

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 (Bilateral)¹

THIS AGREEMENT is dated as of [dd – mm – yyyy] and is made BETWEEN:

- (A) Etpa B.V. (the “OMP”); 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 REMIT² and Article 6(1) of the Implementing Acts³ 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) This Agreement constitutes a data reporting agreement for the purposes of Article 6(1) of the Implementing Acts.
- (5) The Market Participant and the OMP must use a registered reporting mechanism to deliver Trade Data to ARIS⁴.

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.

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.

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.

⁴ Trade Data must be submitted to ACER using a registered reporting mechanism (“RRM”). 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. In this form of agreement it is anticipated that all RRM services will be covered by a separate agreement with the relevant RRM.

IT IS AGREED as follows:

1. Interpretation

- (a) **Definitions.** The terms defined in Clause 19 (*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).
- (b) **Inconsistency.** This Agreement shall take precedence over any other agreements in place between the Parties, including (without limitation) any general OMP 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.

2. Reporting Services

- (a) The Market Participant requests, appoints and authorises the OMP to submit, or procure the submission of, 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 Clause 2(b) to the Relevant RRM and ACER on the Market Participant’s behalf.
- (b) Subject to Clause 2(c) below, the OMP shall report, or procure the reporting of, 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:
 - (i) Standard Contracts⁵ entered into by the Market Participant through the OMP for the supply of electricity or natural gas (“**Relevant Standard Contracts**”);
 - (ii) 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
 - (iii) Any Lifecycle Data, where such Lifecycle Event is concluded through the OMP (“**Relevant Lifecycle Data**”),(together the “**Relevant Trade Data**”)⁶.
- (c) Unless otherwise agreed in writing between the Parties, if the OMP is unable to report, or procure the reporting of, all or some of the Relevant Trade Data because it has not established the required relationship with the Relevant RRM or such other registered reporting mechanism that the Market Participant intends to use for REMIT reporting, then the OMP shall provide the Market Participant with all such Relevant Trade Data in the applicable electronic format specified in the MoP as soon as reasonably practicable and in any event in sufficient time so as to enable the Market Participant to report such Relevant Trade Data to ACER by the Standard Contract Reporting Deadline.⁷

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.

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.

⁷ This is a fall-back provision to enable MPs to obtain data from OMPs directly where the OMP is not linked to the Market Participant’s preferred RRM.

- (d) If unique reference(s) need to be generated for inclusion in the Relevant Trade Data, the Market Participant agrees that the OMP shall generate such unique reference(s) in respect of [all Relevant Standard Contracts and Relevant Orders / Relevant Orders only]⁸, 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.
- (e) If the OMP does not, or reasonably expects that it will not, report the Relevant Trade Data by the Standard Contract Reporting Deadline, or provide the Relevant RRM with the Relevant Trade Data in time for it to be reported to ACER by the Standard Contract Reporting Deadline, the OMP will notify the Market Participant in writing, giving details explaining the reason(s) for such notification, as soon as reasonably practicable and the Market Participant will be entitled to either report such Relevant Trade Data to a registered reporting mechanism or 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.
- (f) The OMP 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.
- (g) In complying with its obligations under this Agreement the OMP shall have regard to the guidance set out in the TRUM and the MoP.

3. 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 to the Relevant RRM as soon as reasonably practicable and, in any event, so as to enable submission of the Relevant Trade Data to ACER by the Standard Contract Reporting Deadline.

4. Market Participant Obligations

- (a) The Market Participant agrees it will deliver to the OMP the Static Data, as set out in the Annex to this Agreement in a timely manner and keep it up-to-date, notifying the OMP as to any changes in a timely manner to enable the OMP to perform its obligations throughout the life of this Agreement.
- (b) The Market Participant agrees that it shall provide the OMP with any data reasonably requested by the OMP that the OMP (and any party to whom the OMP has delegated any

⁸ Delete as applicable.

⁹ The obligation on the OMP to provide the Market Participant with the unique reference in Clause 2(d) 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.

¹⁰ "Relevant Lifecycle Data" only includes Lifecycle Data where the Lifecycle Event is concluded through the OMP. In this case, the OMP 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.

of its obligations under this Agreement in whole or in part, including for this purpose the Relevant 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 it to be reported to ACER by the Standard Contract Reporting Deadline.

- (c) 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, or procure the reporting of, all of the Relevant Trade Data as a result, the OMP shall submit the Relevant Trade Data in its possession to the Relevant RRM so as to enable submission of that Relevant Trade Data to ACER by the Standard Contract Reporting Deadline.
- (d) 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.
- (e) The Market Participant acknowledges that the OMP may rely on the Static Data or any other data provided by the Market Participant in connection with this Agreement without investigation, provided that the OMP has taken reasonable steps to verify that such data has come from the Market Participant.

