



**operatorul  
pieței de  
energie  
electrică și  
de gaze  
naturale din  
ROMÂNIA**

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**AGREEMENT ON DATA ACCESSING AND REPORTING**

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## AGREEMENT ON DATA ACCESSING AND REPORTING

This agreement on data accessing and reporting (hereinafter referred to as the "Agreement") is concluded today, ..... (the "Signing Date") by and between:

1. **OPERATORUL PIEȚEI DE ENERGIE ELECTRICĂ ȘI DE GAZE NATURALE "OPCOM" S.A.**, a Romanian legal person with its registered office in Bucharest, 16-18 Hristo Botev Boulevard, District 3, registered with the Office of Trade Registry attached to Bucharest Tribunal under no. J40 / 7542 / 2000, VAT Number 13278352, fiscal attribute RO, IBAN Code ....., opened with ....., ..... branch, holder of License no. 407 issued by the National Energy Regulatory Authority (ANRE) for the activity of electricity market operator and of License no. 1798 issued by the National Energy Regulatory Authority (ANRE) for the performance of the activity of administration of the centralized markets in the natural gas area, duly represented by ....., in capacity as General Manager and by, ....., in capacity as Economic Manager,

in capacity as organized market, hereinafter referred to as "OPCOM"

and

2. ....., a legal person functioning according to the laws of....., with registered office in ....., registered with the Office of Trade Registry attached to ..... Tribunal under no. ...., VAT Number....., fiscal attribute ....., IBAN Code ..... opened with ....., ..... branch, duly represented by ....., in capacity as ..... and by....., in capacity as .....,

in capacity as market participant, hereinafter referred to as the "Market Participant"

hereinafter severally referred to as the "Party" and jointly as the "Parties"

Having regard to

- (A) The provisions of the Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency ("REMIT") according to which all market participants shall report on a regular basis to the Agency for Cooperation of Energy Regulators ("ACER") the details of the wholesale energy contracts,
- (B) The provisions of article 6 of Regulation 1384/2014 for the implementation of REMIT according to which the details of wholesale energy products executed at organized market

places shall be reported through the organized market place concerned or through trade matching or trade reporting systems,

- (C) The fact that the organized market, at the request of a market participant, shall offer an agreement on data reporting,
- (D) The fact that OPCOM was registered as a Reporting Mechanism,
- (E) The fact that the Market Participant is registered with the National Register of Market Participants in the Wholesale Energy Market and with the European Register of Market Participants, being attributed the ACER code mentioned in Annex 2 to the Agreement,
- (F) The request addressed by the Market Participant to OPCOM, included in Annex 1 to this Agreement, to assist it for the fulfillment of its obligations to report to ACER,
- (G) OPCOM's intention to provide access to the trading data and to act in the name and on behalf of the Market Participant reporting the relevant data in its name and on its behalf to ACER, in the conditions of this Agreement,

The Parties have concluded this Agreement in order to establish the conditions in which the above-mentioned operations shall be performed,

#### **Art. 1. OBJECT OF AGREEMENT. TARIFFS**

- a) The object of this Agreement is the provision by OPCOM of the reporting services to ACER ("Reporting Services"), in the name and on behalf of the Market Participant, of the relevant data according to REMIT and, respectively, according to the procedures and standards published by ACER, within the terms imposed by ACER, or of the services of reporting of the details regarding the wholesale energy contracts that have been concluded before the date when the reporting obligation becomes effective ("Backloading Services") or of the services of provision of access to the trading data in the formats of the trading platforms for the Market Participant reporting by another Registered Reporting Mechanism than OPCOM ("Data Accessing Services") (the Reporting Services, the Backloading Services and the Data Accessing Services being hereinafter jointly referred to as the "Services"). To this end, the Market Participant hereby empowers OPCOM specifically to transmit relevant data to ACER, in its name and on its behalf, no other authorizations of the Market Participant being necessary.
- b) The Parties hereby agree that the relevant data shall be the ones mentioned in the Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency ("REMIT") and in the Trade Reporting User Manual (TRUM). For the avoidance of any doubts, the relevant data may be amended depending on regulations and ACER's requests.
- c) This Agreement is concluded by the Market Participant for the provision by OPCOM of the Services demanded by this pursuant to Annex 1 for all the markets administered by OPCOM with which the Market Participant is registered. OPCOM's provision of the demanded Services shall automatically extend to any new market with which the Market Participants registers itself after the conclusion of this Agreement, within each of the two main markets, no other formalities being necessary to this end.

