



## **ATHENS EXCHANGE CLEARING HOUSE S.A.**

### **General Terms for the EMIR-TR Service**

## 1. DEFINITIONS

In this Agreement the following terms as displayed in alphabetical order, shall mean:

**Agreement:** This Agreement consists as a whole from the Application, these General Terms, the relevant Annexes and any subsequent written appendix, modification or addendum, which are an integral part of the Agreement.

**Application:** The application submitted by the CLEARING MEMBER to the ATHEXCLEAR for receiving the Service EMIR-TR, stating the transactions wishing to be covered by the Service EMIR-TR either on behalf of the CLEARING MEMBER or/and its Authorizing Customers.

**Authorizing Customer:** A Customer of the CLEARING MEMBER on behalf of which the CLEARING MEMBER, upon lawful authorization granted to it by such a Customer, entrusts and delegates to the ATHEXCLEAR the submission of Transaction Reports the Customer is required under EMIR to submit. For the purposes of this document as Authorizing Customer will also be deemed to be any company affiliated with the Clearing Member according to the provisions of Article 42e of the Law 2910 / 1920, as well as any customer of such affiliated company, on condition that, upon legal authorization provided by the affiliated company or the customer to the Clearing Member, the latter entrusts and delegates ATHEXCLEAR to submit Trade Reports of such affiliated company or its customer accordingly.

**EMIR:** The Commission Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

**Reporting Start Date:** The date specified by the relevant legislation for the start of the reporting obligation under Article (9) of the EMIR (February 12<sup>th</sup>, 2014)

**Service EMIR-TR:** The service of the ATHEXCLEAR for the submission of Transaction Reports in accordance with the Technical Specifications

**Technical Specifications:** the technical specifications of the Service EMIR-TR described in Annex A of the Agreement, as in force from time to time

**Trade Repository (TR):** A trade repository recognized under EMIR

**Transaction Report (or Report):**

Each report that should be submitted under Article 9 (1) of EMIR, to a TR and regards the following cases:

- a. Reporting for any transaction entered into by the CLEARING MEMBER in the Athens Stock Exchange (ATHEX) or Hellenic Energy Exchange (HEEx) Derivatives Market with ATHEXClear and the customers thereof, for which the CLEARING MEMBER is a reporting counterparty.
- b. Reporting for any transaction entered into by the CLEARING MEMBER's Authorizing Customers with the CLEARING MEMBER in the Athens Stock Exchange (ATHEX) or Hellenic Energy Exchange (HEEx) Derivatives Market, for which the Authorizing Customers are reporting counterparties.
- c. Reporting on derivatives transactions concluded over the counter or in other organized/regulated markets by the CLEARING MEMBER or the Authorizing Customers thereof, for which the CLEARING MEMBER or the Authorizing Customers thereof are reporting counterparties, respectively.

## **2. DELEGATION FOR TRANSACTION REPORTS**

1. The CLEARING MEMBER hereby delegates to the ATHEXClear under article 9 (1) of EMIR the submission to a TR of the Transaction Reports selected in the Application of the Agreement.
2. The CLEARING MEMBER may enter into this Agreement either on its own behalf or/and, if it wishes so, on behalf of its Authorizing Customers acting as their authorized representative, provided that said Authorizing Customers have furnished the CLEARING MEMBER with a relevant special mandate and power of attorney for this purpose. Where the second case is applicable, the CLEARING MEMBER must promptly inform the ATHEXClear for any such Authorizing Customer or for the cessation of the relevant mandate/delegation.
3. The ATHEXClear hereby undertakes to provide to the CLEARING MEMBER (or and its Authorizing Customers, if applicable) the Service EMIR-TR in accordance with the specific provisions of this Agreement and only for those Transaction Reports selected by the CLEARING MEMBER in the Application.
4. The appointment under paragraph 1 hereof shall be effective upon signing of this Agreement and ceases with the termination thereof for any cause. ATHEXClear shall

not be obliged to submit any Transaction Report for the CLEARING MEMBER (or and its Authorizing Customers, if applicable) until ATHEXClear has notified the CLEARING MEMBER that its on-boarding has been concluded following completion, to the former's satisfaction, of all steps that ATHEXClear considers necessary, in its absolute discretion, to finalize CLEARING MEMBER's on-boarding for the Service EMIR-TR including, but not limited to, receipt of the legal entity identification of the CLEARING MEMBER (or and its Authorizing Customers, if applicable) as well as any other data deemed to be necessary by ATHEXClear in its discretion.

