

## GENERAL TERMS AND CONDITIONS FOR THE USE OF THE ENTSO-E TRANSPARENCY PLATFORM

(January 2015)

In accordance with Article 3 of the Regulation (EU) N°543/2013 on submission and publication of data in electricity markets (“Regulation (EU) N°543/2013”), ENTSO-E has established and is operating an information transparency platform (the Transparency Platform).

The smooth operation of the Transparency Platform requires the imposition of some access and use conditions.

The present general terms and conditions of use (the “Terms of Use”) determine the conditions applicable for the access to, and the use of the Transparency Platform for both Registered and Unregistered Data Users, Transparency Platform Data Submitters and IT Service Providers.

Pursuant to the present Terms of Use, each user has to comply with two types of rules:

- General Provisions, contained in section III, are applicable whatever the nature of the effective use of the Transparency Platform made by the user.
- In relation to the type of use, the user has to comply with additional Specific Provisions, contained in section II of the Terms of Use. A user who is making several types of use of the Transparency Platform and/or the Transparency Platform Data has to cumulatively comply with all relevant Specific Provisions applicable to the concerned types of use.

### I. Definitions

“**Application**” means a piece of software with an IT Service Purpose which is relevant for the business and may be used to transfer data to the Transparency Platform.

“**Business Day**” means any day from Monday to Friday inclusive, with the exception of public holidays in Belgium.

“**Data Provider**” means the entity that submits data to the Transparency Platform in accordance with Article 2(14) of Regulation (EU) N°543/2013.

“**Data User**” means any entity or natural person which consults, gathers and/or uses the Transparency Platform Data. A Data User may register (“**Registered Data User**”) to access additional features, like M2M Interface.

“**Derivative Work**” means any derived version of the ECP Software, including any form in which the ECP Software may be recast, transformed, updated or adapted.

“**ECP Software**” means the software Energy Communication Platform, in all its forms of expression, including its graphical user interfaces and user documentation, updates and releases, as made available by ENTSO-E.

“**Endpoint**” means a connection point for Applications and users, within the Transparency Platform Data Submitter’s IT System.

**“Intellectual Property Rights”** (or “IPR”) means (a) copyright, patents, database rights and rights in trademarks, designs, know-how and confidential information (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world

**“IT Service Provider”** means any entity supplying IT services to one or more external customers. While using the Transparency Platform Data, the IT Service Provider shall comply with the provisions of the present Terms of Use applicable to the Transparency Platform consulting and the re-use of Transparency Platform Data.

**“IT Services Purpose”** means the use of the Transparency Platform for the sole purpose of providing IT services to Transparency Platform Data Submitter, in order to enable Transparency Platform Data Submitter to use the Transparency Platform for Transparency Purpose.

**“IT System”** means the computer hardware and related ancillary equipment and accessories owned or leased in whole or in part by the Data User, the Transparency Platform Data Submitter or by ENTSO-E, including Applications and ECP Software Endpoint, which is used in connection with the operation of the Transparency Platform, together with any related operating manuals and other documentation.

**“M2M Interface”** means a specific interface of the Transparency Platform offering the possibility to register for automated machine to machine transfer of data.

**“Manual of Procedures”** means the document specifying the technical and operational requirements to comply with in order to connect to and use the Transparency Platform, in accordance with article 5 of Regulation (EU) N°543/2013, and which is accessible on the ENTSO-E official website.

**“Primary Owner of Data”** means an entity which creates data and which has an obligation to submit this data to the Transparency Platform via a TSO or Data Provider, as stipulated in Regulation (EU) N°543/2013.

**“Production environment”** means the operational environment of the Transparency Platform.

**“Release of the Transparency Platform”** means an issue of the Transparency Platform made available by ENTSO-E which incorporates major changes in comparison with the previous issue, including, but not limited to, security breach patch or implementation of new data modelling.

**“Relevant Records”** means all information recorded by ENTSO-E regarding the use of the Transparency Platform by the Transparency Platform Data Submitter, the Registered Data User, or the IT Service Provider. It covers specific parameters of activity including, but not limited to, time of connection, actions, identification of elements inserted, deleted or modified, and automated archiving of previous versions of concerned elements.

