**PARTICIPATION AGREEMENT
in the energy markets administered by BRM**

**nr. ......./................**

Closed between:

ROMANIAN COMMODITY 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

Licence no. 2269/14.12.2018 (centralized natural gas market operator) and no. 2314/30.03.2022 (electricity market operator) issued by the National Energy Regulatory Authority hereinafter referred to as "BRM", legally represented by Gabriel Purice, as President - General Manager

and

Society .........................................................................................................................................

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

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

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

License no. ......................./................. issued by the National Energy Regulatory Authority, with code ACER ............................., legally represented by ..................., as ..................

hereinafter referred to as "Participant",

**I. Terminology and applicable law**

**Art.1 -** (1) The terms used in this Agreement are defined in the Electricity and Natural Gas Law No 123/2012, as amended, in secondary legislation issued by the National Energy Authority, and in the BRM Regulations and Procedures applicable to the Markets, as applicable.

(2) For the purposes of this Convention, the terms, expressions and abbreviations used shall have the following meaning:

**Product** - means natural gas and electricity or green certificates, in the form of products accepted for trading on each Market, in accordance with the Market Regulations;

**ANRE** - National Energy Regulatory Authority;

**Agreement** - this agreement for participation in the energy markets administered by BRM;

**Market** - means any regulated market, administered by BRM on the basis of licenses issued by ANRE, for the trading of Products, with the exception of the natural gas balancing market;

**Market Regulations** - means the Regulations, Procedures and Framework Agreements issued by the BRM as operator of a Market or as counterparty, as the case may be, applicable to a Market, as set out in the table set out in Annex 1 to this Convention, in the current form published on the BRM website, [www](http://www.brm.ro).brm.ro ;

**Bank Guarantee Letter** - a bank document, placed at the disposal of the BRM by a Participant, by which the guarantor bank irrevocably and unconditionally undertakes to pay, at the first written request of the BRM, any amount up to a maximum amount set by the Participant, as the originator of the guarantee, issued in accordance with the model agreed by the BRM and valid for transactions carried out on any of the Markets.

**II. Object of the Convention**

**Art.2 -** (1) The object of the Agreement is the provision by BRM of the services of organization and administration of the Markets and granting the Participant the right to carry out sale-purchase transactions with Products on the Markets, under the terms of the Market Regulations. A Participant's option to participate in trading on one or more Marketplaces shall be made only by ticking the appropriate boxes for each Marketplace in Appendix 1 to this Agreement. Participation in other Markets than those selected at a given time shall be made by reviewing the option expressed in Appendix 1 to this Agreement.

(2) Except as expressly provided for in the primary and secondary legislation applicable to that Market, participation in any Market is voluntary and may only be undertaken to the extent that the Participant is entitled to participate in that Market in accordance with the primary and secondary legislation applicable to that Market and the Market Regulations. The BRM will verify the Participant's entitlement to participate in each selected Market prior to signing the Agreement. For the avoidance of doubt, any reference to a Market in this Agreement shall refer to a Market in which the Participant participates or is entitled to participate in accordance with the primary and secondary legislation applicable to that Market and the Market Regulations.

(3) By entering into this Convention, the Parties acknowledge their mutual rights and obligations concerning the organised framework for the conduct of transactions on the Markets, based on specific rules laid down in the Markets Regulations. By accepting this Agreement and Annex 1, the Participant agrees to the application of the Market Regulations, with their subsequent amendments made in accordance with their provisions, failing which the Participant may withdraw from participation in any of the Markets prior to the entry into force of the amendments made, by notifying the BRM prior to the date of entry into force of such amendments, without prejudice to the obligations undertaken prior to the date of withdrawal. The BRM shall use reasonable endeavours to inform Participants in good time of any changes to be made to the Rules of the Markets.

(4) Participants shall be entitled to enter into transactions in Products on the Marketplaces on the basis of orders entered on the trading platform for the relevant Marketplace, which contain firm commitments to contract by the Participant.

(5) The conditions for participation in trading sessions, the offering, trading, publication and making available of the results of trading sessions, receipts and payments for transactions on each Market shall be carried out in accordance with the provisions of the Market Regulations or of the commercial contracts concluded, respectively of the post-trading methods selected, in accordance with the Market Regulations.

(6) By ticking the appropriate boxes in Appendix 1, the Participant shall be subject to the provisions of the Market Regulations referred to in each Market listed in Appendix 1 to this Agreement as applicable, as applicable. In the event of any discrepancy between the terms of this Agreement and the special terms of the Market Regulations, the Market Regulations shall apply in respect of the Markets to which they refer.

