

**Data Reporting Service Agreement**

**about the HUPX reporting based on REMIT**

**of**

**details of wholesale energy transactions executed at HUPX Market**

**(type A1)**

**(hereinafter: “Agreement”)**

concluded between the undersigned:

**HUPX Ltd.**, a private company limited by shares, incorporated under the Hungarian Law with registered office located at 1134 Budapest, Dévai u. 26-28., Hungary and registered under the Company Registration number 01-10-045666 represented by Péter Tóth in his capacity as Chief Executive Officer and Júlia Lobenwein in her capacity as Head of Sales,

hereinafter “**HUPX Ltd.**”,

**and**

\_\_\_\_\_, having its registered office at \_\_\_\_\_, registered under the Company Registry number \_\_\_\_\_,

ACER Registration Code: \_\_\_\_\_

represented by \_\_\_\_\_, in his/her capacity as \_\_\_\_\_,

hereinafter “**Market Participant**”,

HUPX Ltd. and Market Participant hereinafter together referred to as “Parties” or individually referred to as “Party”.

**Preamble**

Pursuant to Article 7 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (hereinafter referred to as „REMIT”) the Agency for the Cooperation of Energy Regulators (hereinafter referred to as „ACER”) shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. In order to fulfil such monitoring activity the ACER shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8 of REMIT.

Pursuant to Article 8 of REMIT market participants, or a person or authority listed in points (b) to (f) of paragraph 4 of REMIT on their behalf, shall provide the ACER (and, where required so, the national regulatory authorities) with a record of wholesale energy market transactions, including orders to trade. The primary purpose of this transaction reporting under REMIT is to enable ACER to efficiently and effectively monitor trading activity in wholesale energy products to detect and to prevent suspected market abuse in order to fulfil the goal of increased integrity and transparency of wholesale energy markets.

Commission Implementing Regulation (EU) No 1348/2014 on data reporting implementing Article 8 (2) and (6) of Regulation (EU) No 1227/2011 (hereinafter referred to as "REMIT IR") defines the detailed rules of the fulfilment of the above data reporting obligation. Based on paragraph 2 of Article 8 of REMIT and Articles 5(2), 10(3) and 11(1) of REMIT IR ACER has prepared a Transaction Reporting User Manual (hereinafter: "TRUM") on the details of reportable information, a Manual of Procedures on transaction and fundamental data reporting (hereinafter: "MoP") on how to report such information and the Requirements for Registered Reporting Mechanisms (hereinafter: "RRM Requirements") on the technical and organisational requirements to become an RRM and so to become entitled to submit the above data reports to ACER. Present Agreement is concluded with the aim and purpose to meet the conditions set out in the above detailed legislation. Therefore any definition not defined in present Agreement shall have the meaning as defined in REMIT, the REMIT IR, the TRUM, the MoP and RRM Requirements, and the stipulations of present Agreement shall be interpreted in accordance with the regulations of the above referred sources of law.

According to Article 6 of REMIT IR market participants shall report details of wholesale energy products executed at organised market places including matched and unmatched orders to ACER through the organised market place concerned, or through trade matching or trade reporting systems. The organised market place where the wholesale energy product was executed or the order was placed shall at the request of the market participant offer a data reporting agreement. Organised markets, trade matching or reporting systems shall be able to provide the information referred to in paragraph 1 of Article 6 of REMIT IR directly to ACER.

HUPX Ltd. holds a license to operate an organised market of electricity in Hungary. On the base of the regulations of the above license HUPX Ltd. operates and ensures the proper functioning of an organised market for electricity called "HUPX Market", which is an organised market place in the meaning of REMIT. Market Participant is trading on HUPX Market as a HUPX Member based on its HUPX Membership Agreement concluded with HUPX Ltd.

HUPX Ltd. is an RRM registered by ACER under the registration number B0000450I.HU in the meaning of Article 11(1) of REMIT IR, and thus entitled and capable to submit data reports of market participants directly to ACER.

The Market Participant, as a HUPX Member has decided to fulfil its data reporting obligation under Article 8 of REMIT in relation to the data of its trading on HUPX Market via HUPX Ltd., as an RRM. In consequence thereof, the Parties hereto now agree as follows.

## **Article 1 Subject Matter of the Contract**

Market Participant hereby requests, appoints and entitles HUPX Ltd. to submit, or procure the submission to ACER of all reportable data set out in Table 1 of the Annex to the REMIT IR in respect of the Market Participant's trading on HUPX Market on the Market Participant's behalf in line with the regulations and conditions set out in REMIT IR, the TRUM, the MoP, the RRM Requirements and present Agreement.