### **3. THE SERVICE EMIR-TR**

1. ATHEXClear, for each Transaction Report chosen by the CLEARING MEMBER in the Application, shall submit to a Trade Repository ("TR") of its choice:
  - a. the minimum technical data required by the EMIR Regulation and related regulations or other technical or illustrative regulatory texts related to the technical implementation.
  - b. other information required by the TR.
2. ATHEXClear may decide not to submit a Transaction Report in respect of any transaction if it reasonably considers that it does not have sufficient information to do so, that any of the information that it has is incomplete, inaccurate, or not compliant with any requirements under EMIR, or where any Transaction Report may breach any law or regulation.
3. In the event that any of the reasons stipulated in the paragraph 2 above occurs, ATHEXClear will use its reasonable endeavors to notify the CLEARING MEMBER and to work with it in order to obtain the missing information as soon as reasonably practicable.
4. All Transaction Reports will be made by the ATHEXClear on a reasonable efforts basis and are conditional upon delivery by the CLEARING MEMBER to the ATHEXClear of the requisite Transaction Reports data for its counterparty (or and for the Authorizing Customers, if applicable) as well as and any other data that may be required by ATHEXClear, to enable ATHEXClear to make such Transaction Reports in a timely manner according to article 3 hereof.

5. The ATHEXClear for the transactions that it clears, shall create Transaction Reports in accordance with the procedures and the Technical Specifications of the Service EMIR-TR.
6. For the transactions that are not cleared by the ATHEXClear, the latter shall submit to the TR the Transaction Reports as drawn up by the CLEARING MEMBER itself in an excel compliant with the Technical Specifications of the Service EMIR-TR.
7. Signing of this Agreement shall be deemed to be as approval by the CLEARING MEMBER of the Technical Specifications under which the Transaction Reports shall be carried out by the ATHEXClear to the TR.

## **4. REPRESENTATIONS AND WARRANTIES**

1. The CLEARING MEMBER represents and warrants that:
  - a. it has been duly appointed by each Authorizing Customer to act on their behalf for the delegation of their EMIR reporting to the ATHEXClear according to the terms of the Service EMIR-TR
  - b. the data which it provides to the ATHEXClear pursuant to this Agreement is complete, accurate and compliant with any requirements under EMIR
  - c. the provision of the Transaction Reports Data in the appropriate format or excel in compliance with the Technical Specifications remains the CLEARING MEMBER' responsibility
  - d. liability for the submission, accuracy and completeness of the Transaction Reports that the CLEARING MEMBER is obliged to perform, (or and its Authorizing Customers, where applicable), rests with the CLEARING MEMBER (or and its Authorizing Customers, where applicable) and it accepts that while submission of Transaction Reports may be delegated to the ATHEXClear, even when it delegates hereunder to ATHEXClear the submission of said reports.
2. ATHEXClear does not act in this Agreement as an Advisor of the CLEARING MEMBER (or and its Authorizing Customers, where applicable).

## **5. OBLIGATION FOR NO DUPLICATION**

1. Pursuant to Article 9(1) of EMIR, both Parties are required to ensure that Transaction Reports are made without duplication. Consequently, the CLEARING MEMBER (or and its Authorizing Customers, where applicable) undertakes throughout the term of this Agreement, not to submit by itself independent Transaction Reports or appoint any

other third party, except the ATHEXClear, to do so on its behalf in respect of the same Transaction Reports. Notwithstanding the foregoing, the CLEARING MEMBER (or and its Authorizing Customers, where applicable) undertakes to submit by itself Transaction Reports in relation to derivative transactions not covered by this Agreement.