- d) For the services provided by OPCOM, the Market Participant shall pay the tariffs provided by Annex 4 (“Tariffs”).

## **Art. 2. MARKET PARTICIPANT’S OBLIGATIONS**

- a) to comply with the applicable regulations regarding the effective reporting obligations;
- b) to fulfil any and all formalities necessary in order to maintain during this Agreement its registration with the National Register of Participants in the Wholesale Energy Market and with the European Register of Market Participants;
- c) to provide OPCOM with the general information provided by Annex no. 2 to this Agreement;
- d) to inform OPCOM of any amendment of the ACER code specified in Annex no. 2 to this Agreement at the latest five (5) business days prior to the date on which it requests the operation of the amendment on the OPCOM trading platforms; the information shall include both the existing ACER code and the amended ACER code of the Market Participant. If otherwise, OPCOM shall not be liable for the rejection of the relevant data reported in its name to ACER;
- e) to provide OPCOM with any and all necessary information/documents for the fulfillment of the reporting obligations completely, exactly and in due time in the format provided by Annex no. 3 to this Agreement;
- f) to inform OPCOM in the shortest time possible of any errors and/or inaccuracies identified in the trading data accessible to the Market Participants in the formats of the trading platforms or with regard to the information/documents provided to OPCOM;
- g) to inform OPCOM immediately, but no later than 12 (twelve) hours from their occurrence, of any modifications that occur with regard to the data/contracts necessary to be reported in order to allow OPCOM to make the reporting completely, accurately and in due time; OPCOM shall not be liable for the incomplete, inaccurate or unperformed reporting until the established terms in case this situation is determined by the Market Participant, including by its failure to inform OPCOM in real time of any modifications occurring with regard to the data/contracts required to be reported;
- h) to pay the Tariffs according to the provisions of this Agreement;
- i) in case of inappropriate fulfillment or non-fulfilment of any payment obligation provided by this Agreement as incumbent on it, the Market Participant undertakes to pay delay penalties, calculated as a percentage share related to the unpaid amount, starting from the day immediately next to the maturity date and until the date of full reimbursement of the owed amount; the applicable percentage share is the one regulated by the Tax Procedure Code in force at the application date, in the matter of delay penalties charged in case of non-payment of the tax obligations. In accordance with Art. 1.523 of the Civil Code, the Market Participant shall be in default by operation of law by the simple expiry of the term established for the fulfillment of its obligations under this Agreement;
- j) the Parties hereby agree that OPCOM shall be entitled to stay the provision of the Services without any prior notice if the Market Participant has not paid or refused unjustifiably to pay the Tariffs provided by this Agreement;

- k) the Market Participant represents and warrants that each piece of information/ document supplied by OPCOM for the provision of the services shall be true, complete, accurate and not misleading, and OPCOM shall collect the data so received without conducting its own investigations with regard to these, relying on such data for the provision of the Services.

**Art. 3. OPCOM'S OBLIGATIONS**

- a) to comply with the applicable effective regulations regarding the reporting obligations;
- b) to fulfil the necessary formalities in order to maintain its status of Registered Reporting Mechanism;
- c) to provide the Services according to the provisions of this Agreement;
- d) to make sure that the relevant data will be reported to ACER completely, accurately and within the imposed deadlines, provided that these have been communicated to it in due time by the Market Participant, as the case may be;
- e) to inform the Market Participant if the relevant data have not been reported to ACER;
- f) to issue and to transmit the monthly invoice to the Market Participant for the counter value of the tariffs.