## **Article 2 Start Date of Reporting and Timing of Reporting**

### **2.1 Start Date of Reporting**

According to Article 12 of REMIT IR and section 5.3 of MoP the data reporting based on present Agreement shall be started on the "Start Date of Reporting", which shall be in relation to the reporting of data of contracts concluded and orders placed on HUPX Market:

on the 3<sup>rd</sup> business day after the entry into force of present Agreement, but not earlier than 7<sup>th</sup> of October 2015.

According to Article 7 of REMIT IR details of wholesale energy contracts which were concluded before the date on which the reporting obligation becomes applicable and remain outstanding on that date (hereinafter: "Backloading of Data Reports") shall be reported to ACER within 90 days after the above referred deadline. Parties Agree that the deadline for the performance of Backloading of Data Reports under present Agreement of the data of the Market Participant's trading on HUPX Market shall be:

not later than 5<sup>th</sup> of January 2016.

### **2.2 Timing of Reporting**

As it is defined in paragraph 2 of Article 2 of REMIT IR and explained in point 3.2.5 of the TRUM the term 'standard contract' means a contract concerning a wholesale energy product admitted to trading at an organised market place, irrespective of whether or not the transaction actually takes place on that market place, thus all contracts traded on HUPX Market qualify as standard contracts. Pursuant to Article 7 of REMIT IR details of standard contracts and orders to trade, including for auctions, shall be reported as soon as possible but no later than on the working day following the conclusion, modification, termination of the contract or placement, modification, termination of the order.

HUPX Ltd. undertakes the obligation to perform the Backloading of Data Reports of the data of the Market Participant's trading on HUPX Market as specified in point 2.1 within the prevailing deadline stipulated in point 2.1 above.

## **Article 3 Reportable Data**

### **3.1. Data of trading on HUPX**

From Start Date of Reporting HUPX Ltd. shall report to ACER in line with the stipulations of REMIT IR, TRUM and MoP the following data of the transactions and orders concluded or placed by the Market Participant on HUPX Market:

Details of reportable contracts as defined in Table 1 of Annex 1 of REMIT IR.

As HUPX Ltd. is in possession of these data (or such data are generated by HUPX Ltd.), Market Participant entitles HUPX Ltd. to submit them to ACER by the prevailing reporting deadlines, without any further authorisation or conciliation. In order to avoid any double reporting, the Market Participant shall not report to ACER (via any other RRM or by itself) the data that present point refers to.

### **3.2. Data requested by ACER on an ad hoc basis**

Upon a request from ACER or any relevant national regulatory authority for further information on an ad hoc basis pursuant to and based on Article 7(3) of REMIT IR, HUPX Ltd. shall and is entitled to make available to ACER or any relevant national regulatory authority the required information if HUPX Ltd. has it in its possession without further authorisation from the Market Participant. In case HUPX Ltd. is not in the possession of such required information, HUPX Ltd. shall forward the request to the Market Participant via email and set a reasonable deadline for answering.

### **3.3. Preliminary registration or authorisation**

In case the Market Participant does not possess any identification code or registration required by ACER for the start and continuity of the data reporting under this Agreement, and also in case ACER requires separate authorisation or entitlement from the Market Participant to HUPX Ltd. for the representation of Market Participant by HUPX Ltd. and reporting by HUPX Ltd. on Market Participant's behalf, the Market Participant shall take all necessary steps and efforts, including issuing all necessary statements in order to recover and remedy such incompleteness as soon as possible.

## **Article 4 Process of reporting**

### **4.1. Access to data reporting platform and SFTP Server**

In order to enable the Market Participant to access the information reported by HUPX Ltd. to ACER based on this Agreement in raw XML format (i.e. without sign, encryption, etc.) and also to monitor the data reporting process executed by HUPX Ltd. on behalf of the Market Participant, HUPX Ltd. shall operate a data reporting platform, which is available at the following link via the internet: [www.rrm.hupx.hu](http://www.rrm.hupx.hu)

Beside the data reporting platform HUPX Ltd. will also operate a secure file transfer protocol based file server ("SFTP Server") which allows the Market Participant to access the information reported by HUPX Ltd. to ACER based on present Agreement in raw XML format (i.e. without sign, encryption, etc.), and the receipt files of performed reports issued by ACER. The Market Participant can reach and access such SFTP Server with a login name and password via the internet on the following link: [sftp.hupx.hu](http://sftp.hupx.hu)

