



Agreement

between

[Market Participant], a company incorporated in [*nationality*] (registration number [xxx],
having its registered office at [*address*])

(hereafter referred to as “**Market Participant**”)

and

PRISMA European Capacity Platform GmbH, a company incorporated in Germany
(registration number HRB 21361), having its registered office at Schillerstraße 4, 04109
Leipzig

(hereafter referred to as “**PRISMA**”)

**on data reporting according to Article 6 (1) Commission Implementing Regulation
(EU) No 1348/2014 of 17 December 2014**

dated 1 [Month] [Year]

RECITALS:

- (1) The Market Participant is a market participant as defined in Article 2 (7) of REMIT. PRISMA is an organised market place as defined in Article 2 (4) of the Implementing Act where the Market Participant executes wholesale energy products or places orders.
- (2) The purpose of this Agreement is to enable the Market Participant to fulfil its obligations under Article 8 of REMIT and Article 6 (1) of the Implementing Act to report details of wholesale energy products as defined in Article 3 (1) (b) (ii) Implementing Act executed at an organised market place including related matched and unmatched orders to ACER through this organised market place, i.e. through PRISMA.
- (3) This Agreement constitutes a data reporting agreement for the purposes of Article 6 (1) of the Implementing Act and sets out the terms and conditions of the Reporting Services provided by PRISMA. PRISMA shall not act as a third party according to the definition in Art. 8 (4) (b) REMIT taking over any other data reporting obligations of the Market Participant apart from that stipulated in Art. 8 REMIT and Art. 6 (1) Implementing Act.

IT IS AGREED as follows:

1. Interpretation

- (a) **Definitions.** The terms defined in Schedule 1 (*Definitions*) and elsewhere in this Agreement) will have the meaning therein specified for the purpose of this Agreement.
- (b) **Validity.** This Agreement is the sole basis for PRISMA and the Market Participant regarding any data reporting according to Article 6 (1) of the Implementing Act. The terms and conditions of the Market Participant are expressly rejected. The acceptance of such general terms and conditions can only be proven with a document in Written Form which expressly refers to this provision.

2. Reporting Services

- (a) The Market Participant mandates PRISMA to submit all of the details set out in Table 4 of the Annex to the Implementing Act in respect of each of the Standard Contracts and Orders to Trade (the "**Trade Data**") set out Article 2 (b).

- (b) Starting with the [XX.XX.XXXX], at 0:00 o'clock and subject to Article 2 (c) to (f) below, PRISMA shall report the following Trade Data concluded or placed by the Market Participant after the REMIT Reporting Start Date by the Standard Contract Reporting Deadline:
- (i) Standard Contracts entered into by the Market Participant on the electronic platform of PRISMA regarding wholesale energy products as defined in Article 3 (1) (b) (ii) Implementing Act (secondary capacity platform) of PRISMA ("**Relevant Standard Contracts**");
 - (ii) matched and unmatched Orders to Trade via the electronic platform of PRISMA regarding wholesale energy products as defined in Article 3 (1) (b) (ii) Implementing Act (secondary capacity platform) placed by Market Participants, which are made visible on PRISMA's electronic platform, if any ("**Relevant Orders**"); and
 - (iii) any Lifecycle Data, where such Lifecycle Event is concluded through PRISMA ("**Relevant Lifecycle Data**"),
- (hereinafter jointly referred to as the "Relevant Trade Data").
- (c) According to the model chosen by the Market Participant the Recipient(s) of the Relevant Trade Data is/are:
- (i) the Market Participant, or
 - (ii) ACER, or
 - (iii) the Designated RRM, or
 - (iv) Market Participant and ACER, or
 - (v) Market Participant and the Designated RRM.
- (d) The reporting models and their respective scopes are defined in Schedule 4.
- (e) The fees attached to each reporting model are defined in Schedule 5.
- (f) The Market Participant shall inform PRISMA of the desired reporting model upon conclusion of this Agreement. The reporting model may be changed subsequently for the following calendar year by notice in Written Form to be served by the Market Participant on 30 September p. a. at the latest.
- (g) Under the condition, that the Agreement is concluded at the latest on the 31 May 2016 and subject to Article 2 (c) to (f) above, PRISMA will also report certain Standard Contracts which were concluded before the REMIT Reporting Start Date and remain outstanding on that date.