**Art 4. TERM, EFFECTIVENESS AND TERMINATION OF AGREEMENT**

- a) This Agreement is concluded for an undetermined term, and shall terminate according to the provisions indicated herein below:
  - (i) if the Market Participant, unjustifiably, refuses or delays by more than 30 (thirty) calendar days the payment of the Tariffs, OPCOM may consider the Agreement terminated automatically, no prior notice to the Market Participant, formal notice of delay or no other prior formality being necessary and without referring to any court of law. The Market Participant shall remain bound to pay the owed and unpaid amounts and to cover any damage thus caused;
  - (ii) in case of non-fulfillment of the obligations by either Party, the other Party may request the Agreement be terminated by written notice sent to the other party, without referring to any court of law and without any other formality, the Agreement being due to terminate as of the date of receipt of the notice by the breaching Party;
  - (iii) either Party may terminate the Agreement unilaterally without any justification, addressing, in this case, a written notice to the other Party, the Agreement being due to terminate in a term of 20 (twenty) calendar days as of the date of receipt of the notice. If the Market Participant is the Party terminating the Agreement unilaterally, this shall remain bound to make the owed and outstanding payments for the Services provided by OPCOM until the moment of termination of the Agreement. The Market Participant shall make these payments immediately after the notice is sent to OPCOM.
- b) This Agreement shall become effective as of the date when this is signed by both Parties, the provision of the Services starting from the date specified in Annex 1.

## **Art. 5 FORCE MAJEURE**

Liability shall be eliminated when damage is caused by force majeure or an unforeseeable circumstance, under art. 1351 of the Civil Code.

## **Art. 6 PARTIES' LIABILITY**

- a) Except for serious fault or willful action, OPCOM shall be held liable for no loss or damage caused by, but without limitation to, the following situations:
  - (i) total or partial malfunctioning or other deficiency of the systems of communication with the Market Participant/ACER, irrespective of the cause that has generated it;
  - (ii) non-functioning, suspension or interruption for any reasons of the means of communication of the Market Participant with OPCOM or of OPCOM with ACER.
- b) For the avoidance of any doubts, the Parties agree that, in any conditions, OPCOM may be bound to cover any damage up to a maximum threshold equal to the Tariff registered and actually cashed for a month of provision of the service.
- c) The Parties agree that OPCOM shall not be held liable in any situation for the Market Participant's failure to comply with OPCOM's and/or ACER's instructions regarding the reporting procedures, including, but without limitation to, the relevant data, the applicable terms etc. At the same time, OPCOM shall not be held liable for the transmission to the Market Participant of erroneous, incomplete, untrue data or of data not complying with the format established by OPCOM by the annexes to this Agreement.
- d) The Parties' mutual liability shall be eliminated for the indirect, incidental losses or damages.
- e) For the avoidance of doubt, the Parties agree that, in any conditions, OPCOM responsibility in accordance with this article 6 for the way the Reporting Services are provided can be drawn starting only with the 30th anniversary of the dates the Reporting Services provided in Annex 1 to this Agreement starts to be implemented, for each category of Reporting Services in part.

## **Art. 7 CONFIDENTIALITY**

- a) The Parties agree to treat as confidential all information they receive or to which they have access during the performance of this Agreement and not to disclose any such information to any third party.
- b) In the interests of clarity, for the purpose of this Agreement, ACER shall not be considered as a third party under letter a) of this Article.
- c) The Parties agree on the fact that any provision referring to confidentiality existing in another/other contracts, agreements and market accession agreement and/or other document/documents that exist or are to exist between the Parties for other purposes than the ones related to this Agreement, assumed by the Parties in what regards the non-disclosure of the data and information to third parties, are not applicable in what regards the disclosure to ACER of the information that is the object of the Services.
- d) The confidentiality obligation shall not apply if:
  - (i) the Party has already held the information prior to its disclosure to the other Party;

- (ii) the information has already been known to the public at the date of its disclosure;
  - (iii) any information necessary to be disclosed for the purpose of attending to the duties of reporting to ACER, in the name of the Market Participant, prior to the date when the Services are required to be provided;
  - (iv) any information is requested in order to meet any legal or regulatory requirements, provided that either Party informs the other Party prior to the supply of such information of such request and analyzes what this is requested to disclose and what can be maintained confidential in certain circumstances.
- e) The provision from Art. 7, letter a) shall apply for an unlimited term, including after the termination of this Agreement.

