**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), as amended from time to time)***

This Data reporting agreement (“**Agreement**”) is made between

OMIP – PÓLO PORTUGUÊS, S.G.M.R., S.A., a company incorporated and existing under the laws of Portugal, with registered office at Avenida Casal Ribeiro, n.º 14, 8.º piso, 1000-092 Lisboa, parish of Arroios, municipality of Lisbon, registered with the Commercial Registry Office of Lisbon, Portugal, under sole registration and taxpayer number 506533786, with the share capital of EUR 2,500,000.00, hereinafter referred to as “**OMIP**";

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**”

OMIP, 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. On 07 May 2024, entered into force Regulation (EU) No. 2024/1106, of 11 April 2024, as regards improving the Union’s protection against market manipulation on the wholesale energy market, which notably amends Regulation (EU) No. 1227/2011 of the European Parliament and of the Council and certain (“**REMIT II**”).
3. According to article 8 of Regulation (EU) No. 1227/2011, market participants are obligated to report to the Agency for the Cooperation of Energy Regulators (hereinafter “**the** **Agency**” or “**ACER**”) certain information regarding wholesale energy transactions, including orders to trade, on a regular basis.
4. In what concerns to wholesale energy products traded at an organised marketplace (“**OMP**”), the data relating to the orderbook shall be directly provided to ACER by the OMP at which such products are traded at or by third parties acting on their behalf.
5. [•] is a market participant of the power and natural gas derivatives market operated by OMIP (“**OMIP Derivatives Market**”), an organised marketplace for purposes of Article 2(20) of REMIT II.
6. OMIClear S.E., an entity from OMIP’s group, is an authorized RRM which reports to ACER on behalf of OMIP the relevant data of the orderbook regarding wholesale energy products traded at OMIP Derivatives Market.
7. On the basis of the aforementioned, OMIP, OMIClear S.E. and the Market Participant wish to enter into this agreement.

Now therefore, the Parties hereby agree as follows:

1. **PURPOSE**

The purpose of this agreement is to set out the terms and conditions applicable to the provision to ACER of the information on transactions of wholesale energy products that the Market Participant is obligated to report to ACER regarding of this Agreement in accordance with REMIT (the “Market Participant’s Data”).

1. **FULLFILMENT BY OMIClear S.E AS RRM**

OMIClear S.E., in its capacity as RRM, shall report to ACER the Market Participant’s Data.

1. **CONTRACTS TO BE REPORTED**

OMIClear S.E. shall report to the Agency the Market Participant’s Data resulting from its participation in the **OMIP Derivatives Market**.

The Market Participant’s Data shall refer to data relating to the order book, in respect of wholesale energy products traded by the Market Participant on OMIP’s Derivative Markets, and comprise all information that is required for such purpose, and that may be legally required, at any time, including, but not limited to, matched and unmatched orders executed on the OMIP platform by the Market Participant.

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

1. **TIMING OF THE REPORTING**

The Market Participant’s Data shall be reported 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) It will remain solely responsible and obliged to submit all data subject to the reporting obligation that is not included in the the Market Participant’s 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, as amended from time to time, and in accordance with article 10 (2) of Commission Implementing Regulation (EU) No. 1348/2014 of December 17, 2014.

 (e) The reporting obligation and, accordingly, the services to be provide under this Agreement, remain at all times subject to change as a result of further regulatory developments and guidance.

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 Market Participant’s Data provided to ACER under this Agreement.

OMIClear’s S.E. and, if and as applicable, OMIP’s 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. and/or OMIP cannot be required to perform, directly or indirectly, any act that is not allowed or is incompatible or contrary to their operational procedures, or is contrary to any regulatory, judicial or administrative provision or whose performance is otherwise prohibited to OMIClear S.E. and/or OMIP.

OMIClear S.E. and/or OMIP shall not be held liable towards the Market Participant (or any person who claims by virtue or through it), whether on a contractual or extra-contractual basis, for the unauthorised interception or access by a third party to any kind of information or Market Participant’s Data, except to the extent that such events result from gross negligence, wilful misconduct, or fraud of OMIClear S.E. and/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.

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; or
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 the 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/or 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**

For the reporting services rendered under this Agreement, OMIClear S.E. will directly 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 S.E. 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 REMIT, as amended from time to time.

OMIClear S.E. as a RRM will make available to the Market Participant the billing estimates that ACER will provide, and will do its utmost to ensure 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.

Termination of the Agreement during the year does not discharge the Market Participant from the obligation to settle the amount due associated with the ACER fee. For this, the RRM will use the information it has at its disposal until the moment of termination to carry out the calculation of the fee due. This fee will be included in the last reporting invoice issued.

1. **CONFIDENTIALITY**

All Market Participant’s Data submitted to ACER in the context of this Agreement, as well as any and all data or information provided by one Party to the other, except as expressly established in this Agreement, shall be considered confidential (“**Confidential Information**”), and the receiving Party will protect that Confidential Information from unauthorized disclosure to third parties.

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

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

The Parties agree 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. and OMIP, if and as applicable, of all the required information in accordance with the provisions of REMIT, as amended from time to time, the execution regulation and the development regulation, and any other rule or regulation directly or indirectly applicable, as well the guidelines established in the Transaction Reporting User Manual and the Manual of Procedures on transaction data, fundamental data and inside information reporting ("**REMIT and Support Regulation**"), as well as of all the required information as requested and determined 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, including, but not limited to, Data, 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 Agreement.

1. **ENTRY INTO EFFECT AND DURATION**

This Agreement enters into effect on the date of its execution by OMIClear S.E. and OMIP.

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. Without prejudice to ongoing reporting of Market Participant's Data regarding transactions not yet reported and fees payment obligations to be settled, this Agreement shall terminate automatically on the date on which the Market Participant ceases to be a member of the OMIP Derivatives Market.
3. 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 the written notice from OMIClear S.E., this Agreement will terminate, such termination becoming effective 90 days after OMIClear S.E.’s written notice, without such modification 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., it is deemed to have agreed to such modification to this Agreement, and the modification, as proposed by OMIClear S.E., will take effect immediately.
3. The Parties undertake to agree on the adjustments to the Agreement which may be required to comply with any mandatory rules before the latter become applicable.

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

In the case the Market Participant ceases its 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 Parties, unless such assignment is required under the applicable Legal Provisions. If the assignee is an OMIP and/or OMIClear, C.C., S.A. Affiliate such consent shall be deemed provided if the Market Participant does not oppose to such assignment within 30 days upon being served an assignment written notice.

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

1. **MISCELLANEOUS**

This Agreement constitutes the entire agreement and understanding of the Parties with respect to its object 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) 2024*

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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)* | *(POSITION/TITLE OF THE LEGAL COMPANY’S REPRESENTATIVE)* |

|  |  |
| --- | --- |
| *OMIP – Pólo Português, S.G.M.R., S.A.* |  |
| *\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_* |  |
| *(COMPANY’S LEGAL REPRESENTATIVE)* |  |
| *(POSITION/TITLE OF THE LEGAL COMPANY’S 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 services, by the Market Participant, during the year, the Market 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 until the moment of termination to proceed with the calculation of the fee due. This fee will be included in the last reporting invoice issued.