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| **ACORD - CADRU**  **PENTRU PRESTARI SERVICII DE CONTRAPARTE PENTRU PIAȚA DE ECHILIBRARE GAZE NATURALE**  Incheiat intre:  Bursa Romana de Marfuri S.A., avand sediu social in Bucuresti, Str. Buzesti nr. 50-52, etaj 7, Sector 1, Cod 011015, Reg. Com. J40/19450/1992, CIF RO1562694, reprezentata legal de Dl. Gabriel PURICE, Presedinte -Director General, denumita in continuare: BRM  si  ................................, avand sediu social in ....................., Str. ................... nr............., , Sector/Judet.............., Cod ..............., Reg. Com.................., CIF ..................., reprezentata legal de Dl./Dna ........................, denumita in continuare: Participant la Piața De Echilibrare Gaze Naturale (pe scurt PE),  Denumite in continuare colectiv Partile.  Partile au convenit incheierea prezentului Contract, in urmatoarele conditii:   1. **Definitii**   In prezentul Contract, urmatorii termeni vor fi interpretati dupa cum urmeaza:  1.1. Agentul Escrow – banca comerciala agreata de BRM, care va deschide la ordinul clientului sau (Participantul la PE) Contul escrow în favoarea BRM.  1.2. Banca de cont central (BCR) – Banca Comerciala Romana S.A., care actioneaza ca institutie colectoare in raport cu BRM si la care BRM are deschis Contul Central aferent PE care urmeaza a fi creditat sau a fost creditat cu sumele prevazute in Instructiunile de debitare directa, emise de BRM si debitat cu sumele prevazute in ordinele de plata.  1.3. Banca de Decontare – Banca comerciala la care Participantul si-a deschis contul care urmeaza a fi debitat sau a fost debitat cu suma prevazuta in instructiunea de debitare directa;  1.4. Cont Central aferent Pietei PE – contul deschis la Banca de cont central in numele BRM, care urmeaza a fi creditat sau a fost creditat cu sumele prevazute in Instructiunile de debitare directa, emise de BRM si debitat cu sumele prevazute in ordinele de plata. Acest cont este utilizat pentru incasarea si efectuarea platilor aferente tranzactiilor incheiate pe PE.  1.5. Acord – prezentul act juridic si anexele sale, care reprezinta acordul de vointa neechivoc si obligatoriu al BRM si al Participantului la PE cu privire la serviciile care fac obiectul Contractului.  1.6. Contract privind debitarea directa (CDD) – acord încheiat între BRM si BCR în calitate de Institutie colectoare, conform prevederilor legislatiei nationale si europene aplicabile privind debitarea directa, precum si acceptul Institutiei colectoare referitor la utilizarea de catre BRM a Instructiunilor de debitare directa in cadrul unei Scheme de debitare directa.  1.7. Contul escrow – contul de depozit colateral deschis de Participant la Agentul Escrow.  1.8. Data finalizării - ziua bancară (z) în care suma prevăzută în Instrucțiunea de debitare directă este creditată în Contul Central aferent Pieței PE de către Instituția colectoare. Data finalizării aferente Instrucțiunilor de debitare directă interbancare este aceeași cu data decontării interbancare (data compensării).  1.9. Debitare directa – modalitate de plata a unei sume de bani convenite intre Participantul cumparator si BRM, care consta in debitarea preautorizata a contului Participantului cumparator de catre Institutia platitoare in baza prevederilor Mandatului de debitare directa, la solicitarea BRM si creditarea corespunzatoare a contului BRM de catre Banca de cont central in baza Contractului privind debitarea directa; aceasta modalitate de plata nu necesita autorizarea prealabila de catre Participantul cumparator a fiecarei instructiuni de debitare directa trasa asupra contului sau, asa cum este reglementat in Regulamentul BNR nr. 2/2016 privind operatiunile de transfer de credit si debitare directa.  1.10. Dreptul la rambursare – dreptul unui Participant de a formula o pretenție de rambursare în legatură cu o Instrucțiune de debitare directă (cu exceptia celor din categoria SDD B2B) la Instituția plătitoare care deține contul Participantului și, respectiv, dreptul de a primi întreaga sumă aferentă Instrucțiunii de debitare directă, solicitare care trebuie formulată în condițiile prevăzute în legislația națională aplicabilă.  1.11. Identificatorul Platitorului la BRM (Id Platitor) – informatie destinata identificarii Participantului platitor de catre BRM (ex: cod de abonat).  1.12. Institutie platitoare – institutia de credit la care Participantul are deschis contul curent care urmeaza a fi debitat sau a fost debitat cu suma prevazuta in Instructiunea de debitare directa.  1.13. Instructiune de debitare directa (IDD) – instructiune de plata prin debitare directa formulata de BRM catre Banca de cont central la care BRM are deschis Contul Central aferent PE care urmeaza a fi creditat sau a fost creditat de catre institutia platitoare la care Participantul are deschis contul curent care urmeaza a fi debitat sau a fost debitat cu suma prevazuta in respectiva Instructiune de debitare directa.  1.14. Instructiune de debitare directa interbancara (IDD interbancara) – instructiune de plata prin debitare directa in cadrul careia Banca de cont central este diferita de institutia platitoare la care Participantul are deschis contul curent care urmeaza a fi debitat sau a fost debitat cu suma prevazuta in Instructiunea de debitare directa.  1.15. Instructiune de debitare directa intrabancara (IDD intrabancara) - instructiune de plata prin debitare directa in cadrul careia banca de cont central este aceeasi cu institutia platitoare la care Participantul are deschis contul curent care urmeaza a fi debitat sau a fost debitat cu suma prevazuta in Instructiunea de debitare directa (Institutia colectoare este identica cu Institutia platitoare).  1.16. Limita – cuantumul în limita căruia Participantul poate tranzacționa în cadrul ședintelor de tranzacționare, reprezentând, pentru ordinele de cumparare ale Participantului valoarea sumei acoperite de Scrisoarea de Garanție Bancară (SGB), iar pentru ordinele de vanzare ale Participantului, valoarea stabilita de BRM.  1.17. Limita maxima a perioadei de transmitere a Instructiunilor de debitare directa – este de cinci zile lucratoare (z-5) si reprezinta numarul maxim de zile inainte de Data finalizarii (z) in care o Instructiune de debitare directa poate fi introdusa in sistemul de decontare al Bancii de cont central; Instructiunile de debitare directa se pot primi de la BRM si anterior limitei maxime a perioadei de transmitere, cu mentiunea ca acestea se incarca in sistemul informatic al Bancii de cont central in asteptare, urmand ca introducerea in sistemul de decontare al Bancii de cont central sa se realizeze in cadrul acestei limite, respectiv incepand cu data (z-5).  1.18. Limita minima a perioadei de transmitere a Instructiunilor de debitare directa intrabancara – in functie de solicitarea BRM, poate fi de o zi lucratoare (z-1) sau zero zile (z) si reprezinta numarul minim de zile bancare inainte de Data finalizarii la care o Instructiune de debitare directa intrabancara poate fi introdusa in sistemul de decontare al Bancii de cont central.  1.19. Limita minima a perioadei de transmitere a Instructiunilor de debitare directa interbancare – este de o zi lucratoare (z-1) si reprezinta numarul minim de zile bancare inainte de Data finalizarii la care o Instructiune de debitare directa interbancara poate fi introdusa in sistemul de decontare al Bancii de cont central.  1.20. Mandat de debitare directa – document care satisface cerintele legale si prin care un Participant acorda o autorizatie permanenta, dar revocabila BRM pentru a emite Instructiuni de debitare directa asupra contului sau curent deschis la Institutia platitoare si, respectiv, dreptul Institutiei platitoare de a-i debita contul curent cu suma prevazuta in Instructiunile de debitare directa emise de BRM.  1.21. Nota de decontare zilnica – raport emis de BRM pentru Participant, conform prevederilor prezentului Contract.  1.22. Numar unic de inregistrare al mandatului (UMR) – identificator unic al mandatului la nivel interbancar.  1.23. Punct virtual de tranzactionare (PVT) – punct abstract, unic la nivelul Sistemului national de transport, intre punctele de intrare in Sistemul national de transport si cele de iesire din Sistemul national de transport, in care este permis transferul dreptului de proprietate asupra gazelor naturale de la un participant catre alt participant de pe piata gazelor naturale;  1.24. Scrisoare de Garantie Bancara (SGB) – instrumentul financiar prin care se constituie o garantie de plata in favoarea BRM de catre Participant, conform prevederilor acestui Contract.  1.25. Schema de debitare directa – schema de plati care defineste un set comun de reguli si procese aplicabile operatiunilor de debitare directa. Schema de debitare directa poate fi:  1.25.1. Schema de debitare directa Business to Business (SDD B2B) – schema de debitare directa accesibila doar clientilor platitori persoane juridice (si conform careia rambursarea unei IDD nu este permisa).  1.25.2. Schema de debitare directa CORE (SDD Core) – schema accesibila atat platitorilor persoane fizice cat si platitorilor persoane juridice.  