This applies to Standard Contracts which were entered into by the Market Participant on the electronic platform of PRISMA regarding wholesale energy products as defined in Article 3 (1) (b) (ii) Implementing Act (secondary capacity platform) of PRISMA in the period from 01 April 2014 until 06 April 2016.

3. PRISMA's Obligations

- (a) PRISMA will use the professional care of a reasonable and prudent operator to perform the Reporting Services according to the applicable industrial standard. According to the state of technology it is not possible to warrant the trouble-free functioning of data processing devices and device combinations under all application conditions imaginable and to exclude errors in the data processing programs. The obligation to perform the Reporting Services shall be subject to the current state of technology and the uptime of the platform, systems, interfaces or other technologies of PRISMA. PRISMA may temporarily suspend the Reporting Services if and when this is necessary in order to guarantee the security and integrity of the server or in order to carry out technical measures which serve to improve or maintain the availability and/or functionality of the platform, systems, interfaces or other technologies of PRISMA. The same applies to cases of unforeseen technical disturbances or difficulties such as and especially in the case of the interruption of the power supply or a hardware or software error which causes the breakdown and or failure of the platform, systems, interfaces or other technologies of PRISMA. The obligation to perform the Reporting Services shall be suspended in such cases for the period of existence of these unforeseen circumstances. PRISMA shall be obliged to restore as soon as possible the technical possibility for the performance of Reporting Services.
- (b) If PRISMA is unable to report, PRISMA shall provide the Market Participant with all such Relevant Trade Data in the applicable electronic format specified in the MoP, as soon as reasonably practicable and in any event in sufficient time so as to enable the Market Participant to report such Relevant Trade Data to ACER within the Standard Contract Reporting Deadline.
- (c) If PRISMA is not able, or reasonably expects that it will not be able to report the Relevant Trade Data within the Standard Contract Reporting Deadline to ACER, or to provide the Market Participant or the Designated RRM with the Relevant Trade Data in due time for it to be reported to ACER by the Standard Contract Reporting Deadline, PRISMA shall notify the Market Participant, giving details explaining the reason(s) for such notification, as soon as reasonably practicable and the Market Participant shall be entitled to either report such Relevant Trade Data to a registered reporting mechanism or to appoint a third party to make such report on the Market Participant's behalf.
- (d) PRISMA shall ensure that when reporting, Relevant Trade Data, the Market Participant shall be identified by its Market Participant Registration Code.
- (e) In complying with its obligations under this Agreement PRISMA shall take into regard the guidance set out in the TRUM and the MoP in the version current on the date when this Agreement is concluded.

4. Market Participant's Obligations

- (a) If the Market Participant becomes aware of any changes in national law or technical changes reasonably to be expected to have an impact on the rendering of services according to this Agreement, the Market Participant shall notify PRISMA in a timely manner in order to enable PRISMA to perform its obligations throughout the duration of this Agreement.
- (b) According to Art. 8 (1) REMIT and Art. 11 (2) Implementing Act the Market Participant shall provide PRISMA with any necessary data that PRISMA (and any party to whom PRISMA has delegated any of its obligations under this Agreement in whole or in part, including for this purpose the Designated RRM) does not already have, in its own systems (including, without limitation, the beneficiary entity ID) in due time for it to be reported to ACER by the Standard Contract Reporting Deadline.
- (c) The Market Participant agrees and acknowledges that if it fails to comply with Articles 4 (a) and (b), and PRISMA is unable to report all of the Relevant Trade Data as a result, PRISMA shall submit only the Relevant Trade Data in its possession to the Recipient(s) (except ACER) by the Standard Contract Reporting Deadline.
- (d) According to Art. 8 (1) REMIT and Art. 11 (2) Implementing Act the Market Participant ensures that the information it delivers under Articles 4 (a) and (b) shall be, at the time of delivery, true, accurate and complete in every material respect.
- (e) Without prejudice to the provisions of Art. 8 (1) REMIT and Art. 11 (2) Implementing Act, the Market Participant acknowledges that PRISMA will trust and rely on data provided by the Market Participant in fulfilling this Agreement without investigation,
- (f) In consideration of the Reporting Services provided by PRISMA, the Market Participant shall be obliged to effect the payment of the fees according to Schedule 5.