#### **Art. 8 APPLICABLE LAW**

- a) This Agreement shall be governed and interpreted according to the Romanian law.
- b) Any difference or dispute that may occur between the Parties, within or in relation to the performance of the Agreement, including referring to its conclusion, performance or cancelation, shall be solved amicably, in a term of maximum fifteen (15) calendar days as of the date when such a difference and/or dispute is notified. If upon expiry of such a term, which may be prolonged by the Parties' agreement, these cannot settle amicably the contractual difference/dispute, the dispute shall be solved by the competent court of law from Romania.

#### **Art. 9 FINAL PROVISIONS**

- a) Any subsequent amendments and supplementations to this Agreement must be made in writing and signed by both Parties.
- b) Each Party represents and confirms that it has understood and accepted knowingly all the clauses of this Agreement published on the Internet page [www.opcom.ro](http://www.opcom.ro), with the skills and expertise of a professional in the exercise of their profession, retaining legal, financial or technical advisors as this may have deemed necessary and agrees and accepts specifically each clause provided by this Agreement.
- c) OPCOM shall publish on their webpage both the Romanian variant of this Agreement, and its English variant. In case of any inconsistencies between the two versions, the Romanian variant, signed by both Parties, shall prevail.
- d) The Annexes shall be an integrant part of this Agreement. The contents of Annexes 3 (Form 3a) and 4 to this Agreement shall be completed in a term of 20 (twenty) business days from the signing date of this Agreement. The contents of Annex 3 (Form 3b) to this Agreement shall be completed in a term of 50 (fifty) business days from the signing date of this Agreement.

This Agreement has been concluded today ....., in Bucharest, at the registered office of company OPERATORUL PIEȚEI DE ENERGIE ELECTRICĂ ȘI DE GAZE NATURALE „OPCOM” S.A., in two (2) originals, one original for each Part and shall become effective on .....

**OPCOM S.A.**

**Market Participant**

General Manager,

.....

.....

Economic Manager,

.....

.....

D.I.T. Manager,

.....

.....

Legally endorsed,

.....

.....



Annex no. 1  
Form – Application of Market Participant

Applicant exit no.....

**APPLICATION**

To







Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" S.A.  
16-18 Hristo Botev Boulevard, District 3, Bucharest

1. Company/Certified      Natural      Person/Industrial      Enterprise/Financial      Enterprise  
....., with registered office in  
....., represented by its  
legal representative (general manager, director etc., as the case may  
be)..... and holding the ACER  
code ....., hereby request the provision of the following services by Operatorul  
Pieței de Energie Electrică și de Gaze Naturale "OPCOM" S.A.

Service	Electricity Market <sup>1</sup>	Natural Gas Market <sup>2</sup>
(A) Services of reporting to ACER (" <b>Reporting Services</b> "), in the name and on behalf of the Market Participant, of the relevant data according to REMIT and according to the procedures and standards published by ACER, within the terms imposed by ACER. For the purpose of provision of the Reporting Services OPCOM shall perform the following operations:		

<sup>1</sup> To be checked off by the Market Participant.

<sup>2</sup> To be checked off by the Market Participant.

<ul style="list-style-type: none"> <li>i. Reporting of the data to ACER, including the events of the lifecycle of a contract;</li> <li>ii. Access to the data reported by OPCOM to ACER. These shall be accessible to the participants in ACER XML format, through the OPCOM FTPS server;</li> <li>iii. Access to the confirmations of successful reporting of the data received by OPCOM from ACER. These shall be accessible to the participants in ACER XML format, through the OPCOM FTPS server.</li> </ul>		
<p>(B) Services of reporting of the details regarding the wholesale energy contracts that have been concluded before the date when the reporting obligation becomes effective (“<b>Backloading Services</b>”). For the purpose of provision of the Backloading Services, OPCOM shall perform the following operations:</p> <ul style="list-style-type: none"> <li>i. Reporting of data to ACER, including the events of the lifecycle of an agreement;</li> <li>ii. Access to the data reported by OPCOM to ACER. This shall be accessible to participants in ACER XML format, through the OPCOM FTPS server;</li> <li>iii. Access to the confirmations of successful reporting of the data received by OPCOM from ACER. These shall be accessible to the participants in ACER XML format, through the OPCOM FTPS server.</li> </ul>		
<p>(C) Services of provisions of access to the trading data in the formats of the trading platforms for the market participant reporting through another Registered Reporting Mechanism than OPCOM (“<b>Data Accessing Services</b>”)</p>		