1.26. Zi de livrare – ziua calendaristica pentru care a fost incheiata o tranzactie (ziua D-1)  1.27. Zi de tranzactionare – orice zi calendaristica in care este initiata o sesiune de tranzactionare (ziua D)  1.28. Zi lucratoare – zi calendaristica, cu exceptia sambetei, duminicii si a oricarei zile declarata sarbatoare legala in Romania  1.29. Zi nelucratoare – zi de sambata, de duminica si oricare zi declarata sarbatoare legala in Romania  1.30. Ziua D – zi calendaristica.  **2. Termeni privind apartenenta ca Participant la Piata PE**  2.1. Participantul la Piata PE declara prin prezentul ca:  (i) a incheiat un contract de echilibrare și acces la PVT cu SNTGN Transgaz la data de ...............................................  Partile convin ca, in baza prezentului Contract, BRM va furniza servicii de compensare in calitate de contraparte fata de Participant, in conditiile prevazute in Regulamentul privind cadrul organizat de tranzacționare pe piețele centralizate de gaze naturale administrate de societatea Bursa Română de Mărfuri (Romanian Commodities Exchange) S.A., in si in Procedura de organizare și funcționare a pieței pentru tranzacţionarea gazelor naturale pe Piata PE de societatea Bursa Română de Mărfuri (Romanian Commodities Exchange) S.A..  2.2. Participantul la Piata PE se angajeaza ca va respecta obligatiile specificate in Regulamentul si procedurile asociate acestei piete.  2.3. Compensarea se face de catre BRM, in calitate de contraparte. Orice fel de obligatii legate de regimul vamal sau fiscal al gazelor naturale vor cadea exclusiv in sarcina Participantului si nu vor fi achitate prin mecanismul de compensare prevazut in prezentul Contract, iar BRM nu va avea nicio raspundere sau obligatie in acest sens.  2.4. Pentru serviciile furnizate in baza prezentului Contract, Participantul va plati contravaloarea comisionului stabilit de catre BRM din cuantumul tranzactiilor efectuate. Valoarea comisionului se publica pe site-ul BRM www.brm.ro. BRM are dreptul sa modifice valoarea comisionului, prin publicarea noii valori pe site-ul BRM și prin notificarea scrisă, a tuturor participanților cu care a încheiat acord cadru pentru prestarea serviciilor de contraparte, cu 30 zile lucrătoare înainte de aplicarea noii valori a comisionului modificat. Initierea de tranzactii reprezintă acordul Participantului cu privire la noua valoare a comisionului, publicata anterior deschiderii zilei de tranzactionare.  2.5. Participantul care nu isi indeplineste obligatiile ce ii incumba ca participant pe piata gazelor naturale (inclusiv cele aferente unei sesiuni de tranzactionare) ramane pe deplin raspunzator pentru orice prejudiciu creat, urmand a garanta si despagubi integral BRM pentru orice pretentii ale oricaror terti.  **3. Obligatiile Participantului la Piata PE. Mecanisme aplicabile**  ***Plata tranzactiilor***  3.1. În măsura în care părțile nu agrează o altă modalitate de plată, participantul la Piata PE va incheia un Mandat de debitare directa in beneficiul BRM care reprezinta baza in care banca Participantului, in calitate de Institutie plătitoare, va debita contul curent al Participantului cu suma prevazută în fiecare Instructiune de debitare directa emisa de BRM si care va fi pus la dispozitia Bancii de cont central la cererea acesteia.  3.2. Debitarea directa se va realiza pentru sumele datorate ca pret al tranzactiilor,. Contractul privind debitarea directa (CDD) si Mandatul de debitare directa vor permite si consultarea soldului contului curent al Participantului deschis la Banca cont central (BCR) sau la o Institutia platitoare care detine un acord de debit direct cu Banca cont central (BCR) si comunicarea acestui sold catre BRM, in orice moment.  Comisioanele bancare aferente platilor de decontare incluse in fluxul de debitare directa pe Piata de Echilibrare revin in sarcina Participantului. Facturarea acestor comisioane se va efectua lunar de catre BRM, in baza informatiilor furnizate de catre Banca de Cont Central. Anexat la factura se va explicita modul de calcul /percepere a comisioanelor.  ***Garantarea platii tranzactiilor***  3.3. In scopul garantarii platii tranzactiilor, Participantul la Piata PE:  (i) va furniza o Scrisoare de Garantie Bancara (SGB) in favoarea BRM emisa de Banca de cont central sau de o alta banca comerciala autorizata in Romania si acceptata de catre BRM sau  (ii) va oferi alte garantii agreate de către părți.  3.4. Pragul valoric maxim in limita caruia Participantul-cumparator are dreptul sa tranzactioneze pe Piata PE este determinat dupa formula Limita = SGB + alte garantii, intelegand ca:  (i) valoarea SGB va fi reprezentata de disponibilul (suma neblocata) aferent- unei SGB in vigoare la momentul Deschiderii zilei de tranzactionare D  (ii) valoarea altor garantii va fi reprezentata de valoarea constituita a acestora la momentul Deschiderii zilei de tranzactionare D.  3.5. Limita de tranzactionare va fi aplicabila in fiecare Zi de tranzactionare pentru ordinele de cumparare ale Participantului. BRM va avea dreptul sa solicite garantii si sa stabileasca Limita de tranzactionare si pentru ordinele de vanzare ale Participantului.  3.6. SGB se va constitui, pe cheltuiala exclusiva a Participantului, ca un angajament care se executa la prima si simpla cerere a BRM. SGB va avea o perioada de valabilitate initiala de minimum 3 luni, urmand ca aceasta valabilitate sa fie extinsa pe cheltuiala exclusiva a Participantului. Participantul va furniza BRM dovada emiterii unei noi SGB, sau, dupa caz, a extinderii perioadei de valabilitate a SGB existente cu cel putin 5 zile inainte de data expirarii fiecarei perioade de valabilitate, sub sanctiunea neluarii in considerare a SGB in calculul Limitei. SGB se va constitui in forma prevazuta in Anexa 1 a prezentului Acord si va permite executarea de catre BRM pentru acoperirea tuturor sumelor datorate conform prezentului Acord, incluzand sumele datorate ca pret al tranzactiilor, comisionul datorat BRM pentru serviciile furnizate conform prezentului Acord si eventualele penalitati.  3.7. Participantul este de drept in intarziere pentru toate obligatiile de plata conform prezentului Acord, debitarea directa si/sau executarea garantiilor urmand a se realiza fara nicio instiintare prealabila a Participantului de catre BRM si fara nicio alta formalitate, cu exceptia celor prevazute expres in prezentul Contract.  3.8. Participantul poate solicita reducerea cuantumului SGB, al Contului Escrow si/sau al altor garantii, justificata prin volumul anterior al tranzactiilor sale, numai cu acordul scris al BRM, care va fi transmis bancii emitente a acestor instrumente de garantare.  3.9. Algoritmul de tranzactionare. In cazul Participantului la Piata PE, in calitate de cumparator, algoritmul de tranzactionare prevede urmatoarele etape:  3.9.1. Deschiderea zilei de tranzactionare a produsului PE pentru ziua D-1 se face in ziua D prin primirea de catre BRM pana la orele 09:00 ale zilei D a soldului clientului de la BCR si stabilirea Limitei (SGB + alte garantii) si primirii datelor de la OTS (Transgaz) pana la ora 15:00 cu cantitatile si sensul deficitului, participantul putand tranzactiona doar in limita cantitatii de dezechilibru si doar pe sensul comunicat (Cumparare sau Vanzare in functie de deficit sau surplus).  3.9.2. Daca Limita este negativa sau zero, Participantul este suspendat de la tranzactionare si primeste o instiintare pentru completarea marjei.  3.9.3. Daca Limita este pozitiva, Participantul poate tranzactiona in intervalul orar 15:00-17:00 al zilei D, fara a depasi Limita.  3.9.4. Dupa inchiderea pietei incepand cu orele 17:15 ale zilei D, BRM transmite catre Participantii la Piata PE si Operatorului de Transport si Sistem (OTS), in speta S.N.T.G.N. Transgaz S.A., raportul tranzactiilor efectuate cu livrare in ziua D-1.  3.9.5. Pana la orele 17:00 ale zilei D+2, OTS trimite la BRM confirmarea inregistrarii tranzactiei pentru ziua D, respectiv ziua D+1, in conditiile in care conventia incheiata intre OTS si BRM va permite aceasta operatiune.  3.9.6. Pana la orele 10:00 ale zilei D+1, BRM transmite notificarile de Debit Direct DD catre BCR. Contul Participantului cumparator este debitat conform tranzactiilor efectuate.  3.10. In cazul Participantului Piata PE in calitate de vanzator, algoritmul de tranzactionare este asemanator cu exceptia obligativitatii constituirii sumelor de garantie  3.11. Limita maxima de timp pentru achitarea de catre Participantul cumparator prin debit direct a cuantumului obligatiilor rezultate din tranzactiile sale este de 2 (doua) zile bancare, interval in cadrul caruia Participantul va trebui sa faca disponibila in contul sau curent suma corespunzatoare platilor cumulate in intervalul mentionat sau sa solicite anularea Instructiunii de debitare directa. In caz contrar, BRM va notifica Participantul si va trece la executarea garantiilor pana la concurenta achitarii sumelor datorate in ziua D+5, prin executarea Scrisorii de Garantie Bancara (SGB). In situatia in care cuantumul garantiilor nu acopera sumele datorate, Participantul va fi exclus de la tranzactii pe o perioada de 3-12 luni, dar nu mai devreme de recuperarea tuturor sumelor datorate BRM. Neacoperirea integrala a sumelor datorate BRM in urma executarii garantiilor determina aplicarea de penalitati de 0,1 %/zi de intarziere, pana la data recuperarii intregii sume.  3.12. Sumele restante la plata pana in momentul confirmarii de catre Banca de cont central a achitarii acestora sunt scazute din Limita in care Participantul - cumparator poate cumpara in cursul sedintelor de licitatie desfasurate pana la momentul confirmarii.  