

**ROMANIAN GAS AND ELECTRICITY MARKET OPERATOR  
OPCOM S.A.**

**PARTICIPATION AGREEMENT  
FOR THE DAY-AHEAD MARKET**

**REVISION 5**

*Translation provided for convenience only*

**Translation disclaimer:**

Please note that this translation is provided for convenience only. In case of discrepancies, the Romanian wording shall govern.

This translation shall be used under no circumstances as the Participation Agreement template for signing with the registration purpose. For registration purpose Participation Agreement as well as any attached addendum concluded in any circumstances will be the template provided by OPCOM S.A. in Romanian only and endorsed by ANRE.

## PARTICIPATION AGREEMENT FOR THE DAY-AHEAD MARKET (DAM)

The contractual parties

**THE ROMANIAN GAS AND ELECTRICITY MARKET OPERATOR "OPCOM" S.A.**, with registered office in 16-18 Hristo Botev Blvd., Sector 3 Bucharest 030236, Romania, registered with the Bucharest Trade Registry Office under number J40/7542/2000, Fiscal Registration Code 13278352, fiscal attribute RO, IBAN code RO59 RNCB 0074 0292 1737 0032 ..... opened with the Banca Comercială Română ..... branch Sector 3 ..... Holder of the Licence 407 issued by the Regulatory Authority in Energy field for activities of electricity market operator, legally represented by ..... CEO and by ..... CFO

In its capacity of administrator of the Centralised Day-ahead electricity Market and counterparty for the electricity sale-purchase transactions concluded on this market, hereinafter called "**OPCOM S.A.**"

And

(<sup>1</sup>) ..... with registered office in ..... registered with the Office of the Commercial Register from ..... under no. .... Fiscal Registration Code no. .... and fiscal attribute ..... IBAN code ..... opened with ..... branch ..... Holder of ..... no. .... issued by the National Regulatory Authority in Energy, legally represented no. .... legally represented by ..... and by ..... and as .....

<sup>1</sup> To be filled in by the applicant, Romanian legal person

(<sup>2</sup>) ..... with registered office in  
..... registered  
at ..... under  
no ..... Fiscal Registration Code no.  
..... other identification data  
.....,

Holder of<sup>3</sup> .....  
legally represented by .....and  
by.....and as  
.....and  
as.....

As Participant to the Day-ahead Market,  
Hereinafter called "DAM Participant",  
Severally called "Party" and jointly "Parties"

## Article 1 OBJECT OF THE AGREEMENT

The object of the Convention is the provision by OPCOM S.A. of the services of organization and administration of the Market for the Next Day (DAM) with the observance of the mechanism of price coupling of the markets and the performance, by the Participant of the DAM, of sale-purchase transactions of electricity at positive or negative prices on this market OPCOM SA as a counterparty, in accordance with the primary and secondary legislation applicable to this market.

## Article 2 THE DAM PARTICIPANTS' RIGHTS

- a) To carry out electricity transactions individually or in aggregate
- b) In the case of aggregate participation, the aggregator / aggregate entity is the participant that trades electricity and which has full rights under this "Convention on Participation in the DAM", as well as those provided for in national and / or European Union regulations corresponding to market participation. electricity;
- c) To access the Trading System of the DAM and to introduce offers for sale and / or offers to buy electricity on the DAM (in CET hours) at positive or negative prices, within the value of the validation guarantee, according to the daily bidding schedule;

<sup>2</sup> To be completed by the applicant, a foreign legal entity

<sup>3</sup> It will be completed with the type of license, the number / date of granting, respectively the ANRE decision granting the right to carry out in Romania the supply / trader activity, as the case may be, and the number / date of granting the decision

- d) To use a letter of bank guarantee of payment, unique for DAM and Intra Day, which will have specified in its content that it is used for the two electricity markets;
- e) To modify or cancel their offer / offers for electricity during the bidding hours, before the closing time of the DAM on the respective trading day;
- f) To receive from OPCOM S.A., through the DAM Trading System, the confirmation of the offer validation / information regarding the offer invalidation;
- g) To issue and transmit to OPCOM S.A., the monthly invoices (in CET hours) for the electricity sales transactions, the monthly invoices related to:
  - the quantity and value of electricity sold on DAM at positive prices;
  - the amount of electricity sold on DAM at negative prices, considered free delivery;
  - provision of services for the purchase of electricity at negative prices from OPCOM S.A .;
- h) To decide to withdraw on its own initiative from DAM based on a written notice sent to OPCOM S.A.