5. Responsibility for Data

- (a) Except for failures in the completeness, accuracy or timely submission of any data which are attributable to the Market Participant, PRISMA acknowledges that under this Agreement PRISMA shall:
 - (i) be responsible for the completeness, accuracy and timely submission of any delivered data (according to Article 4 (a) and (b)) which it submits to ACER on behalf of the Market Participant whether or not it delegated some or any part of that function or the performance of its obligations hereunder to a Third Party Service Provider or other person; and
 - (ii) remain responsible for the failures of any Third Party Service Provider or other party to whom PRISMA has delegated any of its obligations (in whole or in part) to provide the Reporting Services under this Agreement.

6. Errors

- (a) Regarding Error Reports, PRISMA shall:
 - (i) store all Error Reports received from ACER (in so far as these are generated by ARIS or otherwise issued by ACER at any time) in respect of the Market Participant;
 - (ii) provide the Market Participant with the information about the receipt of any Error Reports as soon as reasonably practicable; and
 - (iii) upon request make all Error Reports and any other relevant communications from ACER available to the Market Participant as soon as reasonably practicable.
- (b) If any Party becomes aware of an error in any Relevant Trade Data reported to ACER (whether as a result of receiving an Error Report or otherwise) in accordance with this Agreement, it will notify the other Parties and all Parties will use reasonable efforts, acting in good faith and a reasonable manner, to rectify such error and resubmit the relevant correct data
- (c) The Market Participant acknowledges and agrees that PRISMA is not obliged to discover errors in or check the accuracy, authenticity or completeness, of any Relevant Trade Data which cannot be attributed to PRISMA or any Third Party to whom PRISMA has delegated all or any part of its obligations hereunder.
- (d) In the event of a breach of any of the Reporting Obligations, the Parties shall cooperate to rectify such breach and communicate with ACER and any relevant NRAs as may be required in relation to such breach.

7. Use of Third Parties

- (a) PRISMA and the Market Participant agree that each of them may request the services of a Third Party Service Provider to facilitate the submission of Relevant Trade Data or to be assisted in any other performance by them with regard to the obligations under this Agreement (including but not limited to utilising any platform, system, interface or other technology developed by any such Third Party Service Provider for such purpose).
- (b) The Party using the services of a Third Party Service Provider as mentioned in Article 7 (a) above shall ensure that such Third Party Service Provider is subject to obligations that are at least equivalent to those stipulated in Articles 9 (*Liability*) and 11 (*Confidentiality and Ownership of Data*).

8. Market Participant Acknowledgment

The Market Participant acknowledges and agrees that:

- (a) PRISMA shall not be in breach of this Agreement if, and to the extent that, the performance of its obligations is prevented by a breach of this Agreement by the Market Participant or other act or omission of the Designated RRM or ACER;

- (b) the Reporting Obligation and, accordingly, the Reporting Services, remain at all times subject to change as a result of further regulatory developments and guidance by national or European authorities (including NRA's and ACER) and PRISMA agrees to notify the Market Participant as soon as reasonably practicable upon becoming aware of any such change.