3.13. Sumele restante la plata pana in momentul confirmarii de catre Banca de cont central a achitarii acestora sunt scazute din Limita in care Participantul - vanzator poate vinde in cursul sedintelor de licitatie desfasurate pana la momentul confirmarii.  3.14. In cadrul sedintei de tranzactionare curente, Limita de calificare a Participantului este verificata in timp real de catre platforma BRM, luand in calcul toate tranzactiile curente in care Participantul cumparator sau vanzator este angajat. Participantul este exclus in situatia in care soldul Limitei este depasit de valoarea tranzactiilor initiate. Excluderea de la tranzactionare se efectueaza numai pentru tranzactiile in care Limita este depasita, Participantul avand posibilitatea de a reduce valoarea tranzactiei pentru a se incadra in Limita sau de a majora cuantumul Limitei, pentru a putea participa la noi sedinte.  ***Decontare si Facturare***  3.15. BRM va pune la dispozitia fiecarui Participant care a inregistrat tranzactii de vanzare sau de cumparare o Nota de Decontare Zilnica, ce va contine urmatoarele informatii:  (i) Cantitatile de gaze naturale corespunzatoare vanzarilor si cumpararilor efectuate in ziua de tranzactionare D cu livrare in ziua D -1;  (ii) Valorile corespunzatoare vanzarilor si cumpararilor efectuate in ziua de tranzactionare D cu livrare in ziua D-1;  (iii) Pretul de inchidere al tranzactiilor = PIP (pretul de inchidere al Pietei PE, acelasi pentru toatet tranzactiile;  (iv) Valoarea comisionului platibil BRM;  (v) Contravaloarea TVA, conform reglementarilor aplicabile;  (vi) Valoarea neta a drepturilor de incasare/ obligatiilor de plata zilnice;  (vii) Orice alte informatii considerate necesare sau obligatorii, potrivit reglementarilor aplicabile.  3.16. Valoarea Instructiunilor de debitare directa si a ordinelor de plata emise de BRM se va calcula pe baza Notelor de Decontare Zilnica.  3.17. BRM va emite si transmite lunar facturi catre Participant, pe baza Notelor de Decontare Zilnica.  3.18. Facturile vor fi emise de BRM cu data ultimei zile a lunii de livrare si vor fi comunicate electronic Participantului, in primele 5 zile lucratoare ale lunii urmatoare. Facturile vor contine situatia centralizata a tranzactiilor efectuate de Participant in luna de livrare (cantitativ si valoric), obligatiile de plata si drepturile de incasare ale BRM, tarife si comisioanele aplicabile, contravaloarea TVA conform prevederilor legislatiei fiscale aplicabile la data facturarii, valoarea totala, precum si orice alte mentiuni obligatorii potrivit legii.  3.19. La randul sau, Participantul va emite lunar factura aferenta cantitatilor de gaze naturale vandute pe Piata PE. Facturile vor fi emise de Participant cu data ultimei zile a lunii de livrare si vor fi comunicate electronic sau prin fax catre BRM, in primele 5 zile lucratoare ale lunii urmatoare, urmand sa fie transmise si in original pana la data de 10 a lunii respective.    **4. Drepturile si obligatiile BRM**  4.1. BRM isi asuma integral raspunderea de a se asigura ca Mandatul de debitare directa este valid si valabil si constituie o autorizare corespunzatoare pentru banca Participantului pentru debitarea contului curent al Participantului.  4.2. BRM isi asuma raspunderea deplina pentru exactitatea tuturor Instructiunilor de debitare directa transmise Bancii de cont curent.  4.3. BRM se obliga sa respecte intocmai si in orice moment reglementarile legale in vigoare aplicabile Instructiunilor de debitare directa.  4.4. BRM se obliga sa asigure confidentialitatea datelor personale si bancare ale Participantilor si respectarea tuturor obligatiilor legale cu privire la datele cu caracter personal.  4.5. BRM se obliga sa asigure bunul mers al tranzactiilor pe Piata PE. In acest sens, BRM va avea dreptul:  (i) Sa suspende sau sa anuleze orice ordine de tranzactionare sau orice actiuni realizate in calitate de contraparte centrala pentru a remedia probleme tehnice sau la cererea autoritatilor de reglementare;  (ii) Sa suspende sau sa intrerupa accesul oricarui Participant la Piata PE in cazul in care OTS trimite la BRM confirmarea nelivrarilor de gaze, demonstrand ca Participantul nu a livrat cantitatea de gaze tranzactionata in calitate de vanzator sau nu a preluat cantitatea de gaze tranzactionata in calitate de cumparator.  (iii) Sa suspende sau sa intrerupa accesul oricarui Participant la Piata PE in orice alte cazuri prevazute expres de prezentul Contract, precum si in orice alte situatii in care exista dovezi ca activitatea Participantului ar putea afecta in mod negativ reputatia Pietei PE sau care ar putea afecta modul ordonat si corect de tranzactionare sau decontare (incluzand, dar fara a se limita la tentative realizate sau esuate de manipulare a pietei);  4.6. Toate masurile de mai sus vor fi opozabile Participantului, care nu va avea nicio pretentie derivata din sau ca urmare a adoptarii lor de catre BRM.  4.7. BRM se obliga sa returneze sumele aferente Instructiunilor de debitare directa incasate, in cazul primirii unei solicitari transmise conform prevederilor Art. 4.8 din prezentul Contract, inclusiv in situatia in care schimba Institutia colectoare sau inceteaza sa foloseasca Instructiuni de debitare directa in intervalul de timp dintre momentul emiterii unei Instructiuni de debitare directa si momentul formularii unei solicitari de rambursare/returnare.  4.8. Banca Participantului platitor, in calitate de Institutie platitoare, poate solicita returnarea unei Instructiuni de debitare directa din motive tehnice sau pentru ca nu poate executa Instructiunea de debitare directa din alte motive (ex: contul Participantului este inchis).  4.8.1. O solicitare de returnare a unei Instructiuni de debitare directa procesata in Schema de debitare directa CORE poate fi trimisa in termen de 5 zile lucratoare de la data decontarii.  4.8.2. O solicitare de returnare a unei Instructiuni de debitare directa procesata in Schema de debitare directa Business 2 Business poate fi trimisa in termen de 2 zile lucratoare de la data decontarii.  4.8.3. Dupa expirarea termenelor prevazute la Art. 4.8.1 si 4.8.2, Institutia platitoare nu mai poate transmite solicitari de returnare.  4.9. Valoarea costurilor se va limita la comisioanele solicitate de catre banca Participantului platitor initiatoare a solicitarii de rambursare/returnare a Instructiunii de debitare directa.  4.10. In acest caz, singura obligatie a BRM va fi aceea de a nu executa garantiile Participantului, dupa primirea solicitarii de returnare si cu conditia ca Institutia platitoare se respecte termenele prevazute la Art. 4.8.1 si 4.8.2.  4.11. Cu exceptia culpei grave sau actiunilor intentionate, BRM nu raspunde pentru eventualele prejudicii cauzate de:  (i) Introducerea de catre Participant a unor ordine/oferte continand erori sau inadvertente;  (ii) Incorecta utilizare a sistemului de tranzactionare al BRM pus la dispozitia Participantilor;  (iii) Disfunctionalitati sau defectiuni ale cailor de comunicatii cu BRM sau ale sistemului de tranzactionare al BRM pus la dispozitia Participantilor.  **5. Forta majora. Cazul fortuit**  5.1. Participantul la Piata PE exonereaza BRM de orice obligatie legata de intarzieri sau neexecutari datorate unor circumstante independente de vointa acesteia.  5.2. Niciuna dintre Parti nu raspunde de neexecutarea la termen si/sau de executarea in mod necorespunzator – total sau partial – a oricarei obligatii care ii revine in baza prezentului Acord, daca neexecutarea sau executarea necorespunzatoare sau cu intarziere a obligatiei respective a fost cauzata de forta majora si/sau caz fortuit, așa cum sunt definite la art. 1.351 din Codul Civil.  5.3. Partea care invoca forta majora sau cazul fortuit este obligata sa notifice celeilalte Parti, in termen de 5 zile calendaristice, producerea evenimentului de forta majora sau caz fortuit si sa ia toate masurile posibile in vederea limitarii consecintelor lui. In caz contrar, Partea va raspunde pentru prejudiciul cauzat, prin aceasta, celeilalte Parti. Notificarea privind cazul de forta majora va fi insotita de un document scris emis de o autoritate competenta (ex. Camera de Comert si Industrie a Romaniei in caz de forta majora), care sa certifice exactitatea faptelor si imprejurarilor notificate.  5.4. Daca in termen de 15 zile calendaristice de la producere, evenimentul respectiv nu inceteaza, Partile au dreptul sa notifice incetarea de plin drept si fara indeplinirea nici unei formalitati a prezentului Acord, fara ca vreuna dintre ele sa pretinda daune-interese.    **6. Confidentialitate**  6.1. Atat pe perioada de derulare a prezentului Acord, cat si dupa incetarea acestuia, fiecare Parte va pastra confidentialitatea tuturor informatiilor sau datelor cunoscute, indiferent sub ce forma ar exista, atat a celor direct legate de prezentul Acord, cat si a celorlalte date referitoare la cealalta Parte si clientii acesteia, indiferent pe ce cale le-a aflat, sub sanctiunea rezilierii prezentului Acord si/sau a suportarii daunelor ce le-ar cauza celeilalte Parti ca urmare a nerespectarii acestei clauze, cu mentiunea ca BRM va putea dezvalui astfel de informatii catre grupul din care face parte precum si catre angajatii, reprezentantii, consultantii profesionali si auditorii sai, precum si afiliatilor sai si angajatilor, reprezentantilor, consultantilor profesionali ori auditorilor acestora.  6.2. Clauza de confidentialitate obliga Partea care a ajuns in posesia unor astfel de informatii sa nu le divulge unei terte parti, in nici un caz si sub nici o forma, cu exceptia situatiilor prevazute in normele imperative ale legii sau la solicitarea autoritarilor competente, in caz contrar avand obligatia de a suporta daune-interese care sa acopere integral prejudiciul cauzat celeilalte Parti si dovedit de aceasta.  **7. Durata si incetarea contractului**  7.1. Prezentul Acord se incheie pe termen nelimitat, acesta putand inceta fie cu acordul Partilor, la data stabilita de catre acestea, fie prin denuntare unilaterala a acestuia de catre oricare dintre Parti, cu un preaviz de cel putin 15 zile lucratoare trimis inainte de data incetarii.  7.2. In cazul in care una din Parti incalca obligatia de confidentialitate din prezentul Acord, cealalta Parte poate declara rezilierea unilaterala a Acordului, prin simpla notificare scrisa de reziliere transmisa Partii in culpa, fara punere in intarziere si fara nicio alta formalitate judiciara sau extrajudiciara, conform dispozitiilor art.1553 Cod Civil privind pactul comisoriu.  7.3. In cazul in care una dintre Parti nu isi indeplineste obligatiile contractuale si daca nu exista alte prevederi exprese in Acord care sa reglementeze conduita Partilor in respectiva situatie, cealalta Parte va notifica Partea in culpa cu privire la neexecutare, prin transmiterea unei scrisori recomandate cu confirmare de primire, in care va indica perioada pe care Partea in culpa o are la dispozitie pentru executarea obligatiei contractuale. Data la care Partea in culpa primeste scrisoarea va fi considerata data punerii in intarziere a acesteia. Daca Partea in culpa se afla de drept in intarziere in conformitate cu prevederile legale sau ale prezentului Acord, sau daca in termenul indicat in notificare Partea in culpa nu executa corespunzator obligatia contractuala, Partea indreptatita poate transmite o notificare scrisa prin care va declara rezilierea unilaterala a Contractului. Participantul este pus de drept in intarziere in cazurile in care se i se suspenda dreptul de tranzactionare, conform prezentului Acord.  7.4. Revocarea de catre Participant a Mandatului de debitare directa acordat BRM conduce la incetarea automata a prezentului Acord, fara nicio alta formalitate judiciara sau extrajudiciara, Participantul urmand a fi raspunzator fata de BRM si/sau orice alti Participanti sau terti pentru eventualele prejudicii create.  **8. Lege si jurisdictie**  8.1. Prezentul Acord este guvernat de si va fi interpretat in conformitate cu legea romana.  8.2. Orice disputa intre Parti nascuta din sau in legatura cu incheierea, validitatea, interpretarea, executarea sau incetarea prezentului Acord va fi rezolvata pe cale amiabila. Toate neintelegerile/disputele care nu pot fi rezolvate pe cale amiabila intre Part intr-un interval de [30 de] zile de la notificarea initiala a diferendului vor fi solutionate de catre instantele judecatoresti competente din Bucuresti.  **9. Notificari si corespondenta intre partile semnatare**  9.1. In acceptiunea Partilor, orice notificare/corespondenta adresata de o Parte celeilalte Parti este valabil comunicata daca este predata sau transmisa la adresa mentionata in prezentul Acord.  9.2. Notificarea/ corespondenta se transmite prin posta/curierat cu scrisoare recomandata cu confirmare de primire, prin e-mail sau fax.  9.3. Notificarea/ corespondenta transmise prin posta cu scrisoare recomandata cu confirmare de primire, se considera primita la data semnarii de catre destinatar a confirmarii de primire. Notificarea/ corespondenta transmisa prin e-mail sau fax se considera primita la data receptionarii confirmarii de primire, in cazul in care aceasta a fost emisa inainte de orele 15:00 in orice zi lucratoare; in cazul in care confirmarea a fost emisa dupa orele 15:00 sau intr-o zi nelucratoare, notificarea/corespondenta se considera primita in prima zi lucratoare care urmeaza dupa data emiterii confirmarii.  9.4. Adresele de notificare, numerele de fax si telefon la care se vor transmite in mod valabil corespondenta sunt:  9.4.1. pentru BRM:  Adresa: Str. Buzesti nr. 50-52, Bucuresti, Romania  Telefon: 021 317 4560  Email: office@brm.ro  9.4.2. pentru Participant:  Adresa:  Telefon:  Fax:  Email:  Persoana de contact:  9.5. Schimbarea adreselor postale, a adreselor de email sau a numarului de fax/telefon nu este opozabila decat dupa trecerea a cel putin 5 zile lucratoare de la data la care s-a primit notificarea privind schimbarea adreselor postale, a adreselor de email sau a numarului de fax/telefon.  **10. Dispozitii finale**  10.1. In cazul in care reglementarile legislative de natura tehnica sau operationala emise de autoritatile competente vor impune Partilor obligatii suplimentare sau modificarea celor stipulate in prezentul Acord, Partile vor aduce Acordul in conformitate cu obligatiile legale in termen de maximum 14 zile, sub sanctiunea incetarii automate a acestuia. Pentru evitarea oricarui dubiu, pe perioada negocierilor si pana la incheierea unui eventual act aditional, prezentul Acord isi va produce pe deplin efectele intre Parti.  Participantul, avand la cunostinta natura operatiunilor avute in vedere de prezentul Acord, declara ca isi asuma, prin prezentul Acord, riscul schimbarii imprejurarilor in care este incheiat acesta, in conformitate cu art. 1271 al. 3 lit. c) din Codul Civil, si renunta la invocarea impreviziunii in legatura cu acest Acord.  10.2. Participantul nu va putea sa cesioneze sau sa transmita unui tert, in orice modalitate juridica, vreun drept sau vreo obligatie prevazuta prin prezentul Acord sau prezentul Contract Acord in intregime, fara acordul expres, in scris si prealabil al BRM.  10.3. Orice modificare sau completare a prezentului Acord se face numai prin act aditional, incheiat in scris de Parti.  10.4. Prin semnarea prezentului Acord, Partile declara ca au luat la cunostinta, au inteles pe deplin si accepta in mod expres prezentul Acord.  10.5. Prin semnarea Acordului, Partile confirma faptul ca acesta reflecta in mod deplin intreaga vointa a acestora cu privire la obiectul Acordului, prevaleaza fata de orice alte intelegeri, inscrisuri sau negocieri care au avut loc intre Parti inainte de semnarea acesteia, precum si faptul ca nu exista niciun fel de elemente secundare legate de Acord si intelegerea dintre Parti care sa nu fi fost reflectate in Acord.  10.6. De asemenea, Participantul confirma ca este pe deplin de acord cu prevederile Acordului si ca, in conformitate cu art. 1.203 Cod Civil, accepta in mod expres clauzele din Acord privind limitarea raspunderii BRM, dreptul BRM de a denunta unilateral Acordul si de a suspenda executarea obligatiilor sale in conditiile prevazute in Acord, clauzele care prevad decaderea din drepturi ori din beneficiul termenului, precum si clauzele privitoare la competenta instantelor judecatoresti.  10.7. ln cazul in care una dintre prevederile Acordului este lipsita de valabilitate sau inaplicabila sub orice aspect in conformitate cu legile si reglementarile aplicabile, valabilitatea, legalitatea si aplicabilitatea celorlalte prevederi ale Acordului nu va fi afectata in niciun fel de aceasta, iar Acordul va continua sa isi produca efectele. Prevederile lipsite de valabilitate sau inaplicabile vor fi considerate ca fiind substituite cu o prevedere adecvata si echitabila care, in masura permisa de lege, este cat mai aproape posibil de intentia si scopul prevederii lipsite de valabilitate sau inaplicabile.  10.8. Prezentul Acordul se completeaza cu prevederile legale imperative in materie de debitare directa, asa cum acestea pot varia din timp in timp, cu cele ale Regulamentului Pietei Centralizate de Gaze Naturale Administrata de BRM si ale Procedurii de tranzactionare pe pietele centralizate de gaze naturale administrate de Societatea Bursa Romana de Marfuri SA, in conditiile utilizarii unei Case de clearing/contrapărți.    Prezentul Acord s-a semnat astazi,\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 2 exemplare, cate unul pentru fiecare Parte semnatara si isi va produce efectele incepand cu data semnarii.   |  |  | | --- | --- | | Reprezentant legal  BRM,  **Presedinte Director**  **General**  **Gabriel PURICE**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | Participant,  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | | **FRAMEWORK AGREEMENT**  **FOR THE PROVISION OF COUNTERPARTY SERVICES FOR THE NATURAL GAS BALANCING MARKET**  **Concluded between:**  **Bursa Română de Mărfuri S.A.