### **Article 3 THE DAM PARTICIPANTS' OBLIGATIONS**

- a) To comply with the provisions of this Convention on DAM Participation, the regulations and procedures in force relating to the operation of the DAM and the User Guide for the DAM participant.
- b) To transmit to OPCOM S.A. official fax communication on the change of the BRP that has assumed the responsibility of balancing for its transactions concluded on DAM
- c) To conclude the SEPA Direct Debit Mandate (according to the model in the *Procedure regarding the receipts and payments related to the transactions on the DAM* ) with its settlement bank, which will ensure the registration of the document in TRANSFOND, and to send the scanned document OPCOM SA, in the situation where it intends to introduce purchase offers at positive prices and / or sale offers at negative prices;
- d) To carry out all the necessary actions with its own Guarantee bank so that OPCOM can receive from the Central account bank, no later than 12:00 one banking weekday before the first day when the DAM Participant intends to submit purchase offers, the bank guarantee letter of payment issued in favour of OPCOM and to transmit to OPCOM the nominal distribution of its amount between the DAM and the IDM in case of unique guarantee letter for the two markets, on the terms specified in the *Procedure for the constitution, verification and use of financial (guarantees) collaterals for participation on the Day Ahead Market*;

- e) To send to OPCOM S.A. the nominal distribution of the value of the letter of bank guarantee of payment between DAM and IDM, if it is unique for the two markets, within the terms specified in *the Procedure for the establishment, verification and use of financial guarantees for participation in DAM*;
- f) To ensure the financial availabilities necessary to debit its account opened with the Settlement Bank, at the value requested by OPCOM S.A. by direct debit instruction calculated according to the Daily Settlement Notes and to document, monthly, the collection of rights and payment of obligations, in equal value, reciprocal, by accessing the clearing / settlement mechanisms provided in the *Procedure on receipts and payments related to transactions on the DAM* and within the deadlines set out in the SEPA Direct Debit Mandate;
- g) To communicate OPCOM S.A. the identification data of the bank account opened at a commercial bank in Romania that wishes to be credited with the value of the net collection rights;
- h) To accept as firm commitments the Transaction Confirmations and the Physical Notifications (in CET hours) for every settlement interval of 15 minutes related to the transactions concluded on DAM;
- i) Not to modify / delete the hourly / block offers already introduced until the closing time of the DAM on the time intervals not affected by reaching / exceeding the threshold prices, at the secondary auction;
- j) Not to introduce block offers that contain time intervals unaffected by reaching / exceeding the threshold prices, at the secondary auction;
- k) To bid in order to improve the market situation in case of the start of the secondary auction and not to bid, within the secondary auction, for other time intervals than those for which the threshold price level has been reached;
- l) To pay in full the applicable tariffs established in accordance with the regulations in force (including the equivalent value of VAT, if applicable):
1. In the case of registration of the aggregator / aggregate entity combining electricity produced from several sources, the application of the tariff management component practiced by the NEMO is made on the basis of the total installed power of the aggregate generation capacities;
  2. In case of registration of the aggregator that combines the tasks of several final customers, the application of the tariff administration component practiced by the NEMO is made based on the sum of the approved powers of the consumption places of the aggregated final customers;

- m) The aggregate entity / aggregator communicates to the NEMO the list of the aggregate producers / aggregate final customers and completes Annex 3 / 4, as appropriate, to this Participation Agreement, which includes the list of the producers / final aggregate customers, the installed capacity of each producer / the maximum power of the place(s) of consumption of each end customer and the signature of the legal representative of the producer / end customer / participant designated as aggregator / aggregate entity. The aggregator / aggregate entity notifies OPCOM S.A. whenever list changes occur;
- n) In the case of aggregate participation, the aggregator / aggregate entity is the participant that trades electricity and which has full obligations under this "Convention on DAM" as well as those provided for in national and / or European Union regulations corresponding to market participation. electricity;
- o) To inform OPCOM SA, in case the identification data specified in this Convention for participation in DAM is modified, regarding the legal form, the name of the company, the address of the registered office, the license number coded by ANRE, to send the supporting documents in this respect; to conclude with OPCOM SA an Additional Act to this Convention which shall record the amendments which have occurred;
- p) To communicate in writing to OPCOM S.A. any modification of the identification information related to the IBAN Code, as well as the modification / revocation of the SEPA Direct Debit Mandate at least three working days before their entry into force;
- q) To update without delay the necessary contact data provided according to the *Procedure regarding the registration of the participants in the centralized electricity markets administered by OPCOM S.A .;*
- r) To ensure, in order to participate in this market, the development of correspondence / discussions with the representatives of OPCOM S.A. in Romanian.

