionally agree that Lifecycle Events that do not take place through the OMP in respect of Relevant Standard Contracts and Relevant Orders will be reported under this Agreement. [↑](#footnote-ref-11)
11. ACER may request this information on an ad hoc basis pursuant to Article 7(3) of the Implementing Acts. It has indicated in a ‘no action’ letter that it does not intend to request this information until at least 31 December 2016. However, it is still open to NRAs to request this data before that date. Orders to Trade that are placed with voice operated services which do appear on the OMP’s electronic trading screen are subject to mandatory reporting. [↑](#footnote-ref-12)
12. This may need to be amended to reflect the functionality of the RRM or the OMP’s systems. This should not cut across any additional functionality/ access to be provided by the RRM (or the OMP) to enable the Market Participant to check what has been reported on its behalf. [↑](#footnote-ref-13)
13. Of course, the RRM may offer such a service and this clause is not intended to prejudice any agreement with the Market Participant that it will do so. [↑](#footnote-ref-14)
14. The Parties may wish to include wording to permit the OMP/ RRM to withdraw a rejected amendment within a set period. [↑](#footnote-ref-15)
15. Parties can choose to simplify this clause and delete the optionality, solely referring to either exclusive or non-exclusive jurisdiction, depending on which applies. Alternatively, Parties may choose to agree to exclusive jurisdiction of the English courts in any event, if they would prefer to do so. [↑](#footnote-ref-16)
16. The following data does not fall within the current definition of Relevant Trade Data set out in Clause 2(b) and will not be reported by the OMP unless this is separately agreed in writing between the Parties or the Parties agree to expand the current definition of Relevant Trade Data to include these trades: (i) Lifecycle Data, except where this is executed through the OMP; and (ii) contracts subject to the backloading reporting requirement. [↑](#footnote-ref-17)