## **6. DISRUPTION TO REPORTING AND DATA DEFECTS**

1. If the ATHEXClear becomes aware of any disruption for the submission of Transaction Reports, it shall use reasonable endeavours promptly to resolve such disruption. ATHEXClear may cease to submit Transaction Reports according to the Agreement as long as such disruption lasts.
2. ATHEXClear shall use reasonable endeavors to notify promptly the CLEARING MEMBER of any rejection by the Trade Repository or submission failure in relation to a Transaction Report where such failure was caused by inaccurate or incomplete Transaction Report data supplied by the CLEARING MEMBER or inappropriate compliance with the Technical Specifications by the latter and the CLEARING MEMBER shall immediately upon receipt of notice remedy such data defect.

## **7. TRANSACTION REPORTS DATA**

1. The CLEARING MEMBER shall deliver to the ATHEXClear the Transaction Reports data that regard itself (or and its Authorizing Customers, where applicable) in accordance with the EMIR and the Technical Specifications set by the ATHEXClear from time to time.
2. The CLEARING MEMBER acknowledges that:
  - a. ATHEXClear may require up to one (1) week following receipt of the complete Transaction Reports data by the CLEARING MEMBER, to conclude the on-boarding of the latter for the Service EMIR-TR
  - b. it is CLEARING MEMBER' responsibility to ensure that all relevant Transaction Reports data is provided to the ATHEXClear in a timely manner in order to enable reporting transactions to commence within the relevant reporting deadlines specified in the relevant legislation in force or and the Technical Specifications.
3. The CLEARING MEMBER shall review periodically its Transaction Reports Data (or and of its Authorizing Customers, where applicable) and notify the ATHEXClear immediately of any change.

4. The CLEARING MEMBER acknowledges that the provision of accurate data is its sole exclusive responsibility.
5. The CLEARING MEMBER shall promptly notify ATHEXClear of any inaccuracy in the Transaction Reports it becomes aware of.
6. The CLEARING MEMBER shall reimburse the ATHEXClear on demand for any costs or expenses (inclusive of any applicable tax) ATHEXClear may incur where it is required to supplement or update any Transaction Report as a result of the CLEARING MEMBER's failure to provide any of the Transaction Reports Data in time.

## **8. OBLIGATION FOR PRIME RECORD KEEPING**

1. The Transaction Reports data held by the ATHEXClear shall not be the "prime record" of the CLEARING MEMBER (and its Authorizing Customers, where applicable) and the ATHEXClear is not responsible for meeting the regulatory obligations of the CLEARING MEMBER (and its Authorizing Customers, where applicable) for the retention of such data.

## **9. USE OF THIRD PARTIES**

1. ATHEXClear may utilize the services of a third party service provider to facilitate the submission of the Transaction Reports or the performance by the ATHEXClear of any of its obligations under this Agreement, including but not limited to any platform, system, interface or other technology developed by any such third party service provider for such purpose. If ATHEXClear appoints a third party service provider, it will notify the CLEARING MEMBER of such appointment as soon as reasonably practicable.

## **10. LIABILITY AND INDEMNITY**

1. ATHEXClear shall, at all times, provide the Service EMIR TR and perform its obligations under this Agreement with reasonable care, provided that the ATHEXClear shall not be required to do anything which is contrary to any law or the operating procedures of any third party service provider or any relevant Trade Repository with which ATHEXClear cooperates for the Service EMIR-TR.
2. ATHEXClear and its contractors shall not have any liability towards the CLEARING MEMBER (or and its Authorizing Customers where applicable) for any direct losses

(including any cost, charge, fee, expense, regulatory penalty or fine) sustained by the CLEARING MEMBER (or and its Authorizing Customers where applicable) arising directly from:

- a. The provision of the Service EMIR-TR by the ATHEXCLEAR
- b. any acts, omissions or failures of any third party service provider or a Trade Repository with which the ATHEXCLEAR cooperates for the Service EMIR-TR, resulting to the non-submission of the Transaction Reports via the third party service provider or to the Trade Repository on behalf of the CLEARING MEMBER (or and its Authorizing Customers, where applicable).
- c. the provision of the Service EMIR-TR via a platform, system, interface or other technology provided by the ATHEXCLEAR or any third party service provider
- d. a third party processing any data of the Transactions Reports on behalf of the ATHEXCLEAR,

Except to the extent that such direct losses are due to the willful default or gross negligence of the ATHEXCLEAR or its contractors.

3. Neither party shall be liable to the other for any indirect, special or consequential loss or damage including without limitation loss of profit, business revenue or goodwill.
4. ATHEXCLEAR shall have no obligation and shall bear no liability for verifying the validity or accuracy of the Transaction Reports data provided by the CLEARING MEMBER.
5. ATHEXCLEAR shall not be liable for any errors, acts or omissions arising as a result of any inaccurate or incomplete Transaction Reports Data of the CLEARING MEMBER (or and its Authorizing Customers where applicable), or resulting from relevant instructions given by the CLEARING MEMBER.
6. If the CLEARING MEMBER fails to perform or is delayed in performing any of its obligations under the Agreement by the time limits specified in the Technical Specifications, then the ATHEXCLEAR will be excused for any failure or delayed submission of a Transaction Report to the extent this is caused by the CLEARING MEMBER' fault.
7. ATHEXCLEAR shall not be liable for any partial or non-performance of the Reporting by reason of any technical error, breakdown or failure of transmission, communication or computer facilities where such technical error, breakdown or failure is outside of the control of ATHEXCLEAR (and/or its contractors) provided that ATHEXCLEAR shall use



reasonable efforts to correct or repair any such technical error, breakdown or failure as soon as reasonably practicable after having become aware of it.

8. The CLEARING MEMBER shall be liable to compensate the ATHEXCLEAR for any direct losses, costs and expenses the latter may sustain in respect with the provision of the Service EMIR-TR arising from the CLEARING MEMBER' wilful default or gross negligence.
9. The aggregate liability of the ATHEXCLEAR to the CLEARING MEMBER (or and its Authorizing Customers, where applicable) under this Agreement, whether for breach of contract or tort, shall not exceed an amount equal to the total (inclusive of any Value Added Tax) of the fees paid to the ATHEXCLEAR by the CLEARING MEMBER over the preceding 12 months prior to the circumstances giving rise to the claim in respect of this Agreement, except to the extent that the losses are due to the wilful default of the ATHEXCLEAR.
10. Neither party shall be held liable or be deemed to be in default under the Agreement for any failure to perform its obligations hereunder, arising directly or indirectly from events or circumstances beyond its reasonable control – “Force Majeure Event”- (including without limitation governmental orders or restrictions, war, war-like conditions, hostilities, blockade, embargo, detention, revolution, riot, looting, strikes or lock-outs to which the party claiming benefit of the force majeure event is not a party, plagues or other epidemics, fire, flood, thunderbolts and other Acts of God).
11. If a Force Majeure Event occurs, the Party not being able to perform its obligations due to force majeure shall inform the other Party as soon as practicably possible. If such a Force majeure Event continues for more than 14 (fourteen) working days, either Party may terminate this Agreement immediately upon notice, without being liable for compensation.

## 11. CONFIDENTIALITY

1. By signing this Agreement, the CLEARING MEMBER (or and its Authorizing Customers, where applicable) consents to the ATHEXCLEAR submitting the Transaction Report data to:
  - a. a regulatory authority whose rules or requirements with respect to disclosure are applicable;

- b. a registered or recognised EMIR trade repository selected by the ATHEXClear;
  - c. a third party service provider related with the Service EMIR-TR, selected by the ATHEXClear; and
  - d. any affiliate company of the ATHEXGroup related with the Service EMIR-TR
- 2. The consent provided according to the aforesaid paragraph 1 overrides any existing confidentiality obligation owed by the ATHEXClear to the CLEARING MEMBER (or and its Authorizing Customers, where applicable), for any reason. The Transaction Report data provided by the CLEARING MEMBER to the ATHEXClear may be transferred to and held in other countries on the basis that anyone to whom they are passed, provides an adequate level of protection.

## **12. FEES**

- 1. For the supply of the Service EMIR-TR, the CLEARING MEMBER shall pay to ATHEXClear accumulatively all fees described in Annex B “Fees for the Service EMIR-TR” “, as in force from time to time.