#### **Article 4 OPCOM S.A. RIGHTS**

- a) To monitor the validity period of the letter of bank guarantee of payment issued at the order of the DAM Participant in favor of OPCOM S.A. and invalidate the offer / offers to buy at positive prices and / or the offer / offers to sell at negative prices introduced by the DAM Participant if the validity of the letter of bank guarantee has not been extended within the time limits set in the *Procedure for setting up, verification and use of financial guarantees for participation in the DAM;*
- b) To monitor the value of the letter of bank guarantee of payment and to calculate the level of the value of the validation guarantee / available and to invalidate the respective offer / offers introduced by the DAM Participant whose value exceeds the value of the validation guarantee / available in accordance with the provisions of the *Procedure regarding the establishment, verification and use of financial guarantees for participation in the DAM;*

- c) To request the DAM participant to provide a financial guarantee before the respective DAM participant submits offers to buy at positive prices or offers to sell at negative prices; the defaulting participant is not obliged to provide financial guarantees, but takes all measures so that the settlement deadlines are not exceeded due to the lack of cash in its settlement accounts;
- d) To cancel the bids of the DAM Participant (except in case of non-compliance with the provisions of the regulations for bidding in case of secondary auction), without prior notification of the DAM Participant and without prejudice to the provisions of the *Regulation on the operation of the next day compliance with the price coupling mechanism of the markets*, provided that these offers would be contrary to the bidding rules. OPCOM S.A. may cancel the offers related to the time interval in which the Participant has not assumed or transferred the responsibility of balancing according to the provisions of art. 6.2.36. from the *Operational Procedure on the operation of the DAM*.
- e) To send every working bank day, to the Central Account Bank, the direct debit instruction, corresponding to the net value of the daily payment obligations (including the VAT equivalent, if applicable) of the DAM Participant, registered in the Daily Settlement Note;
- f) To send the request for execution of the letter of bank guarantee of payment to the Central Account Bank, in case it receives from it reports of refusals due to the lack of availability from the DAM Participant's account;
- g) To issue and send monthly invoices (in CET hours) to the Buyer DAM Participant for:
- the quantity and value of electricity purchased at positive prices (including the equivalent value of VAT, if applicable);
  - the amount of electricity sold to the DAM Participant at negative prices during the month of delivery, considered free delivery;
  - the provision of services performed by OPCOM S.A. for the purchase of electricity at negative prices;
- h) To decide, as the case may be, in accordance with the provisions of the *Procedure regarding the registration of the participants in the centralized electricity markets administered by OPCOM S.A.*, in force, the suspension from trading or the revocation of the Registration of the DAM Participant;
- i) To transmit the information requested by the authorized public authorities or the courts regarding the DAM Participant, without the need for the latter's consent, if this is provided for in applicable laws and / or regulations.

