**DATA REPORTING AGREEMENT**

***(under Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT)***

This Data reporting agreement is made between

OMIClear, C.C., Sucursal en España, with registered office at Calle Edgar Neville, 27, planta baja, Puerta 5, 28020 Madrid, incorporated at Registro Mercantil de Madrid, under Tomo 28383, Folio 60, Hoja M-511.139, hereinafter referred to as “**OMIClear S.E."**;

And

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ a company incorporated and existing under the laws of (NAME OF THE COUNTRY), with registered office at (ADDRESS), and VAT NUMBER (" "), hereinafter referred to as “**Market Participant**”

OMIClear S.E. and Market Participant hereinafter individually or collectively also referred to as "Party" or "Parties", respectively.

**WHEREAS**

1. On 8 December 2011, the EU adopted new stringent rules on wholesale energy trading through Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT) which introduces a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market manipulation and trading based on inside information.
2. According to article 8 of this regulation, market participants shall report to the Agency for the Cooperation of Energy Regulators (hereinafter “the Agency” or “ACER”) on a regular basis details of wholesale energy contracts both in relation to the supply of electricity and natural gas and for the transportation of those commodities.
3. ACER has established that market participants shall report transactions executed at organized market places, through the organized market itself, although .article 11 of Commission Implementing Regulation (EU) No 1348/2014, of 17 December 2014, concerning the communication of data under Article 8, paragraphs 2 and 6, of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on the integrity and transparency of the wholesale energy market, allows that the communication of the data can be done through a third party, providing the organized market place takes reasonable steps to verify the completeness, accuracy and timeliness of the data submitted through third parties.
4. For reasons of operational reliability, the Agency considers it necessary and appropriate that the reporting of records of transactions is performed through Registered Reporting Mechanisms (RRMs).
5. OMIClear S.E. is an authorized RRM and in such condition, by subscribing this Agreement will be responsible for the performance and tasks in the terms contemplated in this Agreement.
6. On the basis of the aforementioned, OMIClear S.E. and the Market Participant desire to enter into an agreement, which will define respective rights and duties as well as all services to be performed

Now therefore, the Parties hereby agree as follows:

1. **SUBJECT MATTER**

Subject to and in accordance with the terms and conditions of this agreement, the Market Participant has requested that OMIClear S.E. assists the Market Participant to meet its reporting obligations included in Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT), regarding contracts executed at OMIP

1. **CONTRACTS TO BE REPORTED**

OMIClear S.E. shall report to the Agency the contracts of the market participant resulting from its intervention in the markets managed by OMIP.

According to the EU Regulation, the reported data shall comprise matched and unmatched orders executed on the OMIP platform (hereinafter the “Data”).

The reporting service shall comply with the information fields and formats required by the Agency.

1. **TIMING OF THE REPORTING**

Details of contracts shall be reported by OMIClear S.E. to the Agency no later than on the working day following the conclusion of the contract or placement of the order.

1. **MARKET PARTICIPANT ACKNOWLEDGEMENTS**

The Market Participant acknowledges and agrees that:

(a) Will remain solely responsible and obliged to submit all data subject do reporting obligation that is not included in the Data.

(b) Must provide the “market participant code”, the unique code provided to the Market Participant by ACER when registering in accordance with article 9 of REMIT and in accordance with article 10 (2) of Commission Implementing Regulation (EU) No. 1348/2014 of December 17, 2014.

(c) Any submission by OMIClear S.E. of data under this Agreement is made with a view to facilitating the Market Participant’s reporting of data pursuant to the reporting obligations and is independent of any reporting obligation that OMIClear S.E. may or may not be subject to;

(d) Without prejudice to any other actions that OMIClear S.E. may take, OMIClear S.E. will not be required to provide any services under this Agreement in case of the occurrence of a breach; whether by act or omission, of this Agreement by the Market Participant; including the lack of payment of any fee.