5. RRM Transition

- (a) Should the OMP become aware that the Relevant RRM at any time ceases to be registered as a reporting mechanism or cease to be able to access ARIS, the OMP shall provide reasonable assistance to the Market Participant in transitioning to a replacement registered reporting mechanism.
- (b) If the OMP becomes aware of a possible suspension or cessation of the Relevant RRM's access to ARIS, or otherwise reasonably anticipates that the Relevant 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 in writing as soon as reasonably practicable. In these circumstances, the OMP shall provide reasonable assistance to the Market Participant in transitioning to a replacement registered reporting mechanism.

6. Additional ACER Requests

- (a) Each Party shall provide reasonable assistance to the other Party 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).
- (b) 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 screen¹¹. 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.

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 not appear on the OMP's electronic trading screen are subject to mandatory reporting.

7. Responsibility for Data

- (a) Neither Party shall be responsible for failures in the completeness, accuracy or timely submission of any data which are attributable to the other Party.
- (b) The OMP acknowledges that under this Agreement it shall:
 - (i) be responsible for the completeness, accuracy and timely submission of any data which it submits to the Relevant 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
 - (ii) remain responsible for the failures of any Affiliate, any Third Party Service Provider or other party to whom the OMP has delegated any of its obligations (in whole or in part) to provide the Reporting Services under this Agreement

8. Errors

- (a) In relation to Error Reports, the OMP shall:
 - (i) receive and store all Error Reports received from the Relevant RRM 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;
 - (ii) notify the Market Participant as soon as reasonably practicable upon receipt of any Error Reports; and
 - (iii) make all Error Reports and any other relevant communications from ACER available to the Market Participant as soon as reasonably practicable.¹²
- (b) Notwithstanding Clause 8(c) below, and without prejudice to any enhanced service otherwise agreed to be provided by the Relevant RRM, the Market Participant acknowledges and agrees that the OMP is not 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 itself and each of its Affiliates or any Third Party to whom it has delegated all or any part of its obligations hereunder.¹³
- (c) Subject to Clause 8(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.
- (d) In the event of a breach of any of the 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.

¹² This may need to be amended to reflect the functionality of the OMP's systems. This should not cut across any additional functionality/ access to be provided by the OMP (or the Relevant RRM) to enable the Market Participant to check what has been reported on its behalf.

¹³ Of course, the Relevant 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.

9. Use of Third Parties

- (a) The Parties agree that that they each may utilise the services of a Third Party Service Provider to facilitate the submission of Relevant Trade Data or to assist in any other performance by them of their 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 the any Party appoints a Third Party Service Provider, it will notify the other Party in writing of such appointment as soon as reasonably practicable. Where a Party has discretion in selecting a Third Party Service Provider, it will use reasonable care in the selection of the 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 Agreement¹⁴.
- (b) Where the Third Party Service Provider is an Affiliate of the Party appointing it, the provisions of Clauses 11 (*Liability*) and 13 (*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.

10. Market Participant Acknowledgment

The Market Participant acknowledges and agrees that:

- (a) 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 other act or omission of the Relevant RRM; and
- (b) the Reporting Obligation and, accordingly, the Reporting Services, remain at all times subject to change as a result of further regulatory developments and guidance and the OMP agrees to notify the Market Participant as soon as reasonably practicable in writing upon becoming aware of any such change.

11. Liability

- (a) The OMP shall, at all times, perform its 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.
- (b) Notwithstanding any other provision of this Agreement but subject to the remaining provisions of this Clause 11 (*Liability*), the OMP and its 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:
 - (i) the provision of, or the Market Participant's use of, the Reporting Services agreed to be provided by the OMP under this Agreement;
 - (ii) 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

¹⁴ Depending on the type of Third Party Service Provider used, the Parties may want to consider further language relating to the level of service provided by the Third Party Service Provider.

Provider not to permit the OMP to submit Relevant Trade Data via the Third Party Service Provider on behalf of the Market Participant);

- (iii) the OMP's performance of its obligations or exercise of its rights under this Agreement and/or the use by it of a platform, system, interface or other technology provided by any Third Party Service Provider;
- (iv) the failure of any platform, system, interface or other technology, including any internal platform, system, interface or other technology, which the OMP uses or intends to use in the performance of their obligations or exercise of their rights under this Agreement; or
- (v) 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, any of its Affiliates, any Third Party Service Provider or any other person to whom the OMP has delegated the performance of any of its obligations under this Agreement or any of their respective directors, officers, employees, contractors or agents.

- (c) 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.
- (d) The Parties agree that this Clause 11 (*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.

12. 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.

13. Confidentiality and Ownership of Data

- (a) 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:
 - (i) 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 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

- (ii) to and between the other Party and the Relevant RRM, or any persons or entities who provide services to such other Party, in each case, in connection with and in furtherance of compliance with such Reporting Requirements by either Party.

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.

- (b) Any data or information provided by one Party to the other 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.
- (c) Other than as expressly provided for in this Agreement, any data or information provided by one Party to another 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.