(7) If the Participant's identification data contained in the Arrangement changes, the parties shall sign an addendum to the Arrangement recording the changes.

**III. Rights and obligations of the parties**

**Art. 3 - The** rights of the Market Participant are as follows:

a) to receive from the BRM, at its request, assistance and practical training sessions on the use of the Market trading system;

b) to enter, amend or cancel bids and/or offers to buy Products in the trading system of the Market according to the daily trading schedule in accordance with the Market Rules;

c) to have access to the records of their own transactions and to view the bids placed by other market participants in the trading system related to the Market, in accordance with the Market Regulations;

d) to receive the net proceeds of the sale positions of the Product and to issue and send to BRM the related invoice for the Markets where BRM acts as counterparty according to the respective Market Rules;

e) to decide to withdraw from a Market on its own initiative on the basis of a notice sent in writing to the BRM with 15 days' notice;

f) The Participant shall be entitled to the return of collateral provided for the purpose of participation in a trading session in accordance with the provisions of the Market Regulations;

g) to receive tax invoices for services provided by BRM under this Agreement.

**Art. 4 - The** obligations of the Market Participant are as follows:

a) comply with the provisions of the Markets Regulations;

b) notify the BRM of any changes subsequent to the signing of the Agreement on the Right to Participate in the Market;

c) to comply with the obligations of notification or physical registration of all transactions carried out on the Markets, according to the secondary legislation applicable to the Product, unless this task is incumbent on BRM, as counterparty;

(d) accept as binding commitments trade confirmations and trade notifications and enter into trade contracts relating to trades confirmed by the trading system of a Market, through the trade contracts applicable to that trade or through the post-trade methods selected, in accordance with the Market Regulations;

e) to execute all transactions concluded on the Markets in accordance with the provisions of the concluded trading contracts and the selected post-trading methods in accordance with the Market Regulations;

f) for transactions intermediated by the counterparty with electricity as a Product, to communicate within 24 hours at the latest any change in the balancing party's data or any failure to fulfil its obligations arising from the transactions;

g) provide the BRM with a bank guarantee letter conforming to the model agreed by the BRM or another method of guarantee provided for by the Market Regulations;

h) verify the records of its own transactions in the trading systems related to the Market, in accordance with the Market Regulations;

i) ensure that the value of the Bank Guarantee Letter or other collateral required by the Market Regulations covers the value of the intended sale/purchase or transaction or the marked-to-market price of the Underlying Asset, as the case may be;

j) to respond quickly and concisely to any request for clarification from the BRM/other Market Participants sent through the BRM;

k) ensure that the value of the bank letter of guarantee or other collateral accepted by the Markets Regulations covers the value of the guarantee of participation in a transaction or of the intention to buy or sell, as the case may be;

l) to have cash available to settle transactions generated by offers to sell and/or offers to buy the Product. If the Participant repeatedly fails to have cash available to settle transactions, the BRM may make the admission of bids to the trading session conditional on a collateral structure involving a cash collateral placed at the disposal of the BRM.

m) to pay in full the countervalue of the payment obligations related to the Market trading fees, respectively the fees related to other services offered to the Participant, including manual settlement services in case of non-executed settlements as well as the bank fees related to the above and penalties for transaction cancellation requests, according to the applicable tariffs published on the BRM website.

n) ensure access to trading systems by qualified personnel familiar with trading systems and Market Regulations, including the BRM regulations on market participation conduct, the provisions of the Electricity and Natural Gas Law No 123/2012, secondary legislation issued by ANRE, the provisions of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT), and the relevant prohibitions and rules of criminal and tax law.

**Article 5 - The** rights of the BRM are as follows:

a) request and receive from the Participant the bank guarantee letter issued in favour of the BRM or other guarantees accepted in accordance with the Market Regulations, respectively the guarantee structure requested by the BRM under the terms of Article 4 lit. g) prior to the trading sessions in which the Participant wishes to place bids or offers on the Markets and afterwards, in accordance with the provisions of the Market Regulations;

b) execute a Bank Guarantee Letter of Payment in the event that the Participant breaches its payment obligations under this Arrangement or the Market Regulations;