(e) the reporting obligation and, accordingly, the services OMIClear S.E. provides under this Agreement, remain at all times subject to change as a result of further regulatory developments and guidances.

(f) The Market Participant is acting for its own account, and it has made its own independent decisions to enter into this Agreement and as to whether this Agreement is appropriate or proper for it.

1. **LIABILITY**

OMIClear S.E. shall, at all times, perform its obligations and exercise discretion under this Agreement with reasonable care according to the standards for the type of services rendered.

For the provision of the service, OMIClear S.E. expressly undertakes to assign qualified technical personnel with appropriate professional profiles.

OMIClear S.E. undertakes to make available to the Market Participant the data transmitted to ACER derived from its participation in the Market.

OMIClear’s S.E. liability under this Agreement, except to the extent that such liability is due to fraud, may not exceed, in all its concepts, 100% of the amount actually paid in the corresponding calendar year by the Market Participant according to the Agreement.

OMIClear S.E. cannot be required to perform, directly or indirectly, any act that is not allowed or is incompatible or contrary to its operational procedures, or is contrary to any regulatory, judicial or administrative provision or whose performance is otherwise prohibited to OMIClear S.E..

OMIClear S.E. and OMIP will not be liable towards the Participant in the Market (or any person who claims by virtue or through it), whether contractual or extra-contractual, for the interception or access by a third party to any kind of information or Data of the Market Participant, except to the extent that such events are due to gross negligence, wilful misconduct, or fraud of OMIClear S.E. or OMIP.

1. **PROCEDURES**

OMIClear S.E. shall guaranty the effective and safe exchange and handling of information with the Agency. OMIClear S.E. will ensure the security, confidentiality and completeness of information, the authentication of the source of information and the business continuity.

The Market Participant authorizes OMIP to make available to OMIClear S.E. all information that is required for the execution of this Agreement.

On a daily basis, OMIClear S.E. shall make available to the Market Participant information about the performance of the reporting service to ACER. In this context, OMIClear S.E. shall identify any incident that may have occurred.

1. **FORCE MAJEURE**

For the purpose of this Agreement "Force Majeure" means any event or situation reasonably beyond the control of the Parties, and not due to a default of the affected Party, which cannot be reasonably avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or permanently, its obligations hereunder in accordance with the terms of this Agreement. An event of Force Majeure shall include, but shall not be limited to:

1. An enemy act or an act of terrorism, declared or undeclared war, threat of war, blockade, revolution, riot, insurrection, civil commotion, demonstration or public disorder; or
2. Sabotage or act of vandalism;
3. Natural disaster or phenomenon; or
4. Fire, explosions, radioactive, chemical or other hazardous contamination; or
5. A general or industry-wide strike; or
6. Faults or malfunctions of telecommunication lines (e.g. telephone lines, Internet accesses), to the extent not attributable to a misconduct of the Party invoking force majeure.

A Party affected by Force Majeure, shall be suspended from the performance of its obligations under this Agreement for so long as performance of such obligations is affected by the event of Force Majeure.

1. **INDEMNITY**

The Market Participant agrees to indemnify and hold harmless each of OMIClear S.E. and OMIP from and against any and all losses damages, charges, fees or expenses incurred by or awarded against them arising from or in connection with:

1. any claim or action brought by any third party to the extent that such claim or action arises out of or in connection with or is caused, directly or indirectly, by the activities of the Market Participant contemplated by this Agreement;
2. any information provided to OMIClear S.E. and OMIP by the Market Participant;
3. any fine, penalty or sanction derived from regulatory, administrative or judicial inquiries which arise out of or in connection with the activities of the Parties contemplated by this Agreement, except to the extent that those are the direct result of gross negligence, wilful misconduct or fraud of OMIClear S.E..
4. **FEES**

OMIClear S.E. will charge the Market Participant with the monthly fee defined in Annex 1.

Notwithstanding the foregoing, the Market Participant will pay OMIClear S.E. the fees in force at any time, which may be different from those indicated in the previous paragraph in case they were modified by OMIClear S.E. in the terms established in Clause 13 of this Agreement.

The fees are due on the last day of each calendar quarter and settled on the first week of the following quarter.

The amounts owed by an incomplete quarter are determined on a pro-rata basis.

The Market Participant authorizes OMIP to include the monthly amount established in the first paragraph of this clause jointly with other fees that are due to OMIP in the financial settlement carried out by OMIClear, C.C., S.A..

1. **ACER FEE**

On an annual basis, before 1 July, OMIClear SE will invoice the Market Participant for the increase in fees passed on by ACER, in accordance with the provisions of the Commission Decision (EU) 2020/2152 of 17 December 2020, referring to the increased fees by the European Union Agency for the Cooperation of Energy Regulators; for the compilation, management, processing and analysis of information considering the Regulation (EU) n 1227/2011 of the European Parliament and of the Council.

OMIClear SE as a RRM will make available to the Market Participants the billing estimates that ACER will provide, and will do its utmost to unsure that, in accordance with the estimates made available by ACER, they adjust as accurately as possible the rates estimates and those charged, according to those ultimately issued by ACER.

In the event of a transfer of REMIT data communication services, by the Market Participant, during the year, it will be obliged to settle the amount associated with the ACER fee. For this, the OMI RRM will use information that it has until the moment of termination to carry out the calculation of the fee due. This calculation will be included in the last reporting invoice, issued.

1. **CONFIDENTIALITY**

All market data submitted to ACER in the context of this Agreement shall be considered confidential.

The Parties agrees to hold Confidential Information in confidence in accordance with the terms of this Agreement.

The Parties agrees to use Confidential Information solely in accordance with the terms of this Agreement.

The Parties agrees not to disclose Confidential Information to third parties without the prior written consent of the Disclosing Party except:

1. to such Party's auditors or legal advisors;
2. as required in connection with any filing of this Agreement;
3. as required for enforcement by either party of its rights and remedies with respect to this Agreement; or
4. as required by applicable Law, rule, regulation or requirement issued by a judicial or administrative authority.

The Market Participant authorizes the provision to OMIClear S.E. of all the required information in accordance with the provisions of REMIT, execution regulation and development regulation, rule or regulation directly or indirectly applicable as well the guidelines established in the TRUM and the MOP ("REMIT and Support Regulation "), as well as between them and any persons or entities that provide services to them, in relation to support for compliance with the reporting requirements.

The data or information provided by one Party to the other under this Agreement will be used by the receiving Party only for the purposes set forth in this Agreement and for no other purpose, without the prior written consent of the sending party. Any data or information and the intellectual property rights contained therein will remain the property of the sending party in such a way that the receiving Party will not have other rights over such data or information in accordance with the provisions of this Contract.

Except as expressly established in this Agreement, any data or information, provided by one Party to the other, will be confidential and the receiving Party will protect that data and information from unauthorized disclosure to third parties.

1. **ENTRY INTO EFFECT AND DURATION**

This Agreement enters into effect on the date of it subscription by OMIClear S.E..

This Agreement shall apply for an unlimited period of time and may be terminated by any of the Parties at any time, subject to 30 days prior written notice.

1. **AMENDMENT AND TERMINATION**
2. OMIClear S.E. may, by 90 days prior written notice to the Market Participant, amend (in whole or part) this Agreement and any operational and procedural documents or processes in respect of reporting delegated under this Agreement to accommodate any change in law, rule, regulation or operational requirement but any such amendment will only be effective if not rejected by the Market Participant by written notice.

If:

* 1. The Market Participant rejects an amendment by written notice, within 30 days after receiving written notice from OMIClear S.E., this Agreement will terminate with effective date 60 days after OMIClear S.E. written notice without such amendment taking effect; or
  2. The Market Participant that does not reject an amendment by written notice within 30 days after receiving written notice from OMIClear S.E., be deemed to have agreed to such amendment to this Agreement.