**Note:** The data accessing services is distinctly indicated in order to allow the Market Participant to report also through another Registered Reporting Mechanism than OPCOM. Consequently, the Market Participant that will apply for the provision of the Reporting Service and/or Backloading Service will apply also for the provision of the Data Accessing Service. For the avoidance of any doubts, the Parties agree that, in case, by error, the Market Participant does not request in the table above the provision by OPCOM of the Data Accessing Service, this shall be considered implicitly requested simultaneously with the request for provision of the Reporting Service and/or of the Backloading Service, no other authorizations and/or formalities by the Market Participant and/or OPCOM being necessary. The start date of provision of the Data Accessing Service shall be in this case the same with the start date of the Reporting Service and/or Backloading Service. If these are different, the first occurring date shall be considered.

2. I hereby request the provision by Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. of the services as follows:

Provided Service	Market	From the date of <sup>3</sup> :
Reporting Services	electricity	
	natural gas	
Backloading Services	electricity	
	natural gas	
Data Accessing Services	electricity	
	natural gas	

**Note:** The data accessing services is distinctly indicated in order to allow the Market Participant to report also through another Registered Reporting Mechanism than OPCOM. Consequently, the Market Participant that will apply for the provision of the Reporting Service and/or Backloading Service will apply also for the provision of the Data Accessing Service. For the avoidance of any doubts, the Parties agree that, in case, by error, the Market Participant does not request in the table above the provision by OPCOM of the Data Accessing Service, this shall be considered implicitly requested simultaneously with the request for provision of the Reporting Service and/or of the Backloading Service, no other authorizations and/or formalities by the Market Participant and/or OPCOM being necessary. The start date of provision of the Data Accessing Service shall be in this case the same with the start date of the Reporting Service and/or Backloading Service. If these are different, the first occurring date shall be considered.

Position, legal representative: .....

Legal representative’s last name and first name: .....

Legal representative’s signature: .....

<sup>3</sup> To be filled out by the Market Participant.

Annex no. 2  
Applicant's Data

Name	
Short name	
Registered office	
Mailing address	
Phone number	
Fax number	
E-mail address	
ACER Code	
Persons authorized to represent the applicant	

## Annex no. 3

### Form 3a – Relevant Data and Means of Communication of Relevant Data by the Market Participant

For the provision by Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A., in the name and on behalf of the Market Participant, of the **Reporting Services** – the component referring to the lifecycle of a transaction/contract completely, accurately and in due time, this shall place at OPCOM’s disposal any and all necessary information/documents for the fulfillment of the reporting obligations.

After the signing date of this Agreement, OPCOM will elaborate and communicate to the Market Participant ***Form 3a – Relevant Data and Means of Communication of Relevant Data by the Market Participant (“Form 3a”)***.

Form 3a shall be mandatory for the Parties to the Agreement in a term of 5 (five) business days from the date of its communication by OPCOM to the Market Participant.

The Market Participant may confirm Form 3a in a term of 3 (three) business days from the date of its receipt from OPCOM. The lack of confirmation by the Market Participant does not affect its obligation to use Form 3a from the date of expiry of the term of 5 (five) business days from the date of its communication by OPCOM to the Market Participant.

## Annex no. 3

### Form 3b – Relevant Data and Means of Communication of Relevant Data by the Market Participant

For the provision by Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A., in the name and on behalf of the Market Participant, of the **Backloading Services** completely, accurately and in due time, this shall place at OPCOM’s disposal any and all necessary information/documents for the fulfillment of the reporting obligations.

After the signing date of this Agreement, OPCOM will elaborate and communicate to the Market Participant ***Form 3b – Relevant Data and Means of Communication of Relevant Data by the Market Participant (“Form 3b”)***.

Form 3b shall be mandatory for the Parties to the Agreement in a term of 5 (five) business days from the date of its communication by OPCOM to the Market Participant.

The Market Participant may confirm Form 3b in a term of 3 (three) business days from the date of its receipt from OPCOM. The lack of confirmation by the Market Participant does not affect its obligation to use Form 3b from the date of expiry of the term of 5 (five) business days from the date of its communication by OPCOM to the Market Participant.

## Annex no. 4

### Tariffs

The Tariffs charged for the provision of services shall be the approved ones.