**Annex 3 - Framework Agreement on Acceptance of Compensating Membership**

**(applicable only to Participants trading medium and long-term products through the counterparty)**

**Framework Agreement** **for Acceptance of Clearing Member Status**

This Clearing Member Acceptance Agreement ("**Agreement**") is entered into today, \_\_\_\_\_\_\_\_\_, between

**Romanian Commodities Exchange S.A.**

Commercial Register No J40/19450/1992

Unique Registration Code RO1562694

Guarantee account: RO50 RNCB 0082 0009 9180 0641 - lei

Current account: RO64 RNCB 0082 0009 9180 0001 - lei

hereinafter referred to as "BRM", as Counterparty

and

**SC.........................................................................................................................................**

with registered office in town................., postal code.........................................., tel......................., fax.................., e - mail address................, with bank account ...................., account no...............................

Commercial Register No. ............................................................................

Unique Registration Code..........................................................................................................

hereinafter referred to as "CM", as Clearing Member

Hereinafter referred to individually as the "**Party**" and collectively as the "**Parties**".

**Given the following:**

1. BRM is the operator of the market on which it offers Clearing Settlement Services ("Market"), licensed by ANRE, on which CM is registered to trade the Support Asset;
2. BRM provides Clearing Settlement and Hedging Services (financial, physical delivery) for Transactions executed on the Market, based on Contracts accepted for this purpose by BRM;
3. CM intends to take advantage of BRM's clearing and settlement and hedging services (financial, physical delivery);
4. CM currently qualifies as a Clearing Member in accordance with the *Clearing, Settlement and Risk Management Rules* and the specific *Instructions* for its application issued by BRM as Counterparty (hereinafter referred to as the "**Rules**" and the "**Instructions**" respectively).

**In view of the above, the Parties so agree:**

**1. Definitions and interpretation:**

1.1. Capitalized terms and expressions used in this Agreement shall have the definitions set forth in the Rules.

1.2. Throughout this Agreement, except as otherwise expressly provided,

1.2.1. a reference to a grammatical genre includes all other grammatical genres;

1.2.2. a reference to the singular number includes the plural and vice-versa.

1.3. In the event of any discrepancy between this Agreement and the Rules, the provisions of the Rules shall prevail, in the form in force at the time of their application.

1.4. The provisions of the BRM Rules and Instructions issued in compliance with the applicable legal framework and duly communicated to the CM shall apply to this Agreement *mutatis mutandis* as if they were part of this Agreement.

**2. Obligations arising from being a CM**

2.1. CM warrants that all information provided to BRM to establish that CM qualifies as a Clearing Member is, as of the date of execution of this Agreement, complete and accurate.

2.2. CM shall at all times ensure that it meets the conditions for Clearing Member status and shall notify the BRM of any changes to the documents or information communicated under Article 2.1.

2.3. CM shall also immediately inform BRM in writing of the occurrence of the following events:

2.3.1. any of the events set out in the Regulation as a failure to comply with the CM obligations or a breach of the Regulation;

2.3.2. expiry or refusal of any licence, authorisation or contract concluded with the OTS necessary for CM to carry out its commercial activity;

2.3.3. any change in the CM identification data provided for in this Agreement;

2.3.4. any sanction imposed by ANRE or OTS according to the applicable regulations that could affect the fulfilment of the obligations provided in the Regulation;

2.4. In the event of receiving the information referred to in Articles 2.2 and 2.3, the BRM shall have the right to reconsider whether the CM meets the conditions to be a Clearing Member, and may strictly request the CM to provide the necessary information. The CM shall promptly submit the information so requested.

2.5. CM undertakes to comply with this Agreement, the Rules and the Instructions, declaring in this respect that it is familiar with their provisions, which it expressly accepts.

2.6. The CM undertakes to grant the BRM a direct debit right on the Cash Account, in the form proposed by the BRM, exclusively for amounts owed by the CM relating to its obligations under the Rules, orders initiated in the Market or Transactions concluded, i.e. Margins, Fees, Commissions.

 **3. Clearing and settlement services and hedging (financial, physical delivery) offered by BRM**

3.1. BRM undertakes to provide the CM with the Transaction Clearing Settlement and Risk Hedging Services (financial, physical delivery) in accordance with the provisions of the Rules.