1. OMIClear S.E. may, by 90 days prior written notice to the Market Participant, modify the Fees included in this Agreement. This modification will only be effective if not rejected by the Market Participant by written notice.

If:

1. The Market Participant rejects the modification by written notice, within 60 days after receiving written notice from OMIClear S.E., this Agreement will terminate with effective date 90 days after OMIClear S.E. written notice without such amendment taking effect; or
2. The Market Participant that does not reject the modification by written notice within 60 days after receiving written notice from OMIClear S.E., be deemed to have agreed to such amendment to this Agreement.

The provisions which expressly or by their nature are intended to remain into force following termination such as, but not limited to, Confidentiality Clause or Governing Law and Jurisdiction shall survive the termination of this Agreement.

In the case the Market Participants ceases his membership at OMIP, this Agreement will terminate immediately.

1. **ASSIGNMENT**

Neither this Agreement nor any rights or obligations under this Agreement shall be assigned by a Party without the prior written consent of the other Party unless such assignment is required under the applicable Legal Provisions. If the assignee is an OMIClear, C.C., S.A. Affiliate such consent shall not be required.

For the purposes of this Agreement “Affiliate” means, any subsidiary of OMIClear, C.C., S.A., subsidiary of a subsidiary of OMIClear, C.C., S.A. or OMIP, a holding company of OMIClear, C.C., S.A. of OMIP or any subsidiary of such holding company,

1. **MISCELLANEOUS**

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 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.

If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect, this will not affect the legality, validity or enforceability in that jurisdiction of any other term of this Agreement.

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.

1. **GOVERNING LAW AND JURISDICTION**

This Agreement is governed by and construed in accordance with Portuguese law. Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail. The use of the English language is however without prejudice to the fact that legal concepts in this Agreement are to be understood as law legal concepts of Portuguese law (and not as common law concepts).

Any dispute between the parties in relation to the interpretation, application or validity of the agreement which cannot be settled amicably shall be brought before the courts of Lisbon.

This Agreement has been duly executed in three (3) original copies, one for each of the undersigned Parties.

Signed in *(NAME OF THE CITY)* on *(DAY AND MONTH) 2015*

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| --- | --- |
| *OMIClear, C.C., Sucursal en España* | *(NAME OF THE COMPANY),* |
| *(COMPANY’S LEGAL REPRESENTATIVE)* | *(SIGNATURE OF THE LEGAL COMPANY’S REPRESENTATIVE)* |
|  | *(POSITION/TITLE OF THE LEGAL COMPANY’S REPRESENTATIVE)* |

|  |  |
| --- | --- |
| *OMIP – Pólo Português, S.G.M.R., S.A. (for the purpose of acknowledge and acceptance of the content of Clauses 5, 6, 7, 8 and 9)* |  |
|  |  |
| *(COMPANY’S LEGAL REPRESENTATIVE)* |  |

**Annex 1**

**Fees**

|  |  |  |
| --- | --- | --- |
| **OMIP Member type** | **Base Value** | **Discount Value** |
| Trading Member | 240 | 180 |
| Trading Member Light | 120 | 90 |

*Units: monthly values (Euro)*

*Companies that subscribe data communication services related to OMIP and OMIE markets together will receive a 20% discount on these rates, while these services are in force. The discount will apply directly on the monthly invoice.*

**ACER fee application**

OMIClear SE as a RRM will make available to the Market Participants the billing estimates that ACER will provide, and will do its utmost to unsure that, in accordance with the estimates made available by ACER, they adjust as accurately as possible the rates estimates and those charged, according to those ultimately issued by ACER.

In the event of a transfer of the REMIT data communication service, by the Market Participant, during the year, the Participant will be obliged to settle the amount due associated with the ACER fee. For this, the OMI RRM will use the information it has at its disposal to proceed with the calculation of the fee due. This fee will be included in the last reporting invoice, issued.