14. Personal Data

- (a) Each Party shall, in connection with this Agreement:
 - (i) comply in all respects with all applicable data protection laws and regulations (together, the "**Data Protection Laws**"); and
 - (ii) not, by any act or omission, intentionally place any other Party in breach of the Data Protection Laws.
- (b) 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:
 - (i) process those personal data only on in accordance with the instructions of the other Party; and
 - (ii) 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.

15. Amendment and Termination

- (a) Subject to Clause 15(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 15 are subject to Clause 17 (Notices).
- (b) Notwithstanding Clause 15(a) above, the OMP may, by written notice to the Market Participant, 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 accommodate any change in law, rule, regulation or operational requirement of ACER. Any such amendment will only be effective if not rejected by the Market Participant by written notice 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 17 (*Notices*) (the “**Rejection Notice Deadline**”) . If:

- (i) the Market Participant rejects an amendment by written notice, this Agreement will terminate without such amendment taking effect¹⁵ 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 17 (*Notices*) or such earlier date as may be agreed in writing between the Parties; or
 - (ii) the Market Participant does not reject an amendment by written notice, the Market Participant will be deemed to have agreed to such amendment to this Agreement.
- (c) Subject to Clause 15(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 17 (*Notices*).
- (d) A rejection notice from the Market Participant will only be effective if delivered to the OMP on or before the Rejection Notice Deadline.
- (e) If the Market Participant 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 17 (*Notices*), unless otherwise agreed in writing between the Parties.
- (f) Any Party may terminate this Agreement either:
- (i) immediately upon written notice in the event of the insolvency of the other Party; or
 - (ii) 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 17 (*Notices*).
- (g) Except as provided otherwise in this Clause 15, any Party may terminate this Agreement by giving 3 months’ prior written notice to the other Party in accordance with Clause 17 (*Notices*).
- (h) 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.
- (i) The provisions of Clauses 11 (*Liability*), 13 (*Confidentiality and Ownership of Data*), 16 (*Miscellaneous*), 18 (*Governing Law and Jurisdiction*), as well as this Clause 15 (*Amendment and Termination*) shall survive the expiration or termination of this Agreement.

16. 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 16(a)(ii), and (b), at all times until the termination of this Agreement:

¹⁵ The Parties may wish to include wording to permit the OMP to withdraw a rejected amendment within a set period.

- (a) **Consideration.** Each Party hereby agrees and acknowledges that it is entering into this Agreement in consideration of:
- (i) the mutual representations, warranties and covenants contained in this Agreement;
 - (ii) other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged by each of the Parties).
- (b) **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.
- (c) **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:
- (i) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - (ii) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.
- (d) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.
- (e) **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.
- (f) **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.
- (g) **Transfer.** Neither Party may transfer or assign any interest or obligation in respect of this Agreement without the prior written consent of the other Party. Any purported transfer that is not in compliance with this Clause 16(g) will be void.
- (h) **Schedule.** Contact details for each Party and any additional terms in respect of the Reporting Services are set out in the attached Schedule 1.

17. Notices

- (a) **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 17(b)) and will be deemed effective as indicated:
- (i) if in writing and delivered in person or by courier, on the date it is delivered;
 - (ii) 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);
 - (iii) 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;
 - (iv) if sent by electronic messaging system, on the date it is received; or
 - (v) 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.

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

18. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement shall be exclusively governed by and construed in accordance with the laws of England and Wales.
- (b) **Jurisdiction¹⁶.** 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:
- (i) submits to:
 - (A) the non-exclusive jurisdiction of the English courts if the Proceedings involve a a court that is covered by the Brussels Regulation or the 2007 Lugano Convention; and
 - (B) 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;
 - (ii) 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

¹⁶ 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.

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

- (iii) 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.
- (c) **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.

19. Definitions and Construction

(a) 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 14 of this Agreement.

"Error Reports" means notifications generated by ARIS and sent in response to a data submission made 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 a Relevant 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 18 (*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)¹⁷.

"Relevant Trade Data" has the meaning given to it in Clause 2(b).

"Relevant RRM" means the registered reporting mechanism specified in Schedule 3 of this Agreement, or such other registered reporting mechanism as may be agreed in writing between the Parties from time to time.

¹⁷ 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.

"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).

"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 in 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.

(b) **Construction**

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

- (i) a Party or any other person includes its successors in title, permitted assigns and permitted transferees;

- (ii) 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, self-regulatory or other authority or organisation; and
- (iii) 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

B0005193M.NL

By: Etpa B.V.

Name: M.J. Lensink

Title: CEO

Date:

.....

Market Participant

.....

(ACER registration number, if available)

By:

Name:

Title:

Date:

Schedule 1

Contact Information

With reference to Clause 17 (*Notices*), the contact details for all communications in connection with this Agreement are:

- (a) with respect to the OMP, M.J. Lensink, Arlandaweg 92 unit 14.6, 1043EX ; and
- (b) with respect to the Market Participant, _____.

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).

Schedule 3
Relevant RRM

ⁱ Etpa B.V