**DATA SELF 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 self 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"**;

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 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 organised market places to the Agency. 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).
4. Market Participant will report market transactions thru a designated RRM.
5. OMIClear is the company responsible for managing the MIBEL Derivatives Market.
6. On the basis of the aforementioned, OMIClear 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 assists the Market Participant by providing data in order to the Market Participant 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 OMIClear.

1. **DATA TO BE AVAILABLE**

OMIClear shall make available thru a FTP service and the contracts of the market participant resulting from its intervention in the markets managed by OMIClear.

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

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

1. **TIMING OF THE REPORTING**

Details of contracts shall be available no later than 4 hours after the closing of the continuous phase of the trading session.

1. **MARKET PARTICIPANT ACKNOWLEDGEMENTS**

The Market Participant acknowledges and agrees that:

(a) The Market Participant remains solely responsible and liable for submission of all data subject to the reporting obligation;

(b) Without prejudice to any other actions that OMIClear may take, OMIClear 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.

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

(d) 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**
2. OMIClear shall, at all times, perform its obligations and exercise discretion under this Agreement with reasonable care, provided that OMIClear shall not be required to do or cause to be done anything which
   1. is not permitted or is otherwise contrary to or inconsistent with the operating procedures of OMIClear; or
   2. is contrary to any law, rule or regulation or OMIClear is otherwise prevented from doing by any law, rule or regulation.
3. subject to the remaining provisions of this Clause OMIClear, shall not have any liability to the Market Participant (or any person claiming under or through it) whether in contract, tort (including negligence), breach of statutory or regulatory duty or otherwise, for:
   1. any losses, damages, fines, penalties, costs, expenses or other liabilities (including legal and other professional fees) (hereinafter “Losses”) arising directly from, or in connection with:

* the OMIClear's provision of, or the Market Participant's use of, the services agreed to be provided by the OMIClear under this Agreement;
* any claims, actions, acts, omissions or failures of any third party.
* OMIClear's performance of its obligations or exercise of its rights under this Agreement;
* the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which OMIClear uses or intends to use in the performance of its obligations or exercise of its 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 misconduct or fraud of OMIClear. Notwithstanding the foregoing liability due to a gross negligence shall be limited to the annual amount effectively paid each year by the Market Participant according to the Agreement;

or for

1. any indirect or consequential Losses or for any direct or indirect loss of business, profits, anticipated savings or goodwill.
2. The parties agree that this clause represents a fair and equitable position.
3. **PROCEDURES**

OMIClear shall guaranty the accurateness of the Data and that it observes the fields and formats required by the Agency. In particular, OMIClear shall ensure the security, confidentiality and completeness of information. OMIClear shall also 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, each OMIClear Affiliate and the directors, officers, employees, contractors and agents of OMIClear 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 and/or each OMIClear Affiliate by the Market Participant, including but not limited to all information included in any data made known to OMIClear and/or each OMIClear Affiliate by the Market Participant; or
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.
4. **FEES**

OMIClear will charge the market participant with the fee defined in OMIClear price list.

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.
5. **ENTRY INTO EFFECT AND DURATION**

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

1. OMIClear 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, this Agreement will terminate with effective date 90 days after OMIClear 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, 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.

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. lf the assignee is an OMIClear Affiliate such consent shall not be required.

For the purposes of this Agreement “Affiliate” means, in relation to any Person, a Subsidiary of that Person or a Holding Company of that Person or any other Subsidiary of that 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.

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.

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 two (2) 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),* |
|  | *(SIGNATURE OF THE LEGAL COMPANY’S REPRESENTATIVE)* |
| *(COMPANY’S LEGAL REPRESENTATIVE)* | *(POSITION/TITLE OF THE LEGAL COMPANY’S REPRESENTATIVE)* |