c) issue and collect the invoice from the Participant who has carried out transactions on the Markets (including the VAT countervalue), related to the countervalue of the payment obligations for the Market trading fees, respectively the fees for other services offered to the Participant, including the services of manual operation of transactions, settlements and/or cancellation of transactions, as well as the bank fees related to the above, as published on the BRM website;

d) decide, as appropriate, in accordance with the Market Regulations, to suspend the Participant from trading or revoke the Participant's status as a Market Participant;

e) to transmit information requested by authorised public authorities or courts of law or which must be transmitted ex officio, by virtue of the BRM's status as Market Operator, concerning the Participant, without the latter's consent being required, if provided for in the Agreement, in primary or secondary legislation and/or in the Market Regulations;

f) apply the Market Regulations, including the possibility of cancellation of transactions, enforcement of collateral and sanctioning of the Participant;

g) to resolve any disputes submitted by the Participant in accordance with the Market Regulations.

h) periodically update the Market Regulations and this Agreement as legally and operationally required;

i) to request and collect the fees and commissions for trading on the Markets and the fees for other services offered to the Participant, as published on the BRM website.

**Art. 6 -** The obligations of the BRM are as follows:

a) ensure a fair, objective, independent, equitable, transparent and non-discriminatory trading environment, in accordance with the provisions of applicable primary and secondary legislation and Market Regulations;

b) provide the Participant with assistance and practical training sessions on the use of the Market trading system;

c) to validate the put/bid bids submitted by the Participant in accordance with the provisions of the Market Regulations;

d) to provide the Market Participant with the trade confirmations for transactions carried out in accordance with the Market Regulations;

e) to carry out the notification or physical registration of all transactions carried out on the Markets, in accordance with the secondary legislation applicable to the Product, if this task is incumbent on BRM as counterparty;

f) if BRM assumes the role of counterparty on a Market, to pay in full the net cashing rights related to the sale positions of the Product;

g) where the BRM assumes the role of counterparty on a Marketplace to issue tax invoices for sales of Products made by the Participant;

h) to publish on its website the Market Regulations;

i) for transactions intermediated by the counterparty having as underlying asset Products consisting of the delivery of natural gas, to transmit to the Operator of the National Natural Gas Transmission System, in this case the National Natural Gas Transmission Company Transgaz - S.A., the nominations for the transactions carried out according to the regulations in force;

j) ensure the security of access to trading platforms and the confidentiality of commercially sensitive information;

k) verify the Participant's right to participate in each selected Market at the time of the conclusion of the Agreement and during its execution, in accordance with the primary and secondary legislation applicable to that Market and the Market Regulations.

l) to publish on its website the Market Regulations.

**IV. Suspension and Withdrawal from Trading on the Markets. Complaints Resolution Regime**

**Art.7 -** (1) Suspension and withdrawal from trading on the Markets shall be carried out in accordance with the provisions of the Market Regulations.

(2) - The BRM will settle appeals against the results of trading sessions and decisions to suspend trading, in accordance with the Market Regulations.

**V. Force majeure**

(1) Force majeure is any external, unforeseeable, absolutely invincible and unavoidable event.

(2) The liability of the parties is waived when the damage is caused by force majeure, in accordance with Article 1.351 of the Civil Code.

(3) The party claiming force majeure shall notify the other party within 48 hours of the occurrence of the force majeure, followed by the submission of the supporting document, issued in accordance with the legislation in force, within 20 calendar days of the same date.

(4) If force majeure does not cease within 30 calendar days, the parties shall be entitled to request the automatic termination of the contract, without either party being entitled to claim compensation.

**VI. Privacy**

**Article 9 -** (1) Each Party undertakes to keep confidential all data, documents and information obtained from the operation of this Convention and not to disclose them, in whole or in part, to any third party without the written consent of the other Party.

(2) An exception to the provisions of paragraph. (1) the following data, documents and information:

a) those which may be disclosed, in accordance with the provisions of the legislation in force;

b) those requested by the competent State bodies on the basis of a legal obligation to provide information;

c) those considered to be non-confidential under the legislation in force;

d) those published on the public section of the BRM's own website.

(3) The provisions of this Article shall remain in force for a period of five (5) years after the expiry of this Convention.

**VII. Limitation of BRM liability**

**Art. 10 -** BRM shall not be liable for any damage suffered by Participants as a result of:

(i) Adverse market conditions, business risk, force majeure, force majeure, interruption, suspension or exclusion from trading of a Product, where the interruption, suspension or exclusion from trading of a Product is carried out in accordance with the powers of the BRM set out in the Market Regulations;

(ii) The application in good faith of the provisions of this Convention and/or the Market Regulations;

(iii) Technical problems of the BRM, including, without limitation, problems with power supply or Internet services or other situations beyond the control of the BRM that may affect the functionality of any services provided under this Agreement;

(iv) Technical problems of the Participant, including, without limitation, display and communication errors or communication delays between the Participant's computer systems and BRM's computer systems, entry of orders into a system other than the trading system, errors caused by power outages, Internet connection errors, operating system errors, technical difficulties that may affect the operation of Internet connections and/or computer equipment and/or Internet provider applications and/or malfunctioning of e-mail, technical problems and/or heavy Internet traffic; errors caused by incorrect use of the personal computer or other equipment by the participant (power failure of the computer, errors caused by the operating system installed on the computer, errors caused by the computer operating system virus, etc.).).

(v) Any legislative changes or decisions of public authorities that would affect the functionality of any services provided under this Convention.

**VIII. Transitional and final provisions**

**Art. 11.** This Convention is concluded for an indefinite period. This Convention may be terminated under the following conditions:

1. The Participant may unilaterally terminate this Arrangement by giving at least 15 days' notice before the date on which the Participant wishes to terminate it or in accordance with Article 2 paragraph 2. 3 of this Agreement, without such termination affecting the fulfilment of obligations due to the BRM or other Participants at the date of termination of the Agreement or the refund of amounts paid to the BRM by way of fees or commissions for participation in any Market. Partial termination of the Agreement in respect of a Market shall automatically terminate the provisions of the Annex governing rights and obligations in respect of participation in that Market.
2. This Agreement shall be deemed to be terminated in part, in respect of participation in a Market, as of right, without notice, without the need for a period of notice, without the intervention of a court of law and without any other prior formality, as soon as the Participant no longer fulfils the conditions for participation in that Market under the Market Regulations. Partial termination of the Agreement in respect of a Market shall automatically terminate the provisions of the Market Regulations governing rights and obligations in respect of participation in that Market.

**Art. 12 -** This Convention may be amended unilaterally, at the initiative of the BRM, following a public consultation process, and the amendments thus adopted shall be binding on the Participant. If the Participant does not agree with the amendments adopted, it may unilaterally terminate the Convention in accordance with the provisions of Article 11.

**Article 13** - (1) This Convention shall be governed by Romanian law. The Parties shall endeavour, in good faith, to resolve amicably any disputes, controversies or disagreements which may arise out of or in connection with the Convention.

(2) If an amicable settlement of such disputes, controversies or disagreements is not possible, any disputes arising out of or in connection with the Convention, including those relating to the conclusion, interpretation, performance or termination of the Convention, shall be settled in accordance with the ordinary law.

**Art. 14** - (1) This Convention shall be the sole expression of the will of the Parties with regard to trade relations between them and shall supersede any previous written and signed by both Parties or oral agreement. If any provision of this Agreement is invalidated/declared unenforceable in whole or in part by the court, the remaining provisions and any partially enforceable provisions shall continue to be binding and enforceable, and the parties agree to replace the invalid provision with a valid provision that best approximates the intent and economic purpose of the invalid provision.

(2) The parties understand that trading on the Markets is speculative in nature and, as such, the parties assume the risks relating to unforeseeable changes in circumstances and waive any right to seek in court under Article 1271 of the Civil Code to adjust or terminate the Agreement, the Market Regulations or any elements of a transaction conducted on the Markets.

(3) The provisions of this Convention have been expressly accepted by the parties in accordance with the provisions of Article 1203 of the Civil Code. For the avoidance of doubt, the parties agree that the signature of this Agreement, in its final part, is sufficient to express their express agreement to the non-unusual clauses contained herein, and that no other formality is necessary in this respect.

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

**Article 15 -** The provisions on participation in the Day-ahead Market for Electricity with respect to the Market Price Coupling Mechanism and in the Intraday Market for Electricity with respect to the Market Price Coupling Mechanism shall apply only after the BRM has been designated by ANRE as Designated Electricity Market Operator (OPEED).