3.2. CM understands and accepts that the Services include an obligation on the part of BRM to make PVT notifications in relation to each Transaction, but do not include any obligation on the part of BRM in relation to the physical delivery of the Underlying Asset and that, irrespective of any financial clearing actions, CM remains fully liable under the Contracts to the other CMs, and to the OTS, in the event of an imbalance.

3.3. As provided in the Rules and Instructions, in consideration of the Services, BRM shall apply and CM shall pay the Fees, including by direct debit by BRM.

3.4. CM shall accept the BRM shares as per the reports issued daily by the BRM as per the applicable regulatory framework as well as the Rules and Instructions which shall be fully enforceable and binding on it. For the avoidance of doubt, the liability of the CM shall be limited to the funds constituted in accordance with the Rules, which shall include all funds to be constituted by the CM in accordance with the Margin Calls of the Counterparty, irrespective of whether or not they have actually been constituted as well as additional collateral.

3.5. CM understands and accepts that the Services do not imply unlimited liability on the part of BRM with respect to financial risk, but only to the extent of BRM's contribution to the Guarantee Fund. The BRM understands and accepts that the Services do not imply unlimited liability on the part of the CM with respect to financial risk, but only to the extent of the funds constituted by the CM, i.e. Margin deposited in accordance with the Clearing Settlement Rules and all funds to be constituted by the CM in accordance with the Counterparty Margin Calls, whether or not actually constituted, as well as additional collateral.

3.6. CM undertakes to constitute/pay/update the Margins established by the BRM, including in the event of their modification or increase under the terms of the Regulation.

**4. Limiting trading and clearing**

The BRM shall have the right at any time to justifiably limit the CM's right to enter into Transactions or to have Transactions or Margins cleared under the conditions set out in the Rules with proper notification to the CM of the conditions, circumstances and basis for the limitation.

**5. Shutdown**

5.1. This Agreement is entered into for an indefinite period and may be terminated unilaterally by either CM upon 15 Days' notice. By the end of the last Day of the notice period, CM shall ensure that no further Open Positions are registered. In the event that the CM still registers Open Positions, the BRM shall be entitled to compulsorily close them, the provisions of the Regulation relating to the compulsory closure of Positions shall apply *mutatis mutandis*.

5. 2. If a CM breaches its obligations under this Agreement, the Rules or the BRM finds that the CM no longer qualifies as a Clearing Member, the BRM may terminate this Agreement by simple written notice without any further formality and without the intervention of the court (express arbitration agreement). The BRM may take all measures provided for by the Rules (including the forced closure of the Open Positions of the CM), as well as any other measures provided for by the Rules that are appropriate to protect the BRM, the other CMs and the safety of the clearing and settlement system.

5.3. To the extent that this status has not already been withdrawn, upon termination of this Agreement the CM shall lose its Clearing Member status.

**6. Force majeure**

6.1. Either of the Parties is exonerated from liability for failure to perform or late performance of its obligations, in the event of a case of force majeure (defined according to the provisions of the Romanian Civil Code) ascertained by the Chamber of Commerce and Industry of Romania.

6.2. The Party invoking force majeure shall notify the other Party fully and within 5 days of its occurrence and take any measures at its disposal to limit the consequences. Failure to give notice of Force Majeure shall not invalidate the exonerating effect of the Force Majeure, but shall entail the obligation of the Party claiming Force Majeure to make good the damage caused to the other Party by the failure to give notice. The period of Force Majeure shall end when the Party giving the notice under paragraph (1) has given notice of the Force Majeure. (2) issues a new notification that it is able to resume the performance of all its obligations under this Agreement and resumes the performance of all obligations subject to that notification.

6.3. If the Party prevented from performing its obligations due to force majeure remains unable to perform its obligations for a continuous period of 10 days, the other Party shall have the right to terminate this Agreement with immediate effect by simply notifying the other Party, without liability for compensation by either Party. Such events shall include war, natural disasters, strikes, legal restrictions, intervention by regulatory authorities (except for any intervention which is caused by the failure of a Party to perform an obligation as a participant in a regulated market) and any other event beyond the control of the Party invoking it.