## Article 5 OPCOM S.A. OBLIGATIONS

- a) To observe the procedures in force regarding the operation of the Day-ahead Market;
- b) To provide a transaction environment under fair, objective, independent, equidistant, transparent and non-discriminating conditions;
- c) To provide assistance and practical training sessions for the DAM Participant with respect to the utilisation of the DAM transaction system;
- d) To provide the DAM Participant with the *DAM Participant User Guide* by publishing it on the OPCOM site and to inform him, in due time, about its amendment by notification messages published on the main page of the OPCOM site;
- e) To make available to the DAM Participant, the USB access key to the DAM trading system, after collection in the bank account of OPCOM S.A. of the regulated tariff - the administration component and the value of the guarantee for the USB key, as well as after signing the loan agreement;
- f) Enter in the calculation system of the validation guarantee, the value related to DAM in the single bank guarantee letter for DAM and IDM, distributed by the Participant in DAM
- g) To send to the Bank a central account its agreement for the diminution of the value of the letter of bank guarantee if the value resulting from the reduction covers its payment obligations, as well as for the removal of the guarantor from the obligations before the expiry of the bank guarantee letter, if the DAM Participant has no unpaid payment obligations.
- h) To validate the offer / offers of purchase (in CET hours), at positive prices and / or the offer / offers of sale (in hours of CET), at negative prices introduced by the DAM Participant in accordance with the provisions of the regulations in force and the *Procedure for the establishment, verification and use of financial guarantees for DAM participant*;
- i) To cancel the offers of the DAM Participant, at his request sent by email from the declared addresses, in case the DAM Participant cannot connect to the trading system;
- j) To cancel the Participant's offers in the conditions in which they contravene the bidding rules provided in the Operational Procedure regarding the functioning of the DAM and to notify the Participant at DAM regarding the decision of OPCOM S.A. ;
- k) To make available to the DAM Participant who submitted offers for electricity on DAM, Transaction Confirmations and Daily Settlement Notes for electricity transactions made (in CET hours), including through alternative communication channels (e-mail) in case of impossibility of the DAM Participant to access the Trading System;
- l) To make available to the DAM Participant, if it is its own BRP (Balance Responsible Party), or to the BRP that has assumed the balancing responsibility for the DAM Participant, the physical notifications for every settlement interval of 15 minutes corresponding to the transactions concluded on the DAM (in CET hours) by the DAM Participant and to transmits to TSO the physical Notifications for every settlement interval of 15 minutes corresponding to the transactions concluded on DAM (in CET hours), aggregated on each BRP;

- m) To pay, in full, the value of the net payment obligations provided in the Daily Settlement Notes, through payment orders issued for crediting the bank account opened by the DAM Participant at a commercial bank in Romania and to document the collection of duties and payment of obligations, in equal value, reciprocal, by accessing the clearing / regularization mechanisms provided in the *Procedure regarding the receipts and payments related to the transactions on the DAM*;
- n) To notify the DAM Participant through alternative communication channels regarding the impossibility of using the usual means of communication or the non-functioning of the trading system, as well as regarding the resumption of trading;
- o) To update the Register of participants in centralized markets managed by OPCOM S.A. with the data related to the DAM Participant;
- p) To update the Register with information on the letters of bank guarantee of payment;
- q) To publish on its website the secondary legislation regarding the organization and functioning of the DAM and, as the case may be, the revised variants, in force, of it;
- r) To publish on its own website the composition of the aggregator / aggregate entity.

## **Article 6 - CONFIDENTIALITY**

- a) Each party will take the necessary measures in order to not disclose the confidential information provided by the other party and will not disclose it to any third party without the preliminary consent of the other party;
- b) The provision in a) does not apply to the information which:
- i) Has become public other than by breaching the provisions of a);
  - ii) Was known to the receiving party without restrictions on disclosure before receiving it from the issuing party;
  - iii) Has been received from a third party that obtained it legally with no disclosing restrictions;
  - iv) Have to be disclosed/published by the receiving party according to the provisions of applicable legislation and/or regulations;

## **Article 7 FORCE MAJEURE**

- a) The liability is removed when the damage is caused by force majeure or fortuitous case, under the conditions of art. 1351 of the Civil Code. By force majeure, the parties mean any external event, absolutely unpredictable, invincible and unavoidable, and the causes of such events, which occur after the conclusion of this Convention and which cannot be

removed and controlled by either party, making it impossible, in whole or in part, temporarily or permanently, the performance of obligations, including, but not limited to, war (civil or international), fires, floods or other natural disasters, social unrest, revolutions, acts of terrorism, embargoes, changes in legislation or its interpretation, as well as any other cases in respect of which evidence is provided by the competent authority at the request of either party.