**“Test Environment”** means a specific and controlled environment, containing configuration similar to the Production Environment, designed for testing configuration and interaction with the Transparency Platform.

**“Transparency Platform”** means the central information transparency platform referred to in Article 3(1) of Regulation (EU) N°543/2013, established and operated by ENTSO-E and made available to the Transparency Platform Data Submitter, the Data User and the IT Service Provider following the conditions and limits set forth in present Terms of Use.

**“Transparency Platform Data”** means the data deliberately published on the Transparency Platform or made accessible to the Data Users by ENTSO-E, with the exception of data which would become accessible

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as a consequence of a breach of Transparency Platform access conditions or of a technical problem in the Transparency Platform operation.

**“Transparency Platform Data Submitter”** means any entity, such as a TSO or a Data Provider, which is required by Regulation (EU) N°543/2013 to submit data directly to ENTSO-E for publication on the Transparency Platform. While using the Transparency Platform Data, the Transparency Platform Data Submitter shall comply with the provisions of the present Terms of Use applicable to the Transparency Platform consulting and the re-use of Transparency Platform Data.

**“Transparency Purpose”** means the use of the Transparency Platform for the sole purpose of submitting data to the Transparency Platform, in order to comply with the transparency obligations resulting from Regulation (EU) N°543/2013.

**“TSO”** means Transmission System Operator.

**“Uploading Solution”** means any software, with the exception of the ECP Software or its Derivative Works, which is installed on the Transparency Platform Data Submitter’s IT System in order to submit data to the Transparency Platform in accordance with Regulation (EU) N°543/2013.

**“Version of the Transparency Platform”** means an issue of the Transparency Platform made available by ENTSO-E and which incorporates some changes in comparison with the previous issue.

## **II. Specific Provisions**

The Specific Provisions of the present section II are grouped within three sub-sections, each one dedicated to the rules applicable to one specific kind of use of the Transparency Platform.

The use of the Transparency Platform to submit data for publication, in accordance with the transparency obligations imposed by Regulation (EU) N°543/2013, is governed by the provisions of the first sub-section (II.1). The rules applicable to the consultation of the Transparency Platform and re-use of the Transparency Platform Data are grouped within the second sub-section (II.2). Finally, the third sub-section (II.3) contains the provisions applicable to the use of the Transparency Platform in the framework of the provision of IT Services.

### **II.1. Submission of data for publication on the Transparency Platform**

#### **1. Use of the Transparency Platform for Transparency Purpose**

Within the limits set forth in the present Terms of Use, ENTSO-E grants the Transparency Platform Data Submitter a right to use the Transparency Platform, exclusively for the Transparency Purpose.

#### **2. No mandatory data transfer solution**

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Insofar as it complies with all requirements set forth in the present Terms of Use, and notably the access and use requirements detailed in clause 4, the Transparency Platform Data Submitter may freely decide to use the Transparency Platform for Transparency Purpose in connection with

- an Uploading Solution, or
- the ECP Software which is made available free of charge by ENTSO-E, or
- a Derivative Work made available by any third-party.

The level and scope of services offered by ENTSO-E shall however vary from one scenario to another, as detailed in the present Terms of Use.

The M2M Interface offers the Transparency Platform Data Submitter the possibility of automated transmission of its data to the Transparency Platform. General information on the configuration requirements shall be communicated by ENTSO-E, but proper configuration of Transparency Platform Data Submitter's IT System for M2M connection is the exclusive responsibility of the Transparency Platform Data Submitter.

### **3. Use of an Uploading Solution**

The use of an Uploading Solution, even in connection with the use of the Transparency Platform for Transparency Purpose, is made under the sole responsibility of the Transparency Platform Data Submitter.

ENTSO-E is not able to secure and maintain Uploading Solutions which are developed and made available by third-parties.

Using an Uploading Solution therefore imposes the Transparency Platform Data Submitter to ensure, by itself and at its own cost, all operations relating to the development, installation, testing, maintenance and support of said Uploading Solution.