**7. The whole Agreement**

7.1. This Agreement, together with the Rules and Instructions, embody the entire understanding between the Parties with respect to the Clearing Settlement Services offered by BRM.

7.2. This Agreement supersedes and replaces any agreement, communication, offer, proposal, or correspondence, whether oral or written, previously exchanged or entered into between the Parties relating to the same subject matter.

**8. Transfer**

8.1. This Agreement may not be transferred, either directly or by any legal transaction by the Parties.

8.2. Subject to the restriction on transfer contained in this Agreement in Article 8.1, the provisions of this Agreement shall be binding on the Parties, their legal representatives and successors.

**9. Replace**

If any provision of this Agreement is found to be illegal, void or unenforceable in whole or in part under any applicable law, such provision shall be deemed not to be part of the Agreement and shall not affect the legality, validity and enforceability of the remaining provisions of the Agreement. Each Party shall use its best efforts to negotiate as soon as possible, in good faith, a valid substitute provision having the same economic effect.

**10.** **Non-waiver**

The non-exercise or postponement of the exercise of a right arising under this Agreement shall not constitute a waiver of that right, nor shall the exercise of any right, in whole or in part, preclude the possibility of exercising the same or other rights at a later date. The rights and remedies provided by this Agreement are cumulative and do not exclude the existence of additional rights and remedies provided by applicable law.

1. **Applicable law**

This Agreement shall be governed by and construed in accordance with the laws of Romania.

1. **Dispute resolution**

The Parties agree to use their best efforts to resolve amicably any dispute arising in connection with this Agreement, the Rules or the Instructions. If the Parties fail to resolve such disputes, any misunderstanding or dispute arising out of the interpretation, execution or termination of this Agreement, or the interpretation and execution of the Rules or Instructions shall be referred for resolution to the competent court in Bucharest, Romania.

 **13. Final provisions**

13.1. Each Party expressly accepts clauses providing for the limitation of liability, the right to unilaterally terminate the Agreement or to suspend the performance of obligations for the benefit of one of the Parties.

13.2. The CM assumes the risk of the occurrence of exceptional circumstances beyond its control, even if they would make it manifestly unfair to oblige the CM to perform its obligations, and agrees to perform them independently of such exceptional changes in the circumstances underlying this Agreement or a Transaction. By assuming such risks, CM understands and accepts that it will not be able to apply to the court to adapt this Agreement, a Transaction or the obligations arising from them under the Rules in the event of the occurrence of exceptional circumstances of the kind described above.

13.3. Each Party undertakes to ensure the confidentiality of all information, data and documents provided by the other Party under this Agreement and not to disclose them in whole or in part to any third party without the prior written consent of the other Party. Exceptions to the provisions of this Article are: (i) information required by the competent authorities in accordance with the regulations in force; (ii) information which has been made public up to the date of conclusion of the contract or which by law has the character of public information; The provisions of this Article shall remain valid for 5 years after the termination of this Agreement.

13.4. Each Party represents and warrants to the other Party at the conclusion of this Agreement and each day thereafter until the termination of this Agreement that it will comply with the law concerning the protection of minors and women at work, the law of equal treatment, against discrimination, abuse, harassment, the law of freedom to form or join trade unions, freedom of association and representation, prohibition of forced labour, respect for measures to protect the environment, compliance with health and sanitary conditions and respect for provisions, wage rates, contributions, insurance and tax conditions (compulsory payment of income tax on wages) and covers all categories of persons employed as a result of the implementation of the contract, anti-corruption and anti-money laundering and anti-terrorist financing legislation in its jurisdiction and takes effective measures to prevent such activities among its employees.

13.5. The processing of any personal and sensitive data included in this Agreement shall comply with the relevant rules in force, in particular the European GDPR Regulation 2016/679 ("General Data Protection Regulation"). The parties acknowledge and agree that each of them shall act as a separate data controller in respect of their respective processing of personal data.

**This Agreement shall be effective from the date of signing ANNEX 1- Markets/Services to which the Participation Agreement in the energy markets by BRM, applies.**