9. Liability

- (a) In the event of a breach of a material contractual obligation (“wesentliche Vertragspflichten”), each of the Parties shall be liable to the other Party for damage to property (“Sachschäden”) and financial loss (“Vermögensschäden”), unless such loss or damage was not caused by wilful act or omission or negligence of the Party itself, its statutory representatives or vicarious agents. The liability of the Parties in the event of damage to property or financial loss caused by slight negligence shall be limited to the loss or damage typically foreseeable in connection with this Agreement.
 - (i) Material contractual obligations are obligations the performance of which is prerequisite to the proper performance of this Agreement, and the performance of which the parties to such a contract normally rely on and may at all times expect. These obligations include without limitation the ones defined in Article 3 (*PRISMA's Obligations*) and 6 (*Errors*) hereinabove for PRISMA and in Article 4 (*Market Participant's Obligations*) hereinabove for the Market Participant.
 - (ii) Loss or damage typically foreseeable is loss or damage a party to a contract foresaw as a possible consequence of a breach of such contract or ought to have foreseen as a possible consequence of a breach of such contract under the circumstances of which the party was aware at that time or ought to have been aware at that time if it had exercised due care (“verkehrsübliche Sorgfalt”).
 - (iii) It is to be assumed that the typical loss or damage in connection with this Agreement is per case EUR 25.000 for damage to property and for financial loss EUR 10.000.
- (b) Each of the Parties shall be liable to the other Party for damage to property and financial loss arising from breach of non-material contractual obligations, unless such loss or damage was not caused by wilful act or omission or gross negligence of the Party itself, its statutory representatives or vicarious agents. In this case the liability of the Parties shall be limited to the damage typically foreseeable in connection with this Agreement which is defined in Article 9 (a) (ii) and (iii) above.
- (c) Each of the Parties shall be liable to the other Party for death, personal injury or damage to health.

10. Force Majeure

- (a) A Party shall be released from its obligations to the extent that it is prevented from performing such obligations by force majeure in accordance with Article 10 (b) below. The other Party in each case shall be released from its obligations to the extent that and for such time as the first Party is prevented from performing its obligations by force majeure.
- (b) Force Majeure is defined as any unforeseeable external event that is unavoidable, even by the exercise of due care reasonably to be expected and the deployment of resources which the Party concerned could be reasonably expected to deploy from the technical and economic point of view. Such events shall include without limitation natural disasters, terrorist attacks, power failures, telecommunications failures, strikes and lawful lockouts or statutory provisions or acts of governments, courts or authorities (regardless of their legality).
- (c) The affected Party shall notify the other Party promptly, stating the circumstances of force majeure and their expected duration. The affected Party shall endeavour to restore its ability to fulfil its obligations as soon as possible, deploying all technically feasible and economically viable resources to do so.
- (d) If a Party utilises a Third Party Service Provider to perform contractual obligations, an event which would constitute force majeure or other circumstances within the meaning of Article 10 (b) above for the Third Party Service Provider concerned shall also constitute circumstances of force majeure for that Party.

11. Confidentiality and Ownership of Data

- (a) Other than as expressly provided for in this Agreement, any data or information provided by one Party to another shall be kept strictly confidential and the receiving Party shall protect such data and information from unauthorised use and disclosure to any third party in any manner whatsoever without the disclosing Party's prior consent in Written Form.
- (b) Each Party hereby consents to the disclosure of information:
 - (i) to the extent required or permitted under, or made in accordance with, the provisions of REMIT, the Implementing Act and any applicable supporting law, rule or regulation and the guidance set out in the TRUM and the MoP ("**REMIT and Supporting Regulation**") which mandate reporting and/or retention of Trade Data and similar information or to the extent required or permitted under, or made in accordance with, any order or directive in relation to (and including) REMIT and Supporting Regulation regarding reporting and/or retention of Trade Data and similar information issued by any authority or body or agency in accordance with which the other Party is required or accustomed to act and also to the extent required in accordance with the terms of this Agreement ("**Reporting Requirements**"); or

- (ii) to and between the other Party and/or Designated RRM, or any persons or entities who provide services to such other Party, in each case, in connection with and in furtherance of compliance with such Reporting Requirements by either Party.
- (c) Nothing in this agreement shall act to transfer any intellectual property rights belonging to one Party to the other.