### **4. Access and use requirements**

To be allowed to use the Transparency Platform for Transparency Purpose, the Transparency Platform Data Submitter shall install, configure, make and maintain operational an IT System which strictly complies with all requirements communicated by ENTSO-E, in accordance with the Manual of Procedures.

The Transparency Platform Data Submitter is therefore notably responsible for performing all tasks necessary to properly configure its IT System and to ensure smooth operation of the Applications which are used in connection with the Transparency Platform.

Submission of data to the Transparency Platform is submitted to the prior acceptance of ENTSO-E, in accordance with the process and requirements detailed within the Manual of Procedures.

## **II.2. Transparency Platform Consulting and re-use of Transparency Platform Data**

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## 5. Use of the Transparency Platform Data

In accordance with the applicable legislation, the Data User shall, when using of the Transparency Platform Data for any purpose whatsoever:

- use the Transparency Platform Data in good faith and always comply with good business practices regarding the re-use of publicly available data;
- mention the ENTSO-E Transparency Platform as the source of publication of the data, in accordance with good industry practices and comply with all reasonable requests from ENTSO-E regarding the visibility of the ENTSO-E Transparency Platform origin of the re-used Transparency Platform Data;
- be only allowed to make reference to the ENTSO-E Transparency Platform as the source of publication of the re-used data. It is therefore expressly prohibited to use the ENTSO-E Transparency Platform name or the ENTSO-E name in any manner that is likely to cause confusion regarding the possible existence of any kind of sponsorship or of endorsement of the services to be provided or the information published by the Data User;
- not cause prejudice to the holder of a copyright or related right on a Transparency Platform Data.

## 6. Absence of ENTSO-E control on the Transparency Platform Data and cautionary language

The Transparency Platform is a specific database platform which aims at receiving and publishing data from TSOs and Primary Owners of Data, in accordance with Regulation (EU) N°543/2013.

ENTSO-E does not perform any control on the accurateness, the up-to-date character or the consistency of the Transparency Platform Data.

The Data User shall therefore extract and use the Transparency Platform Data under its sole responsibility.

The Transparency Platform website may contain statements, estimates or projections that constitute "forward-looking statements". Generally, the words "believe," "expect," "intend," "estimate," "anticipate," "project", "will" and similar expressions identify forward-looking statements, which are generally not historical in nature.

Forward-looking statements are subject to certain risks and uncertainties that could cause actual results to differ materially from ENTSO-E's historical experience and present expectations or projections. The Data User should not place undue reliance on forward-looking statements, which speak only as of the date they are made. ENTSO-E undertakes no obligation to publicly update or revise any forward-looking statements.

## 7. Use of automated data extraction tools

The web graphical user interface of the Transparency Platform is primarily designed for human access and not for robots access.

To facilitate access to all interested parties using automated tools to gather data from the Transparency Platform, ENTSO-E provides a specific M2M Interface, offering Registered Data Users the possibility to subscribe to publication, so that updates of the Transparency Platform Data may be sent to the Registered Data User's IT System.

The Data User is the sole responsible for the proper configuration of its M2M connection.

Considering the requirement for ENTSO-E to ensure open and continuous access to the Transparency Platform for all interested parties, and the fact that automated tools (e.g. robots, screen scrapers, crawlers) may cause disturbance to the stability and availability of the platform, ENTSO-E reserves the right to introduce technical constraints aimed at ensuring optimal Transparency Platform operation.

In the event that such measures prove necessary and insofar as it is practically possible without compromising the continuity of the Transparency Platform operation, ENTSO-E will inform all registered users of their introduction, and will contact impacted users directly to discuss how they can best access the platform to achieve their data needs without putting its operation at risk.

### **II.3. Use of the Transparency Platform in the framework of the provision of IT Services**

Within the limits set forth in the present Terms of Use, ENTSO-E grants the IT Service Provider a right to use the Transparency Platform, exclusively for the IT Service Purpose.