## **13. INTELLECTUAL PROPERTY RIGHTS**

- 1. All Intellectual Property Rights in the Transaction Reports data belong to their beneficiaries, respectively the CLEARING MEMBER and or and its Authorizing Customers.
- 2. The CLEARING MEMBER grants hereunder to ATHEXClear and its subcontractors (TR and third party service providers) during the term of this Agreement, a royalty-free, worldwide, non-exclusive license to use the aforesaid data that it owns solely, to the extent necessary and for the purpose of performing the Service EMIR-TR.
- 3. In case the CLEARING MEMBER delegates to the ATHEXClear the submission of Transaction Reports on behalf of its Authorizing Customers, undertakes to ensure that the authorization granted to it by its Authorizing Customers for such purpose, shall grant to the ATHEXClear a non-exclusive license to use the aforesaid data the latter own, solely, to the extent necessary and for the purpose of performing the Service

EMIR-TR by the ATHEXClear in respect of the Authorizing Customer's Transaction Reports.

## **14. TERM AND TERMINATION**

1. This Agreement shall enter into force on the signing date and shall continue to be in force until terminated by either Party giving the other not less than one (1) months' prior written notice at any time.
2. Notwithstanding paragraph 1 hereof, either Party may terminate this Agreement immediately in the event of:
  - a. any material breach of this Agreement by the other Party which is incapable of remedy or, if capable of remedy, is not remedied within 30 (thirty) days of written notice being given by the other Party requiring it to be remedied; or
  - b. a moratorium of payment of debts is granted or insolvency application of the other Party;
  - c. any proceedings, whether voluntary or involuntary, being instituted for the winding-up of the other Party or for the appointment of a receiver.
3. Termination of this Agreement shall not affect the accrued rights or liabilities of the Parties arising out of this Agreement as at the date of termination and all clauses which are expressed to survive this Agreement shall remain in full force and effect.

## **15. MISCELLANEOUS**

1. This Agreement constitutes the entire understanding of the Parties with regard to the subject matter hereof and it supersedes all proposals, representations or prior agreements, whether oral or in writing, relating to the Service EMIR-TR. Neither party may assign any right nor obligation of this Agreement without the prior written consent of the other, such consent not to be unreasonably withheld, conditioned or delayed. If any such consent is denied by the party required to give it, the other party shall be allowed to terminate this Agreement on one (1) months' prior written notice. By way of derogation of the aforesaid sentence, each Party shall be entitled to assign or otherwise transfer its rights and/or obligations under this Agreement without the consent of the other to any its Affiliate of the (existing now or in the future). The same shall apply in the event of a merger or spin off with a company of the same group or a third party.

2. Unless otherwise provided in this Agreement, no variation or modification to this Agreement shall be valid unless mutually agreed in writing.
3. If any term of this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby.
4. Failure or delay by either Party to exercise any right or remedy under this Agreement shall not be considered as a waiver of such right or remedy nor as an acceptance of the event giving rise to such right or remedy.
5. Nothing in this Agreement shall create or be deemed to create a partnership or agency relationship between the Parties.
6. Headings are for convenience only and do not affect the interpretation of this Agreement.

## **16. JURISDICTION AND GOVERNING LAW**

1. This Agreement shall be governed by the laws of Greece. Both Parties submit to the exclusive jurisdiction of the Courts of Athens.

## **17. CONSTRUCTION-ANNEXES**

1. This Agreement comprises of the following Annexes:
  - a. Annex A: «Technical Specifications for the Service EMIR-TR».
  - b. Annex B: «Fees for the Service EMIR-TR»
2. ATHEXClear reserves the right to unilaterally update the Annexes and the General Terms as a consequence of new policies or amendment of the Service EMIR-TR. If this occurs, In the event that the CLEARING MEMBER cannot or does not wish to accept the new conditions related to the new policies or the amendment of the Service EMIR-TR, shall be entitled to terminate this Agreement by written notice to ATHEXClear, to take effect from the date such new conditions shall be implemented by ATHEXClear.