12. Amendment and Termination

- (a) Subject to Article 12 (b) below, any amendments and additions to the terms of this Agreement must be agreed in Written Form between the Parties.
- (b) Notwithstanding Article 12 (a) above, PRISMA may, by notice in text form to the Market Participant, amend (in whole or part) this Agreement and any operational and procedural documents or processes under this Agreement, but in each case only to the extent that such amendment is necessary to accommodate any change in law, rule, regulation or operational requirement of ACER. Any such amendment will only be effective if not rejected by the Market Participant by notice in Written Form on or before the date that is [15] calendar days following the date on which the amendment notice is delivered to the Market Participant (the "Rejection Notice Deadline").
- (c) Amendments will be effective on the later of the date specified in the relevant notice and the date that is [30] calendar days following the date on which the notice of amendment is delivered to the Market Participant.
- (d) A rejection notice from the Market Participant will only be effective if delivered to PRISMA on or before the Rejection Notice Deadline.
- (e) If the Market Participant delivers a rejection notice by the Rejection Notice Deadline, this Agreement will terminate on the date that is [30] calendar days following the date on which the rejection notice is delivered to PRISMA, unless otherwise agreed in Written Form between the Parties without the amendment taking effect.
- (f) Any Party may terminate this Agreement in the case of persistent breach or breach of material contractual obligations as defined in Art. 9 (a) (i) by one of the Parties to this Agreement on [10] calendar days' notice following the date on which the termination notice is delivered to the Party which is in breach.
- (g) Except as provided otherwise in this Article 12, any Party may terminate this Agreement by notice in Written Form at the end of each calendar month with a notice period of 3 months.
- (h) The provisions of Articles 9 (*Liability*), 11 (*Confidentiality and Ownership of Data*), 13 (*Miscellaneous*), 14 (*Governing Law and Jurisdiction*), as well as this Article 12 (*Amendment and Termination*) shall survive the expiration or termination of this Agreement by 5 years after date of expiration or termination.

13. Miscellaneous

- (a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the Parties with respect to its subject matter. Subject to Art. 12 (b) above, any changes to this Agreement must be agreed upon amongst the Parties and must be made in Written Form in order to be valid; electronic form is not sufficient. This also applies to any waiver of the Written Form requirement.
- (b) **Partial Invalidity.** If, at any time, any term of this Agreement is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, this will not affect:
 - (i) the legality, validity or enforceability in that jurisdiction of any other term of this Agreement; or
 - (ii) the legality, validity or enforceability in other jurisdictions of that or any other term of this Agreement.

The Parties undertake to replace the invalid, ineffective or unenforceable provision by a valid, effective and enforceable provision which comes as close as possible to the economic interests and the intentions of the Parties at the time of entering into the Agreement. This shall also apply in the event of a contractual gap.

- (c) **Counterparts.** This Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in two (2) counterparts (including by facsimile transmission), each of which will be deemed as an original.
- (d) **Schedules.** The following Schedules are attached to this Agreement and form an integral part thereof:
 - (i) Schedule 1 (Definitions)
 - (ii) Schedule 2 (Contact Information)
 - (iii) Schedule 3 (Designated RRM)
 - (iv) Schedule 4 (Service Description)
 - (v) Schedule 5 (Fees)

14. Governing Law and Jurisdiction

- (a) **Governing Law.** This Agreement shall be governed and construed in accordance with material law of Federal Republic of Germany with the exception of its conflict of law rules. The UN Convention on Contracts for the International Sale of Goods is expressly excluded and shall in no case apply.
- (b) **Jurisdiction.** The exclusive place of jurisdiction for all legal disputes arising from this Agreement shall be Leipzig, Germany.

THIS AGREEMENT has been executed by the Parties on the respective dates specified below with effect from the XX.XX.XXXX.

.....
Place, Date, Signature

PRISMA

Dr. Götz Lincke
Managing Director

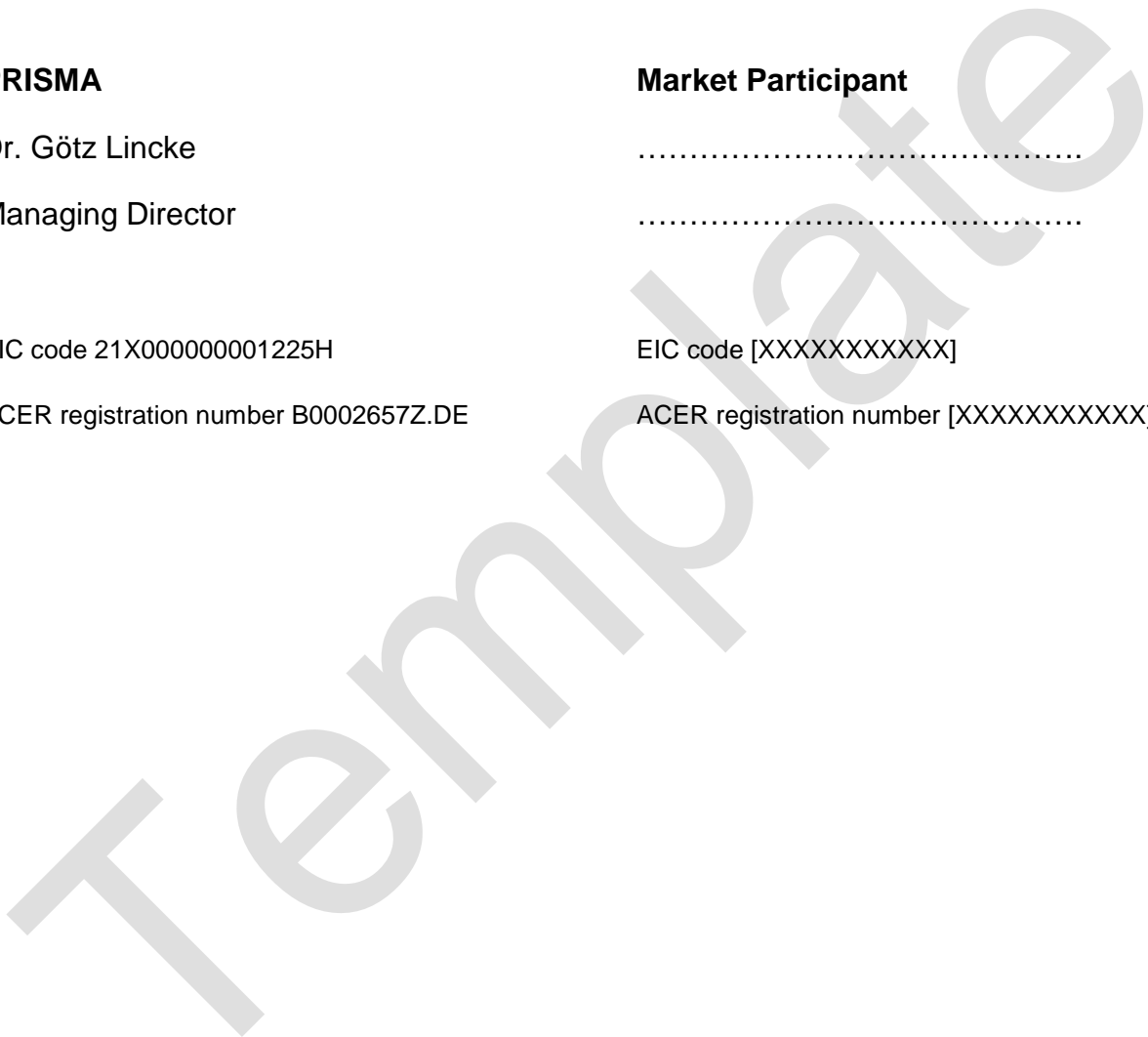
EIC code 21X00000001225H
ACER registration number B0002657Z.DE

.....
Place, Date, Signature

Market Participant

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EIC code [XXXXXXXXXXXX]
ACER registration number [XXXXXXXXXXXX]



Schedule 1 Definitions

For the purposes of this Agreement:

“ACER” means the Agency for the Cooperation of Energy Regulators with its business domicile at Trg republike 3, 1000 Ljubljana, Slovenia.

“ARIS” means ACER’s REMIT Information System.

“Designated RRM” means the registered reporting mechanism specified in Schedule 3 of this Agreement, or such other registered reporting mechanism as may be agreed in Written Form between the Parties from time to time.

“Error Reports” means notifications generated by ARIS and sent in response to a data submission made on behalf of the Market Participant which identifies errors in a data submission.

“European Union” means the economic and political union established in 1993 by the Maastricht Treaty, with the aim of achieving closer economic and political union between Member States that are located in Europe.