The scope of this license is limited to what is necessary:

- to ensure and maintain a proper configuration of the Transparency Platform Data Submitter or the Registered Data User's IT System
- to perform testing of the interaction:
  - o between the Transparency Platform and the ECP Software/Derivative Work/Uploading Solution to be implemented by the Transparency Platform Data Submitter to use the Transparency Platform for Transparency Purpose, or
  - o between the Transparency Platform and the Registered Data User's IT System to enable the use of the M2M Interface.

Considering the legal framework set up by Regulation (EU) N°543/2013, IT Service Providers shall ensure the strict observance of all access and use requirements imposed by ENTSO-E, in accordance with the Manual of Procedures, to ensure the smooth operation of the Transparency Platform. These requirements, which may vary considering the exploitation of the Transparency Platform, shall be made available to all parties requesting to use the Transparency Platform for Transparency Purpose.

Specific testing requirements may also be imposed by ENTSO-E in consideration of the load of its servers and its Test Environment, the testing needs of ENTSO-E, its members or other interested parties.

The IT Service Provider shall not make any other use of the Transparency Platform unless it has received a prior authorisation in writing from ENTSO-E.

## **III. General Provisions applicable to all types of use of the Transparency Platform**

## 8. Ownership and limited scope of the rights granted by ENTSO-E

The Transparency Platform, in whole or in part, including but not limited to, its website, its database, its database content arrangement, translations, compilations, partial copies, modifications, graphical interfaces and updates, is and shall remain the exclusive property of ENTSO-E.

The rights to use the Transparency Platform are:

- granted on a non-exclusive and worldwide basis, for an unlimited term,
- submitted to the strict compliance with the limits of use set forth in present Terms of Use, and
- not sub-licensable or transferrable.

## 9. Compliance with the Manual of Procedures

The rights to use the Transparency Platform and/or the Transparency Platform Data, for any of the purposes authorised in accordance with the present Terms of Use, are subject to the strict compliance with all technical and operational requirements set forth in the Manual of Procedures or imposed by ENTSO-E in accordance with the Manual of Procedures.

## 10. Prohibited use of the Transparency Platform Data and website

The following use of the Transparency Platform Data or of any other element published or available on the Transparency Platform website are strictly prohibited:

- a) Any use which may cause unjustified damage to ENTSO-E or ENTSO-E members' reputation;
- b) Any use for performing commercial solicitation;
- c) the uploading or change of Transparency Platform Data without prior authorisation from ENTSO-E;
- d) The defeat or circumvention of security features implemented in relation with the Transparency Platform use;
- e) Any use which may cause damage to the Transparency Platform normal operations.

## 11. Availability and maintenance of the Transparency Platform

ENTSO-E shall use its best efforts to ensure the 24/7 availability of the Transparency Platform.

ENTSO-E shall periodically maintain and update the Transparency Platform.

Without prejudice to the provisions of clause 7, ENTSO-E may temporarily suspend access to the Transparency Platform services, when required for maintenance. Except in case of urgent matters, ENTSO-E shall publish a 24h prior notice on the Transparency Platform website.

Except where the reported malfunction or problem has a major impact on the performance of the Transparency Platform, ENTSO-E may decide to remedy within the framework of a forthcoming Transparency Platform Version or Release and/or maintenance operation.

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ENTSO-E does not offer maintenance and support services to the users of the Transparency Platform, except the following limited support services:

- Communication of information on the connection and use requirements for the use of the Transparency Platform for Transparency Purpose ;
- Communication of general information regarding connection and use requirements regarding the use of the M2M Interface;

No other maintenance or support services are provided by ENTSO-E to the IT Service Provider, the Data User or the Transparency Platform Data Submitter, in particular regarding

- Derivative Works or Uploading Solutions which may be used by the Transparency Platform Data Submitter;
- The software or any other element of its IT System used by the Data User to connect to the M2M Interface.

## 12. Access rights

ENTSO-E shall deliver to the Transparency Platform Data Submitter, the IT Service Provider, or the Registered Data User the required access rights to secure the configuration of their IT System in connection with the Transparency Platform.

The Transparency Platform Data Submitter, the IT Service Provider, and the Registered Data User are responsible for ensuring the confidentiality of their accounts and password, and that all concerned individual users also ensure this said confidentiality.