- b) The case of force majeure determines the suspension of the obligations of the affected party for the entire period of maintaining the respective event and exonerates the respective party from liability.
- c) The case of force majeure shall have suspensive effect provided that the party affected by force majeure notifies the other party, in writing, of the occurrence and, respectively, termination of the case of force majeure. The party invoking force majeure must notify the other party of the occurrence of force majeure within 10 (ten) days of its production and present a certificate issued by the Romanian Chamber of Commerce and Industry proving the occurrence of force majeure. The party invoking force majeure must also notify the other party of the termination of the case of force majeure within 10 (ten) days of this termination. Failure to notify the occurrence, termination and evidence of force majeure within the above time limits shall result in the obligation to pay damages for damages caused to the other party by failure to make timely notification and/or, as the case may be, failure to fulfill obligations under this Convention.
- d) In the event of force majeure lasting more than 60 days, either Party shall be entitled to terminate this Convention by a written declaration, without further formality and without the need for the intervention of a court or arbitral tribunal.
- e) For the purposes of this Convention, a fortuitous event means an event which cannot be foreseen or prevented by the party called upon to answer, if that event had not occurred, and which makes it impossible for that party to and perform (in whole or in part) the contractual obligations. The fortuitous case concerns events closely related to the activity carried out by the party whose liability is removed, but which could not be foreseen by it.

## **Article 8 RESPONSIBILITY FOR LOSS AND DAMAGES**

- a) One party will not be liable to the other party for direct losses or damages arising from trading on the DAM, provided that it has taken all possible and necessary measures to prevent such losses or damages
- b) Except for wilful fault or deliberate, OPCOM S.A. shall not be liable for any direct and/or indirect or incidental loss or damage caused by and without limitation on the following circumstances:
  - i) Total or partial malfunction or other defect of the DAM trading system, regardless of cause;

- ii) Non-function, suspension or interruption for any cause of the communication means with OPCOM S.A.;
  - iii) The failure of DAM Participants to observe the *Guidelines of DAM trading system's installation and use*;
  - iv) DAM participants have introduced offers with typos into the trading system.
- c) The mutual liability of the parties is removed for indirect losses or damages, arising from trading on DAM.

For the purposes of this clause, references to OPCOM S.A. include, but are not limited to, any contractors, subcontractors, service providers, suppliers, agents, consultants, employees, directors, of OPCOM S.A. which are involved in operations consisting of, but not limited to, the generation, coordination, maintenance, provision of related services relating on the Trading System.

## **Article 9 TERMINATION OF THE AGREEMENT**

- a) The DAM Participant can one-sidedly denounce this Agreement within at least 5 (five) working days from the preliminary written notification sent by OPCOM S.A. in this respect, without impacting on fulfilment of payment obligations existing or in progress at the end date of Agreement;
- b) In case of the Convention is revised by OPCOM S.A., endorsed by ANRE and published by OPCOM S.A. on the website [www.opcom.ro](http://www.opcom.ro), but the revised form is not accepted by the DAM Participant, he may decide to unilaterally terminate the Convention by sending a prior written notification. The termination of the Convention will occur within one (1) week from the date of receipt of the notification by OPCOM S.A., the Convention being applied during this period in the previous version. If within two (2) weeks from the date of bringing to the public notice the amendment of the Convention, the DAM Participant does not unilaterally denounce the Convention, it shall be considered that the DAM Participant fully approves its new content.
- c) This Agreement is considered rightfully repealed without delay and with no need to set deadline for notice, without the interference of the law court and any other preliminary formality as of the date when OPCOM S.A. has been informed that the Licence was withdrawn from the DAM Participant;

## **Article 10 APPLICABLE LAW**

- a) This Agreement is governed and construed according to the Romanian law;

Any misunderstanding or dispute that can occur between the Parties within or in relation to the Agreement execution, including with respect to concluding, executing or repealing it, will be solved amiably within 15 calendar days at the most from the notification date of such misunderstanding and/or dispute. If after such term that can be extended by the Parties' agreement they fail to solve amiably such contractual misunderstanding/divergence, each Party can request to settle the dispute by arbitration of the International Trade Arbitration Court from Romania's Chamber of Commerce and Industry in accordance with the Arbitral procedural rules of such Court. The arbitration place will be Bucharest. The arbitral judgment is final and compulsory;

- b) The place of arbitration will be in Bucharest. The arbitral award is final and binding.
- c) The decision of the International Trade Arbitration Court from Romania's Chamber of Commerce and Industry that will be pronounced by the law court can be read by DAM Participants that are not parties in the dispute, provided the confidential information has been removed from it.