“Force Majeure” has the meaning set out in Article.10 (b).

“Implementing Act” means 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.

“Lifecycle Event” means the modification or termination of a Relevant Standard Contract or Relevant Order, reportable in accordance with article 7(1) of the Implementing Act and the TRUM.

“Lifecycle Data” means Trade Data concerning a Lifecycle Event.

“Market Participant Registration Code” is the unique code provided to the Market Participant by ACER when registering in accordance with Article 9 of REMIT and as referenced in Article 10(2) of the Implementing Act.

“MoP” means the manual of procedures document produced pursuant to the Implementing Act by ACER establishing procedures, standards and electronic formats for reporting of information (covering both transaction reporting and reporting of fundamental data) referred to in Articles, 6, 8 and 9 of the Implementing Act, including information on data submission channels, data validation rules and the XML-schemas to be used for such reporting, as initially published on 7 January 2015.

“NRAs” mean national regulatory authorities for the purpose of REMIT.

“Orders to Trade” has the meaning set out in the TRUM.

“Party” means PRISMA or the Market Participant

“Parties” means PRISMA and the Market Participant

“Proceedings” has the meaning given to it in Article 15 (*Governing Law and Jurisdiction*).

“Rejection Notice Deadline” has the meaning set out in Article 12(b).

“Relevant Lifecycle Data” has the meaning set out in Article 2(b)(iii).

“Relevant Orders” has the meaning set out in Article 2(b)(ii).

“Relevant Standard Contracts” has the meaning set out in Article 2(b)(i).

“Relevant Trade Data” has the meaning given to it in Article 2(b).

“Recipient” means the Market Participant, ACER or Designated RRM or a combination thereof according to the reporting model.

“REMIT” means Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

“REMIT Reporting Start Date” means 7 April 2016, being 15 months after the date the Implementing Act came into force in accordance with Article 12 of the Implementing Act.

“Reporting Obligation” means the obligation to report Trade Data under Article 8 of REMIT and the Implementing Act, construed in accordance with the TRUM, the MoP and any other guidance or operational or procedural requirements produced by ACER, or any applicable NRA.

“Reporting Services” means the services provided by PRISMA pursuant to this Agreement.

“RRM Requirements” means the document produced by ACER describing the requirements for the reporting of trade and fundamental data, the registration process of reporting parties, how ACER will assess that these requirements are fulfilled and providing an overview of the relevant legal framework, as initially published on 7 January 2015.

“Standard Contract” means a contract concerning a Wholesale Energy Product admitted to trading at an OMP as defined in Article 2(2) of the Implementing Act.

“Standard Contract Reporting Deadline” means (i) no later than the end of the working day following the conclusion of the contract or placement of the order (as applicable) or (ii) 90 days after the 7 April 2016 for Standard Contracts concluded before 7 April 2016 and remaining outstanding on that date.

"Third Party Service Provider" means a third party including, without limitation, a registered reporting mechanism appointed by PRISMA to submit, or facilitate submission and delivery of Relevant Trade Data by the Standard Contract Reporting Deadline to ACER via ARIS.

"Trade Data" has the meaning set out in Article 2(a).

"TRUM" means the Transaction Reporting User Manual, as initially published on 7 January 2015.

"Wholesale Energy Market" means any market within the European Union on which Wholesale Energy Products are traded.

"Wholesale Energy Products" has the meaning given to it in Article 2(4) of REMIT.

"Written Form" means the declaration must be signed with the hand-written signature of the person issuing the declaration.

Template

Schedule 2
Contact Information

The contact details for all communications in connection with this Agreement are:

(a) with respect to PRISMA,

René Lindner

Schillerstraße 4

04109 Leipzig

+49 341 699299078

rene.lindner@prisma-capacity.eu

; and

(b) with respect to the Market Participant

[Name]

[Adress]

[Country]

[Phone]

[E-Mail]

in each case, as may be amended in accordance with this Agreement.

**Schedule 3
Designated RRM**

(Details for contact and connection with the Designated RRM and details for the costs to be stipulated here)

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