Market Participant shall obtain a login name and password for the secure access of the data reporting platform and of the SFTP Server operated by HUPX Ltd. HUPX Ltd. shall insure that it discloses the login name and password only to contact persons of the Market Participant appointed by the Market Participant in Article 12 below, and that the data reporting platform and SFTP Server containing the information related to the trading of the Market Participant on HUPX Market will be accessible only by the login name and password. After the receipt of the login name and password issued by HUPX Ltd., the Market Participant shall take all responsibility of the safe handling of such login name and password in order to protect the secure access to the data reporting platform and to

the SFTP Server containing the information related to the Market Participant's trading on HUPX Market and data reporting under present Agreement. For operational purposes HUPX Ltd. will have dedicated internal users who can also access the Market Participant's data available on the data reporting platform and / or on the SFTP Server.

#### **4.2. Converting data to ACER XML file, report submission by HUPX Ltd. to ACER**

HUPX Ltd. undertakes the obligation to report the reportable data as prescribed in Article 3 that HUPX Ltd. possesses about the trading of the Market Participant on HUPX Market within the Timing of Reporting as defined in point 2.2 and in the form as stipulated by ACER in the TRUM, MoP and RRM Requirements. Therefore HUPX Ltd. shall convert the details of the trading of the Market Participant on HUPX Market into an electronic form as prescribed by ACER in the prevailing rules of the document of Technical Specification for Registered Reporting Mechanisms (TSRRM) and being compatible for the report obtainment infrastructure and procedure of ACER's Remit Information System (ARIS). HUPX Ltd. shall submit such converted XML file to ACER in the form, via the link and within the timeline as specified and prescribed in TSRRM, the TRUM, the MoP and the RRM Requirements. Unless such failure is attributable to the delay, mistake or any other kind of failure of the Market Participant in performing its duties under this Agreement, HUPX Ltd. is responsible for any failure occurring in the converting process or in the process of the submission of the converted report files to ACER.

#### **4.3. Receipt and validation of data by ACER**

The submitted reports will be received and validated by ACER. In case ACER finds the submitted report acceptable, it shall generate and send a receipt file to HUPX Ltd., which receipt file will be made available to the Market Participant by HUPX Ltd. via the SFTP Server specified in point 4.1 above. In case ACER communicates any incorrectness or finds the uploaded file invalid, HUPX Ltd. shall first examine such feedback of ACER in reasonable time. In case HUPX Ltd. can fix the problem without the support and assistance of the Market Participant, then HUPX Ltd. shall fix such problem causing the invalidity or incorrectness and resubmits the corrected file. In case fixing of the problem is only possible with the help or assistance of the Market Participant, then HUPX Ltd. shall communicate this request to the Market Participant via the data reporting platform or via email and Parties shall cooperate in order to produce and resubmit the corrected report file to ACER.

### **Article 5 Fee**

The fee of the services of HUPX Ltd. in data reporting based on present Agreement is included in the HUPX Membership fee for the HUPX Members.

### **Article 6 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 as long as that Force Majeure event continues.

“Force Majeure” means an occurrence beyond the reasonable control of the claiming Party which it could not reasonably have avoided or overcome and which makes it impossible for the claiming Party to perform its obligations, including but without limitation one or more of the following:

- a) failure of communications or computer systems of ACER, which prevents the claiming Party from performing the data reporting submission obligation;
- b) any failure or problem in the internet connection required for data reporting.

The Party claiming Force Majeure shall as soon as practical after learning about the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The claiming Party shall use all economically reasonable efforts to mitigate the effects of Force Majeure.

### **Article 7 Responsibility**

Neither Party shall be responsible for failures in the completeness, accuracy or timely submission of any data which are attributable to the other Party.

Parties shall, at all times, perform their obligations and exercise discretion under this Agreement with reasonable care, provided that neither 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.

Each Party shall ensure the hardware and software tools and the related operating conditions needed for the fulfilment of this Agreement, and each Party declares that it possesses the knowledge and resources needed for performing their tasks and obligations under present Agreement.

Each Party shall be responsible for the activities of third parties involved by it in the fulfilment of this Agreement as for its own activities.