**,headquartered in Bucharest, 50-52 Buzești Street, 7th floor, 1st district, zip code 011015, Trade Register Number J40/19450/1992, CIF *(tax registration code)* RO1562694, legally represented by Mr. Gabriel PURICE, President - General Manager, hereinafter referred to as the **RCE**  **and**  **................................,** headquartered in ....................., Street ................... no. ............, District/County .............., zip code ..............., Trade Register No. .................., CIF (tax code)..................., legally represented by Mr./Ms. ......................, hereinafter referred to as: **the Participant in the Natural Gas Balancing Market**, hereinafter referred to as **the Participant**,  Hereinafter collectively referred to as **the Parties**.  **The Parties have agreed to conclude this Agreement, subject to the following conditions:**   1. **Definitii**   In this Agreement, the following terms shall be interpreted as follows:  1.1. **Escrow Agent** – the commercial bank approved by the RCE that shall open at its customer’s order (the Participant in the BALANCING MAKET) the Escrow account in favour of the RCE.  1.2. **Central Account Bank** **(CAB)** – Banca Comerciala Romana S.A. (Romanian Commercial Bank), that acts as a collecting institution in relation to the RCE and with which the RCE has opened the Central Account related to the BALANCING MARKET that shall be credited or has been credited with the amounts provided in the Direct Debit Instructions, issued by the RCE and debited with the amounts provided in the payment orders.  1.3. **Settlement Bank** - The commercial bank with which the Participant has opened the account that shall be debited or has been debited with the amount provided in the Direct Debit Instruction.  1.4. **Central Account related to the Short-Term Products Market** – the account opened with the Central Account Bank on behalf of the RCE, that shall be credited or has been credited with the amounts provided in the Direct Debit Instructions, issued by the RCE and debited with the amounts provided in the payment orders. This account is used to collect and make payments related to transactions concluded on the BALANCING MARKET.  1.5. **Agreement** – this legal act and its annexes that represents the unequivocal and binding agreement of will of the RCE and the Participant to the BALANCING MARKET regarding the services that are the object of the Agreement.  1.6. **Direct debit contract (DDC)** – agreement concluded between the RCE and the BCR as a Collecting institution, according to the provisions of the applicable national and European legislation on direct debit, as well as the acceptance of the collecting institution regarding the use by the RCE of the Direct Debit Instructions within a Direct debit scheme.  1.7. **Escrow account** – the collateral deposit account opened by the Participant with the Escrow Agent.  1.8. **Completion date** – the banking day (z) on which the amount provided for in the Direct Debit Instruction is credited to the Central Account related to the Balancing Market by the Collecting institution. The completion date for the Interbank Direct Debit Instructions is the same as the interbank settlement date (clearing date).  1.9. **Direct debit** – the method of payment of a sum of money agreed between the Buyer Participant and the RCE, which consists in the pre-authorized debiting of the Buyer Participant account by the paying Institution based on the provisions of the Direct debit mandate upon the request of the RCE and the corresponding credit of the RCE account by the Central account bank based on the Direct Debit Agreement; this method of payment does not require the prior authorization by the Buyer Participant of each Direct Debit Instruction drawn on its account, as regulated in the NBR Regulation no. 2/2016 on the credit transfer and direct debit operations.  1.10. **Right to reimbursement** – the right of a Participant to make a claim for reimbursement in connection with a Direct Debit Instruction (except for those in the B2B DDS category) to the Paying Institution holding the Participant`s account and, respectively, the right to receive the full amount of the Direct Debit Instruction, a request that must be made under the conditions laid down in the applicable national law.  1.11. **Payer Identifier at the RCE (Payer Id)** – information intended for the identification of the Paying Participant by the RCE (ex: subscriber code).  1.12. **Paying Institution** – the credit institution with which the Participant has opened the current account that shall be debited or has been debited with the amount provided in the Direct Debit Instruction.  1.13. **Direct Debit Instruction (DDI)** – direct debit payment instruction issued by the RCE to the Central Account Bank with which the RCE has opened the Central Account related to the BALANCING MARKET that shall be credited or has been credited by the paying institution with which the Participant has opened the current account that shall be debited or has been debited with the amount provided in the respective Direct Debit Instruction.  1.14. **Interbank Direct Debit Instruction (interbank DDI)** – Direct debit payment instruction in which the Central Account Bank is different from the paying institution to which the Participant has opened the current account that shall be debited or has been debited with the amount provided in the Direct Debit Instruction.  1.15. **Intrabank Direct Debit Instruction (Intrabank** **DDI**) – Direct debit payment instruction in which the Central bank account is the same as the Paying Institution with which the Participant has opened the current account that shall be debited or has been debited with the amount provided in the Direct Debit Instruction (the Collecting Institution is identical to the Paying Institution).  1.16. **Limit** – the amount within which the Participant may trade during the trading sessions, representing, for the purchase orders of the Participant the value of the Letter of Bank guarantee (LBG) and for the sale orders of the Participant, the value set by the RCE.  1.17. **Maximum limit of the transmission period of the Direct Debit Instructions** – is five working days (d-5) and represents the maximum number of days before the Completion Date (d) when a Direct Debit Instruction can be entered in the settlement system of Central Account Bank; The Direct Debit Instructions may also be received from the RCE before the maximum limit of the transmission period, with the mention that they are uploaded in the computer system of the Central Account Bank pending and they shall be introduced in the settlement system of the Central Account Bank within this limit, respectively starting with the date (d-5).  1.18. **Minimum limit of the transmission period of the Intrabank Direct Debit Instructions** – depending on the request of the RCE it may be one working day (d-1) or zero days (d) and it represents the minimum number of banking days before the Completion Date when an Intrabank Direct Debit Instruction can be entered in the Central Account Bank’s settlement system.  1.19. **Minimum limit of the transmission period of the Interbank Direct Debit Instructions** – is one working day (d-1) and it represents the minimum number of banking days before the Completion Date on which an Interbank Direct Debit Instruction can be entered in the settlement system of the Central Account Bank.  1.20. **Direct debit mandate** – a document that satisfies the legal requirements and by which a Participant grants a permanent but revocable authorization to the RCE to issue Direct Debit Instructions on its current account opened with the Paying Institution and, respectively, the right of the Paying Institution to debit its current account with the amount provided in the Direct Debit Instructions issued by the RCE.  1.21. **Daily settlement note** – a report issued by the RCE for the Participant, according to the provisions of this Agreement.  1.22. **Unique mandate registration number (UMR)** – a unique identifier of the mandate at interbank level.  1.23. **Virtual trading point (VTP)** – an abstract unique point at the level of the National Transmission System, between the entry points in the National Transmission System and the exit points from the National Transmission System, where the transfer of ownership of natural gas is allowed from one participant to another on the natural gas market;  1.24. **Letter of bank guarantee (LBG)** – the financial instrument by which a payment guarantee is established in favor of the RCE by the Participant, according to the provisions of this Agreement**.**  1.25. **Direct debit scheme** – the payment scheme that defines a common set of rules and processes applicable to the direct debit operations. The direct debit scheme can be:  1.25.1. **Business to Business Direct Debit Scheme (B2B DDS)** – direct debit scheme accessible only to paying customers legal entities (and according to which the reimbursement of a DDI is not allowed).  