The Transparency Platform Data Submitter, the IT Service Provider and the Registered Data User are responsible for any damage caused by any of their users making use of their accounts (and related access privileges) and/or caused by any abuse of said accounts (and related access privileges) by unauthorised third-parties.

The Transparency Platform Data Submitter and the Registered Data User may share their accounts and passwords with their IT Service Providers, but remain in all circumstances liable for any damages caused by this latter's use of their accounts.

## 13. Log files and user tracking

To ensure a high level of security of the Transparency Platform operation, ENTSO-E shall keep Relevant Records of the Transparency Platform Data Submitter, of the Registered Data User or of the IT Service Provider's use of the Transparency Platform.

Said Relevant Records may constitute valid evidence of the acts which could be attributable to the Transparency Platform Data Submitter, the Registered Data User or to the IT Service Provider, as far as the Relevant Records relate to an account attached to the Transparency Platform Data Submitter, to the Registered Data User or to the IT Service Provider.



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## 14. Suspension or termination of access to the Transparency Platform

ENTSO-E may, at any time with immediate effect and without any prior notice, decide to suspend access to the Transparency Platform or revoke the right of use granted to the Data User, the Transparency Platform Data Submitter, or the IT Service Provider if they do not comply with any of the provisions of these Terms of Use and insofar as that non-compliance may cause damages or disturbances in the normal operation of the Transparency Platform.

The Transparency Platform Data Submitter/Registered Data User/IT Service Provider may not claim any compensation of whatever nature in case of suspension or revocation of access to the Transparency Platform decided by ENTSO-E pursuant to present clause.

Suspension or revocation (or not) of access to the Transparency Platform is decided and made without prejudice:

- to the ability of ENTSO-E to claim compensation for the possible damage resulting from Transparency Platform Data Submitter/Data User/IT Service Provider's breach of its obligations, and
- to the obligation of the Transparency Platform Data Submitter/Data User/IT Service Provider to hold ENTSO-E harmless from any claim brought from a third-party (including but not limited to members of ENTSO-E) alleging that Transparency Platform Data Submitter/Data User/IT Service Provider infringed its rights or caused damages to said third-party.

## 15. Personal data

For technical reasons, the Transparency Platform website uses cookies to manage some features of the website, in particular to display a specific welcome page for first-time visitors, or to memorise chosen display options or settings for return visitors.

Software also records user statistics of the website but it does not permit individual user identification.

It is possible to configure your browser to either accept or block cookies. Access to the Transparency Platform website will not be restricted or refused for users not accepting cookies.

During the registration process, you have to provide ENTSO-E with the following personal data: first name and second name, title, valid email address, phone number, company, position and industry. Relevant Records regarding the effective use of the Transparency Platform will be collected during your later use of the Transparency Platform.

Personal data collected by ENTSO-E shall be processed by ENTSO-E, International Non-Profit Association created under Belgian law, having its registered office at 1000 Brussels, Avenue de Cortenbergh, 100 (Belgium), acting as data controller and in compliance with the Belgian Act of 8 December 1992 on the protection of privacy in relation to the processing of personal data, for the following purposes:

- i. management of the Transparency Platform operation (in particular for security and maintenance purposes), including ENTSO-E relations with the Transparency Platform users;
- ii. statistical analysis of user activity on the Transparency Platform, for further improvement of the Transparency Platform and related services;

- iii. information regarding the activities of ENTSO-E, in connection with the Transparency Platform.

By providing ENTSO-E with your personal data, you give ENTSO-E your express agreement to use the transmitted personal data for the above-mentioned purposes. The personal data transmitted to ENTSO-E are registered in a database held by and under the responsibility of ENTSO-E. These data will be used exclusively for the above-mentioned purposes, save express later disagreement from you concerning the purpose sub iii. These data shall not be transmitted to any third party other than ENTSO-E members, which shall process the transmitted personal data solely for the above-mentioned purposes.

Your data shall be processed as long as your account remains active and one year after the closing of your account. You can request the closure of your Transparency Platform account, by sending an email to ENTSO-E through the contact details available on the Transparency Platform website.

Upon request sent by email to ENTSO-E (at the relevant email address mentioned on the Transparency Platform website), you can access and rectify the personal data relating to you. The President of the Court of First Instance of the place of your residence (in Belgium) or of the place of ENTSO-E's registration (Brussels), is competent to decide on any dispute relating to the exercise of your right to access and to rectification.

If, at any time, you are of the opinion that ENTSO-E does not respect your privacy, please inform ENTSO-E by e-mail (at the email address mentioned on the Transparency Platform website). ENTSO-E shall do everything to identify and solve the problem.

## 16. Liability

ENTSO-E does not guarantee that the Transparency Platform will run uninterrupted or be free from errors. No warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to condition, quality, performance, intellectual property, infringements, merchantability or fitness for purposes is given or assumed by ENTSO-E.

To the fullest extent permitted by applicable law, ENTSO-E and its members shall not be liable, under any circumstances or under any legal theory, whether in tort, contract, or otherwise, for any damage arising out of:

- the use or inability to access or use the Transparency Platform, or of
- the provision or failure to provide any service (including M2M interface related services) or otherwise under or in connection with the Transparency Platform, or of
- the use, consultation, interpretation, re-use, transmission or downloading of Transparency Platform Data, or of
- any decision, act or omission of the Data User which is based in all or in part on the Transparency Platform Data, or of
- the alteration or modification of the Transparency Platform Data resulting from an improper reutilisation of the data by any Data User,

even if ENTSO-E has been advised of the possibility of such damage or such damage is foreseeable.

In case of gross negligence or wilful misconduct, possible liability of ENTSO-E and its members shall in any case be limited to direct damages arising out of the use or inability to access or use the Transparency Platform, the provision or failure to provide any service (including M2M interface services) or otherwise under or in connection with the Transparency Platform.

ENTSO-E and its members' liability is expressly excluded regarding any indirect damage, incidental damage or consequential damage (including damages for loss, of use, information, goodwill, profit, work stoppage, data, business, or revenue).

The Data User, the Transparency Platform Data Submitter and the IT Service Provider shall hold ENTSO-E and any of its members free and harmless against any third-party claim for damages, compensation or otherwise, regardless of the reason therefore, in conjunction with the use of the Transparency Platform made by them.

## 17. Notices

All written notices that a Party is required to provide to the other Party pursuant to present Terms of Use have to be communicated through the following addresses:

- For ENTSO-E: to the relevant email address as mentioned on the Transparency Platform website
- For the Transparency Platform Data Submitter/IT Service Provider/Registered Data User: to the email address communicated during the registration process

A notice shall be deemed to have been duly given the first Business Day following the day the notice is sent by email, provided that the email transmission is promptly confirmed by an electronic receipt from the recipient email server.

## 18. Revisions to present Terms of Use and to the Manual of Procedure

ENTSO-E may at any time, and without notice, revise these Terms of Use. The revised Terms of Use shall be binding for the Transparency Platform Data Submitter, the IT Service Provider and the Data User as soon as the revised Terms of Use are publicly available on the Transparency Platform website.

Continued use of the Transparency Platform implies the agreement of the Transparency Platform Data Submitter, the IT Service Provider and the Data User to the revised Terms of Use.

Similarly, a revised version of the Manual of Procedures, produced by ENTSO-E in accordance with the provisions of Article 5 of the 543/2013 Regulation, shall be binding for the Transparency Platform Data Submitter, the IT Service Provider and the Data User, as soon as the revised Manual of Procedures is publicly available on the ENTSO-E website.

## 19. Applicable law and jurisdiction

The validity, performance and construction of these Terms of Use shall be governed by the laws of Belgium.

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The courts of Brussels shall have exclusive jurisdiction to settle any disputes arising out of or in connection with these Terms of Use.

If any term of these Terms of Use is held by a court of competent jurisdiction to be invalid, unenforceable, or otherwise ineffective by operation of law, these Terms of Use shall remain in full force and ENTSO-E shall replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to the intention of ENTSO-E.