The Parties shall handle all information and data related to this Agreement and the provided service – which is not subject to the reporting process defined in present Agreement – confidentially, and – unless the disclosure or publication is made mandatory by prevailing provision of the law or a resolution of a competent authority or court – such information may only be disclosed to third parties or made public with the prior written consent of the other Party. In order to avoid any doubt, the data disclosure and data handling required by and performed in order to the fulfilment of the reporting process defined in present Agreement shall not be qualified as a breach of the confidentiality obligation defined above or as a breach of the prevailing rules of the Data Protection Law.

### **Article 8 Liability**

The Market Participant acknowledges that the payable fee specified in Article 5 was established by considering the limitation of liability contained in this Agreement, and without such limitation, HUPX Ltd. would have required a (higher) fee for the service. Therefore, in accordance with the provisions of section 6:152 of the Hungarian Civil Code, the liability of HUPX Ltd. for any damages or costs deriving from or in connection with the service specified in this Agreement under any circumstances or for any reason – except to the extent that such damages are due to breach of the contract by wrongful intent or a breach of the contract that results in death, or injury in physical integrity or health – shall be limited to the amount of EUR 1.000 per annum.

### **Article 9 Effective Date – Term**

This Agreement enters into force on the date when duly signed by both Parties.

This Agreement has entered into force for an indefinite period of time from its effective date.

This Agreement may only be modified in writing, with mutual consent of the Parties.

### **Article 10 Suspension**

This Agreement shall be suspended automatically:

- in the event of Force Majeure, until the Force Majeure situation exists;
- if the HUPX Membership Agreement between the Parties is suspended, irrespective of the cause of such suspension, until such suspension exists;
- if the Market Participant fails to fulfil its registration, identification code obtainment obligation and authorisation statement issuance obligation based on Article 3.3 of present Agreement until such obligation is not fulfilled.

### **Article 11 Termination**

Either Party may terminate this Agreement by sending a written notice of termination to the other Party sent by registered letter with return receipt addressed to the sending Party, subject to a notice period of thirty (30) calendar days, calculated from the registered date of mailing such letter.

In case the HUPX Membership Agreement is terminated between the Parties, present Agreement is automatically terminated with the same effective date as the termination of the HUPX Membership Agreement, irrespective of the cause of such termination.

Market Participant is aware of the fact that after the effective date of termination, HUPX Ltd. is no longer obliged or liable to provide any services based on this Agreement.

### **Article 12 Contacts for Communication**

On behalf of HUPX Ltd., the appointed contact person for this Agreement is:

Name: Júlia Lobenwein  
Telephone: 00 36 1 304 1098  
Fax: 00 36 1 304 1099  
E-mail: lobenwein@hupx.hu

Postal address: H-1134 Budapest, Dévai utca 26-28. HUNGARY

On behalf of the Market Participant, the appointed contact person for this Agreement is:

Name:.....

Telephone:.....

Fax:.....

E-mail: .....

Postal address: .....

The Parties shall inform each other immediately in writing about any changes in their data specified in this Agreement.

The change in the contact person(s) shall not constitute as a modification of this Agreement.

All official communication related to this Agreement shall be sent to the other Party in writing, by registered mail with return receipt, by confirmed fax, or by confirmed e-mail.

### **Article 13 Interpretation, Nullity, Tolerance, Entire Agreement**

In case of conflict of construction between any heading to a provision and such provision itself, the heading shall be deemed non-existent.

If one or more provisions of this Agreement are deemed to be invalid or ruled to be invalid in application of a legal regulation or following a final decision of a competent court, the other provisions hereof shall remain in full force and effect.

The Parties reciprocally agree that the fact that one Party tolerates a situation does not result in vested rights for the other Party. Furthermore, such tolerance cannot be construed as a waiver of the rights in question.

This Agreement constitutes the entire agreement between the Parties with respect to its subject. It supersedes all prior oral or written agreements with respect to its subject matter.

### **Article 14 Governing Law**

This Agreement is governed by the Hungarian law. Any matters not covered by this Agreement shall be governed by the provisions of REMIT, REMIT IR, the TRUM, the MoP and the effective Hungarian Civil Code.



**Article 15 Leading Language**

Two English-language originals of this Agreement have been signed by the Parties. In the event of any conflict between the English version and any translation into a foreign language, the English version shall prevail.

Having perused, construed and accepted this Agreement to be in full conformity with their will and intentions, in witness whereof, the Parties have signed this Agreement in two original copies on the following date and place.

**For the Market Participant:**

**For HUPX Ltd.:**

Date \_\_\_\_\_

Date \_\_\_\_\_

Place \_\_\_\_\_

Place \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

signature, name, title, stamp

signature, name, title, stamp