1.25.2. **CORE direct debit scheme (Core DDS)** – the scheme accessible to both natural and legal persons payers.  1.26. **Delivery day** – the calendar day for which a transaction was concluded. (Day D-1)  1.27. **Trading day** – the calendar day for which a transaction was concluded. (Day D)  1.28. **Working day** – calendar day, except for Saturday, Sunday and any day declared a legal holiday in Romania.  1.29. **Non-working day** – Saturday, Sunday and any day declared a legal holiday in Romania.  1.30. **Day D** – calendar day.  **2. Terms regarding membership as a Participant in the Natural Gas Balancing Market**  2.1. The Participant in the **Natural Gas Balancing Market** hereby declares that:  (i) it concluded a balancing and access contract to the VTP with the SNTGN Transgaz on ...............................................  The Parties agree that, on the basis of this Agreement the RCE shall provide clearing services as a counterparty to the Participant, under the conditions provided in *the Regulation on the organized trading framework on centralized natural gas markets managed by* *the company* *Bursa Română de Mărfuri (Romanian Commodities Exchange) S.A.*, and in *the Procedure of organization and functioning of the natural gas Balancing market administered by the company* *Bursa Română de Mărfuri (Romanian Commodities Exchange) S.A.*  2.2. The Participant in the Balancing Market undertakes to comply with the obligations specified in the *Regulation* and procedures associated with this market.  2.3. The clearing is made by the RCE, as a counterparty. Any obligations related to the customs or tax regime of natural gas shall fall exclusively on the Participant and shall not be paid through the clearing mechanism provided in this Agreement, and the RCE shall have no responsibility or obligation in this regard.  2.4. For the services provided under this Agreement, the Participant shall pay the value of the commission established by the RCE from the amount of the transactions performed. The value of the commission is published on the RCE website [www.brm.ro](http://www.brm.ro). The RCE has the right to change the amount of the commission, by publishing the new value on the RCE website and by written notification sent to all participants with whom it has concluded a framework agreement for the provision of counterparty services, at least 30 calendar days before applying the new value of the adjusted commission. The initiation of transactions represents the agreement of the Participant regarding the new value of the commission, published prior to the opening of the trading day.  2.5. The participant that does not fulfill its obligations as a participant on the natural gas market (including those related to a trading session) remains fully liable for any damage, and shall guarantee and fully compensate the RCE for any claims of any third party.  **3. Obligations of the Participant in the Balancing Market. Applicable mechanisms.** ***Payment of transactions***  3.1. To the extent that the parties do not agree on another method of payment, the participant in the Balancing Market shall conclude a Direct Debit Mandate for the benefit of the RCE which is the basis on which the Participant’s bank, **as Paying Institution**, shall debit the Participant’s current account with the amount provided in each Direct Debit Instruction issued by the RCE and which shall be made available to the **Central Account Bank** upon its request.  3.2. The direct debit shall be made for the amounts due as transactions price. The Direct Debit Contract (DDC) and the Direct Debit Mandate shall also allow the consultation of the current account balance of the Participant opened with the Central Account Bank (BCR bank) or at a Paying Institution holding a direct debit agreement with the Central Account Bank (BCR bank) and the communication of this balance to the RCE at any moment.  The bank commissions related to the settlement payments included in the direct debit flow on the Balancing market are incumbent on the Participant. The RCE shall issue monthly invoices for these commissions, based on the information provided by the Central Account Bank. The calculation / collection of commissions shall be explained in the annex to the invoice.  ***Garantarea platii tranzactiilor***  3.3. In order to guarantee the payment of transactions, the Participant in the Balancing Market:  (i) shall provide a Letter of Bank Guarantee (LBG) in favor of the RCE issued by the Central Account Bank or by another commercial bank authorized in Romania and accepted by the RCE.  (ii) shall provide other guarantees agreed by the parties.  3.4. The maximum value threshold within which the Buyer Participant has the right to trade in the Balancing Market is determined by the formula Limit = LBG + other guarantees, understanding that:  (i) the value of the LBG shall be represented by the cash (unblocked amount) related to a LBG in force at the time of the Opening of the trading day D.  (ii) the value of other guarantees shall be represented by their constituted value at the Opening of the trading day D.  3.5 The trading limit shall be applicable on each Trading Day for the Participant’s purchase orders. The RCE shall have the right to request guarantees and to establish the Trading Limit for the Participant’s sales orders as well.  3.6. The LBG shall be established at the exclusive expense of the Participant, as a commitment executed upon the first and simple request of the RCE. The LBG shall have an initial validity period of at least 3 months that shall be extended at the exclusive expense of the Participant. The participant shall provide the RCE with the proof of issuing a new LBG or, as the case may be, of extending the validity period of the existing LBG, at least 5 days before the expiration date of each validity period, under the sanction of not considering the LBG in the Limit calculation. The LBG shall be established as set out in Annex 1 to this Agreement and shall allow the execution by the RCE to cover all amounts due under this Agreement, including the amounts due as transaction price, the commission due to the RCE for services provided under this Agreement and any penalties.  3.7. The Participant is late as of right for all payment obligations under this Agreement and thus the direct debit and / or the execution of guarantees shall be made without any prior notice to the Participant by the RCE and without any other formality, except as expressly provided in this Agreement.  3.8. The Participant may request a reduction in the amount of the LBG, the Escrow Account and / or other guarantees, justified by the previous volume of its transactions, only with the written consent of the RCE, that shall be sent to the issuing bank of these guarantee instruments.  3.9. ***Trading algorithm***. In the case of the Balancing Market Participant, acting as buyer, the trading algorithm provides the following steps:  3.9.1. The trading day for the Balancing market product for the day D-1 is opened on day D when the RCE receives until 09:00 a.m. of day D the client’s balance from BCR bank and the establishment of the Limit (LBG + other guarantees) and receives data from TSO (S.N.T.G.N. Transgaz S.A.) untill 15:00 p.m. regarding the quantities and the direction of the deficit, the participant being able to trade only within the limit of the deficit and only on the direction of the deficit (Buying or Selling, depending on the deficit or surplus).  3.9.2. If the Limit is negative or zero the Participant is suspended from trading and receives a notification to settle the margin.  3.9.3. If the limit is positive the participant can trade in the interval 15:00-17:00 of day D, without exceeding the Limit.  3.9.4. After the closing of the market at 17:15 p.m. on day D, the RCE transmits the report of the transactions performed with delivery on day D-1 to the Balancing Market Participants and to the Transport and System Operator (TSO), in this case, the S.N.T.G.N. Transgaz S.A.  3.9.5. Until 17:00 p.m. of day D+2, TSO sends to the RCE confirmation of the registration of the transaction for day D, namely day D+1 provided that the convention concluded between the TSO and the RCE allows this operation.  3.9.6. The RCE sends the DD Direct Debit notifications to BCR bank until 10:00 a.m. of the day D + 1. The account of the Buyer Participant is debited according to the transactions performed.  3.10. In the case of the Participant in the Balancing Market as seller, the trading algorithm is similar with the exception of the obligation to constitute guarantee sums.  3.11. The maximum time limit for the payment by the Buyer Participant by direct debit of the amount of obligations resulting from its transactions is 2 (two) banking days, during which the Participant shall have to make available in its current account the amount corresponding to the payments accumulated in the mentioned interval or to request the cancellation of the Direct Debit Instruction. Otherwise, the RCE shall notify the Participant and shall proceed to the execution of the guarantees until all the amounts due on day D + 5 are paid, through the execution of the Letter of Bank Guarantee (LBG). If the amount of guarantees does not cover the amounts due, the Participant shall be excluded from transactions for a period of 3-12 months, but not earlier than the recovery of all amounts due to the RCE. The non-full coverage of the amounts due to the RCE following the execution of the guarantees determines the application of penalties of 0.1%/day of delay, until the date of recovery of the entire amount.  