**Legal representative Legal representative**

**Romanian Commodities Exchange - S.A. Participant** ........................................

**Annex 1 - Markets/Services to which the Convention applies**

The Participant wishes to participate in the following BRM-administered Marketplaces, i.e. to receive the following REMIT reporting services

1. Natural gas markets
2. Electricity markets
3. REMIT reporting services

|  |  |  |
| --- | --- | --- |
| **Market/Service Name** | Applicable Market Regulations | Participation Agreement |
|  **1. Natural gas markets**  |
| **Common applicable documents**Regulation on the organized framework for trading of standardized products on the centralized natural gas markets administered by Bursa Romana de Mărfuri S.A. (Romanian Commodities Exchange S.A.)Market conduct procedure<https://www.brm.ro/reglementare-gaze-naturale/> |
| Market for short-term standardised products (natural gas)<https://www.brm.ro/reglementare-gaze-naturale-spot/> | Agreement - Framework for the provision of counterparty services for the Short Term Products MarketProcedure for the organization and operation of the market of standardized short-term products, administered by the Romanian Commodities Exchange S.A. |  |
| Medium and long-term standardised product market (natural gas)<https://www.brm.ro/reglementare-gaze-naturale-forward/> | Procedure for the organisation and operation of the market in standardised products in the medium and long term |  |
| Medium and long-term flexible product market (natural gas)<https://www.brm.ro/reglementare-gaze-naturale-forward/> |  |
| Medium and long-term standardised products market (natural gas) under clearing house/central counterparty conditions<https://www.brm.ro/reglementare-gaze-naturale-forward-ccp/> | Framework Agreement on Acceptance of Clearing Member StatusClearing, Settlement and Risk Management Regulation of the Romanian Commodity Exchange as Central CounterpartyTrading procedure on the centralized natural gas markets administered by Bursa Romana de Mărfuri (Romanian Commodities Exchange) S.A., under the conditions of using a clearing house/central counterparty |  |
| Medium and long-term standardised derivatives market (natural gas)<https://www.brm.ro/reglementare-gaze-naturale-futures/> | Framework Agreement on Acceptance of Clearing Member StatusRegulation of compensation, settlementand risk management for futures contracts with natural gas as underlying assetTrading procedure for futures contracts with natural gas as underlying asset on the market administered by the Romanian Commodities Exchange S.A. |  |
| **2. Electricity markets** |
| **Common applicable documents**Regulation on the organisation and functioning of the organised electricity market, administered by the Romanian Commodities Exchange Company - S.A.Market conduct procedure<https://www.brm.ro/reglementare-energie-electrica/> |
| Electricity market for large end customers<https://www.brm.ro/reglementare-energie-electrica-pmc/> | Regulation on the organised framework for the contracting of electricity by large final customersProcedure for the operation of the electricity market for large end customers organized by the Romanian Commodities Exchange S.A. |  |
| Electricity futures market<https://www.brm.ro/reglementare-energie-electrica-forward/> | Framework Agreement on Acceptance of Clearing Member StatusClearing, Settlement and Risk Management Regulation of the Romanian Commodity Exchange as Central CounterpartyTrading procedure issued under the Regulation on the organisation and functioning of theorganised electricity market, administered by the Bursa Română de Mărfuri - S.A. |  |
| Day-ahead electricity market respecting the price coupling mechanism of the markets<https://www.brm.ro/reglementare-energie-electrica-pzu> | Special conditions applicable toDay-ahead market for electricity with compliance with the price coupling mechanism of the BRM-administered energy markets Participation Agreement marketsNext Day Market Procedure for electricity under the Market Price Coupling (PZU) mechanismProcedure for market surveillance, monitoring and reporting of transactions concluded in the PZU and IP-linked marketsBRM's Clearing Procedure as Counterparty in the PZU and PI Linked Markets |  |
| Intra-EU electricity market with respect to the price coupling mechanism of the markets<https://www.brm.ro/reglementare-energie-electrica-pi/> | Special conditions applicable toIntraday Electricity Market with compliance with the price coupling mechanism of the markets to the Participation Agreementon energy markets administered by BRMNext Day Market Procedure for electricity with respect to the price coupling mechanism (PZU) Procedure for market surveillance, monitoring and reporting of transactions concluded in the PZU and IP-linked marketsBRM's Clearing Procedure as Counterparty in the PZU and PI Linked Markets |  |
| **3. REMIT reporting services** |
| REMIT Transaction Data Reporting Service<https://www.brm.ro/reglementare-remit/> | REMIT Data Reporting Agreement - Transaction data |  |
| REMIT Bilateral Contracts Reporting Service<https://www.brm.ro/reglementare-remit/> | Data reporting agreement - Bilateral contracts  |  |

**Legal representative Legal representative**

**Bursa Română de Mărfuri S.A. Participant** ........................................