

Agreement about the access to data
of
details of wholesale energy transactions executed at HUDEX Market
required for data reporting based on REMIT

(type A2)
(hereinafter: “Agreement”)

concluded between the undersigned:

HUDEX Hungarian Derivative Energy Exchange 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 01-10-049303 represented by two members of the Board of Directors,

hereinafter “**HUDEX Ltd. or HUDEX**”,

and

having its registered office at _____

registered under the Company Registry number _____

VAT number: _____

ACER Registration Code: _____

represented by _____

in his/her capacity as _____

hereinafter “**Market Participant**”,

HUDEX 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. According to Article 2 (4) b) ‘wholesale energy products’ means also derivatives relating to electricity or natural gas produced, traded or delivered in the Union, irrespective of where and how they are traded.

Further, recital (19) of REMIT declares, that where a market participant or a third party acting on its behalf, a trade reporting system, an organised market, a trade-matching system, or other person professionally arranging transactions has fulfilled its reporting obligations to a competent authority in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (3) or applicable Union legislation on derivative transactions, central counterparties and trade repositories, its reporting obligation should be considered fulfilled also under this Regulation, but only to the extent that all the information required under this Regulation has been reported.

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.

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.

HUDEX Ltd. holds a license to operate a regulated market of energy derivatives in Hungary called “HUDEX Market”, which is an organised market place in the meaning of REMIT. Market Participant is trading on HUDEX Market as a HUDEX Member based on its HUDEX Membership Agreement concluded with HUDEX Ltd.

In line with its obligations stipulated in Article 6 of REMIT IR, HUDEX Ltd. has offered a data reporting agreement to all of the HUDEX Members, including the Market Participant, however the Market Participant has decided to fulfil its data reporting obligation under Article 8 of REMIT in relation to the data of its trading on HUDEX Market without having resort to the offered data reporting service of HUDEX Ltd., and therefore the Market Participant will not accept the offer of HUDEX Ltd. and will not conclude the Data Reporting Service Agreement with HUDEX Ltd.

However the Market Participant would like to require an access to the data regarding its trading on HUDEX Market as it is registered and archived by HUDEX Ltd. in its databases, most importantly the identification codes of the traded contracts generated by HUDEX Ltd.

In consequence thereof, the Parties hereto now agree as follows.

Article 1 Subject Matter of the Contract

Market Participant hereby requests HUDEX Ltd. to save and make the reportable data available for the Market Participant set out in Table 1 of the Annex to the REMIT IR that HUDEX Ltd. possesses (or shall be generated by HUDEX Ltd.) in respect of the Market Participant's trading on HUDEX Market. The Market Participant will maintain and ensure the reporting of such data to ACER without any further contribution of HUDEX Ltd., and therefore the Market Participant expressly declares that HUDEX Ltd.'s only task and obligation based on present Agreement is to provide the Market Participant access to the trading data of the Market Participant on HUDEX Market required for the data reporting based on REMIT, as detailed in Table 1 of the Annex to the REMIT IR.

Article 2 Start Date and Timing of availability of the Data

2.1 Start Date

HUDEX Ltd. will make the data defined in Article 1 available for the Market Participant data from the 1st Trading Day in accordance with the HUDEX rules and regulations.

2.2 Timing

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. HUDEX Ltd. shall make its best effort to make the data specified in Article 1 related to the Market Participant available for the Market Participant at the latest until 12:00 CET on the day when they are reportable according to Article 7 of REMIT IR.

Article 3 Access to the SFTP Server

In order to enable the Market Participant to access the data possessed by HUDEX Ltd. required for the data reporting based on REMIT about the Market Participant's trading on HUDEX Market, HUDEX Ltd. saves and makes available for the Market Participant these data on a secure file transfer protocol based file server ("SFTP Server"). The Market Participant can reach and access such SFTP Server with a login name and password via the internet.

Market Participant obtains the login name and password for the secure access to the SFTP Server from HUDEX Ltd. HUDEX Ltd. shall insure that it discloses the login name and password only to the contact persons of the Market Participant appointed by the Market Participant in Article 12 below, and that the SFTP Server containing the information related to the trading of the Market Participant on HUDEX Market will be accessible only by the login name and password. After the receipt of the login name and password issued by HUDEX 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 partition of the SFTP Server containing the information related to the Market Participant's trading on HUDEX Market. For operational purposes HUDEX Ltd. will have dedicated internal users who can also access the Market Participant's data available on the SFTP Sever.

Article 4 Form of the provided data

In order to ease the task of the Market Participant to align with ACER requirements, HUDEX Ltd. makes reasonable efforts to save and store the required data on the SFTP Server accessible for the Market Participant in a raw XML file format similar to or convertible to the XML file format required by ACER. For the sake of clarity the raw XML file format provided by HUDEX Ltd. on the SFTP Server needs to be processed further (i.e. it needs to be transformed, signed, encrypted, etc.) by the Market Participant in order to meet all the ACER requirements.

Article 5 Fee

The fee of the services of HUDEX Ltd. based on present Agreement are included in the HUDEX Membership fee for the HUDEX Members.

Article 6 Force Majeure

If HUDEX Ltd. 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 HUDEX Ltd., which prevents HUDEX Ltd. from performing its obligation based on present Agreement;
- b) any failure or problem in the internet connection required.

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

HUDEX Ltd. undertakes its obligations based on present Agreement only and solely on a best effort basis, without taking any liability for the result of such efforts, and therefore shall not be responsible for any occurring failures in the completeness, accuracy or timeliness of the data made available for the Market Participant being attributable to any kind of system breakdown, technical error, bug, operational failure or unintended mistake.

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 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, HUDEX 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 HUDEX 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 and the reporting obligation starts as the finding point 2.1.

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 HUDEX Membership Agreement between the Parties is suspended, irrespective of the cause of such suspension, until such suspension exists.

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

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

Article 12 Contacts for Communication

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

Name: Noémi Sztrida

Telephone: 00 36 1 304 1090

Fax: 00 36 1 304 1099

E-mail: remit@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 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:

Date _____

Place _____

signature, name, title, stamp

For HUDEX Ltd.:

Date _____

Place _____

signature, name, title, stamp