#### **Article 11 FINAL PROVISIONS**

- a) The Parties declare they have been fully informed, have acknowledged and entirely assumed the standard content of the Agreement endorsed by ANRE, published on the site [www.opcom.ro](http://www.opcom.ro).
- b) In the sense of the Agreement, the terms and expressions used herein have the definitions from Annex 1 to the DAM Participation Agreement, revision 2.

Annex 1 – Standard terms of the DAM Participation Agreement, which is integral part of the Agreement

Annex 2 – Operational procedures of OPCOM S.A. regarding the DAM are integral part of the Agreement

Annex 3 – Composition of the aggregator / aggregate entity (integral part of the Convention) - List of aggregate producers.

Annex 4 – Composition of the aggregator (integral part of the Convention) - List of aggregate final customers.

This Agreement has been concluded today ..... in Bucharest at the offices of the ROMANIAN GAS AND ELECTRICITY MARKET OPERATOR OPCOM S.A. in 2 original copies, one for each Party and enters into force on .....

**OPCOM S.A.**

**Participant**

CEO,

.....

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CFO,

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ETSD Director,

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ITD Director,

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Juridical endorsement,

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*Translation provided for convenience only*

**STANDARD TERMS**

**1. ACRONYMS**

ANRE - National Energy Regulatory Agency

DAM - Day-ahead Market

**2. DEFINITIONS**

The terms used in this Agreement have the meaning defined in the Electricity and natural gas law 123/2012 with subsequent amendments. In addition the following terms are defined:

Additionally, the following terms are defined:

- 2.1 Aggregator - market participant involved in aggregation, as defined in art. 2 point 43 of Regulation 943/2019;
- 2.2 Physical notification - Information within the trading system made available to the BRPs that have the responsibility of balancing for the participants in the DAM regarding the quantities of aggregate electricity, traded on the DAM in CET by the members of the respective BRPs, for each settlement interval of 15 minutes of the delivery day considered in EET hours (Romanian time); NEMO transmits, as BRP-DAM Operator, physical notifications to OPE
- 2.3 DAM participation agreement - standardised contract of public nature established by OPCOM S.A. and endorsed by ANRE, which provides the mutual rights and obligations between OPCOM S.A. and each DAM Participant, representing this document;
- 2.4 DAM Participant - licensee or holder of authorisation of establishment requiring a licence to be issued by ANRE, which is during tests, signatory of the DAM Participation Agreement and registered by OPCOM S.A. for the Day-ahead market;
- 2.5 Romanian legal person - any legal person that has been established in accordance with Romania's legislation;
- 2.6 Legal person established according to European legislation - any legal person that has been set up according to the terms and mechanisms provided by European regulations;
- 2.7 Foreign legal person - any legal person that is not Romanian legal person and any legal person established according to European legislation that is not seated in Romania;
- 2.8 Regulated tariff - component of DAM management- regulated tariff charged by OPCOM S.A. and annually applied to each DAM participant that has been registered;

- 2.9 Regulated tariff - component of DAM transactions- regulated tariff charged by OPCOM S.A. to the DAM Participants, both to the electricity amounts sold and to those purchased on the DAM;
- 2.10 Licence/authorisation holder - economic operator holding a Licence/Authorisation issued by ANRE;

**Translation provided for convenience only**

**Operational procedures for the DAM of OPCOM S.A.**

The specific procedures mentioned in this Agreement are OPCOM's Operational procedures elaborated according to the secondary legislation in the electricity field, namely:

- a) Procedure on the registration of participants to the centralised electricity markets managed by OPCOM S.A.;
- b) Procedure regarding functioning of the Day-Ahead electricity Market.
- c) Procedure regarding collections and payments from Day-ahead Market transactions;
- d) The procedure regarding the establishment, verification and use of financial guarantees for the participation in the Day-Ahead electricity Market.

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**Annex 4 to „DAM participation agreement“**

**Aggregator composition - List of aggregate end customers**

<b>Nr. crt.</b>	<b>Final customer name</b>	<b>The power of the place of consumption  [MW]</b>	<b>Signature</b>

**Total Power consumption of place.....[MW]**

**Participant designated as aggregator,**

.....

.....