3.12. The outstanding amounts until the moment of confirmation by the Central Account Bank of their payment are deducted from the Limit in which the Buyer Participant can buy during the auction sessions held until the confirmation moment.  3.13. The outstanding amounts until the confirmation moment by the Central Account Bank of their payment are deducted from the Limit to which the Seller Participant can sell during the auction sessions held until the confirmation moment.  3.14. During the current trading session, the Participant Qualification Limit is verified in real time by the RCE platform, taking into account all current transactions in which the Buyer or Seller Participant is involved. The Participant is excluded in the situation when the balance of the Limit is exceeded by the value of the initiated transactions. The Participant is excluded from trading only for transactions in which the Limit is exceeded, the Participant having the possibility to reduce the value of the transaction in order to fit in the Limit or to increase the amount of the Limit, in order to participate in new sessions.  ***Settlement and invoicing***  3.15. The RCE shall provide each Participant who has registered sale or purchase transactions with a Daily Settlement Note, that shall contain the following information:  (i) The amounts of natural gas corresponding to the sales and purchases made on the trading day D with delivery on day D -1;  (ii) The values corresponding to the sales and purchases made on the trading day D with delivery on day D-1;  (iii) The closing price of the transactions = MCP (the Market Closing Price of the Balancing market, the same for all transactions);  (iv) The amount of the commission payable to the RCE;  (v) The value of the VAT, according to the applicable regulations;  (vi) The net value of the daily collection rights / payment obligations;  (vii) Any other information deemed necessary or mandatory, in accordance with the applicable regulations.  3.16. The value of the Direct Debit Instructions and of the payment orders issued by the RCE shall be calculated based on the Daily Settlement Notes.  3.17. The RCE shall issue and send monthly invoices to the Participant, based on the Daily Settlement Notes.  3.18. The invoices shall be issued by the RCE with the date of the last day of the delivery month and shall be communicated electronically to the Participant, on the first 5 working days of the following month. The invoices shall contain the centralized situation of the transactions performed by the Participant on the delivery month (quantity and value), the payment obligations and the collection rights of the RCE, the applicable tariffs and commissions, the VAT amount according to the fiscal legislation applicable on the invoicing date, the total value, as well as any other mandatory mentions according to the law.  3.19. In turn, the Participant shall issue a monthly invoice for the quantities of natural gas sold on the Balancing market. The invoices shall be issued by the Participant with the date of the last day of the delivery month and shall be communicated electronically or by fax to the RCE on the first 5 working days of the following month, and shall be sent in original until the 10th day of the respective month.  **4. Rights and obligations of the RCE**  4.1. The RCE takes full responsibility to ensure that the Direct Debit Mandate is valid and current and constitutes an appropriate authorization for the Participant’s bank to debit the Participant’s current account.  4.2. The RCE takes full responsibility for the accuracy of all Direct Debit Instructions submitted to **the Current Account Bank.**  4.3. The RCE undertakes to comply exactly and at all times with the legal regulations in force applicable to the Direct Debit Instructions.  4.4. The RCE undertakes to ensure confidentiality of the personal and banking data of the Participants and the observance of all legal obligations regarding the personal data.  4.5. The RCE undertakes to ensure the smooth running of transactions on the Balancing market. In this sense the RCE shall have the right:  (i) to suspend or cancel any trading order or any action taken as a central counterparty to remedy technical issues or at the request of regulatory authorities;  (ii) to suspend or interrupt the access of any Participant to the Balancing market if the TSO sends to the RCE the confirmation of gas deliveries, proving that the Participant has not delivered the quantity of gas traded as a seller or has not taken over the quantity of gas traded as a buyer.  (iii) to suspend or interrupt the access of any Participant to the Balancing market in any other cases expressly provided for in this Agreement, as well as in any other situations where there is evidence that the Participant’s activity could adversely affect the reputation of the Balancing market or that could affect the orderly and correct way of trading or settlement (including, but not limited to attempts made or failed to manipulate the market);  4.6. All the above measures shall be opposable to the Participant, which shall not have any claim derived from or as a result of their adoption by the RCE.  4.7. The RCE undertakes to return the amounts related to the Direct Debit Instructions received, in case of receiving a request sent according to the provisions of Art. 4.8 of this Agreement, including in case the Collection Institution changes or ceases to use the Direct Debit Instructions in the time between issuing a Direct Debit Instruction and the moment of formulating a request for reimbursement / return.  4.8. The Paying Participant’s Bank, as a Paying Institution, may request the return of a Direct Debit Instruction for technical reasons or because it cannot execute the Direct Debit Instruction for other reasons (e.g.: the Participant’s account is closed).  4.8.1. A request for the return of a Direct Debit Instruction processed in the CORE Direct Debit Scheme can be sent within 5 working days from the settlement date.  4.8.2. A request for the return of a Direct Debit Instruction processed in the Business 2 Business Direct Debit Scheme can be sent within 2 working days from the settlement date.  4.8.3. After the expiration of the terms provided in Art. 4.8.1 and 4.8.2, the Paying Institution can no longer send return requests.  4.9. The value of the costs shall be limited to the commissions requested by the bank of the paying Participant initiating the request for reimbursement / return of the Direct Debit Instruction.  4.10. In this case, the only obligation of the RCE shall be not to execute the Participant’s guarantees after receiving the return request and provided that the Paying Institution respects the terms provided in Art. 4.8.1 and 4.8.2.  4.11. With the exception of gross negligence or intentional actions the RCE is not liable for any damages caused by:  (i) the introduction by the Participant of some orders / bids containing errors or inadvertences;  (ii) the incorrect use of the RCE trading system made available to the Participants;  (iii) dysfunctions or malfunctions of the communication channels with the RCE or of the RCE trading system made available to the Participants.  **5. FORCE MAJEURE**  5.1. The participant in the Balancing market exonerates the RCE from any obligation related to delays or non-executions due to circumstances beyond its control.  5.2. Neither Party shall be liable for the non-execution on time and / or the improper execution - in whole or in part - of any obligation under this Agreement, if the non-execution or the improper or delayed execution of that obligation was caused by force majeure, as defined in art. 1.351 of the Civil Code.  5.3. The Party invoking the force majeure is obliged to notify the other Party, within 5 calendar days, of the occurrence of the force majeure event and to take all possible measures in order to limit its consequences. Otherwise, the Party shall be liable for the damage caused thereby to the other Party. The notification regarding the case of force majeure shall be accompanied by a written document issued by a competent authority (e.g. the Chamber of Commerce and Industry of Romania in case of force majeure), certifying the accuracy of the notified facts and circumstances.  5.4. If within 15 calendar days after the occurrence, the event does not cease, the Parties have the right to notify the full termination and without fulfilling any formality of this Agreement, without any of them claiming damages.  **6. CONFIDENTIALITY**  6.1. Both during and after the termination of this Agreement, each Party shall maintain confidentiality of all known information or data, in whatever form it may exist, those directly related to this Agreement and the other data relating to the other Party and its clients, irrespective of the way they found them, under the sanction of termination of this Agreement and / or bearing the damages they would cause to the other Party as a result of non-compliance with this clause, with the mention that the RCE shall be able to disclose such information to the group to which it belongs as well as to its employees, representatives, professional consultants and auditors, as well as its affiliates and employees, representatives, professional consultants or their auditors, who become obliged to maintain confidentiality under the same rules as the RCE.  6.2. The confidentiality clause obliges the Party that has come into possession of such information not to disclose it to a third party, in any case and in any form, except in the situations provided by the mandatory rules of law or at the request of the competent authorities, otherwise having the obligation to bear damages that fully cover the damage caused to the other Party and proved by it.  **7. DURATION AND TERMINATION OF THE AGREEMENT**  7.1.This Agreement is concluded for an unlimited period, and it may be terminated either with the agreement of the Parties, on the date set by them, or by unilateral denunciation by either Party, with at least 15 working days notice before the termination date.  7.2. If one of the Parties violates the obligation of confidentiality of this Agreement, the other Party may declare the unilateral termination of the Agreement, by simple written notice of termination sent to the Party at fault, without delay and without any other judicial or extrajudicial formality according to the provisions of art. 1553 of the Civil Code regarding the termination clause.  7.3. If one of the Parties fails to fulfill its contractual obligations and if there are no other express provisions in the Agreement governing the conduct of the Parties in that situation, the other Party shall notify the Party at fault of the non-performance by sending a registered letter with acknowledgement of receipt, in which it shall indicate the period that the Party at fault has at its disposal for the execution of the contractual obligation. The date on which the Party at fault receives the letter shall be deemed to be the date of the notice of default. If the Party at fault is rightfully at default in accordance with the law or this Agreement, or if the Party at fault fails to perform its contractual obligation within the time limit set forth in the notice, the entitled Party may give written notice stating the unilateral termination of the Agreement. The Participant shall be rightfully given a notice of default in cases where its trading right is suspended, in accordance with this Agreement.  7.4. The revocation by the Participant of the Direct Debit Mandate granted to the RCE leads to the automatic termination of this Agreement, without any other judicial or extrajudicial formality, the Participant being liable to the RCE and / or any other Participants or third parties for any damages.  **8. LAW AND JURISDICTION**  8.1.This Agreement is governed by and shall be construed in accordance with the Romanian law.  8.2. Any dispute between the Parties arising out of or in connection with the conclusion, validity, interpretation, execution or termination of this Agreement shall be settled amicably. All misunderstandings / disputes that cannot be settled amicably between the Parties within 30 days from the initial notification of the dispute shall be resolved by the competent courts in Bucharest.  **9. NOTIFICATIONS AND CORRESPONDENCE BETWEEN THE SIGNING PARTIES**  9.1. For the acceptance of the Parties, any notification / correspondence addressed by one Party to the other Party is validly communicated if delivered or transmitted to the address mentioned in this Agreement.  9.2. The notification / correspondence is sent by registered mail / courier with acknowledgment of receipt, by e-mail or fax.  9.3. The notification / correspondence sent by registered mail with acknowledgment of receipt is considered received on the date it is signed by the recipient of the acknowledgment of receipt. The notification / correspondence sent by e-mail or fax is considered received on the date of receipt of the acknowledgment of receipt, if it was issued before 15:00 on any working day; if the acknowledgment of receipt was issued after 15:00 or on a non-working day, the notification / correspondence is considered received on the first working day following the issuance date of the acknowledgment of receipt.  9.4. The notification addresses, fax and telephone numbers to which the correspondence shall be validly sent are:  9.4.1. pentru BRM:   |  |  | | --- | --- | | Address: | 50-52 Buzesti Street, Bucharest, Romania | | Phone: | 021 317 4560 | | Email: | [office@brm.ro](mailto:office@brm.ro) |   9.4.2 for **the Participant:**   |  |  | | --- | --- | | Address: |  | | Phone: |  | | Fax: |  | | Email: |  | | Contact person: |  |   9.5. The change of postal addresses, email addresses or fax / telephone number is not opposable until at least 5 working days have elapsed from the date on which the notification was received regarding the change of postal addresses, email addresses or fax number / phone.  **10. FINAL PROVISIONS**  10.1. If technical or operational legislative regulations issued by the competent authorities shall impose additional obligations to the Parties or shall make them amend the obligations set forth in this Agreement, the Parties shall update the Agreement in accordance with the legal obligations within a maximum of 14 days, subject to automatic termination. For the avoidance of any doubt, during the negotiations and until the conclusion of any additional act, this Agreement shall take full effect between the Parties.  The participant, knowing the nature of the operations envisaged by this Agreement, declares that it assumes, through this Agreement, the risk of changing the circumstances in which it is concluded, in accordance with art. 1271 paragraph 3 letter c) of the Civil Code, and waives the invocation of contingency in connection with this Agreement.  10.2. The Participant may not assign or transmit to a third party, in any legal manner, any right or obligation under this Agreement or this Agreement in its entirety, without the express written and prior consent of the RCE which shall not be unjustifiably denied.  10.3. Any modification or completion of this Agreement is made only by an additional act, concluded in writing by the Parties.  10.4. By signing this Agreement the Parties declare that they have read, fully understood and expressly accept this Agreement.  10.5. By signing the Agreement the Parties confirm that it fully reflects their entire will regarding the object of the Agreement, prevails over any other agreements, documents or negotiations that took place between the Parties prior to its signing, and that there are no secondary elements related to the Agreement and understanding between the Parties that have not been reflected in the Agreement.  10.6. Also, the Participant confirms that it fully agrees with the provisions of the Agreement and that in accordance with art. 1.203 of the Civil Code it expressly accepts the clauses of the Agreement on limiting the liability of the RCE, the right of the RCE to unilaterally terminate the Agreement and to suspend the execution of its obligations under the conditions provided in the Agreement, the clauses providing for the revocation of rights or benefits, and the clauses regarding the competence of the courts.  10.7. If one of the provisions of the Agreement is invalid or unenforceable in any respect under the applicable laws and regulations, the validity, legality and applicability of the other provisions of the Agreement shall not be affected in any way by this Agreement and the Agreement shall continue to produce effects. Invalid or unenforceable provisions shall be deemed to be substituted for an adequate and equitable provision which, to the extent permitted by law, is as close as possible to the intent and purpose of the invalid or unenforceable provision.  10.8. This Agreement is supplemented by the mandatory legal provisions on direct debit, as they may vary from time to time, with those of the Regulation on the framework organized for trading standardized products on centralized natural gas markets administered by the company Bursa Romana de Marfuri (Romanian Commodities Exchange) S.A., under the conditions of utilising a Clearing house/counterparty.  This Agreement has been signed today, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ in 2 copies, one for each signing Party and shall take effect on the signature date.   |  |  | | --- | --- | | Legal representative  BRM,  **President General**  **Manager**  **Gabriel PURICE**  **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | Participant,  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |