

## ALL NEMO COOPERATION AGREEMENT

**THIS ALL NEMO COOPERATION AGREEMENT** (hereinafter “**Agreement**”, or “**ANCA**”) dated 28 March 2019 is made by and between:

1. **BSP Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661 (“**BSP**”);
2. **CROATIAN POWER EXCHANGE Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia (“**CROPEX**”);
3. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road, Dublin 4, Ireland (“**EirGrid**”);
4. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501 (“**EPEX**”);
5. **European Market Coupling Operator AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway (“**EMCO**”);
6. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208 (“**EXAA**”);
7. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002 (“**GME**”);
8. **Hellenic Energy Exchange S.A.** a company duly organized and existing under the laws of Greece, with V.A.T. number 801001623, with registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000, (“**HEEx**”);
9. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808 (“**HUPX**”);

10. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria ("**IBEX**");
11. **NASDAQ OSLO ASA**, a company incorporated and existing under the laws of Norway, with enterprise number 965 662 952, whose registered office address is Karenslyst Allé 53, 0279 Oslo. ("**NASDAQ**").
12. **OKTE, a.s.**, a company duly organised and existing under the laws of Slovak republic, with registered office in Mlynské nivy 48, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728 ("**OKTE**");
13. **OMI Polo Español S.A.**, a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI nº 6, 4<sup>th</sup> floor, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Sheet: 506799 ("**OMIE**");
14. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" SA**, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3<sup>rd</sup> District, Romania, registered with the Bucharest Trade Register Office under the number J40/7542/2000, VAT n° 13278352 ("**OPCOM**");
15. **OTE, a.s.**, a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318 ("**OTE**"), OTE's contract number: 24/18;
16. **SONI Limited**, a company incorporated in Northern Ireland with registered number NI 38715 and registered office at Castlereagh House, 12 Manse Road, Belfast, BT6 9RT, United Kingdom ("**SONI**"); and
17. **Towarowa Giełda Energii SA**, a company duly organised and existing under the laws of the Republic of Poland, with registered office at ul. Książęca 4, 00-498 Warszawa, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714 ("**TGE**"),

each a "**Party**" and together the "**Parties**".

**WHEREAS:**

- A. On the 14<sup>th</sup> of August 2015, EU Commission Regulation 2015/1222 establishing a guideline on capacity allocation and congestion management entered into force (the "**CACM Regulation**").

- B. Pursuant to article 2 paragraph 23 of CACM Regulation 'nominated electricity market operator ("NEMO") means "an entity designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling". The NEMOs tasks related to day-ahead and intraday market coupling are detailed in article 7 of the CACM Regulation.
- C. According to article 4 paragraph 10 of the CACM Regulation the designating authority is required to inform the Agency for the Cooperation of European Regulators ("ACER") of the designation of NEMOs (and of the revocation of such designations). ACER maintains a list of designated NEMOs, their status and where they operate on its website.
- D. Pursuant to article 4 paragraph 3 of the CACM Regulation each of the Parties is individually designated as NEMO by the relevant designating authority of at least one Member State.
- E. On 3<sup>rd</sup> of March 2016 the NEMOs established an interim framework by the signature of the NEMO Interim Cooperation Agreement ("INCA") to facilitate the necessary cooperation between designated NEMOs with respect to developing the terms and conditions or methodologies required by the CACM Regulation and submit them for approval to the competent regulatory authorities. This included the development of a plan setting out how NEMOs will jointly set up and perform the MCO functions (referred to as the "MCO Plan"), in accordance with article 7 paragraph 3 of the CACM Regulation.
- F. The terms and conditions and methodologies referred to above have been developed by the NEMOs in accordance with the provisions of the INCA. In particular, the MCO Plan was approved by the relevant national authorities on 26<sup>th</sup> of June 2017.
- G. With the aim of facilitating the continued and enduring performance of the NEMOs' tasks in accordance with the CACM Regulation and the MCO Plan, the Parties now wish to terminate the INCA and replace it with this ANCA.

**NOW THEREFORE, THE PARTIES HAVE AGREED AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

- 1.1 For the purposes of this Agreement, all capitalised words and phrases in this Agreement shall, unless the context otherwise requires, have the meanings attributed to them in Annex I to this Agreement (Definitions).
- 1.2 In connection with the interpretation of this Agreement:
  - (a) No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision;
  - (b) Words denoting the singular shall include the plural and vice versa;

- (c) Words denoting one gender shall include another gender;
- (d) The headings of clauses or Annexes are inserted for convenience only and do not affect their interpretation;
- (e) Any reference to any rule, enactment, statutory provision, Regulation or code or any subdivision or provision thereof shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced;
- (f) All references to a "clause" or "Annex" shall, unless the context otherwise requires, be interpreted as a reference to a clause or Annex of this Agreement;
- (g) Any Annex referred to in this Agreement forms an integral and inseparable part of this Agreement. Any reference to this Agreement includes a reference to its Annexes and vice versa; and
- (h) any reference to a "**person**" includes individuals, bodies corporate, companies, partnerships, unincorporated associations, firms, trusts and all other legal entities.

## 2. CONTRACTUAL DOCUMENTS AND PRECEDENCE

### 2.1 The documents constituting this Agreement are:

- (a) The main text of this Agreement; and
- (b) The following Annexes attached to this Agreement:
  - I. Definitions
  - II. Financial Modalities/Budget/Invoicing Modalities
  - III. Rules of Internal Order
  - IV. Allocation of ANCA Tasks and Monitoring of Performance
  - V. Confidentiality Declaration
  - VI. Accession Declaration
  - VII. Pro-forma Power of Attorney
  - VIII. Contact Details
  - IX. Expert Panel Deadlock Procedure

### 2.2 In the event of contradiction, ambiguity or difference between the documents constituting this Agreement, the main body shall prevail over the Annexes listed above in this clause 2.

### 2.3 In the event of a discrepancy between this Agreement on the one hand and either the ANDOA or ANIDOA on the other, the All NEMO Committee together with all Parties to the ANIDOA or ANDOA (as the case may be) shall meet to resolve such discrepancy amicably and in good faith within 10 Business Days. In the event that the All NEMO Committee and the relevant parties are not able to resolve the outstanding issue, the procedures in clause 26 (Dispute Resolution) shall apply.

### **3. SCOPE OF THE AGREEMENT**

3.1 The purpose of this Agreement is to:

- (a) To create the necessary framework to govern the tasks of all NEMOs as further described in CACM Regulation and article 4.1 of the MCO Plan;
- (b) Establish the All NEMO Committee as the successor to the Interim NEMO Committee in order to facilitate cooperation between NEMOs as further detailed in article 4.2 of the MCO Plan; and
- (c) Establish such other processes, procedures or mechanisms as may from time to time be required to reflect and support the aims or objectives of CACM Regulation and/or the MCO Plan,

(collectively, the “**Scope**”).

### **4. GENERAL PRINCIPLES**

#### **4.1 Best Effort obligations**

Obligations of the Parties under this Agreement are Best Efforts obligations (“*obligation de moyens*” / “*middelenverbintenis*”) unless it is explicitly specified herein that an obligation is an obligation of results (“*obligation de résultat*” / “*resultaatsverbintenis*”).

#### **4.2 No joint and several obligations**

Unless expressly provided otherwise under this Agreement, the Parties are each liable for their individual commitments hereunder only and shall not bear any joint and several liability to any other Party or to any Third Party.

#### **4.3 Good faith cooperation and non-discriminatory treatment**

The Parties shall exercise their rights and perform their obligations under this Agreement in good faith and shall adopt a fair and loyal treatment towards each other, bearing in mind their mutual interest and the multilateral spirit of the Cooperation according to which all Parties should benefit from non-discriminatory treatment.

#### **4.4 Adherence on non-discriminatory terms**

This Agreement is open to the adherence of any Third Party designated as a NEMO pursuant to the CACM Regulation. The adherence of any Third Party to this Agreement shall be on non-discriminatory terms and shall be managed by the then current Parties to this Agreement in accordance with the provisions of clause 7.

#### **4.5 Principles of the Cooperation**

- (a) The Cooperation is based on the fundamental principle of subsidiarity and decentralization, meaning that, apart from the provisions which are strictly necessary to facilitate the Cooperation, each Party will retain its full independence and self-determination with respect to its own business.
- (b) Each Party is individually responsible for ensuring that its participation in the Cooperation is compliant with Applicable Law (in particular but not limited to Applicable Law relating to public procurement and competition). To the extent that a Party violates Applicable Law by entering into this Agreement or by performing its obligations under this Agreement or by exercising its rights under this Agreement, it will in accordance with clause 21.6 hold harmless the other Parties and indemnify them for any direct damage or loss incurred as a result of a third-party claim (including claims of public, administrative or regulatory authorities).
- (c) Each NEMO shall exercise due care and attention for the entire duration of the Cooperation with regards to the compliance of this Agreement with competition law. The Cooperation is operated on the basis of the principle of subsidiarity and decentralization, meaning that it aims at respecting, the independence, autonomy and self-determination of any NEMO and the differing regulatory situations of each Member State and individual NEMO. Notwithstanding the exchange of information strictly necessary for the achievement of the Scope, each Party shall remain at all times autonomous in as strict a manner as possible with regards to its business, strategy, product design, commercial policy, prices definition, etc.

#### **4.6 Evaluation of the Cooperation**

- (a) The Parties agree to subject the performance of this Agreement to a yearly evaluation by the All NEMO Committee or an ad hoc evaluation by the All NEMO Committee at written request of one or more Parties, with a view to examine possible improvements to the Cooperation.
- (b) A written request for evaluation formulated by one or more Parties shall contain one or more proposals for possible improvements.

#### **4.7 State of the art performance**

- (a) Each Party shall perform its obligations under this Agreement:

- i) In compliance with all requirements of this Agreement and Applicable Law, in particular the CACM Regulation, the MCO Plan and the other approved CACM methodologies;
  - ii) In compliance with generally recognised standards of good practice and with the diligence to be reasonably expected of a prudent business person;
  - iii) By no later than such target dates and/or target deadlines as the All NEMO Committee may determine from time to time in accordance with the terms of this Agreement;
  - iv) Using, where appropriate, suitable materials and/or equipment and trained and competent staff for the execution of its obligations under this Agreement;
  - v) With a view to assuring the proper implementation of this Agreement; and
  - vi) With all necessary licenses and authorisations.
- (b) Each Party declares, by signing this Agreement, that it has the knowledge, experience and human and technical competences and resources necessary for the satisfactory performance of its obligations in accordance with this Agreement.

## 5. DELEGATION OF OBLIGATIONS BY A PARTY

5.1 Each Party shall be entitled to delegate all or part only of the performance of any of its obligations under this Agreement to any other Party or any Third Party (other than any TSO) provided that:

- (a) such delegation is made in compliance with the requirements of article 81 of the CACM Regulation which applies *mutatis mutandis*; and
- (b) a declaration is signed by the delegate and provided to the delegating Party to the effect that there is no conflict of interest arising from or in connection with such delegation.

5.2 Where, following any delegation to any Third Party made pursuant to clause 5.1 above, the delegating Party seeks to nominate such Third Party to represent it at one or more meetings of the All NEMO Committee:

- (a) the delegating party shall inform the All NEMO Committee in advance of the relevant All NEMO Committee meeting, and shall provide the All NEMO

Committee with a copy of the declaration signed by such Third Party pursuant to clause 5.1(b); and

- (b) the members of the All NEMO Committee in attendance (excluding the vote of the delegating Party) must unanimously approve in advance the attendance of such Third Party, provided that any rejection by the All NEMO Committee must be accompanied by the All NEMO Committee's reasons for such rejection.

5.3 A Party delegating all or part only of the performance of any obligation under this Agreement shall at all times remain fully responsible and liable towards the other Parties for the performance of the delegated tasks in accordance with this Agreement and the fulfilment of its obligations under this Agreement and under the CACM Regulation.

5.4 Each Party acknowledges that it may:

- (a) be represented by its Internal Representatives and such representation shall not be treated as a delegation for the purposes of clauses 5.1 or 5.2 of this Agreement; and/or
- (b) be represented by a Third Party on any one or more work groups and/or task forces and such representation shall not be treated as a delegation for the purposes of clause 5.1 of this Agreement.

## 6. THIRD PARTY SERVICE PROVIDERS

6.1 The Parties may decide to jointly appoint a Third Party to perform works or services to the benefit of all Parties in the context of the performance of the ANCA Tasks (hereafter the "Third Party Service Provider"). In such event the following principles shall apply:

- (a) [REDACTED]

- (b) [REDACTED]



[REDACTED]

(c) [REDACTED]

6.2 In the event the Parties decide, in accordance with clause 6.1, to appoint a Third Party Service Provider in the context of the performance of any one or more ANCA Tasks, the agreement with the Third Party Service Provider shall in addition to being compliant with clause 6.1 and Annex IV include at least the following elements:

(a) [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

(e) [REDACTED]

[REDACTED]

**7. NEMO DESIGNATION**

7.1 Subject to clauses 20.2 (a)(i) or 20.3 (a)(i), each Party declares, by signing this Agreement, that it is designated as a NEMO in at least one bidding zone pursuant to the

CACM Regulation as at the date of signature of this Agreement and, thereafter, on each day it remains a Party to this Agreement.

## **8. GOVERNANCE**

- 8.1 The Cooperation between the Parties shall be coordinated by means of the All NEMO Committee, it being understood and agreed that each Party's authorised representative on the All NEMO Committee shall be vested with all necessary powers and authority to take binding decisions in respect of the Scope on behalf of the Party which they represent.
- 8.2 The All NEMO Committee may from time to time decide to create or dissolve working groups or task forces for the purpose of carrying out such tasks as may be required to fulfil the Scope.
- 8.3 The business of the All NEMO Committee shall be conducted at all times in a manner that is consistent with the procedures attached as Annex III (the Rules of Internal Order).
- 8.4 No decision of the All NEMO Committee, or of any other working group or task force created by the All NEMO Committee, shall be binding unless such decision falls within the All NEMO Committee roles and responsibilities as described in clause 9 and is approved according to the relevant voting rules as stipulated in the RIO.
- 8.5 The Secretary or such other person as may be nominated by the All NEMO Committee will act as vote counter.
- 8.6 The All NEMO Committee shall from time to time appoint one of their members to act as chairperson (the "**Chairperson**") in accordance with the relevant provisions of the RIO.

## **9. ROLES AND RESPONSIBILITIES OF THE ALL NEMO COMMITTEE**

- 9.1 Each of the Parties shall, through the framework of the All NEMO Committee, cooperate with the other Parties in the performance of such joint European tasks as are required to be performed by the NEMOs pursuant to the provisions of the CACM Regulation and the MCO Plan, including (without limitation) by:
  - (a) Performing all tasks associated with the further development, consultation, approval, submission, implementation, publication of changes to the MCO Plan as well as all other terms and conditions or methodologies provided in accordance with article 9 paragraph 6 of the CACM Regulation.

- (b) Facilitating such necessary cooperation between NEMOs and TSOs, where TSOs are responsible for terms and conditions or methodologies specified in article 9 paragraph 6 of the CACM Regulation.
- (c) Determining changes to the governance framework, including changes to the governance frameworks established under the ANDOA and ANIDOA if escalated to the All NEMO Committee by either the ANDOA Steering Committee or the ANIDOA Steering Committee.
- (d) Submitting information and necessary reports to ACER, ENTSO-E, regulatory authorities and the European Commission as required under the CACM Regulation. In particular, the All NEMO Committee shall report to:
  - i) ACER on NEMO progress in establishing and performing the day-ahead and intraday MCO Functions in accordance with article 7 paragraph 5 of the CACM Regulation.
  - ii) ACER, in cooperation with TSOs, to provide a review of the operation of the price coupling algorithm and continuous trading matching algorithm in accordance with article 37 paragraph 6 of the CACM Regulation.
- (e) Providing information to ENTSO-E, if it has been requested jointly by ACER and ENTSO-E, for the purpose of implementation monitoring, in accordance with article 82 paragraph 6 of the CACM Regulation.
- (f) Ensuring that the DA MCO Function Assets and ID MCO Function Assets meet the requirements of the CACM Regulation, the MCO Plan, the Algorithm Methodology and all other relevant conditions or methodologies.
- (g) Setting the criteria for decisions relating to any change to the Day-ahead MCO Function Assets or Intraday MCO Function Assets pursuant to the relevant change control procedures described in the Algorithm Methodology;
- (h) Approving the criteria for decisions relating to the selection of or change to any Third Party Service Provider.
- (i) Establishing a process for the All NEMO Committee to act as an escalation body for the ANDOA Steering Committee and ANIDOA Steering Committee in accordance with paragraph 4.7 of Annex III (Rules of Internal Order).
- (j) Providing an annual report to stakeholders on progress with the implementation and the operational performance of the DA MCO Function and the ID MCO Function.

- (k) Approving the proposed budget related to ANCA Tasks as described in Annex II of this Agreement. A process shall be established to update this budget over the course of the relevant year.
- (l) Facilitating NEMOs' participation in the establishment and performance of joint TSOs' and NEMOs' organisation of the day-to-day management of the single day-ahead coupling and single intraday coupling in accordance with article 10 of the CACM Regulation.
- (m) Acting as a joint point of contact for regulatory authorities, ACER, ENTSO-E and the European Commission in relation to the design, implementation, operation and amendment of the DA MCO Function and ID MCO Function. This includes any process launched by the European Commission to jointly consult NEMOs on amendments to the CACM Regulation.
- (n) Arranging such external communication related to the DA MCO Function and the ID MCO Function as is required from time to time.
- (o) Such other matters as the All NEMO Committee may unanimously determine to be its responsibility from time to time.

## **10. CONFIDENTIALITY**

10.1 In accordance with article 13 of the CACM Regulation and subject to the further provisions of this clause 10, each Party hereby undertakes to the other Parties that it shall:

- (a) not disclose, convey or transfer to any individual or entity any Confidential Information without the express, prior written consent (including email) of the other Parties; such consent not to be unreasonably withheld or delayed;
- (b) not use Confidential Information in any way, or for any purpose, other than for the Permitted Purpose, unless this is previously and specifically authorised in writing (including email) by the other Parties;
- (c) not copy or reproduce Confidential Information in any form whatsoever except as may be necessary for the performance of its obligations under this Agreement the ANIDOA or the ANDOA;
- (d) safeguard Confidential Information which is in its possession using the same degree of care that it applies to safeguard its own respective confidential and proprietary information and to take all necessary measures to prevent unauthorized or accidental disclosure of the same. In this respect, each Party warrants that it has sufficient procedures and protections in place in order to enforce and maintain confidentiality and to prevent unauthorized use and unauthorized disclosure of such Confidential Information;

- (e) not incorporate Confidential Information into data, documents, databases, or any other media save to the extent necessary for the Cooperation or as permitted under this Agreement, without the explicit prior written consent (including email) of the Disclosing Party(ies), such consent not to be unreasonably withheld or delayed;

10.2 Each Party shall be entitled to disclose Confidential Information to any one or more of its own Internal Representatives or External Representatives, provided that all the following conditions are met:

- (a) the Internal Representative or External Representative of the Recipient Party has a definite need to know such information for the execution of its assignment which must be strictly related to the performance of this Agreement. Each Recipient Party shall directly assume full responsibility for any acts of its Internal Representatives or External Representatives related to the disclosed Confidential Information;
- (b) the Internal Representative and/or the External Representative is informed by the Party of the confidential nature of the Confidential Information as well as of the conditions of professional secrecy stipulated under article 13 of the CACM Regulation, and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement and of article 13 of the CACM Regulation;
- (c) the necessary procedures and protections must have been put into place by the Recipient Party to prevent disclosure and further use of such Confidential Information in the event such person is no longer an Internal Representative or External Representative of the Recipient Party;
- (d) each Recipient Party is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations;
- (e) the Recipient Party undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorised use and/or disclosure of such Confidential Information by its Internal Representatives or External Representatives to whom Confidential Information is disclosed;
- (f) in respect of Confidential Information related to Third Parties (e.g. TSOs, service providers) if such disclosure is permitted under existing agreements with such Third Parties or if the Recipient Party has obtained all consents to such disclosure from the relevant Third Party; and
- (g) disclosure of Confidential Information to one or more Internal Representatives of a Party shall be allowed if such Internal Representatives have a definite need to know such information for the performance of their responsibilities in

connection with the Scope of this Agreement and provided that such Internal Representatives are bound by appropriate confidentiality obligations and undertake not to use such Confidential Information for any purpose other than as is strictly related to the performance of their responsibilities in connection with the Scope of this Agreement in terms which are at least equivalent to those set out herein.

10.3 A Party may disclose Confidential Information it has received if one of the following conditions are met:

- (a) the Disclosing Party can demonstrate by written evidence that all Parties have agreed to such disclosure and that such information is not otherwise subject to any confidentiality obligation owed to any Third Party;
- (b) if it can demonstrate by written evidence that the received information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the concerned Party;
- (c) if it can demonstrate by written evidence that the received information has come into the public domain through no fault or negligence of a Party to this Agreement.

10.4 Without prejudice to clauses 4.1 and 4.3 (respectively, Best Efforts and good faith), this Agreement does not, and is not intended to, create an obligation for any Party to exchange information with other Parties which is not within the Scope, such as but not limited to market data of any other Party. Moreover, the Parties acknowledge and agree that a Disclosing Party may request a Recipient Party to enter into one of the confidentiality arrangements before disclosing any Confidential Information.

10.5 In the event that any Party becomes aware of, or reasonably suspects, that any unauthorised use or disclosure of Confidential Information by any Party has occurred or is about to occur, such Party must immediately notify the relevant Disclosing Party in writing (including, but not limited to, by email).

10.6 The Parties agree that the obligations imposed by this clause 10 shall:

- (a) survive the termination, for any reason whatsoever, of this Agreement for a term of five (5) years; and
- (b) in case one or more Parties withdraws from this Agreement for any reason, survive such withdrawal with respect to such withdrawing Parties for a term of five (5) years from the date of such withdrawal.

10.7 Each Party is entitled to voluntarily disclose, at its own initiative, Confidential Information to a Competent Authority provided that:

- (a) such Competent Authority is informed by the Recipient Party of the confidential nature of the Confidential Information; and
- (b) such Competent Authority is bound to respect the confidential nature of the Confidential Information in accordance with relevant national legislation or in the absence of such legislation, such Competent Authority is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement.

10.8 The Parties are aware of the fact that certain Party(ies) in Norway, Romania, Sweden, Denmark, Finland, the Czech Republic and Slovenia are subject to acts relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called "freedom of information acts") or to the legal obligation of publishing all relevant documents named by particular national legislation (so called "act on registration of contracts") and may therefore be forced to disclose some or all of the terms of this Agreement or other information pertaining to such Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions. Without prejudice to the foregoing provisions of this clause 10, any Party subject to such a disclosure obligation shall use its Best Efforts to ensure that no Confidential Information is disclosed during the course of complying with such obligation, including by (in consultation with the Disclosing Parties where it is reasonable for it to do so) redacting all such Confidential Information from any materials or documents (in whatever form) prior to such disclosure, so that sharing of Confidential Information is avoided.

10.9 If the Recipient Party is requested to disclose all or any part of the Confidential Information pursuant to an Applicable Law or pursuant to a valid and effective order or request issued by any Competent Authority, in such case:

- (a) to the extent lawful, the Recipient Party undertakes to notify each Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation prior, if possible, or in any case soon after proceeding with any disclosure, provided that such disclosure does not constitute a breach of national rules;
- (b) each Disclosing Party shall cooperate to respond adequately, consistently and in time;
- (c) should such Confidential Information be intended to be published by the relevant Competent Authority, the Recipient Party shall agree with the Disclosing Parties in providing a non-confidential version of such Confidential Information for this publication, under the exception of mandatory rules or court or administrative orders or information requested by administrative, regulatory or court authorities in which case the publication shall not be constrained.

10.10 For the avoidance of doubt, the Parties confirm that the disclosure of Confidential Information in the circumstances foreseen under this clause 10 does not affect the confidential character of the Confidential Information so exchanged.

- 10.11 In cases of doubt as to whether an information is Confidential Information or whether Confidential Information may be disclosed pursuant to this clause 10, confidentiality shall be maintained until written confirmation (including by email) has been obtained from the other Parties (or, as the case may be, by the relevant Disclosing Parties) that one of the above exclusions applies.
- 10.12 In case of a breach by a Recipient Party of any of its confidentiality obligations under this Agreement, the Disclosing Party shall be entitled to cease immediately the disclosure of any further Confidential Information.
- 10.13 The Disclosing Party shall have no liability towards any third party with respect to the use by a Recipient Party of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Disclosing Party and the Recipient Party.
- 10.14 The rights a Disclosing Party may have against third parties pursuant to any other agreement shall in no event restrict a Disclosing Party's right to claim damages under this Agreement from the breaching Recipient Party.
- 10.15 Subject to the limitations on liability set out under clause 21, the Recipient Party undertakes to hold the Disclosing Party harmless and indemnify it against any third party claim, including claims raised by the Intraday Systems Supplier, directly related to:
- (a) any breach by the Recipient Party of its confidentiality obligations under this Agreement; or
  - (b) the access or use of the Confidential Information in violation of the laws and Regulations applicable to the Recipient Party.
- 10.16 The Parties acknowledge that any unauthorised disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Disclosing Party. Accordingly, the Disclosing Party may seek immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.
- 10.17 To the extent a Disclosing Party and a Recipient Party have entered into more than one agreement that protects the confidentiality of the same Confidential Information:
- (a) subject to the limitations set out under clause 21.1 and clause 21.2, the Disclosing Party shall be entitled to claim compensation or indemnification from a Recipient Party for damages caused by a breach of this clause 10 (Confidentiality), except to the extent that the same action or omission by such Recipient Party has already given rise to a claim and compensation or indemnification under such other agreement;



- (b) the Disclosing Party shall not be entitled to claim compensation or indemnification under any one or more of such other agreements from a Recipient Party for damages caused by a breach of confidentiality to the extent that such breach by the Recipient Party has already received compensation or indemnification under this Agreement.

10.18 All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party or its relevant service provider.

10.19 This Agreement does not grant the Recipient Party any license rights or any other rights related to the Confidential Information and its future use, except to the extent as set out in this Agreement or unless such rights are agreed upon in a separate, written, specific and signed agreement.

## **11. COMMUNICATION**

11.1 The principles under this clause 11 shall apply to external communication in all forms relating to any subject within or related to the Cooperation. The Parties may deviate from this clause 11 only if necessary to comply with Applicable Law, and/or with binding orders, requests or resolutions of a Competent Authority.

11.2 The Parties shall be free to express written or oral positions or opinions about the Cooperation provided they do not prejudice or negatively affect the collective and/or individual interests or the reputation of the other Parties. The Parties shall not express positions or opinions in the name of one or more other Parties unless such positions or opinions have been expressly authorised in writing by the other Parties in advance.

11.3 The Parties shall communicate at all times correct and accurate information. In the event a communication by a Party is inaccurate or, in the reasonable opinion of the other Parties, may be misleading, the other Parties are entitled to request such Party to correct and republish a revised communication, without prejudice to any other rights or remedies as may be available under this Agreement or Applicable Law.

11.4 The Parties acknowledge the goal to present commonly agreed positions with respect to the Cooperation, but agree each Party may present and discuss its own views on the Cooperation with NRAs, ACER, TSOs, the European Commission and any other Competent Authority. In doing so, the Parties may use relevant materials developed within the Cooperation regarding project planning, cost estimates, and descriptions/evaluations of options/issues (to the extent consistent with the confidentiality obligations under this Agreement). Such materials should be used fairly and without distortion. The Parties should provide to the other Parties copies of material they intend to use in this context for ACER and the European Commission at

least three (3) Business Days in advance and should amend any references to such material where other Parties reasonably can show it may be misleading.

11.5 Prior to any joint communication of the Parties regarding a commonly agreed position on any issue relating to this Agreement, the Committee shall give its formal approval on the content of such communication. The Committee shall decide on the appropriate communication media through which joint communications are released. Each joint communication shall bear the logo of each Party or a common NEMO logo, if available. Joint communications shall only be published after approval by the Committee of the content of such communication. The Committee shall also decide, for any joint communication, on the date and time from which each joint communication is to be effective. The following shall be subject to joint communication:

- (a) the disclosure to the public of all or any part of this Agreement;
- (b) any Party's withdrawal from, or the termination of, this Agreement;
- (c) other events or circumstances in respect of which a joint communication is determined to be necessary by the All NEMO Committee.

11.6 A Party may communicate individually to Third Parties on the topics which are the subject of a joint communication as mentioned under clause 11.4 only after the All NEMO Committee's approval of the content of such individual communication.

## **12. CONTRACT MANAGEMENT**

12.1 The Parties may appoint a legal or natural person (which person may be the same person as is appointed Secretary) to establish a common (online) storage location for the keeping of records of contractual documents (including meeting minutes and contracts with third parties) and to keep the common storage up to date (amongst others by collecting and storing all minutes).

## **13. CONSULTATION**

13.1 The All NEMO Committee may decide on the process, form and content for any stakeholder consultation considered necessary in connection with the fulfilment of the Scope of this Agreement. To the extent appropriate, the provisions of article 12 of the CACM Regulation shall be complied with.

## **14. FINANCIAL MODALITIES/BUDGET/INVOICING MODALITIES**

14.1 ANCA Costs sharing, reporting and settlement and invoicing under this Agreement shall be performed in accordance with the CACM Regulation following the principles and processes described in Annex II (Financial modalities/budget/invoicing modalities).

- 14.2 The ANCA Costs to be incurred by any one or more of the Parties pursuant to the terms of this Agreement shall be subject to the approval of the All NEMO Committee in accordance with clause 8 (Governance).
- 14.3 The Parties agree to observe and comply with the principles and processes detailed in Annex II (Financial Modalities/Budget/Invoicing Modalities) according to which ANCA Costs must be handled, budgeted, categorised, reported and calculated, shared and invoiced.
- 14.4 In the event that a Party disputes all or any part of an invoice, it shall inform the invoicing Party and the All NEMO Committee as soon as possible and in any event within ten (10) Business Days of the date of the invoice of the disputed amount and the basis for disputing such invoice, together with any appropriate information supporting its position. The undisputed part of the invoiced amount shall remain payable as provided herein. Any dispute with respect to all or any part of an invoice shall be subject to the Dispute resolution procedure set out in clause 26 as integrated by the specific provisions of this clause. Notwithstanding the existence of any Dispute relating to all or any part of an invoice, the Disputing Party shall remain for all purposes (other than payment of the contested part of such invoice pending resolution of such Dispute) subject to all its obligations under this Agreement.
- 14.5 Payment by either Party of the invoice, wholly or in part, shall not itself, in case of a Dispute regarding such invoice, be considered as an acceptance or validation of the activities performed which are subject of such a Dispute.
- 14.6 Default interest on any amounts not paid by the Due Date, shall accrue at the legal interest rate as specified in the Belgian Law of 02/08/2002 on combating late payment in commercial transactions, as modified by the Law of 22 November 2013, implementing Directive 2011/7/EU.

## 15. REPORTING

- 15.1 For information purposes, in the event a Party becomes aware of any facts or circumstances which may materially affect or may lead to any potential, or threatened, delay in its ability to complete any of its obligations under this Agreement:
- (a) it shall promptly inform the All NEMO Committee of such facts or circumstances in reasonable detail, provided that revealing such information is compatible with the confidentiality undertakings of such Party;
  - (b) the concerned circumstances shall be discussed at the next available meeting of the All NEMO Committee, or any work group or task force created by the All NEMO Committee or, in case of urgency, at an earlier ad hoc meeting of the All NEMO Committee or any work group or task force created by the All NEMO Committee.

## 16. ACCESSION

- 16.1 This Agreement is open to accession of any legal person designated as a NEMO from time to time pursuant to the CACM Regulation and Applicable Law, provided that the Applicant has executed an Accession Declaration. It is acknowledged by the Parties that accession to ANIDOA and/or the ANDOA is subject to accession to the terms of this Agreement in addition to any specific requirements under those agreements.
- 16.2 An Applicant shall address to the Secretary a written request. The Secretary shall inform such Applicant about the accession procedure and shall, provided that the Applicant has executed a confidentiality declaration substantially similar to the template attached as Annex V, provide it with a copy of this Agreement and the specimen Accession Declaration. The Parties and the Applicant shall be bound by the provisions of the Accession Declaration with effect from its signature by or on behalf of the Applicant and the Parties.
- 16.3 An entity designated as a NEMO in a non-EU country not member of EEA shall be entitled to request to accede to the Agreement subject to:
- i) Applicable Law;
  - ii) the provision of the authorisation or designation granted by the Competent Authority of such Applicant;
  - iii) such accession being compliant with legal or regulatory requirements (e.g. an intergovernmental agreement with the EU), if any, to enter into the Agreement.

## 17. OBSERVER POWER EXCHANGES

- 17.1 Any Power Exchange, having its operations within or outside the EU, may be granted observer status by an All NEMO Committee decision in the following cases:
- (a) in the case of a Power Exchange being a designated NEMO and having its operations either: (i) in a country within the EU; or (ii) within a non-EU country which has a valid intergovernmental agreement in place, provided such Power Exchange signs an appropriate confidentiality declaration substantially in the form of Annex V (such confidentiality declaration being the only condition required); and
  - (b) in the case of a Power Exchange not being a designated NEMO and having its operations in a country within the EU or within a third country which has a valid intergovernmental agreement in place, provided such Power Exchange provides: (i) satisfactory evidence to the All NEMO Committee that at least one NEMO designation application has been lodged in accordance with article 4 of the CACM Regulation (or equivalent where an intergovernmental agreement is in place); (ii) satisfactory evidence to the All NEMO Committee that the Power Exchange has the support of its national regulatory authority (or other Competent Authority) towards the integration of such Power Exchange's markets within SDAC and/or SIDC; (iii) the signing of an appropriate confidentiality declaration substantially in

the form of Annex V; (iv) such further conditions as the All NEMO Committee may determine to be appropriate in all the circumstances; and

- (c) in the case of a Power Exchange not being a designated NEMO and having its operations outside the EU and in a country or countries in respect of which there is no valid intergovernmental agreement in place, provided such Power Exchange provides: (a) satisfactory evidence of the grant of observer status not being incompatible with Applicable Law; (b) satisfactory evidence to the All NEMO Committee that the necessary intergovernmental agreements are under negotiation; and (c) satisfactory evidence being provided to the All NEMO Committee that the Power Exchange has the support of its national regulatory authority (or other Competent Authority) towards the integration of the Power Exchange's markets within SDAC and/or SIDC; (d) satisfactory evidence to the All NEMO Committee that there is an intention to physically couple the Power Exchange's markets to the existing SDAC/SIDC; (e) a signed confidentiality declaration substantially in the form of Annex V; (f) reasonable evidence of compliance with such further conditions as the All NEMO Committee may determine to be appropriate in all the circumstances.

17.2 Any Power Exchange granted the status of observer in accordance with the provisions of this clause (each an "**Observer**") may be granted access to such documentation and may be entitled to participate in such meetings relating to the Cooperation as may be decided by the All NEMO Committee. For the avoidance of doubt an Observer shall have no voting rights.

## 18. AMENDMENTS

18.1 Amendments to this Agreement shall only be valid, if approved unanimously in writing and signed by an authorised representative of each of the Parties. In deviation from the foregoing, Annex VIII (Contact Details of the Parties) may be amended by way of notice by a Party's Nominated Contact Person to the Secretary, exclusively in relation to its own Nominated Contact Person.

18.2 The Parties expressly agree to review this Agreement if any Applicable Law is introduced or modified in such a way that has a substantive effect on this Agreement. In the event that any such introduction or change to Applicable Law - including, for the avoidance of doubt, measures and/or decisions of any Competent Authority – require an amendment or modification of this Agreement, any Party(ies) affected by the new/amended Applicable Law may send a request for modification of this Agreement to the other Parties containing:

- (a) the provisions of this Agreement that it is requesting be modified;
- (b) the reason why such modification is necessary; and
- (c) its proposals for the amendment of the relevant provisions of this Agreement.

- 18.3 At the latest thirty (30) calendar days after receipt of the request of amendment, the Parties shall convene a meeting to consult each other in respect of the requested amendment. The Parties shall negotiate any amendment taking into account the principles of cooperation as described in clause 2.
- 18.4 To the extent a Party is not affected by a change to any Applicable Law notified to it by another Party, it may refuse to make the requested amendments to this Agreement on reasonable grounds, stating its reasons for such refusal. In such case, the affected Party(ies) shall inform its (their) NRA(s) to see if execution of/continued participation in this Agreement is still possible without making the requested amendment. If the relevant NRA(s) raise any objection to the rejection of such requested changes, the affected Party(ies) may apply clause 20.1, provided that the other requirements of clause 20 relevant to Voluntary Exit Parties are met.
- 18.5 In the event that an amendment to this Agreement is a consequence of a change in Applicable Law of the European Union, the costs thereof shall be shared equally among the Parties.
- 18.6 In the event that an amendment to this Agreement is a consequence of a change in Applicable Law applicable to one Party, such Party will bear the implementation costs of such amendment.

## **19. ENTRY INTO FORCE, DURATION, TERMINATION**

- 19.1 Subject to clauses 19.5, 19.6, 19.7 and 19.8 below, this Agreement will enter into force with effect from 28 March 2019 (the “**Effective Date**”) with respect to all those Parties that have signed it by sending a scan of the signed signatory page of this Agreement to the Secretary on or before such date.
- 19.2 With effect from the date on which all existing parties to the INCA have executed this Agreement (or such earlier termination date to which the parties to the INCA may agree), the Parties hereby agree that the INCA shall be and hereby is terminated, save with respect to any pre-existing rights and/or obligations.
- 19.3 The Secretary will collect all copies of the received signed signatory pages and provide a copy of the main text of this Agreement incorporating all the copies of the signed signatory pages to the Parties.
- 19.4 As soon as possible following the completion of the signature process outlined above, for evidence reasons and without impacting the Effective Date, each Party shall send 17 (seventeen) original signatory pages of this Agreement to the Secretary. The Secretary will then collect all copies of the original signed signatory pages, compile them with the main text of this Agreement and create 17 (seventeen) original hard copies of this

Agreement which will be sent to the Parties (one original hard copy to each Party).

- 19.5 The Parties are aware of the fact that OTE, a.s., irrespective of the Applicable Law of this Agreement, has a national legal obligation within the meaning of Section 2 (1) of the Czech Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, to publish this Agreement in the National Contract Registry of the Czech Republic and that, insofar as OTE is concerned, the coming-into-force of this Agreement is subject to such prior publication of this Agreement.
- 19.6 The Parties are aware of the fact that it may not be possible for HUPX and/or GME to obtain all the necessary internal approvals to enable it to execute this Agreement on or before 28 March 2019. In such case, it is agreed by those Parties that have formally executed this Agreement on or before the Effective Date and that HUPX and/or GME may execute this Agreement as soon as possible after 28 March 2019, whereupon this Agreement, for HUPX and/or GME, shall take effect with retroactive effect from 28 March 2019 as if HUPX and/or GME had executed this Agreement on or before such date but provided that HUPX and/or GME shall be deemed to have accepted all decisions of the Parties taken under the terms of this Agreement prior to their execution hereof.
- 19.7 Until such time as GME and/or HUPX has formally executed this Agreement in accordance with clause 19.6, the Parties agree that HUPX and/or GME will be invited to the meetings of the All NEMO Committee as well as any other work groups or task forces organized under the ANCA, and permitted to state their positions in the minutes of the NEMO Committee, but shall not have voting rights and shall not be counted in the relevant quora, although such position shall be duly considered in good faith by the Parties.
- 19.8 This Agreement shall remain in full force and effect until it is replaced or terminated in accordance with its terms. The termination of this Agreement, for whatever reason, shall be without prejudice to any rights or obligations of the Parties arising or accruing with respect to the period prior to such termination.
- 19.9 This Agreement may be terminated at any time by written agreement of all the Parties, without any court intervention and without any compensation being due (without prejudice to all pre-existing rights and/or obligations under this Agreement), provided always that there exists a suitable replacement agreement or other arrangement between the NEMOs to the extent such is required to facilitate the proper fulfilment by NEMOs of their respective obligations under the CACM Regulation.
- 19.10 In case of termination, the All NEMO Committee shall decide on the implementation of

the termination. The Parties shall duly inform the relevant Competent Authorities in accordance with clause 11.4. To the extent required by Applicable Law, termination shall not take effect until all relevant regulatory authorizations have been obtained.

19.11 The Parties shall not refuse to terminate this Agreement in the event that termination is ordered by a concurrent valid order of all NRAs or any other relevant Competent Authorities pursuant to article 4 paragraph 3 of the CACM Regulation.

19.12 In case the contract is rendered invalid, ineffective or null and void due to an act or omission of one of the Parties, it is considered to have this effect exclusively to the extent of the rights and obligations of such specific Party. All remaining Parties hereby express their will to continue to be bound by the terms of this Agreement regardless of its invalidity or ineffectiveness with respect to the rights and obligations of one of the Parties.

## 20. VOLUNTARY EXIT, FORCED EXIT AND SUSPENSION

### 20.1 Voluntary Exit

- (a) Any Party (hereinafter, the “**Voluntary Exit Party**”) may at any time, without cause and without any court intervention, exit this Agreement by its own means (a “**Voluntary Exit**”). A Voluntary Exit shall not trigger the payment of any compensation, but shall be without prejudice to: (i) any pre-existing payment obligations towards or between the other Parties under this Agreement up to and including the effective date of exit by the Voluntary Exit Party; and/or (ii) such already committed payment obligations towards third parties up to and including the earliest possible termination date applicable to such third party agreement, which in each case shall remain due unless agreed otherwise in the relevant Exit Plan.
- (b) The Voluntary Exit Party shall notify the All NEMO Committee of its intention to exit from this Agreement. The All NEMO Committee shall meet within two (2) weeks after any such notification to commence the preparation of the Voluntary Exit Party’s Exit Plan according to clause 20.4. In particular, the All NEMO Committee shall assess the timescales within which such exit shall occur. Except if decided otherwise by the All NEMO Committee, with the consent of the Voluntary Exit Party, or except if provided otherwise by Applicable Law or regulatory decision, the following timescales for the effectiveness of such exit shall apply by default:
  - i) in the event of Force Majeure for two (2) consecutive months, with immediate effect on the date of notification by the Nemo Committee from the Voluntary Exit Party;



- ii) in the event of a failure to reach an agreement with regard to the modification of this Agreement according to clause 18.3, subject to three (3) months as from the notification of the Voluntary Exit Party;
- iii) in the event of a Dispute which is either referred to arbitration or subject to determination by arbitral proceedings in accordance with clause 26.7, subject to three (3) months as from the notification of the Voluntary Exit Party;
- iv) to the extent compatible with Applicable Law, and without prejudice to clause 20.2(a), in the event of a voluntary bankruptcy or any other voluntary insolvency proceeding, dissolution, liquidation or winding up (or equivalent) of such Voluntary Exit Party, upon one (1) month as from the notification of the Voluntary Exit Party;
- v) in the event of an order of Competent Authority to end the participation of a Party to the Single Day-ahead Coupling and/or the Single Intraday Coupling, upon one (1) month from the notification of the Voluntary Exit Party; or
- vi) in all other cases, upon six (6) months as from the notification of the Voluntary Exit Party.

**20.2 Forced Exit**

(a) [REDACTED]

i) [REDACTED]

ii) [REDACTED]

iii) [REDACTED]

- (b) The consequences of any Forced Exit shall be decided by the All NEMO Committee (other than the Forced Exit Party) in consultation with the relevant NRAs. The consequences will be laid down in the relevant Exit Plan.
- (c) For the avoidance of doubt dispute settlement shall not impact the effectiveness of the All NEMO Committee decision. However the All NEMO Committee (it being understood that the Forced Exit Party will not take part to the decision in this respect) may decide to suspend its decision under clause 20.2(b) where such decision is the subject of a Dispute pursuant to clause 26.
- (d) For all decisions of the All NEMO Committee in respect of the Forced Exit the Forced Exit Party shall not be entitled to vote it being understood that the Forced Exit Party shall be able to defend its case.

**20.3 Suspension of Party**

- (a) [REDACTED]
- i) [REDACTED]
- ii) [REDACTED]
- iii) [REDACTED]
- (b) [REDACTED]
- (c) For all decisions of the All NEMO Committee in respect of a suspension of a Suspension Party, such Suspended Party shall not be entitled to vote it being understood that such Suspended Party shall be able to defend its case.
- (d) In case of any suspension, the Suspension Party is authorized to communicate about its suspension with the relevant NRAs (and ACER as the case may be) without this constituting a breach confidentiality.

## 20.4 Exit Plan and Consequences of Exit

- (a) In case of any exit of a Party in accordance with the provisions of this clause, the remaining Parties shall each use their respective Best Efforts to secure the continuity of the Single Day-ahead Coupling and the Single Intraday Coupling. The All NEMO Committee shall prepare a plan (the “**Exit Plan**”), setting forth the actions and measures to be taken to ensure continuity following a Party’s exit (as the case may be) including, but not limited to, the following:
- i) assessment of the changes to be made to this Agreement (if any);
  - ii) assessment of the costs related to such exit and the allocation thereof;
  - iii) measures for ensuring continuity of the Single Day-ahead Coupling and/or Single Intraday Coupling;
  - iv) the exit should be conducted as smoothly as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and
  - v) the exact date on which the exit shall become effective, according to the abovementioned timescales.
- (b) The Exit Plan will be submitted to the All NEMO Committee (including the relevant Voluntary Exit Party, but not including the relevant Suspension Party or Forced Exit Party (as applicable)) for formal approval. If the All NEMO Committee does not approve the Exit Plan/Suspension Plan, the matter shall be resolved in accordance with clause 26.
- (c) The Voluntary Exit Party or Forced Exit Party (as the case may be) shall, in accordance with the Exit Plan, use its Best Efforts to assist the remaining Parties to enable continuity of the Single Day-ahead Coupling and/or Single Intraday Coupling and to enable the migration of any services it performs or the documentation/information it provides until the date of its exit or for such other period as referred to in the relevant Exit Plan.
- (d) The Voluntary Exit Party or Forced Exit Party (as the case may be) shall in no event object to the solutions implemented by the remaining Parties to ensure the continuity of the Single Day-ahead Coupling and/or Single Intraday Coupling, including the granting of rights on any joint asset to any other entity appointed to take over the services performed by such Voluntary Exit Party or Forced Exit Party (as the case may be).
- (e) Until the exit becomes effective, the Voluntary Exit Party or Forced Exit Party (as the case may be) shall have the right to vote on escalations from the ANDOA and/or the ANIDOA where the relevant Voluntary Exit Party or Forced Exit Party is or may reasonably be expected to be impacted by the outcome of such escalation. For other matters, the Voluntary Exit Party or Forced Exit Party (as the case may be) shall not be entitled to vote unless the All NEMO Committee decides

otherwise or unless the vote has direct consequences for the relevant Voluntary Exit Party or Forced Exit Party (as the case may be).

- (f) As of the date on which the exit becomes effective as determined in the Exit Plan in accordance with clause 20.4(a), any co-owned Intellectual Property Rights of the Voluntary Exit Party or Forced Exit Party (as the case may be) pertaining to joint developments or any right of the Voluntary Exit Party or Forced Exit Party (as the case may be) to use data and systems will be governed by the relevant terms of the ANDOA or ANIDOA (as appropriate).
- (g) In case of any exit, the Voluntary Exit Party or Forced Exit Party (as the case may be) is authorized to communicate about its exit with the relevant NRAs (and ACER as the case may be) without this constituting a breach confidentiality.

## 21. LIMITATIONS ON LIABILITY

21.1 [REDACTED]

21.2 For avoidance of doubt no consequential or indirect damages, such as loss of profit, loss of business, or incidental damages shall be compensated.

21.3 Should the breach of this Agreement be a consequence of fraud (“bedrog” / “fraude”), intentional fault, intentional misconduct (“opzettelijke fout” / “faute intentionnelle”) of the defaulting Party, the affected Parties shall be entitled to claim full compensation or indemnification for all losses, damages, charges, fees without any cap being applicable, to the exclusions of indirect and consequential damage.

21.4 In the event of a breach of this Agreement by a Party, the All NEMO Committee shall decide upon possible measures to mitigate the negative consequences of such breach. The defaulting Party shall be allowed to participate in the deliberations of the All NEMO Committee in this respect, but shall not be entitled to vote in respect of the measures to be taken.

21.5 Should the sum of all damages suffered by two or more affected Parties exceed the amount of the liability cap, the maximum compensation or indemnification to be paid by the defaulting Party towards the affected Parties shall be reduced pro rata.

21.6 In any case where a Party (the “Defaulting Party”) is in breach of this Agreement (whether by act or omission), the Defaulting Party shall indemnify and hold harmless the other Parties (each a “Defendant Party”) against any claim, demand, action or

proceedings made by any third party which may reasonably be considered to have arisen or to have been made in connection with or as a result of such breach (each a **“Third Party Claim”**), provided that the aggregate liability of the Defaulting Party under such indemnity shall be subject to the cap stipulated in clause 21.1 above.

21.7 In any case where a breach of this Agreement by a Party also constitutes a breach of the ANDOA and/or the ANIDOA, multiple simultaneous or successive claims against the Defendant Party under this Agreement and/or under the ANIDOA and/or under the ANDOA in respect of the same breach shall not be permitted, provided that the affected Party shall be free to choose which agreement shall be the basis of its claim against the Defendant Party.

## **22. CONDUCT OF THIRD PARTY CLAIMS**

22.1 The provisions of this clause 22 shall apply in the event of any Third Party Claim.

22.2 In the event of a Third Party Claim, the Defendant Party shall:

- (a) as soon as reasonably practicable, and in any event with 10 Business Days of the date upon which the Defendant Party becomes aware of the Third Party Claim, give written notice of such Third Party Claim to the Defaulting Party, specifying in reasonable detail the nature of the Third Party Claim and its connection to the breach(es) of this Agreement by the Defaulting Party;
- (b) keep the Defaulting Party fully informed of the progress of, and all material developments in relation to, the Third Party Claim;
- (c) provide the Defaulting Party with copies of all information and correspondence relating to the Third Party Claim; and

22.3 The Defaulting Party shall join, upon Defendant Party's request, any discussions or dispute settlement procedure (whether amicable, judicial or arbitral) following a Third Party Claim. Any failure by the Defendant Party to request the Defaulting Party to join such discussions or dispute settlement procedures (whether amicable, judicial or arbitral) shall not limit the right of defence of the Defaulting Party in respect of such Third Party Claim.

22.4 Any hold harmless obligation set out under this Agreement is conditional upon the Defendant Party:

- (a) fully cooperating with the Defaulting Party in any response and defence as reasonably required; and
- (b) not entering into any settlement or acknowledging the existence or grounds of the Third Party Claim without the prior consent of the Defaulting Party.

- 22.5 The Defaulting Party shall indemnify and secure the Defendant Party to its reasonable satisfaction in respect of all costs, charges and expenses that are reasonably and properly incurred by the Defendant as a consequence of any actions taken at the request of the Defaulting Party in accordance with this clause 22.
- 22.6 The provisions of clause 22 shall not apply in relation to a Third Party Claim if and to the extent that the application of them would render any policy of insurance maintained by or available to the Defendant Party void or voidable, or entitle the relevant insurer to repudiate or rescind any such policy in whole or in part, or in the event that a relevant insurer exercises its right to take over conduct of the Third Party Claim.
- 22.7 The Defaulting Party shall have no liability in respect of a Third Party Claim to the extent that the liability pursuant to the relevant Third Party Claim arises or is increased as a result of a failure by the Defendant Party to act in accordance with any reasonable request or direction given by the Defaulting Party in accordance with this clause 22.
- 22.8 The Defendant Party shall not have any right of set-off (howsoever arising) in respect of any Third Party Claim and all sums payable by the Defendant Party and any other Party (including the Defaulting Party) under this Agreement shall be paid in full without set-off, counterclaim or other deduction.
- 22.9 Neither the Defendant Party shall be entitled to recover damages, or obtain payment, reimbursement, restitution or indemnity more than once in respect of the same loss, shortfall, damage, deficiency, breach or other event or circumstance.

### **23. FORCE MAJEURE**

- 23.1 No Party shall be liable for delay or failure to fulfil its obligations under this Agreement if the delay or failure in performing the concerned obligation results from Force Majeure.
- 23.2 Any Party affected by Force Majeure, shall:
- (a) Send the other Parties prompt notification describing the nature of Force Majeure and its probable duration and the impact on the performance of its obligations under this Agreement;
  - (b) Use its Best Efforts to limit the consequences and duration of the Force Majeure;
  - (c) Provide regular (and, in any event, weekly) notices to the other Parties about its actions and plans for action under (b); and
  - (d) Provide prompt notice to the other Parties as soon as the circumstances giving rise to the event of Force Majeure have been cured, mitigated or have otherwise ceased.
- 23.3 A Party affected by Force Majeure shall be excused from any delay or failure in performance, in whole or in or part, of its obligations under this Agreement for so long

as, and to the extent that, the performance of such obligations is affected by Force Majeure.

- 23.4 A Party cannot, under any circumstances, be held responsible or held liable to pay any compensation for damage suffered, due to any delay or failure in performance, in whole or in part, of any one or more of its obligations, when such delay or failure in performance is due to a Force Majeure event.

## 24. INTELLECTUAL PROPERTY RIGHTS

- 24.1 Without prejudice to the treatment of intellectual property rights associated with the single DA and ID algorithms and any related deliverables including systems or software developed for the purpose of the single DA and ID coupling pursuant to the relevant terms of either the PCR Co-ownership Agreement, the ANDOA or ANIDOA respectively, all works, preparations, creations, studies, researches including all documents, drawings, documentation, manuals, reports, schemes, software (system programs, applications, object codes, source codes), algorithms, technologies, business secrets, methods, jointly elaborated by the Parties or by a subset of them within the Scope of this Agreement shall become the joint property of the Parties or of the relevant subset of them (as appropriate), at no additional cost or remuneration, it being understood that all Intellectual Property Rights in respect thereto shall be jointly vested with the Parties.
- 24.2 Nothing in this Agreement shall be interpreted as having any effect whatsoever on any Intellectual Property Rights vested with any individual Party at or prior to the date of this Agreement or which are not jointly elaborated by the Parties or by a subset of them within the Scope of this Agreement.

## 25. GOVERNING LAW AND JURISDICTION

- 25.1 This Agreement, its conclusion, performance and interpretation, including the issue of its valid conclusion (legal capacity excluded) and its pre- and post-contractual effect shall be governed and construed in all aspects by Belgian law.

## 26. DISPUTE RESOLUTION

- 26.1 Any dispute arising under, in connection to, or in the framework of this Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties ("**Dispute**") shall be subject to the provisions of this clause 26.
- 26.2 In the event of a Dispute arising between two or more Parties, such Parties (each a "**Disputing Party**") shall each use their respective best endeavours to resolve the Dispute between themselves amicably. If the Parties in Dispute are not able to resolve

the Dispute within 20 (twenty) Business Days, any Party to such Dispute may refer such Dispute to the All NEMO Committee.

- 26.3 A referral for dispute settlement by the All NEMO Committee (the “**Referral**”) shall be sent by email by one Disputing Party to All NEMO Committee members in writing and shall at least contain the following information:
- (a) a description of the Dispute; and
  - (b) the indication of the Party(ies) to whom it is addressed; and
  - (c) the scope of the demand(s) or claim(s) of the Disputing Party referring the Dispute to the All NEMO Committee; and
  - (d) the legal basis of the demand(s) or claim(s); and
  - (e) a proposal for settlement.
- 26.4 The Chairperson shall invite the Parties to participate in at least two (2) physical meetings (unless the Dispute is solved in the meantime) to be held within one (1) month of the receipt of the Referral.
- 26.5 The All NEMO Committee shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable dispute settlement procedure. The All NEMO Committee may hear and/or request opinions of experts provided that they are bound by confidentiality obligations at least equivalent to those in this Agreement. In particular, the All NEMO Committee shall:
- (a) assess the facts;
  - (b) assess the interests of the Parties in light of the objectives of this Agreement; and
  - (c) in case of damage:
    - i) estimate the damage (and its nature and extent);
    - ii) determine which Party(ies) suffered the damage;
    - iii) determine which Party(ies) is(are) liable for the damage; and
    - iv) determine the extent and modalities of indemnification; and
    - v) formulate a proposal for settlement.
- 26.6 In the event that the All NEMO Committee fails to resolve the Dispute within one (1) month of receipt of the Referral, the Parties shall be notified thereof by the Chairperson (or the Secretary on behalf of the Chairperson) and the All NEMO Committee may solicit the NRAs and/or ACER for a non-binding opinion on the Dispute (the “**Opinion**”). Upon receipt of the Opinion, the Disputing Parties shall pursue an amicable settlement based on this Opinion.
- 26.7 In the event that:
- (a) the All NEMO Committee decides not to seek an Opinion from the NRAs and/or ACER; or
  - (b) the Disputing Parties do not achieve an amicable settlement based on the Opinion within one (1) month of its receipt; or



- (c) ACER and/or the NRAs denies its competence to provide an Opinion or does not provide an Opinion within a timeframe of one (1) month of the the request from the All NEMO Committee,

the Dispute shall be exclusively and finally settled by arbitration under the ICC's rules of arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have three (3) arbitrators, regardless of the number of Parties involved. They shall be appointed by the ICC court of arbitration, according to the ICC rules of arbitration. All appointed arbitrators shall preferably be familiar with the applicable sector, specific legislations and Regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned. The Parties agree that the arbitrators validly appointed shall not be allowed to impose the termination of the Agreement as a solution of any Dispute.

- 26.8 Any settlement reached pursuant to this clause 26 shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract, signed by the Parties to such Dispute.
- 26.9 In the event of a Dispute, nothing in this clause 26 shall preclude a Party from applying for injunctive relief in summary proceedings before any competent court.

## **27. NOMINATED CONTACT PERSON**

- 27.1 Each Party will appoint a nominated person (the "Nominated Contact Person") to act as the initial contact point for such Party for all issues connected to this Agreement. The names of each Party's Nominated Contact Person are to be recorded in Annex VIII (Contact Details of the Parties). Each Party may replace its Nominated Contact Person at any time and shall inform the other Parties via e-mail, providing all relevant contact details for such replacement Nominated Contact Person.

## **28. GDPR**

- 28.1 The Parties commit to comply with GDPR, and in particular with the following provisions:
  - (a) The personal data exchanged in the context of this Agreement (name, position, company email addresses and telephone numbers of representatives and contact details of other Parties) shall be limited to what is necessary for the management of the contractual relationship amongst the Parties and for the purposes of this Agreement during its term.
  - (b) Following termination of this Agreement, the Parties shall continue to maintain and process any personal data it holds in accordance with Applicable Law, including without limitation in accordance with any rights of access and rights to rectification,

erasure, objection, restriction, portability by any data subjects, whether pursuant to GDPR or other Applicable Law.

- (c) No Party will communicate to any Third Party the personal data received from any other Party or transfer it to a third country or international organisation, unless such communication is made fully in compliance with the relevant terms of GDPR.
- (d) Each Party undertakes to provide the information contained in this clause to any individual data subject whose personal data is communicated to another Party or Parties in the context of this Agreement.

## **29. MISCELLANEOUS**

- 29.1 Each Party acknowledges and agrees that this Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and that neither Party shall have the right to bind the other without that Party's prior express written consent.
- 29.2 Each of the Parties, unless is expressly provided otherwise herein or pursuant to Applicable Law (e.g. with respect to automatic legal succession), is prohibited from assigning (including by means of merger, split-off, or transfer or contribution of universality or a branch of activity or otherwise) all or part of its rights and obligations arising from this Agreement to a third party without the prior written consent of the other Parties, such consent not to be unreasonably withheld, conditioned or delayed.
- 29.3 No waiver of any term, provision or condition of this Agreement shall be effective except to the extent to which it is made in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this Agreement. For the avoidance of doubt, if a Party fails to perform any of its obligations hereunder, and another Party fails to enforce the provisions relating thereto, such Party's failure to enforce this Agreement shall not prevent its later enforcement.
- 29.4 All notices and correspondence under this Agreement shall be in writing and shall be delivered, previously anticipated by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested, to the following addresses, or at such different address as may be designated by such party by written notice to the other party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail provided that, in either case, where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Working Day. The invoices shall be delivered by email. In case of failure of the email systems, the invoices shall be sent by personal service or express courier using an internationally recognised courier company.

- 29.5 The addresses, e-mails and phone numbers of the Parties for the purpose of this Agreement are indicated in Annex VIII (Contact Details of the Parties) and each Party may update such references by means of a written notice to the Secretary.
- 29.6 The Parties agree that the working language for all notifications and for all matters relating to their cooperation under this Agreement shall be English.
- 29.7 The invalidity or ineffectiveness of any clause of this Agreement shall not affect the validity of the remainder of this Agreement.
- 29.8 In the event of the termination of the Agreement for whatever reason, the provisions which, expressly are intended to survive the termination of the Agreement are clauses 1 (Definitions and Interpretation), 10 (Confidentiality), 21 (Limitations on Liability), 24 (Intellectual Property Rights), 25 (Governing Law and Jurisdiction), 26 (Dispute Resolution) and this clause 29 (Miscellaneous).
- 29.9 This Agreement and the Annexes, as supplemented by decisions of the All NEMO Committee in the performance of this Agreement, contain the entire agreement of the Parties hereto with respect to the subject matter hereof and contain everything the Parties have negotiated and agreed upon relating to the same subject matter.
- 29.10 Each Party shall maintain records that are complete and accurate for all the relevant material regarding the performance by it of all its obligations under this Agreement and each Party shall retain such records for a period as required under the applicable legal provisions applicable to it, with a minimum of three (3) years unless in conflict with the applicable legal provisions. On another Party's first substantiated request, a Party shall provide the other Parties with a copy of all or part of the records as indicated by the requesting Parties, if available.
- 29.11 The rights and remedies under this Agreement are cumulative with and not exclusive of any rights and remedies provided by law.

This Agreement has been duly executed in seventeen (17) original copies, one for each of the undersigned Parties.

**NEMO COOPERATION AGREEMENT: EXECUTION VERSION 14 MARCH 2019**

**BSP Energy Exchange LLC**

me: [REDACTED]

function: [REDACTED]

date: 26. 3. 2019

signature [REDACTED]



**BSP Energetska Berza d.o.o.**  
**Dunajska 156, SI-1000 Ljubljana**

**CROATIAN POWER EXCHANGE Ltd**

Name: [REDACTED]

Function: [REDACTED]

Date: 15.03.2019. [REDACTED]

Signature [REDACTED]

HRVATSKA BURZA  
ELEKTRIČNE ENERGIJE d.o.o.  
Zagreb

**EirGrid plc**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

[REDACTED]

**EPEX SPOT SE**

ne: [REDACTED]

ction: [REDACTED]

e: 25 March 2019

ature:

**European Market Coupling Operator AS**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]



**EXAA - Abwicklungsstelle für Energieprodukte AG**

Name: [REDACTED]

Function: [REDACTED]

Date: 15.03.2019

Signature [REDACTED]

Name: [REDACTED]

Function: [REDACTED]

Date: 15.03.2019

Signature [REDACTED]

**Gestore dei Mercati Energetici S.p.A.**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

**Hellenic Energy Exchange S.A.**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

**HUPX Hungarian Power Exchange Company Limited by Shares**

ne: [REDACTED]

ction: [REDACTED]

e:  
ature [REDACTED]

ne: [REDACTED]

ction: [REDACTED]

e:  
ature [REDACTED]

2019 MARCH 25

**Independent Bulgarian Energy Exchange EAD**

Name: [REDACTED]

Function: [REDACTED]

Date: 22/03/2019

Signature [REDACTED]

Nasdaq Oslo ASA

Name: [REDACTED]

Function: [REDACTED]

Date: 20/03/19

Signature [REDACTED]

**OKTE a.s.**

**Name:** [REDACTED]

**Function:** [REDACTED]

**Date:** 19. 03. 2019

**Signature** [REDACTED]

**Name:** [REDACTED]

**Function:** [REDACTED]

**Date:** 19. 03. 2019 [REDACTED]

**Signature** [REDACTED]

**OMI Polo Español S.A.**

Name: 

Function: 

Date:

Signature





**Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

OPE, a.s.

Name: [REDACTED]

Function: [REDACTED]

Date: 28. 03. 2019

Signature [REDACTED]

Name: [REDACTED]

Function: [REDACTED]

Date: 28. 03. 2019

Signature [REDACTED]

**SONI Limited**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

**Towarowa Giełda Energii SA**

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

[REDACTED]

**ANNEX I**  
**Definitions**

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

<b>Accession Declaration</b>	means a document recording the terms of accession of a new Party to this Agreement in accordance with the provisions of clause 16.1, substantially in the form of the pro-forma attached as Annex VI.
<b>Accession Fee</b>	has the meaning set forth in paragraph 1, Section K of Annex II.
<b>ACER</b>	means the Agency for the Cooperation of Energy Regulators, as established in accordance with Regulation 713/2009 of the European Parliament and the Council of 13 July 2009.
<b>Affiliate</b>	means, with respect to any Party, any company or other legal entity which either Controls, is Controlled by or is under common Control with, such Party;
<b>Agreement</b>	means this ANCA as may be amended, supplemented or replaced from time to time.
<b>Algorithm Methodology</b>	means the All NEMOs' proposal for the price coupling algorithm and for the continuous trading matching algorithm, also incorporating TSO and NEMO proposals for a common set of requirements, in accordance with Article 37(5) of the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management dated 13 November 2017.
<b>All NEMO Committee</b>	means the Committee comprised of the authorised representatives of all designated NEMOs from time to time as established in accordance with section 4 of the MCO Plan.
<b>ANCA Costs</b>	means such cost incurred by any one or more Parties, with the approval of the All NEMO Committee, in connection with the performance of any one or more ANCA Task.
<b>ANCA Task</b>	means any common task for benefit of all the Parties that needs to be performed in connection with the Scope during the term of this Agreement.

<b>ANDOA</b>	means the All NEMO Day-ahead Operations Agreement dated on or around the date of this Agreement.
<b>ANDOA Steering Committee</b>	means the steering committee established by the parties to the ANDOA in accordance with the terms of the ANDOA.
<b>ANIDOA</b>	means the All NEMO Intraday Operations Agreement dated 12 June 2018.
<b>ANIDOA Steering Committee</b>	means the steering committee established by the parties to the ANIDOA in accordance with the terms of the ANIDOA.
<b>Applicable Law</b>	means, with respect to each Party, such mandatory (including public policy) laws or regulations or decisions of any Competent Authority applicable to such Party, including any terms, conditions or methodologies as implemented from time to time under such laws or regulations.
<b>Applicant</b>	means an entity that is already designated as NEMO or consistently with CACM Regulation and Applicable Law has already started the procedure for being designated as NEMO which has requested to adhere to this ANDOA consistently with Article 16;
<b>Best Efforts</b>	means performing an obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result (" <i>middelenverbintenis</i> " / " <i>obligation de moyen</i> ")
<b>Business Day</b>	means any day other than a Saturday and a Sunday in which banks are open to the public for general business in the country or city of the Party that needs to perform the obligation, except if provided otherwise.
<b>CACM Regulation</b>	means Regulation 2015/1222 of the European Parliament and the Council of 24 July 2015 establishing a guideline on capacity allocation and congestion management as may be amended, supplemented or replaced from time to time.

<b>Calendar Quarter</b>	means, during the term of this Agreement, each period of three consecutive calendar months (or part thereof in the case only of the first and last Calendar Quarter) as follows: (i) 1 January to 31 March inclusive (“Q1”); (ii) 1 April to 30 June inclusive (“Q2”); (iii) July to September (“Q3”); and (iv) 1 October to 31 December (“Q4”), and <b>“Calendar Quarterly”</b> shall be construed accordingly.
<b>Chairperson</b>	has the meaning given to that term in clause 8.6.
<b>Competent Authority</b>	means ACER, any NRA or any other European Union, national, federal, regional, state, local or other court, arbitral tribunal, administrative agency or commission or other governmental, municipal, administrative or regulatory body, authority, agency or inspectorate with jurisdiction over any one or more Parties to this Agreement;
<b>Confidential Information</b>	means: <ul style="list-style-type: none"> <li data-bbox="730 1032 1417 1335">(i) any information, whether or not marked as confidential, exchanged between any two or more Parties in the context of this Agreement in any form whatsoever (verbal, written, electronic or other), such as, but not limited to, any technical, financial, commercial, testing and/or operating data; and</li> <li data-bbox="730 1379 1417 1424">(ii) the content of this Agreement.</li> </ul>
<b>Contracting Party</b>	has the meaning given to that term in clause 6.1(a).

<p><b>Control</b></p>	<p>means, for the purpose of the definition of “Affiliates”, the situation where a person:</p> <ul style="list-style-type: none"> <li>(a) directly or indirectly owns a fraction of the capital in another company that gives a majority of the voting rights at such company's general meetings;</li> <li>(b) holds alone a majority of the voting rights in a company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to such company's interests;</li> <li>(c) effectively determines the decisions taken at a company's general meetings through the voting rights it holds;</li> <li>(d) has the power to appoint or dismiss the majority of the members of company's administrative, management or supervisory structures; or</li> <li>(e) directly or indirectly holds a fraction of the voting rights above 40% of a company and no other partner or shareholder directly or indirectly holds a fraction larger than this participation.</li> <li>(f) Two or more undertakings acting jointly are deemed to jointly control a company when they effectively determine the decisions taken at its general meetings.</li> <li>(g) In any case, an undertaking is presumed to control a company when it exerts a decisive influence over it. The decisive influence is defined according to the organizational, economic and legal links between both undertakings,</li> </ul> <p>and the term “Controlled” shall be construed accordingly.</p>
<p><b>Cooperation</b></p>	<p>means the coordination between the Parties, in accordance with the relevant provisions of the CACM Regulation and MCO Plan, of the performance of the ANCA Tasks comprising the Scope.</p>
<p><b>DAOA</b></p>	<p>means the Day-ahead Operations Agreement dated 30 January 2015.</p>
<p><b>DA MCO Function</b></p>	<p>means the task of matching orders from the</p>



	day-ahead markets for different bidding zones and simultaneously allocating cross-zonal capacities, as defined in article 2(30) of the CACM Regulation.
<b>DA MCO Function Assets</b>	means means the systems, procedures, algorithm and service provider contracts used for the DA MCO Function.
<b>Defaulting Party</b>	has the meaning given to that term in clause 21.6.
<b>Defendant Party</b>	has the meaning given to that term in clause 21.6.
<b>Disclosing Party</b>	means any Party that discloses Confidential Information to another Party.
<b>Dispute</b>	has the meaning set forth in clause 26.1.
<b>Disputing Party</b>	has the meaning set forth in clause 26.2.
<b>Due Date</b>	has the meaning given to that term in Section G, paragraph 2 of Annex II.
<b>EEA</b>	means the European Economic Area set by the EEA Agreement which entered into force on 1 <sup>st</sup> January 1994;
<b>Effective Date</b>	has the meaning set forth in clause 19.1.
<b>European Stakeholder Committee or “ESC”</b>	The European stakeholder committee comprised of the representatives of the European Commission, ACER, ENTSO-E, NEMOs and the associations representing Distribution System Operators (DSOs), the European association of energy exchanges (Europex) and other stakeholder groups representing generators, suppliers and customers from across the European electricity sector. The European Stakeholder committee is governed by the Terms of Reference published on ACER internet site.
<b>EU</b>	means the European Union of countries and states from time to time during the continuance of this Agreement, established by the Treaty of Maastricht, with effect from 1 November 1993.
<b>Exit Plan</b>	has the meaning set forth in clause 20.4(a).
<b>Expert Panel</b>	means the panel of independent experts constituted in accordance with the procedures to be attached to this Agreement as Annex IX.

<b>External Representative</b>	means the subcontractors, agents, lawyers, professional advisors, external consultants, insurers, financiers or any other entity appointed by a Party in relation to the Cooperation.
<b>Forced Exit</b>	means, with respect to any one or more Parties, the termination of such Parties' participation in this Agreement by the other Parties in accordance with clause 20.2(a).
<b>Forced Exit Party</b>	has the meaning given to that term in clause 20.2(a).
<b>GDPR</b>	means EU Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
<b>Historical Costs</b>	shall have the meaning set forth in paragraph 1, Section K of Annex II.
<b>IDOA</b>	means the Intraday Operations Agreement dated 12 June 2018.
<b>ID MCO Function</b>	means the task of matching orders from the intra-day markets for different bidding zones and simultaneously allocating cross-zonal capacities, as defined in article 2(30) of the CACM Regulation.
<b>ID MCO Function Assets</b>	means means the systems, procedures, algorithm and service provider contracts used for the ID MCO Function.
<b>Intraday Systems Supplier</b>	has the meaning given to that term in the MCO Plan.
<b>Intellectual Property Rights</b>	means any intellectual property right or other (property) right throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under applicable law, contract, or otherwise, and whether or not registered, registrable or perfected, including (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations,

	<p>continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trade marks, service marks, trade names, internet domain names, business names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other Confidential Information; (g) design rights, whether registered or unregistered; and (h) rights analogous to those in this definition and any and all other proprietary rights relating to intangible property.</p>
<b>Internal Representative</b>	<p>means, with respect to any Party, the directors, officers, managers and employees of such Party, or of such Party's Affiliates.</p>
<b>Internal Resources</b>	<p>means, with respect to any Party, such Party's own internal resources (in terms of the experience, skills and time of any one or more of its Internal Representatives) as are deployed, or which may be deployed, for the purposes of the fulfilment of such Party's obligations under this Agreement, plus any such resources available to such Party through the utilization (either alone or jointly with any one or more other Parties) of the services of one or more Third Parties (not being a Third Party Service Provider).</p>
<b>MCO Plan</b>	<p>means the plan that sets out how NEMOs will jointly set up and perform the MCO Functions pursuant to article 7(2) of the CACM Regulation.</p>
<b>Monthly Report</b>	<p>has the meaning given to that term in Section D, paragraph 12 of Annex II.</p>

<b>National Regulatory Authority or “NRA”</b>	means the relevant national regulatory authority designated at national level on the basis of article 35 of Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC or, in case of a country for which this directive does not apply, the national regulatory authority designated at national level by similar legal provisions.
<b>NEMO</b>	means a “nominated electricity market operator”, as defined in the CACM Regulation.
<b>Nominated Contact Person</b>	has the meaning set forth in clause 27.
<b>Observer</b>	shall have the meaning given to that term in clause 17.2.
<b>Operational Decision</b>	<p>shall mean:</p> <p>(a) for the purposes of the ANDOA Steering Committee, any Regional Operational Decision (as such term is defined in the ANDOA) or Joint Operational Decision (as such term is defined in the ANDOA); and</p> <p>(b) for the purposes of the ANIDOA Steering Committee, have the meaning given to that term in the ANIDOA;</p>
<b>Opinion</b>	has the meaning set forth in clause 28.6.
<b>Party</b>	means any party to this Agreement.
<b>Permitted Purpose</b>	means, in the context of the utilization of Confidential Information by a Recipient Party, for the purposes of the Scope and in connection with the performance of any one or more of the ANCA Tasks.
<b>Power of Attorney</b>	has the meaning given to that term in clause 6.1(a).
<b>Power Exchange or “PX”</b>	means any legal person that operates a business which facilitates for its customers (via an appropriate IT platform) the execution of day-ahead and/or intraday wholesale electricity contracts for delivery to any one

	or more bidding zones (as such term is used in the CACM Regulation).
<b>Quarterly Account</b>	has the meaning given to that term in Section F, paragraph 4 of Annex II.
<b>Quarterly Report</b>	has the meaning given to that term in Section F, paragraph 2 of Annex II.
<b>Recipient Party</b>	means any Party that receives Confidential Information from another Party.
<b>Referral</b>	has the meaning set forth in clause 26.3.
<b>Rules of Internal Order (RIO)</b>	has the meaning given to that term in clause 8.3.
<b>Scope</b>	has the meaning set forth in clause 3.
<b>SDAC</b>	means “single day-ahead coupling” as defined in the CACM Regulation.
<b>Secretary</b>	means such person as may be appointed from time to time by the All NEMO Committee to act as secretary to the All NEMO Committee.
<b>Sharing Key</b>	means, with respect to the sharing of ANCA Costs between each of the NEMO Parties, the share of such costs to be borne by such NEMO, in compliance with the CACM Regulation and NRA guidance, and as more particularly described in Annex II.
<b>SIDC</b>	means “single intraday coupling” as defined in the CACM Regulation.
<b>Standard Daily Rate</b>	has the meaning given to that term in Section C, paragraph 3 of Annex II.
<b>Suspended Party</b>	has the meaning set forth in clause 20.3.
<b>Suspension Plan</b>	has the meaning set forth in clause 20.4.
<b>Third Party</b>	means any person that is not a Party to this Agreement.
<b>Third Party Claim</b>	has the meaning given to that term in clause 21.6
<b>Third Party Service Provider</b>	has the meaning set forth in clause 6.1.
<b>Third Party Service Provider Agreement</b>	has the meaning set forth in clause 6.1(b).

<b>TSO</b>	means a transmission system operator.
<b>Voluntary Exit</b>	means, with respect to any one or more Parties, the termination of such Parties' participation in this Agreement on such Parties' own initiative in accordance with clause 20.1.
<b>Voluntary Exit Party</b>	has the meaning set forth in clause 20.1.

**ANNEX II**  
**Financial Modalities /Budget /Invoicing Modalities**

This Annex II describes, pursuant to clause 14, the processes to be applied by the Parties in handling, budgeting, categorising, reporting, calculating, sharing and invoicing of ANCA Costs.

**A. Process for ANCA Costs incurred as of the Calendar Quarter following the month of entry into force of this Agreement**

[REDACTED]

[REDACTED]

**B. ANCA Costs categorization**

[REDACTED]

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]
- (e) [REDACTED]
- (f) [REDACTED]

2. For the avoidance of any doubt, the following tasks shall not be regarded as ANCA Costs:

- (a) [REDACTED]



[REDACTED]

(b)

[REDACTED]

**C. Overall Yearly Budget and Work Group and Task Force Budgets**

[REDACTED]

[REDACTED]

[REDACTED]

(a)

[REDACTED]

(b)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**D. Time Reporting to the Secretary**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10. [REDACTED]

[REDACTED]

[REDACTED]

11. [REDACTED]

[REDACTED]

[REDACTED]

13. Quarterly reporting for CACM reporting requirements and invoicing purpose: [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

E. ANCA Costs Sharing Key

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4. Sharing key for NEMOs Only Common Costs of establishing and amending the SIDC.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

7. Sharing Key for NEMOs Only Common Costs of establishing and amending the SDAC.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**F. Cost approval and invoicing mechanism**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**G. Invoicing and Payments**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**H. Fulfilment obligations arising from Slovak law**

[REDACTED]

**I. Process for resettlement amongst all NEMOs of ANCA Costs incurred under the INCA between all Parties for the period from 14<sup>th</sup> February 2017 until the end of the Calendar Quarter during which the entry into force of this Agreement occurs.**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**J. Exit Plan and other costs**

1. [REDACTED]  
[REDACTED]  
[REDACTED]
  
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
  
- [REDACTED]  
[REDACTED]  
[REDACTED]

**K. Costs for Accession of a new Party**

1. [REDACTED]  
[REDACTED]
  
- [REDACTED]  
[REDACTED]
  
- [REDACTED]  
[REDACTED]  
[REDACTED]
  
- [REDACTED]
  
- [REDACTED]  
[REDACTED]
  
- [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]



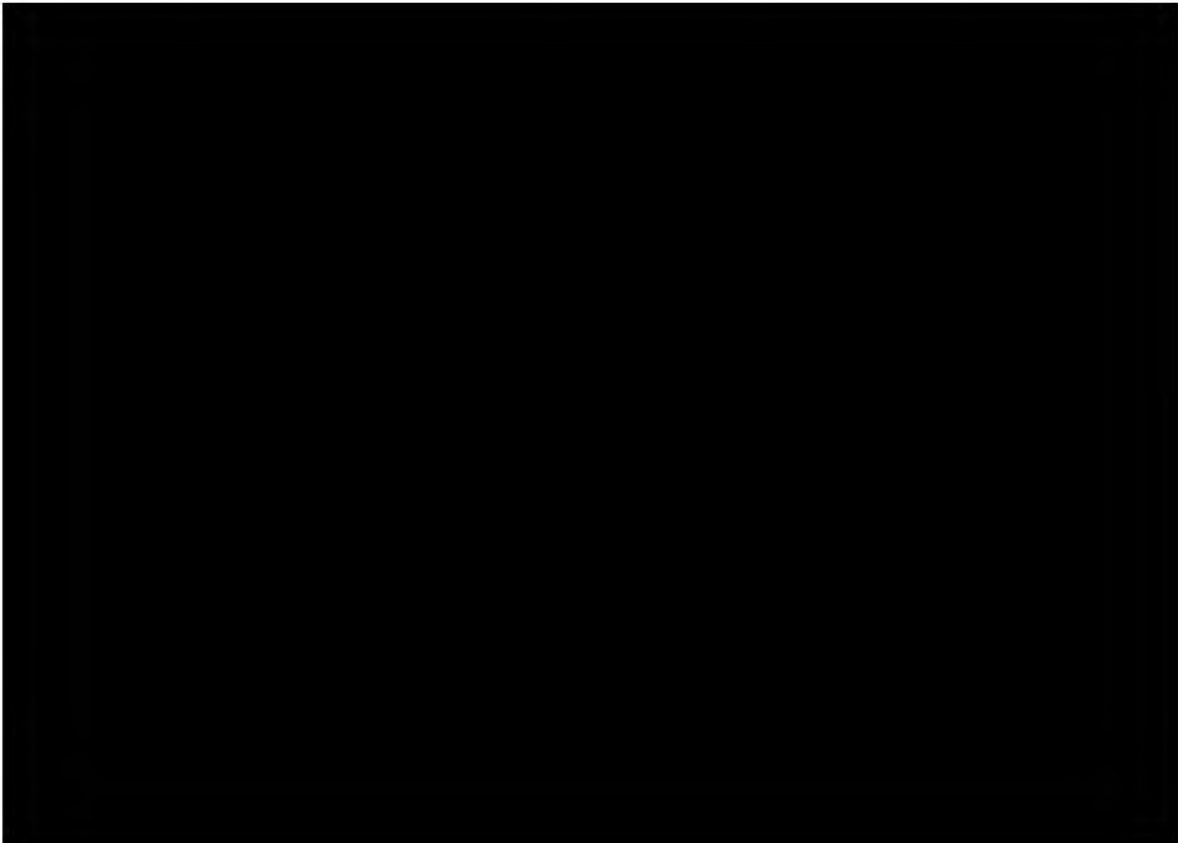






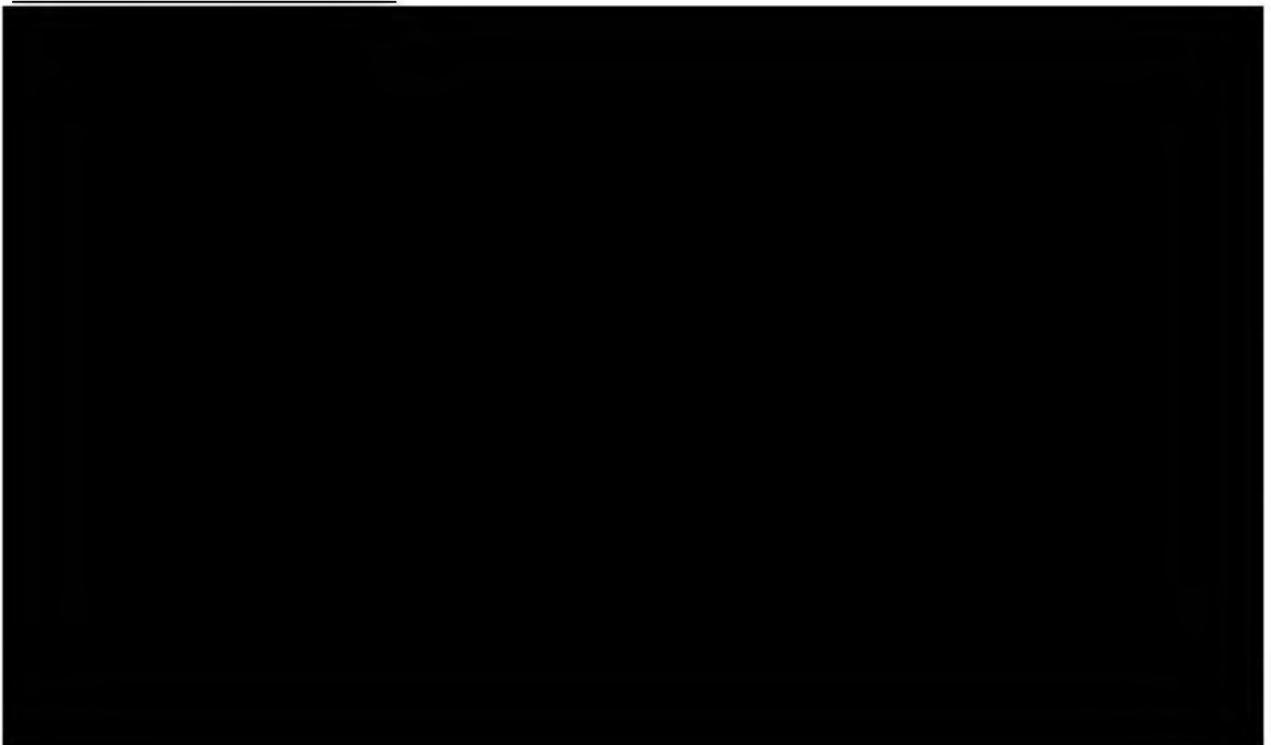


**Attachement 2 – Budget template + budget for 2018**



**Attachement 3 - List of percentage sharing keys amongst NEMOs active in each Member State or third country.**

1. [REDACTED]





[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			
	[REDACTED]					
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			



**ANNEX III**  
**Rules of Internal Order**

**1. GENERAL**

These Rules of Internal Order set forth the rules of the All NEMO Committee as established under clause 8 of this Agreement which shall be the body responsible of the making of decisions between the Parties as are required from time to time to facilitate the Parties' fulfilment of their obligations under this Agreement with respect to the Scope.

**2. COMPOSITION OF THE COMMITTEE**

**2.1. Authorised Representatives**

- (a) Each Party shall use its Best Efforts to ensure that it is duly represented at each meeting of the All NEMO Committee by at least one authorised representative. Such authorised representative may be a person from its board of directors, its management team, an appropriately qualified and experienced employee or alternatively may be a delegate appointed in accordance with with the terms of clause 5 (where appropriate).
- (b) Without prejudice to the right of any Party to ask for a postponement of any decision in accordance with Sections 4.1 (e) and (f), each Party's authorised representative must be duly mandated to take all decisions on the agenda for such meeting in addition to all other decisions required to be made during the All NEMO Committee meeting.

**2.2. Non-voting Participants**

Each Party is entitled to invite, in addition to its own authorised representative, other persons to attend and participate in a meeting of the All NEMO Committee, provided that such persons shall not be entitled to vote on any matter. In any case where such person is not an Internal Representative of such Party, such person's attendance at

the meeting in question shall be subject to no objection being raised by any other Party.

### 2.3. Chairperson

- (a) The role of Chairperson of the All NEMO Committee shall be fulfilled by a person appointed to such role who is a senior manager of a NEMO.
- (b) For the avoidance of doubt, for cost recovery purposes the Chairperson will be treated as an Internal Resource.
- (c) The fulfilment of the role of Chairperson is dependent on the appointed person remaining a senior manager of a NEMO for all times during such appointment. In the event that the appointed Chairperson ceases to be a senior manager of a NEMO during the period of his/her appointment, the All NEMO Committee may decide to terminate such Chairperson's appointment forthwith (or subject to such longer period of notice as the All NEMO Committee may determine).
- (d) In the absence of any event or circumstances referred to in paragraph (f) below bringing the appointment of a Chairperson to an end, the mandate of each Chairperson shall be 12 months starting with the day of his/her appointment (or such other term as the All NEMO Committee may determine prior to the commencement of such appointment).
- (e) No person can serve as Chairperson more than: (i) 3 consecutive terms; and/or (ii) 6 years in total.
- (f) The death, incapacity, termination of contractual relationship or resignation of the Chairperson during his/her mandate, or the expiry of the mandated term pursuant to paragraph (d) above, will necessitate a fresh election of a new Chairperson to be held at the earliest opportunity. The Committee shall take the necessary steps to secure that the election of a new Chairperson is concluded in a timely fashion such that continuity and an organised transition of the performance of the Chairperson's duties is ensured.
- (g) In any case where a new Chairperson must be elected:
  - (i) Each NEMO shall have the right to nominate one candidate of its choosing, being a person with the relevant skills and experience to perform such Chairperson role.
  - (ii) The All NEMO Committee will advise the NEMOs of the period during which nominations for the role of Chairperson may be submitted to the Secretary. Nominations will not be accepted after the expiry of such period.



- (h) All nominated candidates are expected to provide details of their relevant skills and experience to the Secretary (in such agreed form as the Committee shall determine from time to time) for distribution to all other NEMOs by no later than the end of the nomination period.
- (i) As soon as possible following the end of the nomination period, the Secretary will inform the members of the All NEMO Committee in writing (including via email or another suitable form of electronic communication) of the full list of candidates, together with the details provided of each candidate's experience.
- (j) The NEMOs will consider each of the candidates in good faith, taking care that the selected candidate will have enough time available to devote to the position, according to the requirements of the All NEMO Committee.
- (k) As soon as reasonably possible following the expiry of the nomination period, the All NEMO Committee shall hold a vote of its members to approve (where only one candidate) or determine (in any case where there is more than one candidate) which candidate should be appointed Chairperson.
- (l) The election of a Chairperson shall be carried out by the All NEMO Committee, on the understanding that each NEMO shall have one vote, as follows:
  - (i) In the first instance, each NEMO shall use its respective best efforts to appoint a new Chairperson by unanimous decision of all the NEMOs.
  - (ii) In the event that the NEMOs are not able to reach unanimity after no more than three attempts on the appointment of a Chairperson, an election for the post shall be held and the new Chairperson shall be selected by a 2/3<sup>rd</sup>s majority vote of all NEMOs. For the avoidance of doubt, the required number of votes needed to attain a 2/3<sup>rd</sup>s majority shall be calculated by dividing the total number of designated NEMOs by 2/3<sup>rd</sup>s and then, if needed, rounding down the result to the nearest whole number.
  - (iii) If no 2/3<sup>rd</sup>s majority is achieved, the All NEMO Committee shall notify all the NEMOs that the nomination process will be re-opened in accordance with paragraph g(i) above subject to the same terms and conditions.
  - (iv) The process under paragraphs (l)(i), (ii) and (iii) shall be completed within five (5) Business Days.
  - (v) Where one or more new candidates are proposed per paragraph (l)(iii) or no new candidates are proposed, paragraphs (l)(i), (ii), (iii) and (iv) shall be applied no more than two additional times.
  - (vi) In the event that no Chairperson is elected after the second voting round pursuant to paragraph (v) above, the All NEMO Committee shall discuss in good faith the reason for the failed election and decide on the next steps.

(m) The Chairperson election voting processes outlined above may be conducted at any Committee meeting by email, phone or by a ballot (secret or otherwise) or a show-of-hands of the All NEMO Committee members or via a proxy. For the avoidance of doubt, each step in the election process as outlined above must be subject to its own vote. Where votes are cast via email, each of the NEMOs should send their vote to the Secretary (or to such other email address as the All NEMO Committee may notify for these purposes).

(n) For the avoidance of doubt:

- (i) the rules described in this document apply exclusively to the Chairperson election process and do not set a precedent for setting other voting procedures that may be agreed by the Committee;
- (ii) nothing in Section 4 of this Annex III (Decision Making Procedure) shall be capable of being deployed by any NEMO to challenge the election of a Chairperson which has otherwise been duly performed in accordance with these rules.

- (o) The Chairperson shall always act in a neutral manner, representing the general interest of the All NEMO Committee.
- (p) The Chairperson is non-voting member unless there is no voting representative from the Chairperson's Party attending the meeting for exceptional reasons. In such situation, the Chairperson is entitled to duly represent its Party in any voting of the All NEMO Committee.

#### 2.4. Secretary

- (a) The Secretary is yearly chosen by decision of the All NEMO Committee upon proposal of the Parties. The Secretary shall not be from the same Party as the Chairperson. Alternatively, the function of the Secretary can be assigned to a third party, provided that the compliance with confidentiality requirements of Article 13 of the CACM Regulation and this Agreement is duly assured under a written agreement.
- (b) The Secretary has no voting rights. For the avoidance of doubt, the Secretary cannot be mandated as authorised representative of one of the Parties even in exceptional circumstances when the official voting representative cannot attend a meeting of the All NEMO Committee.
- (c) The Secretary is in charge of the follow up of the following activities, amongst others, as confirmed and detailed from time to time by the All NEMO Committee:
  - (i) Drafting the agenda, preparing session files of meetings and notices for meetings of the All NEMO Committee and sending them, on behalf of the Chairperson;
  - (ii) Preparing the attendance list of the meetings of the All NEMO Committee;
  - (iii) Verifying before the start of and during each meeting of the All NEMO Committee that the quorum in accordance with the Section 4.1 (b) is being met and if not, striving to solve the situation in cooperation with Chairperson or other Parties.
  - (iv) Ensuring that decisions taken during the All NEMO Committee meeting are reviewed by all attending Parties immediately after the respective decision is taken;
  - (v) Ensuring the drafting and circulation of the minutes of the meetings and/or of decisions;
  - (vi) Planning process;
  - (vii) Budgeting process;
  - (viii) Cost reporting, share calculation and input for invoicing processes;
    - (aa) Overall status and progress reporting;
    - (bb) Collecting the agenda points and preparation of the session file for the All NEMO Committee;
    - (cc) Meetings minutes;
    - (dd) Document management in the common IT Platform;
    - (ee) Organisation of calls and meetings;

- (ff) Entry/Exit point for incoming/outgoing communication from/to external stakeholders;
- (gg) Support of consultation process.

(d) The Secretary will keep the minutes of the All NEMO Committee meetings on a shared storage facility accessible to all Parties, but each Party shall ensure its own record keeping of the copies of the minutes it receives from the Secretary.

(e) The costs of the Secretary will be considered as a Common Cost.

### **3. MEETINGS OF THE ALL NEMO COMMITTEE**

- 3.1.** The All NEMO Committee shall meet at least once every two months except if the Chairperson considers such meeting is not necessary given the absence of matters to be discussed assuring that a meeting is set in advance of each All NEMO Committee/ESC meeting.
- 3.2.** Additional meetings shall be held whenever at least three (3) Parties require so by written request to all Parties specifying the proposed date, place and time as well as the agenda of such meeting, such request to be served not less than seven (7) Business Days before the proposed date of the relevant meeting.
- 3.3.** Notice of a meeting of the All NEMO Committee shall be given by the Secretary in writing to all the members of the All NEMO Committee at least ten (10) Business Days before the scheduled date of such All NEMO Committee meeting. The notices shall contain the date, place and time as well as the draft agenda of the meeting (including proposed draft decisions), as approved by the Chairperson.
- 3.4.** A Party may propose to add issues on the agenda of any meeting of the All NEMO Committee, and such proposals shall be taken into account provided they are received by the Secretary by no later than 12:00 CET on the day falling three (3) Business Days before such All NEMO Committee meeting.

- 3.5. The final agenda plus any supporting documentation, including with respect to any topics requiring a decision of the All NEMO Committee on points on the agenda, shall be sent to all members of the NEMO Committee by no later than 17:00 CET on the day falling three (3) Business Days before the meeting.
- 3.6. Further issues may be added to the agenda less than three (3) Business Days before the relevant All NEMO Committee meeting, but only by the unanimous decision of the Parties in attendance at the meeting in question.
- 3.7. A member of the All NEMO Committee whose authorised representative attends the meeting is considered as having received due notice of the meeting.
- 3.8. The All NEMO Committee may meet either physically or by remote meeting devices (such as e.g. conference call, video call, written procedure, etc.). Actual physical participation in meetings shall be the preferred basis of attendance and the Parties shall use their respective Best Efforts to ensure this is possible. Participating via conference call, video call etc. shall be limited to when strictly necessary.
- 3.9. The duty of the practical organisation of the meetings of the All NEMO Committee is borne by the Secretary.

#### **4. DECISION MAKING PROCEDURES**

##### **4.1. General Principles**

- (a) The general rule will require the NEMOs in attendance at the relevant meeting of the All NEMO Committee to reach unanimity, provided the meeting in question is quorate, unless a different voting majority is set in the RIO under Sections 4.3, 4.4 or 4.5).
- (b) The All NEMO Committee meeting shall be quorate when at least three quarters ( $\frac{3}{4}$ ) of all NEMOs entitled to vote on any given decision are represented at the meeting in question. The fulfilment of the quorum must be verified by the Secretary before the start of each meeting of the All NEMO Committee. In case the attendance at the meeting changes during the course of the meeting the Secretary shall verify whether the appropriate quorum is fulfilled again and inform the Chairperson and Parties accordingly.
- (c) The decisions of the All NEMO Committee shall be shown, discussed and recorded by the Secretary in the minutes of the relevant All NEMO Committee meeting.

- (d) No Party may challenge a decision reflected in the minutes of an All NEMO Committee meeting otherwise than for non-compliance with the requirements of Section 4.1(b) or in accordance with Section 4.2(a) or (b) below.
- (e) Any NEMO is entitled to request the postponement of any decision prepared in advance of the relevant All NEMO Committee meeting (and not adjusted or amended during such meeting), provided that:
  - (i) such NEMO describes in reasonable detail its reasons for requesting the postponement; and
  - (ii) such decision is postponed only once (for a maximum duration of two weeks).
- (f) Any NEMO is entitled, without limitation, to request the postponement of any decision which is drafted or amended during an All NEMO Committee meeting.
- (g) For the matters specified in Sections 4.4 and 4.5 of this RIO, if unanimity cannot be reached between the relevant NEMOs (subject to the applicable maximum number of attempts), the relevant decision may be taken by means of a qualified majority vote (“**QMV**”) procedure, which may be either:
  - (i) the QMV procedure according to article 9(2) of the CACM Regulation (“**CACM QMV**”); or
  - (ii) a vote in favour of such matter/decision by at least  $\frac{3}{4}$  of the Parties to this Agreement entitled to vote on such matter/decision (“**ANCA QMV**”).
- (h) Certain decisions (as specified below in Section 4.3 below) shall not be capable of being made by QMV. In such cases, the All NEMO Committee must make a decision on such matter by unanimity of the NEMOs in attendance at the relevant meeting in accordance with Section 4.1(a) above.
  - (i) If the NEMOs cannot reach unanimity or cannot make the decision using the relevant QMV procedure, then the deadlock procedure shall apply.

#### **4.2. NEMOs Right to Object; Deemed Consent**

- (a) Any Party not attending a meeting of the All NEMO Committee will have a right to object in writing to any decision of the All NEMO Committee taken on the basis of unanimity of all NEMOs attending such meeting, provided that such objection is notified to the Secretary within five (5) Business Days of receipt of the relevant minutes. On receipt of such objection, the relevant decision will be set aside and the matter will be put back on the agenda for the next scheduled All NEMO Committee meeting (or such ad-hoc meeting as the Secretary may arrange for this purpose).

- (b) Any Party will have a right to object in writing to a decision of the All NEMO Committee taken on the basis of the ANCA QMV procedure, provided such Party was not one of the ANCA QMV majority Parties which voted in favour of the decision, within five (5) Business Days of receipt of the relevant minutes of such meeting on the grounds that such decision could result in any one or more of the following:
- (i) A discriminatory or adverse effect on such Party's ability to comply with the CACM Regulation or to operate coupling activities; or
  - (ii) A conflict with a national or European legal or regulatory requirement or breach of Applicable Law with which such Party has to comply; or
  - (iii) An unreasonable or discriminatory financial burden being imposed on such Party; or
  - (iv) Such Party being effectively prevented or hindered from operating within any bidding zone or another NEMO gaining an advantage over it in any bidding zone; or
  - (v) A breach of one or more provisions of this Agreement.
- (c) Any NEMO raising an objection to a decision of the All NEMO Committee pursuant to Section 4.2(a) or (b) above must provide the All NEMO Committee with reasonable background information to justify its objection. The All NEMO Committee (comprised of all members of the All NEMO Committee other than the member representing the objecting NEMO) will, based upon the information provided to it by the objecting NEMO, determine if the objection raised by such NEMO should be upheld or rejected as soon as possible.
- (d) The All NEMO Committee may reject the objection of any NEMO made under Section 4.2(b) if it considers that any one or more of the grounds stipulated under Section 4.2(b)(i)-(v) above have not been reasonably substantiated by the objecting NEMO. Any decision of the All NEMO Committee to reject the objection raised by such NEMO shall require the unanimity of all NEMOs in attendance at the relevant meeting of the All NEMO Committee (except for the objecting NEMO), provided the meeting in question is quorate. In rejecting such objection, the All NEMO Committee must provide in writing to the objecting NEMO its detailed reasons why it does not accept the objecting NEMO's grounds for objection.
- (e) Any dispute or difference between the Parties with respect to a decision of the All NEMO Committee with respect to the validity of an objection under Section 4.2(b) above will be finally resolved in accordance with clause 26.
- (f) In the absence of any objection being raised by a Party, the decision of the All NEMO Committee will be deemed to have been duly made with effect from the date of the All NEMO Committee meeting in question.

- (g) If the All NEMO Committee accepts the objection of a Party under Section 4.2(b), the decision in question will be set aside and will be put back on the agenda for the next scheduled All NEMO Committee meeting (or such ad-hoc meeting as the Secretary may arrange for this purpose).
- (h) For the avoidance of doubt, CACM QMV decisions shall not be subject to the objection procedure outlined above, but shall instead require the relevant blocking minority to be attained in accordance with article 9 of the CACM Regulation.

#### **4.3. Matters Requiring All Party Consent**

Certain decisions of the All NEMO Committee shall always require the full unanimous consent of all NEMO Parties to this Agreement, as follows:

- (a) Amendments to the front-end of the ANCA and Annexes I – VIII (inclusive) will require the document to be re-signed by all Parties. Annex IX (Nominated Contact Persons) may be changed by means of a written notice to the Secretary by the NEMO wishing to change the details in such Annex relevant to it;
- (b) Termination of the ANCA (by all Parties);
- (c) Any decision upon referral to the All NEMO Committee of ANDOA or ANIDOA Steering Committee; and
- (d) Any dispute referred to the All NEMO Committee arising under the Agreement.

#### **4.4. Matters Subject to CACM QMV**

Matters/decisions that concern the further development, consultation, approval, submission, implementation, publication of changes to the MCO Plan as well as all other terms and conditions or methodologies pursuant to ANCA clause 9(a) shall be made in accordance with CACM QMV if the full unanimous consent of all the Parties cannot be obtained.



#### 4.5. Matters Subject to ANCA QMV

- (a) ANCA QMV may be applied to the following matters/decisions in the event that unanimity cannot be achieved:
- (i) The provision of information to ENTSO-E, if it has been requested jointly by ACER and ENTSO-E pursuant to clause 9(e) of this Agreement;
  - (ii) The provision of the annual report to stakeholders on progress with the operational performance of the DA MCO Function and the ID MCO Function pursuant to clause 9(i) of this Agreement;
  - (iii) Budget decisions as described under Section 4.6(b) of this Annex III (see below for details);
  - (iv) The NEMOs reaching between themselves a joint NEMO position concerning the joint TSO and NEMO organisation of day-to-day management of the single day-ahead coupling and single intraday coupling pursuant to clause 9(k); and
  - (v) External communications related to the DA MCO Function and ID MCO Function as is required from time to time pursuant to clause 9(m).
- (b) Subject to Section 4.6(b) below, all other matters/decisions before the All NEMO Committee for decision shall only be decided by unanimity of the NEMOs in attendance, subject to the non-attending NEMO's right to object, without recourse to ANCA QMV.

#### 4.6. Budget Decisions

- (a) Budget decisions may comprise a range of possible individual decisions, e.g.: agreement of an individual budget line item, appointment of a senior and/or junior Secretary, appointment of Chairperson, acceptance of work group/task force budget, work assigned by All NEMO Committee to an individual NEMO, travel expenses of Chairperson and work group/task force leaders.
- (b) The following Budget decisions shall be subject to ANCA QMV in the event of any failure to achieve unanimity according to Section 4.1(a) above:
- i. if the year to year difference within the budget in question does not exceed +/-3% compared to the previous year;
  - ii. for any within-year allocation (full or partial) of the available contingency for such year's budget.
  - iii. for the reallocation of budget items other than the contingency within the budget, provided that: (X) there is no increase or decrease of any single budget item greater than 25% as a result of such reallocation; and (Y) there is no impact on the overall amount of the budget (i.e. the total amount of the budget and the total amount of the contingency remains the same).

- (c) All other budget-based decisions shall be decided by unanimity of the NEMOs in attendance according to Section 4.1(a), subject to any non-attending NEMO's right to object as described in Section 4.2(a).

#### **4.7. Escalation of Matters from ANDOA and/or ANIDOA**

4.7.1 The All NEMO Committee shall act as an escalation body for both the ANDOA Steering Committee and the ANIDOA Steering Committee in the following cases:

- (a) Where the ANDOA Steering Committee or the ANIDOA Steering Committee (as the case may be) is not capable of achieving unanimity with respect to any decision other than:
  - i) any decision required to be taken by such steering committee in the context of the real-time application of the relevant Operational Procedures;
  - ii) any dispute concerning the question of a potential breach by and/or the liability of any party to the ANDOA and/or ANIDOA pursuant to the terms of such agreements;
  - iii) any dispute with respect to the interpretation of the ANDOA and/or ANIDOA; or
  - iv) any decision with respect to the legal consequences of an operational incident.
- (b) Where the ANDOA Steering Committee or the ANIDOA Steering Committee (as the case may be) is not capable of achieving unanimity with respect to any decision concerning the amendment or modification of the ANDOA or the ANIDOA; and
- (c) Where the ANDOA Steering Committee or the ANIDOA Steering Committee (as the case may be) has unanimously decided to escalate any other decision to the All NEMO Committee.

#### **4.8. Deadlock**

4.8.1 If it is not possible for the All NEMO Committee (having made no more than three attempts) to make a decision on any matter:

- (a) that requires the full unanimous consent of all NEMO Parties to this Agreement pursuant to Section 4.3 of this Annex III; or
- (b) that requires the unanimity of all NEMO Parties in attendance at the relevant All NEMO Committee meeting pursuant to Sections 4.5(b) and 4.6(c) of this Annex III; or
- (c) that requires the attainment of the ANCA QMV pass-mark with respect to any matter specified in Sections 4.5(a) or 4.6(b) of this Annex III; or
- (d) that requires the attainment of the CACM QMV pass-mark with respect to any matter specified in Section 4.4 of this Annex III; or

(e) that, following any escalation to the All NEMO Committee pursuant to Section 4.7 of this Annex III, requires the unanimity of all NEMO Parties in attendance at the relevant All NEMO Committee meeting,

then the All NEMO Committee may solicit the NRAs and/or ACER for a non-binding opinion on such Deadlock (the “**Deadlock Opinion**”). Upon receipt of the Deadlock Opinion, the Parties shall seek in good faith to reach a decision between them based on the Deadlock Opinion.

4.8.2 Where, having endeavoured to resolve a Deadlock according to Section 4.8.1 above, the Parties remain unable to make a binding decision which threatens in the opinion of any Party to seriously hinder or delay the continued operation of this Agreement, any one or more of the Parties may seek to refer the matter for resolution to the Expert Panel, provided that in any case where Annex IX has not yet been introduced as part of this Agreement, the Parties may seek to refer the matter for resolution as a Dispute in accordance with the provisions of clause 26.7 of this Agreement.

#### 4.9. Urgent Decisions

4.9.1 On the application of any Party, a matter/decision may be categorised as urgent by the Chairperson (an “**Urgent Decision**”), in which case:

- (a) There will be an ad-hoc meeting of All NEMO Committee set up as soon as possible by the Secretary for which the urgent matter to be decided will be on the agenda (the agenda to clearly state that such decision is being dealt with under the urgent timetable). The final agenda plus any supporting documentation with respect to such ad-hoc meeting shall be sent to all members of the All NEMO Committee by no later than 17:00 CET on the day falling at least 2 Business Days before the meeting.
- (b) The maximum number of attempts by the All NEMO Committee to reach an urgent decision (either by unanimity or on an ANCA QMV basis) shall be two (2).
- (c) The period of time for any non-attending NEMO to object to an urgent unanimity decision shall be two (2) Business Days.
- (d) The period of time to raise minority protection grounds to object to an urgent ANCA QMV decision shall be two (2) Business Days from receipt of the relevant minutes of the meeting.

4.9.2 Urgent decision(s) of the All NEMO Committee shall be recorded by the Secretary in a separate written decision document, prepared, shown, discussed and approved after each decision is taken during the relevant All NEMO Committee meeting. A copy of this separate decision document shall be circulated to the members of the All NEMO Committee by the Secretary, on the very same date of the meeting. This separate decision document will also be reflected in the minutes of the All NEMO Committee meeting during which it was adopted. Such minutes are elaborated in accordance with the provisions below, it being understood, for the avoidance of any doubt, that neither the urgent decision(s) nor the separate decision document can be subject to any further challenge or modification by any of the NEMOs who attended such meeting and voted favour of the relevant urgent decision. With respect to those NEMOs either not attending the relevant NEMO Committee meeting in question or not voting in favour of such urgent decision, the relevant provisions of Section 4.2 shall apply.

#### **4.10. Written Decisions**

The Parties shall always be entitled to make decisions on any matter based on full unanimous consent of all Parties to this Agreement by written resolution. In such cases the Secretary will prepare the necessary resolution. On receipt, any individual Party may within ten (10) Business Days of receipt of the relevant resolution either signify its acceptance/rejection of the proposed resolution or otherwise object to such decision being so determined in which case the matter shall be decided at a scheduled or ad-hoc meeting of the All NEMO Committee.

#### **4.11. Minutes of All NEMO Committee Meetings**

Without prejudice to Section 4.9.2 of this Annex III (Urgent Decisions):

- (a) all decisions of the All NEMO Committee shall be clearly recorded by the Secretary both during the meeting (via a live on screen facility) and in the minutes of the relevant meeting.
- (b) the draft minutes will be circulated to the members of the All NEMO Committee by the Secretary, by no later than three (3) Business Days after the date of the relevant All NEMO Committee meeting.
- (c) Each Party may comment on the minutes until they are formally approved (but may not challenge a decision reflected in such minutes otherwise than in accordance with Section 4.2). The minutes of each All NEMO Committee meeting will normally be approved as the first item on the agenda of the next All NEMO Committee meeting.
- (d) The decision(s) of the All NEMO Committee meeting as recorded in the formally approved minutes shall be binding on the Parties with retroactive effect from the date of the meeting at which the decision (not the approval) was made.

- (e) A copy of the approved minutes will be signed by the Chairperson and circulated to the members of the All NEMO Committee by the Secretary (in scanned format), within five (5) Business Days from the date of approval.

## **5. TASK FORCES AND WORKING GROUPS OF THE COMMITTEE**

The All NEMO Committee may set up other bodies to assist the All NEMO Committee. In such event, the All NEMO Committee determines the composition and approves all the organisational aspects of such further bodies. Any body created by the All NEMO Committee shall make its decisions by unanimity of all the Parties of the relevant body. Should unanimity not be possible on any matter, such body shall escalate the decision to the All NEMO Committee. Each Party is entitled to participate in such additional bodies.

**ANNEX IV**  
**ALLOCATION OF ANCA TASKS AND MONITORING OF PERFORMANCE**

**1. OBJECTIVES, ASSUMPTIONS AND GENERAL PRINCIPLES**

- (a) This Annex sets out the procedures - including administrative tasks, approval steps and templates - to be followed by the All NEMO Committee (and such bodies as may be established by the All NEMO Committee from time to time in accordance with Section 5 of ANNEX III (Rules of Internal Order)) in the assignment of tasks to be undertaken in connection with the Scope, their modification, the relevant process of approval, follow-up and invoicing of such activities, whether by means of the Internal Resources of such Party allocated to perform such task or by means of a Third Party Service Provider selected and appointed in accordance with the terms of this Agreement. It is the intention of the Parties that such procedures as outlined herein shall be compliant with clause 8 of this Agreement.
- (b) For the purposes of this Annex it is assumed that:
- i) Time and effort dedicated for specific roles such as the Chairperson and/or the leader of any work group or task force created by the All NEMO Committee should be separately recognized.
  - ii) Tasks performed for the common benefit of the Parties will be more efficient if performed by one dedicated, motivated person or group of persons.
  - iii) The availability of resources is different per Party, may vary from one work group or task force to another and may vary from time to time.
  - iv) Allocating scarce internal resources on a time-consuming job could create resourcing concerns to individual Parties.
- (c) In light of the above, the following general principles shall apply:
- i) Each Party shall use its respective best efforts to make its Internal Resources available, at least for the necessary review of a work group's or task force's deliverables before approval of the relevant budget.
  - ii) The All NEMO Committee may appoint a Third Party Service Provider when appropriate.
  - iii) Those Parties providing Internal Resources in performing tasks should, subject to such tasks having been assigned and carried out in accordance with the terms of Section 3 of this Annex, be reimbursed for their costs.
  - iv) ANCA Costs which have been budgeted and incurred (or which have been otherwise approved by a decision of the All NEMO Committee in accordance with Section 4 of Annex III (Rules of Internal Order) shall be tracked by Parties pursuant to article 80 paragraph 2 of the CACM Regulation with the goal that such costs shall be capable of being reported to the relevant NRAs as Common Costs pursuant to article 80 paragraph 1 of the CACM Regulation.
  - v) Tasks that must be performed in the same manner by all Parties, such as the necessary 'reviews' of deliverables before their approval, are out of the scope of this Annex, as it is assumed they will be performed with the same level of effort by each Party.
  - vi) In the case of any activity being undertaken by one or more members of any work group or task force, the evaluation of quality of deliverables should be

made, as a first step, at the level of the work group or task force itself, by consent of all members, subject to the final approval of the All NEMO Committee.

## **2. WORK GROUP/TASK FORCE ACTIVITIES AND RESPONSIBILITIES**

- (a) The following general principles will govern the activity of each work group or task force:
- i) Work group or task force leaders shall be designated by the All NEMO Committee.
  - ii) Work group or task force activity will be supported by each Party using their respective best efforts.
  - iii) Work group or task force leader activity per work group or task force will be previously estimated and agreed at the All NEMO Committee level on per work group or task force basis.
  - iv) Work group or task force leader activity will be reimbursed on the basis of time sheets approved by the All NEMO Committee.
  - v) Each work group or task force will be required to provide an estimate of the monthly time/cost input required to fulfil the relevant work group or task force's activities delegated to such work group or task force as part of the annual work group/task force budget.
  - vi) Each work group or task force will be required to provide monthly time/cost report to the Secretary based on the relevant work group or task force's activities during such month.
  - vii) The activity of the work group or task force may be allocated, within an assumed workload, to one or more members of the work group or task force in question. The details of how such activity may be allocated is set out below in Section 3.
  - viii) All work group/task force decisions shall be made by the unanimity of all the members of such work group/task force. In the event of any disagreement or difference between any of the members, the matter shall be escalated to the All NEMO Committee resolution.
- (b) Evaluation by work group or task force members and the All NEMO Committee
- i) The All NEMO Committee will be ultimately responsible for the evaluation of the quality of any deliverables of the relevant work group or task force and the amount of the work undertaken by the work group or task force.
  - ii) In the case of work group/task force activity being allocated to one or more members, the evaluation of the quality of the deliverables shall be made, as a first step, at the work group level, by the members of such work group/task force.
  - iii) Work group or task force leaders shall be responsible for monitoring and reporting on the progress of work (against applicable milestones) with the support of the Secretary.
  - iv) The following activities must be recorded through timesheets and valued at the applicable Standard Daily Rate:
    - Chairperson activity;
    - Work group or task force leader activity;

- Any other ANCA Task allocated pursuant to the terms of this Annex IV and carried out by any one or more individual members of a work group/task force or any third party on behalf of the work group/task force members as whole.
- v) Monthly, the Secretary will collect all the timesheets recording details of the time spent for each activity from:
  - Chairperson;
  - Work group or task force leaders;
  - Any one or more individual members of a work group/task force allocated an ANCA Task pursuant to the terms of this Annex IV;
  - The contract managers of third parties who have been allocated work pursuant to the terms of this Annex V, if appropriate.
  - The work group or task force leader will prepare and maintain a report (the template for which shall be prepared by the Communications work group) of the ANCA Tasks and the workload per work group or task force and shall provide an up-to-date copy of such report to the Secretary no less than once per month. Work group or task force leaders' reports shall include the relevant background to and proposals for decisions, the presented options (with pros and cons), a description of process and relevant timelines for delivery. Any relevant decisions/requests of the All NEMO Committee shall be included on the first page of such report, including any such decisions/requests relating to the the priority of tasks and any potential constraints.
- vi) Monthly, on basis of the timesheets recording details of the time spent per approved task, the Secretary will establish the value of such work at the Standard Daily Rate and communicate it to the work group or task force leader and the All NEMO Committee.

### **3. ALLOCATION OF ANCA TASKS TO INTERNAL RESOURCES AND/OR THIRD PARTY SERVICE PROVIDERS**

The procedure for allocating the performance of ANCA Tasks is outlined in this Section 3.

- (a) ANCA Tasks shall include:
- i) The Chairperson's work;
  - ii) The Secretary's work;
  - iii) Any work group or task force leader's work;
  - iv) Performance of ANCA Tasks by one or more of the Parties utilizing their own Internal Resources;
  - v) Performance of ANCA Tasks by a Third Party Service Provider appointed for such purpose with the approval of the All NEMO Committee.

For the avoidance of any doubt, the following tasks shall not be regarded as ANCA Tasks:

- vi) Tasks that must be performed in the same manner by all Parties, including e.g.:
  - Attending all-Party meetings either in person or via any kind of electronic communications equipment;



- The necessary 'review' of the deliverables before their approvals; and
  - Any other tasks as may be determined as non-ANCA Tasks by the All NEMO Committee.
- vii) Travelling undertaken by the Chairperson, the Secretary or by any work group or task force leader in attending meetings in person.
- (b) Any Party utilising one or more Third Party consultants as its own Internal Resources shall remain liable to the other Parties (in accordance with the terms of this Agreement) for any failure to deliver all or any part of the ANCA Tasks undertaken on its behalf by such consultants.
- (c) In any case where the Chairperson, in compliance with the Rules of Internal Order, attends any meeting of the All NEMO Committee (whether in person or via any form of electronic communications equipment) in both his capacity as Chairperson and as the sole representative of his employer at such meeting, due to exceptional reasons, it will be assumed for time-recording purposes that such person dedicates fifty per cent (50%) of his time to the Chairperson's work and the other fifty per cent (50%) of his time to the fulfilment of his duties to the Party by whom he has been required to such meeting. In any case where the Chairperson is accompanied at such meeting by one or more persons acting in the capacity of representative of such Party at such meeting, it will be assumed for time-recording purposes that such person dedicates one hundred per cent (100%) of his time to the Chairperson's work at the meeting in question.
- (d) In any case where a work group or task force leader attends any work group or task force meeting (whether in person or via any form of electronic communications equipment) in both his capacity as work group or task force leader and as the sole representative of his employer at such meeting, it will be assumed for time-recording purposes that such person dedicates fifty per cent (50%) of his time to the task force leader's work and the other fifty per cent (50%) of his time to the fulfilment of his duties to the Party by whom he has been required to such meeting, provided always that all Parties are required to appoint a representative to the work group or task force in question. In any case where the appointment by a NEMO of a representative to the work group or task force in question is discretionary, or where the making of such appointment is not discretionary but the work group or task force leader is accompanied at such meeting by one or more persons acting in the capacity of Party representative, it will be assumed for time-recording purposes that the work group or task force leader dedicates one hundred per cent (100%) of his time to the work group or task force's work at the meeting in question.
- (e) The members of a work group or task force may from time to time allocate responsibility for the performance of one or more ANCA Tasks to one or more Parties (each, an "**Allocation**"). Each Allocation will be carried out by the work group or task force members in accordance with the following principles:

- i) The members will first decide how the performance of the necessary ANCA Tasks should be best procured from the Parties, including the extent to which multiple ANCA Tasks should be packaged together for allocation purposes;
- ii) The members will invite the Parties to make proposals to it concerning one or more of the ANCA Tasks (or packages of ANCA Tasks, as appropriate);
- iii) The members will require Parties submitting proposals to give details in such proposals of:
  - (aa) the estimated level of work (in man-days) required to complete each ANCA Task;
  - (bb) which elements of the work will be done by employees or by consultants and how much work on each ANCA Task that will be done by each;
  - (cc) whether any consultants have been or will be specifically retained for the purposes of such ANCA Tasks; and
  - (dd) Any other details that the members may require.
- iv) The members will consider the various proposals it receives from the Parties (if any) relating to the performance of ANCA Tasks (or packages of ANCA Tasks, as appropriate). In considering such proposals, the members shall:
  - (aa) favour the most efficient solution (considering the expertise and the availability of internal resource of the Parties);
  - (bb) favour the most cost-effective solution, whereby when presented with several proposals with equal scope and quality:
    - (AA) the least costly proposal should be selected; and
    - (BB) a permanent (full-time or part-time) employed resource of a Party will be assumed to be cheaper than a consultant resource proposed to be utilised by another Party for performance of the equivalent ANCA Task unless there is clear evidence to the contrary; and
    - (CC) in so far as is reasonably possible, favour a fair distribution of the performance of ANCA Tasks amongst the Parties.
- v) No Allocation shall become finally effective until such Allocation, including the proposed budget for the relevant ANCA Tasks comprised in it, has been approved by the All NEMO Committee.
- vi) The work group or task force leader will, on receiving confirmation of any Allocation to a Party or Third Party Service Provider from the All NEMO Committee, issue a notice to such person specifying:
  - (aa) the subject of the Allocation;

- (bb) the contents of the expected deliverables comprised in such Allocation;
  - (cc) the quality objectives (deliverable form, respect of scope, finishing level, detail level, required level of support,...);
  - (dd) the budgeted workload (i.e. an estimated budget, considering the internal Standard Daily Rate);
  - (ee) the target date for completion;
  - (ff) the person(s) to which the ANCA Task has been allocated.
- (f) All Allocations made by work group members shall be made by unanimity of all the members of such work group and all such Allocations shall be recorded in the minutes of the relevant work group or task force.
- (g) In any case where either:
- (i) no Party is willing or able to assume the risk of non-delivery of an ANCA Task (through the utilisation of its own Internal Resources); or
  - (ii) the proposals in respect of one or more ANCA Tasks are rejected by the All NEMO Committee (e.g. on grounds that the budget is too high, the resources offered do not have the requisite skills or experience or are insufficient in number),
- the All NEMO Committee shall be entitled to make such arrangements as it considers necessary and reasonable in all the circumstances for the engagement of a suitable Third Party Service Provider to perform such ANCA Tasks.
- (h) In considering any proposals from one or more potential Third Party Service Providers for the performance of ANCA Tasks, the All NEMO Committee shall take into account (to the extent reasonably necessary) such relevant considerations as it is required to take into account when allocating ANCA Tasks to Parties under paragraph (e)(iv) above.
- (i) No Allocation to a Third Party Service Provider shall become finally effective until such Allocation, including the proposed budget for the relevant ANCA Tasks comprised in it, has been approved by the All NEMO Committee. In this context, any single Allocation to a Third Party Service Provider of one or more ANCA Tasks with an aggregate value in excess of €20.000 (twenty thousand Euros) will require a selection process to be established for the award of a relevant contract, unless such Third Party Service Provider qualifies as a unique service provider due to its particular and specific technical skills. The Parties may, with the unanimous consent of the All NEMO Committee, appoint one of the Parties to manage the selection process and/or to enter into a binding contract with the selected Third Party Service Provider, in its own name and for and on behalf of all other Parties.

- (j) Subject to prior approval by the All NEMO Committee, an Allocation to a Third Party Service Provider may be contracted by one or more of the Parties for and on behalf of all of the Parties as a whole. Such contract shall, at a minimum, specify:
- (i) the subject of the Allocation;
  - (ii) the contents of the expected deliverables comprised in such Allocation;
  - (iii) the quality objectives (deliverable form, respect of scope, finishing level, detail level, required level of support,...);
  - (iv) the estimated workload (i.e. an estimated budget, calculated based upon the Standard Daily Rate);
  - (v) the target date for completion;
  - (vi) such other matters as the All NEMO Committee may require.

For this purpose, an appropriate specific power of attorney will be required to authorise the contracting Party or Parties to conclude such contract with the relevant Third Party Service Provider.

#### **4. MONITORING OF PROGRESS, QUALITY**

##### **(a) Monitoring of progress, quality**

The work group or task force leader will, with the support of the members of the work group or task force in question, regularly monitor the progress being made by the Internal Resources or any Third Party Service Provider assigned to any one or more ANCA Tasks, including with respect to the observance of any applicable milestones and/or target dates and/or the accumulated costs incurred with respect to such ANCA Task against the relevant approved budget.

The work group or task force leader shall assess, together with the members of the relevant work group/task force, any case where there is an anticipated breach of an approved budget item for a task or activity (including any relevant contingency). Following such assessment, the work group or task force leader shall report such a breach to the Secretary. If needed, the work group or task force leader will submit a justified and revised budget proposal to the All NEMO Committee with the request for an All NEMO Committee decision to approve the same.

Third Party Service Providers' work on ANCA Tasks will be recorded through detailed timesheets and valued at the contractually agreed tariff. Such timesheets will be submitted directly to the relevant contracting Party(ies) and then by such Party(ies) to the Secretary of All NEMO Committee (with a copy to the members of the relevant work group or task force).

Work group or task force leader work and the use of a Party's own Internal Resources will be recorded through timesheets at the Standard Daily Rate. If any work group or task force leader is in receipt of, with the approval of the All NEMO Committee, assistance from any Party in connection with the performance of any

one or more of the work group or task force leader tasks, this will be reported to the Secretary in the same manner.

When any ANCA Task deliverable is produced, the relevant work group or task force leader will evaluate together with the members of such work group or task force:

- (i) the quality with which such deliverable has been performed with respect to the quality objectives provided at the start of the ANCA Task;  
and
- (ii) the amount of ANCA Costs incurred with respect to the budget for such ANCA Task (if any) or with respect to the aggregate yearly budget (less the already incurred ANCA Costs within such budget).

Findings from this evaluation process such as an initial underestimation of the anticipated effort or a lack of clarity in the initial ANCA Task description must be used to improve the work group/task force management method.

**ANNEX V**  
**Form of Confidentiality Declaration**

This confidentiality declaration ("Confidentiality Declaration") is made on [*insert date*] between:

1. **BSP Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661 (hereafter "**BSP**");
2. **CROATIAN POWER EXCHANGE Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia (hereafter "**CROPEX**");
3. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road (hereafter "**EirGrid**");
4. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501 ("**EPEX**");
5. **European Market Coupling Operator AS**, a company incorporated and existing under the laws of the Kingdom of Norway, having its registered office at Vollsveien 17B, 1366 Lysaker, Norway, registered with the commercial register in Norway n° 984 058 098 (hereafter "**EMCO**");
6. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208 (hereafter "**EXAA**");
7. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002 (hereafter "**GME**");
8. **Hellenic Energy Exchange S.A.** a company duly organized and existing under the laws of Greece, with V.A.T. number 801001623, with registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial

register at General Commercial Registry under number 146698601000, ("HEnEx");

9. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808 (hereafter "**HUPX**");
10. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria (hereafter "**IBEX**");
11. **NASDAQ OSLO ASA**, a company incorporated and existing under the laws of Norway, with enterprise number 965 662 952, whose registered office address is Karenslyst Allé 53, 0279 Oslo. ("**NASDAQ**");
12. **OKTE, a.s.**, a company duly organised and existing under the laws of Slovak republic, with registered office in Mlynské nivy 48, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728 (hereafter "**OKTE**");
13. **OMI Polo Español S.A.**, a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI nº 6, 4<sup>th</sup> floor, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Sheet: 506799 (hereafter "**OMIE**");
14. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" SA**, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3<sup>rd</sup> District, Romania, registered with the Bucharest Trade Register Office under the number J40/7542/2000, VAT n° 13278352 (hereafter "**OPCOM**");
15. **OTE, a.s.**, a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, OTE's contract number: xx/xx (hereafter "**OTE**");
16. **SONI Limited**, a company incorporated in Northern Ireland with registered number NI 38715 and registered office at Castlereagh House, 12 Manse Road, Belfast, BT6 9RT, United Kingdom (hereafter "**SONI**");
17. **Towarowa Giełda Energii SA**, a company duly organised and existing under the laws of the Republic of Poland, with registered office at ul. Książęca 4, 00-498 Warszawa, Poland, registered with National Court Register under number

0000030144 and VAT no PL5272266714 (hereafter “TGE”),

(each an “Existing Party” and together the “Existing Parties”); and

18. ...., a company incorporated and existing under the laws of....., with enterprise number ....., address ....., .....(the “Adhering Party”).

**WHEREAS:**

[REDACTED]

**NOW THEREFORE THE ADHERING PARTY AGREES AND COMMITS TOWARDS THE EXISTING PARTIES AS FOLLOWS:**

**1. CONFIDENTIAL INFORMATION**

1.1 The term “Confidential Information” as used in this Confidentiality Declaration means all information whether or not marked as confidential, directly or indirectly related to the NEMO Cooperation, which any Existing Party provide, verbally or in writing or give(s) access to through the Projectplace, to the Adhering Party for the purpose of the examination and/or deeper understanding of the documentation in light of the possible adherence to the ANCA (the “Permitted Purpose”). The information (to be strictly interpreted) defined in Article 3 of this Confidentiality Declaration (referred to as the “Available Information”) is not to be considered as Confidential Information.



- 1.2** Confidential Information may only be published after formal approval of all the Existing Parties or in the case of mandatory disclosure for regulatory reasons as set out in Article 3. The published part of the Confidential Information shall therefore be regarded as Available Information from that moment as defined under Article 3, provided the conditions required under this Article 1.2 are met.

## **2. NON DISCLOSURE OF CONFIDENTIAL INFORMATION**

- 1.3** The Adhering Party hereby expressly undertakes towards the Existing Parties that it shall:

- a) not disclose, convey or transfer to any person Confidential Information in any form whatsoever without the express, prior written consent (including email) of the relevant Existing Party;
- b) not use the Confidential Information in any way or for any purpose other than the Permitted Purpose unless such other use is previously and specifically authorised in writing (including email) by the relevant Existing Party;
- c) not incorporate Confidential Information into data, documents, databases, or any other support other than as is necessary in connection with the Permitted Purpose unless the relevant Existing Party has given its prior written explicit consent (including e-mail) to such incorporation; should such material necessary for the NEMO Cooperation be meant for publication or disclosure, such publication or disclosure shall not be made without the fulfilment of the requirements assessed in Article 1.2;
- d) not copy or reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the Permitted Purpose;
- e) not share nor disclose in any manner whatsoever any Confidential Information with any person or entity (even if such person or entity is an affiliate, holding company or subsidiary of the Adhering Party), other than the Existing Parties.

- 1.4** The Adhering Party furthermore expressly undertakes towards the Existing Parties that it shall:

- a) immediately notify the relevant Existing Party in writing (including email) in the event of any unauthorised use or disclosure of Confidential Information and take all reasonable steps to mitigate any harmful effects such Existing Party may sustain or incur as a result of such a breach of this Confidentiality Declaration;
- b) immediately (and in any event within three days) return or destroy all Confidential Information in any tangible form whatsoever at the first written request of the relevant Existing Party;

- c) indemnify the relevant Existing Party in accordance with this Confidentiality Declaration (see Article 4.3 and Article 4.4. below).

### 3. AVAILABLE INFORMATION

#### 2.1 Notwithstanding Article 2, the Adhering Party may disclose Confidential Information it has received:

- a) If it can document by written evidence that the information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the disclosing Existing Party;
- b) If it can document by written evidence that the Confidential Information has come into the public domain through no fault or negligence of the Adhering Party;
- c) If, in the event of disclosure by the Adhering Party to its directors, members of management, officers, employees or to the directors, members of management, officers, employees of any of its Affiliates (referred to as “**Internal Representative**”) or to any subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (referred to as “**External Representative**”), the following conditions are met:
  - i) the Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be related to the Permitted Purpose; and
  - ii) the Internal Representative or an External Representative is informed by the Adhering Party of the confidential nature of the Confidential Information;
  - iii) the Internal Representative or an External Representative is bound to respect the confidential nature of the Confidential Information and undertakes not to use such Confidential Information for any purpose other than the Permitted Purpose under terms at least equivalent to the terms of this Confidentiality Declaration;
  - iv) For the avoidance of doubt, the Existing Parties confirm that the disclosure of Confidential Information in the circumstances foreseen under paragraph (iii) of this Article does not affect the confidential character of the Confidential Information so exchanged;
  - v) The Adhering Party undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorised use and/or disclosure of such Confidential Information by its Internal Representatives and External Representatives to whom Confidential Information is disclosed;

- vi) The Adhering Party remains at all times fully liable pursuant to this Article 3 for any breach of this Confidentiality Declaration by its Internal Representative or External Representative.
  
- d) If the Adhering Party is requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if the Adhering Party considers itself to be under a legal obligation to disclose all or part of the Confidential Information, in which case the Adhering Party undertakes to:
  - i) immediately and in any case prior to making any disclosure (and to the extent lawful), notify the disclosing Existing Party of the existence, terms and circumstances surrounding such request or legal obligation; and
  - ii) if consistent with the terms assigned by law or public authority to disclose the Confidential Information, consult with the disclosing Existing Party on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the disclosing Existing Party to take such legal steps itself, and to agree on the content and form of the Confidential Information to be disclosed; and
  - iii) if disclosure of such Confidential Information is required, exercise its best efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed. Best efforts shall mean performing its obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result (“middelenverbintenis” / “obligation de moyen”).

#### **4. RESPONSIBILITY**

**3.1** The Adhering Party acknowledges and agrees that the Existing Parties shall have no liability with respect to the use by the Adhering Party of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between any one or more of the Existing Parties and the Adhering Party.

**3.2** The Adhering Party acknowledges and agrees that in case of a breach by the Adhering Party of any of its obligations under this Confidentiality Declaration, the Existing Parties shall be entitled to cease immediately the disclosure of any further Confidential Information and may claim full compensation from the Adhering Party for any and all direct losses, damages, charges, fees or expenses, whether expected or unexpected, arising out of, or resulting from, such breach of the terms of this Confidentiality Declaration. The indemnification obligations of the Adhering Party

shall at all times be limited to a cap of one hundred thousand Euros (100.000 €) per claim, except in the event of fraud or intentional breach by the Adhering Party, in which cases the indemnification obligations shall be uncapped. In no event shall the Adhering Party be liable for consequential or indirect damages, such as loss of profit, loss of business, reputation damage or incidental damages of any kind, except in the event of fraud or intentional breach by the Adhering Party in which cases the indemnification obligations shall be uncapped.

- 3.3** The Adhering Party undertakes to hold the Disclosing Party harmless and indemnify it against any third-party claim, including claims of participants to the market operated by the Disclosing Party, directly related to a breach by a Adhering Party of its obligations under this Confidentiality Declaration.
- 3.4** The Adhering Party acknowledges that unauthorised disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Disclosing Party. Accordingly, the Adhering Party agrees that the Disclosing Party may seek immediate injunctive relief to enforce obligations under this Confidentiality Declaration in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.
- 3.5** The rights a Adhering Party may have against third parties pursuant to a confidentiality agreement shall in no event affect any Existing Party's right to claim damages under this Article 4 from the Adhering Party (to the extent that such damages have not yet been recovered by the claiming Existing Party from the third party).

## **5. INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 4.1** All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party/ies.
- 4.2** This Confidentiality Declaration shall not be construed as granting the Adhering Party any license right or any other right related to the Confidential Information and its future use, except to the extent as set out in this Confidentiality Declaration or unless such is agreed upon in a separate, written, specific and signed agreement.

## **6. ENTRY INTO FORCE, TERM AND TERMINATION**

- 5.1** This Confidentiality Declaration enters into force as of the date of its signature by the Adhering Party. With respect to any adhering party to the NEMO Agreements, this Confidentiality Declaration shall enter into force as of the date on which such new party informs in writing (including e-mail) the Adhering Party of the completion of its adherence to the NEMO Agreements.
- 5.2** This Confidentiality Declaration shall remain in effect towards the Existing Parties for the duration of its adherence process, subject to a maximum period of two (2) years. The Adhering Party may terminate its adherence process by giving the Existing Parties

14 (fourteen) days' prior written notice. The Existing Parties may terminate the Adhering Party's adherence process by giving the Adhering Party 14 (fourteen) days' prior written notice. In the event of expiration or termination by the Adhering Party of its adherence process, the obligations of confidentiality and restriction of use of the Confidential Information shall survive for the period commencing on the date of such expiration or termination plus ten (10) years.

**5.3** Upon termination of this Confidentiality Declaration, the Adhering Party undertakes within eight (8) days following termination of this Confidentiality Declaration:

- a) to return to the Disclosing Party all documents (including copies) and other material (whether in written or other form e.g. computer disks) in its possession, custody or control that bear or incorporate any part of the Confidential Information; or
- b) to destroy all documents and other material in its possession, custody or control which bear or incorporate any part of the Confidential Information or which are produced by using any part of the Confidential Information (except that a copy may be kept if necessary, for recordkeeping purposes) and to certify to the Disclosing Party that this has been done.

## **7. ADHERING PARTY STATUS AND ADHERENCE TO THE NEMO COOPERATION**

**6.1** For the avoidance of doubt, the Adhering Party agrees that the granting of Adhering Party status does not constitute adherence to the NEMO Cooperation. The adherence to the NEMO Cooperation by the Adhering Party shall require its explicit written consent with its content to be formalised in writing by adherence to the Lol, the Data Sharing Agreement (as amended), the NDA and any other agreement the Existing Parties may have concluded in respect of the NEMO Cooperation. Nothing in this Confidentiality Declaration, nor the exchange of Confidential Information with or use of the Confidential Information by the Adhering Party shall be deemed to constitute an expression of the adherence to the NEMO Cooperation. The Adhering Party shall agree beforehand with the Existing Parties on any external communication related to such adherence. The Adhering Party agrees and accepts that it has no decision rights in respect of the NEMO Cooperation as long as it has not adhered to the NEMO Cooperation.

**6.2** Without prejudice to Article 7.1 by signing this Confidentiality Declaration, the Adhering Party commits to support the NEMO Cooperation.

## **8. MISCELLANEOUS**

**7.1** Severability. If any term of this Confidentiality Declaration is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective by operation of law, then this Confidentiality Declaration, including all of the remaining terms, will remain in full force and the Adhering Party and the Existing Parties shall

negotiate in good faith to replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to their intentions.

- 7.2** Beneficiaries. For the avoidance of doubt the Adhering Party acknowledges that the commitments hereunder are its binding commitments towards each of the Existing Parties individually and agrees and accepts that the Existing Parties may, individually or collectively, claim performance by the Adhering Party in compliance with this Confidentiality Declaration.
- 7.3** Assignment. This Confidentiality Declaration shall protect the Existing Parties and their permitted assignees and successors in interest. An Existing Party may assign its rights hereunder to another third party, provided the Adhering Party is informed thereof by written notification.

## **9. DISPUTE PROCEDURE**

- 8.1** In case of a dispute between the Adhering Party and one or more of the Existing Parties (together the "**Disputing Parties**"), arising out of or in relation with this Confidentiality Declaration, the Adhering Party undertakes to meet in good faith with the Existing Parties at their first written request to resolve such dispute without recourse to legal proceedings and to achieve a reasonable and fair amicable settlement amongst each other within fourteen (14) days, or within any other timeframe agreed between the Disputing Parties. Should an amicable settlement not be reached within fourteen (14) days (or within such other timeframe as agreed between the Disputing Parties), the dispute will be submitted for settlement to the respective Chief Executive Officers of the Disputing Parties or such other person as they may appoint for this purpose.
- 8.2** If no amicable settlement can be reached by the Chief Executive Officers of the Disputing Parties (or any such other person as they may appoint for this purpose) within fourteen (14) days (or within such other timeframe as agreed between the Disputing Parties) any one or more of the Disputing Parties may refer the dispute to arbitration under the International Chamber of Commerce (hereafter the "ICC") rules, provided that for the purposes of such arbitration it is agreed that: a) the arbitral tribunal shall have three arbitrators, regardless of the number of the parties involved; b) the place of arbitration shall be Paris and all procedures shall be in English; c) the award of the arbitration will be final and binding upon the Disputing Parties.
- 8.3** Nothing in this Article shall preclude the Disputing Parties from applying for injunctive relief in summary proceedings before any competent court.
- 8.4** This Confidentiality Declaration is governed and shall be construed in accordance with Belgian law.

IN WITNESS WHEREOF the Adhering Party has caused its duly authorised representative to execute this Confidentiality Declaration in ..... (...) original copies on the date first mentioned above.

[Company name of Adhering Party] \_\_\_\_\_ [Name] [Title]

**ANNEX VI**  
**Form of Accession Declaration**

This Accession Declaration is made on [SAME DATE OF THE SIGNATURE] by:

1. ...., a company incorporated and existing under the laws of ....., with enterprise number ....., address ....., ....., (the "New Party")), towards:
2. **BSP Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661 (hereafter "**BSP**");
3. **CROATIAN POWER EXCHANGE Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia (hereafter "**CROPEX**");
4. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road (hereafter "**EirGrid**");
5. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501 ("**EPEX**");
6. **European Market Coupling Operator AS**, a company incorporated and existing under the laws of the Kingdom of Norway, having its registered office at Vollsveien 17B, 1366 Lysaker, Norway, registered with the commercial register in Norway n° 984 058 098 (hereafter "**EMCO**");
7. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208 (hereafter "**EXAA**");
8. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the



Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002 (hereafter “**GME**”);

9. **Hellenic Energy Exchange S.A.** a company duly organized and existing under the laws of Greece, with V.A.T. number 801001623, with registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000, (“**HEnEx**”);
10. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808 (hereafter “**HUPX**”);
11. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria (hereafter “**IBEX**”);
12. **NASDAQ OSLO ASA**, a company incorporated and existing under the laws of Norway, with enterprise number 965 662 952, whose registered office address is Karenslyst Allé 53, 0279 Oslo. (“**NASDAQ**”);
13. **OKTE, a.s.**, a company duly organised and existing under the laws of Slovak republic, with registered office in Mlynské nivy 48, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728 (hereafter “**OKTE**”);
14. **OMI Polo Español S.A.**, a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI nº 6, 4<sup>th</sup> floor, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Sheet: 506799 (hereafter “**OMIE**”);
15. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA**, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3<sup>rd</sup> District, Romania, registered with the Bucharest Trade Register Office under the number J40/7542/2000, VAT n° 13278352 (hereafter “**OPCOM**”);
16. **OTE, a.s.**, a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8,

Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, OTE's contract number: xx/xx (hereafter "**OTE**");

**17. SONI Limited**, a company incorporated in Northern Ireland with registered number NI 38715 and registered office at Castlereagh House, 12 Manse Road, Belfast, BT6 9RT, United Kingdom (hereafter "**SONI**");

**18. Towarowa Giełda Energii SA**, a company duly organised and existing under the laws of the Republic of Poland, with registered office at ul. Książęca 4, 00-498 Warszawa, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714 (hereafter "**TGE**"),

hereinafter individually referred to also as an "**Existing Party**" and collectively as the "**Existing Parties**".

**WHEREAS:**

- A. Pursuant to the terms of an initial contract dated [*insert date of ANCA*], BSP, CROPEX, EirGrid, EPEX SPOT SE, EXAA, GME, HUPX, IBEX, HEnEx, EMCO, OKTE, OMIE, OPCOM, OTE, SONI, TGE and NASDAQ have entered into the All NEMO Cooperation Agreement, hereby enclosed as Attachment 2 (the "**Agreement**").
- B. On ....., the New Party has expressed to the Existing Parties its wish to adhere to the Agreement.
- C. On....., the New Party has been provided with a copy of the Agreement by the Secretary of the All NEMO Committee.
- D. According to clause 16 of the Agreement, all Existing Parties accept the adherence to the Agreement of the New Party provided that it has duly executed this Accession Declaration which is substantially similar to the template provided under Annex V of the Agreement.

**NOW THEREFORE THE NEW PARTY AGREES AND COMMITS TOWARDS THE EXISTING PARTIES AS FOLLOWS:**

**1. Accession to the All NEMO Cooperation Agreement**

- 1.1** The New Party agrees to accede to the Agreement, accepting all the terms and conditions with no exclusion whatsoever.

**1.2** Pursuant to clause 16 of the Agreement, it is understood that the Existing Parties agree that the accession of the New Party shall be effected immediately upon the execution of this Accession Declaration.

## **2. Acknowledgement by the New Party**

Upon signature of this Accession Declaration, the New Party declares to be fully aware of, all obligations of the Agreement having received by the Parties full and complete access to the relevant documentation.

## **3. Entry into force and termination**

**3.1** This Accession Declaration shall enter into force with effect from the date on which all the Existing Parties have duly received the signed Accession Declaration by electronic mail at the relevant e-mail addresses listed in Attachment 1. An original hard copy of this Accession Declaration duly signed by the New Party shall be sent to each of the Existing Parties for record purposes.

**3.2** This Accession Declaration is entered into for the duration of the Agreement as set forth under clause 19 of the Agreement. For the avoidance of doubt, should the Agreement be earlier terminated, this Accession Declaration shall be terminated accordingly.

## **4. Miscellaneous**

**4.1** No provision of this Accession Declaration shall be interpreted adversely against any Existing Party solely because such Existing Party was responsible for drafting that particular provision.

**4.2** Any change to this Accession Declaration can only be validly agreed upon in writing, duly signed by the legal representative of the New Party and of all the Existing Parties.

**4.3** If one or more of the provisions of this Accession Declaration is declared to be invalid, illegal or unenforceable in any respect under any Applicable Law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Accession Declaration is not affected in any material manner adverse to any Party. In such event, the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.

- 4.4 The Parties agree that the working language for all notifications and for all matters relating to this Accession Declaration shall be English, to the extent compatible with the applicable provisions of mandatory law, if any. Any term used in this Accession Declaration with capital letter and not otherwise defined herein, shall have the same meaning described to it in the Agreement.
- 4.5 The Attachments and the recitals to this Accession Declaration form an integral part thereof and any reference to this Accession Declaration shall include a reference to the Attachments and vice versa.
- 4.6 In case of contradiction or discrepancy between this Accession Declaration and the Agreement and/or any of its respective Annexes, the precedence shall be as follows:
1. Main text of the Agreement;
  2. Annexes to the Agreement;
  3. Main body of this Accession Declaration;
- 4.7 The New Party may not assign or transfer this Accession Declaration, partially or as a whole.
- 4.8 This Accession Declaration is governed by and construed in accordance with Belgian laws without regard to the conflict of laws principles of it.
- 4.9 Any dispute arising out of or in connection with this Agreement shall be settled in accordance with clause 26 of the Agreement.

Date and Place (same as the one indicated in the heading)

**COMPANY NAME**

Signature(s)

Name(s)

Title(s)



**ATTACHMENT 2**

**Current in-force Version of All NEMO Cooperation Agreement**

**ANNEX VII  
Pro-Forma Power of Attorney**

**POWER OF ATTORNEY**

**BETWEEN THE NEMOS WITH RESPECT TO THE CONTRACT WITH A THIRD PARTY SERVICE PROVIDER**

The present agreement (hereafter "**Agreement**") is entered into by and between:

1. **BSP Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661 (hereafter "**BSP**");
2. **CROATIAN POWER EXCHANGE Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia (hereafter "**CROPEX**");
3. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road (hereafter "**EirGrid**");
4. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501 ("**EPEX**");
5. **European Market Coupling Operator AS**, a company incorporated and existing under the laws of the Kingdom of Norway, having its registered office at Vollsveien 17B, 1366 Lysaker, Norway, registered with the commercial register in Norway n° 984 058 098 (hereafter "**EMCO**");
6. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208 (hereafter "**EXAA**");
7. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale

Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002 (hereafter “**GME**”);

8. **Hellenic Energy Exchange S.A.** a company duly organized and existing under the laws of Greece, with V.A.T. number 801001623, with registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000, (“**HEEx**”);
9. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808 (hereafter “**HUPX**”);
10. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria (hereafter “**IBEX**”);
11. **NASDAQ OSLO ASA**, a company incorporated and existing under the laws of Norway, with enterprise number 965 662 952, whose registered office address is Karenslyst Allé 53, 0279 Oslo. (“**NASDAQ**”);
12. **OKTE, a.s.**, a company duly organised and existing under the laws of Slovak republic, with registered office in Mlynské nivy 48, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728 (hereafter “**OKTE**”);
13. **OMI Polo Español S.A.**, a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI nº 6, 4<sup>th</sup> floor, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Sheet: 506799 (hereafter “**OMIE**”);
14. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA**, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3<sup>rd</sup> District, Romania, registered with the Bucharest Trade Register Office under the number



J40/7542/2000, VAT n° 13278352 (hereafter “**OPCOM**”);

15. **OTE, a.s.**, a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, OTE’s contract number: xx/xx (hereafter “**OTE**”);
16. **SONI Limited**, a company incorporated in Northern Ireland with registered number NI 38715 and registered office at Castlereagh House, 12 Manse Road, Belfast, BT6 9RT, United Kingdom (hereafter “**SONI**”); and
17. **Towarowa Giełda Energii SA**, a company duly organised and existing under the laws of the Republic of Poland, with registered office at ul. Książęca 4, 00-498 Warszawa, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714 (hereafter “**TGE**”).

Collectively referred to as “**Parties**” or “**NEMOs**”.

#### **WHEREAS:**

1. On 15th August 2015 Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management entered into force. Pursuant to article 4.1 of Commission Regulation (EU) 2015/1222 (hereafter the “**CACM Regulation**”), *“Each Member State electrically connected to a bidding zone in another Member State shall ensure that one or more NEMOs (‘nominated electricity market operator’, entity designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling) are designated by four months after the entry into force of this Regulation to perform the single day-ahead and/or intraday coupling”*.
2. The Parties have been individually designated as NEMOs. The Parties have entered into the All NEMO Cooperation Agreement (hereafter the “**ANCA**”) with aim of facilitating the necessary cooperation between designated NEMOs with respect to the performance of all common tasks that need to be performed in connection with the CACM Regulation (hereafter the “**NEMO Cooperation**”).
3. On *[[insert date]*, the All NEMO Committee (hereafter “**Committee**”) decided to organize the appointment of *[describe role/services to be procured etc]*. Such selection will be performed by the contracting Party subject to the supervision and decision of the Committee via a procurement procedure (hereafter: the “**Procurement**”).
4. On *[insert date]*, the NEMOs – through a decision of the Committee decided to

assign to [•] the role of procuring and contracting Party in charge of the Procurement, having the latter been identified as the best qualified NEMO for the performance of such role.

5. Following the assignment by the NEMOs of the role of procuring and contracting Party, [•] shall manage the Procurement in its own name, on its own behalf and on behalf of the other NEMOs, according to the instructions provided through a decision of the Committee. In particular, as part of its contracting Party role, [•] shall:
  - i) formally select a [**describe role/services to be procured etc**] (hereafter the "**Contractor**") subject to a decision of the Committee;
  - ii) pre-finance the costs stemming from such Procurement, it being understood that [•] will recover from the other NEMOs ("**Mandating Parties**") the other costs not attributable to its share of contribution, consistently with the provisions of the ANCA;
  - iii) appoint a procurement manager – following its approval by the Committee - (hereafter the "**Procurement Manager**") as the internal superintendent of the Procurement and special point of contact for the candidates participating in the Procurement;
  - iv) enter into in its own name, on its own behalf and on behalf of the other NEMOs the contract (hereafter the "**Service Agreement**") with the Contractor. For the avoidance of any doubt, it is understood that the Service Agreement, inter alia, shall be entered into for the benefit of all NEMOs meaning that each NEMO shall be entitled to directly request/receive the services of the Contractor consistently with the provisions of the ANCA;
  - v) act as special point of contact ("**SPOC**") for all contractual relations with the Contractor.
6. The NEMOs therefore now wish to enter into this Agreement for the performance of the activities listed in Recital 5 above.

**NOW THEREFORE IT IS DECLARED AND AGREED AS FOLLOWS:**

**ARTICLE 1. SUBJECT MATTER**

- 1.1 This Agreement acknowledges and sets forth the terms and conditions under which [•]:
  - i) conducts the Procurement and
  - ii) is entitled to recover the costs from the Mandating Parties, not attributable to its share of contribution, related to the Procurement and

iii) enters into the Service Agreement with the Contractor.

## ARTICLE 2. POWER OF ATTORNEY

2.1 Mandating Parties hereby formally acknowledge i) the appointment of [•], as procuring and contracting Party for the Procurement (hereafter: the “Contracting Party”) and ii) to such extent, the granting to the Contracting Party of a power of attorney to:

- a. conduct the Procurement under the supervision of the Committee and select a [*describe role/services to be procured etc*] as Contractor, subject to a Committee’s decision.
- b. appoint a Procurement Manager as internal superintendent of the Procurement and SPOC for all candidates during the Procurement process. However, all instructions and all decisions to be taken towards the candidates and the Contractor shall be decided by the Committee or any other body designated by the latter, consistently with the provisions of the ANCA.
- c. enter into the Service Agreement with Contractor in its own name, on its own behalf and on behalf of all other Parties, according to the instructions provided by the Committee. It is understood that the Service Agreement, inter alia, shall be entered into for the benefit of all NEMOs meaning that each NEMO shall be entitled to directly request/receive the services of the Contractor consistently with the provisions of the ANCA;
- d. pay for itself and on behalf of the other Parties the Contractor in accordance with the provisions of the Service Agreement;
- e. act in its own name, on its own behalf and on behalf of the other NEMOs as SPOC for all contractual relations with the Contractor. However, all instructions and all decisions to be taken towards the Contractor in respect of the services to be provided by the Contractor (the “**Services**”) shall be decided upon by the Committee, or any other body designated by the latter, and communicated by Contracting Party to the Contractor. Decisions of the Committee or of any other body designated by the latter in this respect shall be taken pursuant to the rules set forth in the ANCA.

For the avoidance of doubt:

- i) The Contracting Party will not be entitled to amend, terminate, renew or withdraw from the Procurement or Service Agreement or from any related binding document (including any pre-contractual arrangement related to the Service Agreement) without the prior consent of the Committee;
- ii) any decision/approval under this Agreement shall be taken pursuant the provisions applicable to the Committee establishedt under the ANCA;

- iii) any question arising on the interpretation of this Agreement and/or the Service Agreement shall be subject to a decision of the Committee or of any other body designated by the latter, consistently with the provisions of the ANCA.
- 2.2 The Service Agreement to be entered into with the Contractor shall be substantially similar to the template agreement attached to this Agreement as Annex 2.

### **ARTICLE 3. OBLIGATIONS OF THE CONTRACTING PARTY**

- 3.1 The Contracting Party shall regularly inform the Mandating Parties on the status of the Procurement and shall provide without undue delay the Mandating Parties with any information related to the Procurement which is reasonably necessary for the Mandating Parties to assess the Procurement.
- 3.2 All instructions to the Contracting Party and all decisions to be taken by the Contracting Party in respect of the Procurement (in particular the selection decision) and the Service Agreement shall be subject to prior approval of the Committee or of any other body designated by the latter, consistently with the provisions of the ANCA.
- 3.3 Within the context of the Procurement, the relevant Procurement's documentation shall be sent by the Contracting Party to any third party only following the prior written consent (including by e-mail) of the other Parties.
- 3.4 The Service Agreement shall not be entered into by Contracting Party without the other Parties having given their prior written consent (including by e-mail) on the content of the signing version of the Service Agreement. To this aim the Contracting Party shall regularly inform the other Parties on the content of the possible negotiations with the Contractor on the Service Agreement as well as provide them with any relevant drafts of such Service Agreement as well as their final version. During negotiations with the Contractors (including in connection with any pre-contractual arrangement related to the Service Agreement), the Contracting Party shall act in accordance with the decisions of the Committee or of any other body designated by the latter.

### **ARTICLE 4. PAYMENT AND COST RECOVERY**

- 4.1 The Contracting Party shall pay the Contractor on behalf of itself and on behalf of the Mandating Parties the amounts due pursuant to the Service Agreement provided that all Parties have approved in written form (including via e-mail) the pro-forma invoices and the related detailed timesheets consistently with the relevant provisions of the ANCA.
- 4.2 The amounts due by the Contracting Party to the Contractor on the basis of the Service Agreement as well as any approved cost incurred by the Contracting Party for the performance of this Agreement shall be shared among the Parties consistently with the terms and conditions set in the ANCA.

- 4.3 For the avoidance of doubt, the Contracting Party agrees not to charge any fee to the Mandating Parties for the execution of its obligations under this Agreement. It is understood that any cost stemming from the Procurement shall be recovered according to the previous Article 4.2. The gratuity of this Agreement does not decrease the liability of the Contracting Party under the Agreement, it being understood that the Contracting Party shall use that same degree of diligence as if the power of attorney under this Agreement would have been granted upon payment.
- 4.4 In case of non-fulfilment or in case of a breach of the Service Agreement by the Contractor, without prejudice to the terms and conditions under which the lump sum is payable pursuant to Article 6.10 of the template Services Agreement included in Annex 2, the Contracting Party may claim against the Contractor:
- a) if such non-fulfilment or breach of the Service Agreement leads to the Contracting Party incurring or suffering any costs, losses, damages or expenses; or
  - b) if such non-fulfilment or breach of the Service Agreement causes one or more Mandating Parties (hereafter the "**Concerned Party(ies)**") to incur or suffer any costs, losses, damages or expenses. In this event, the Concerned Party(ies) shall notify the Committee of the claim against the Contractors by indicating the magnitude of the costs, losses, damages or expenses and the fundamental factual background giving rise to the claim to be enforced. If the Committee does not respond to the above notification within 5 business days, the Concerned Party(ies) may instruct the Contracting Party to take the necessary steps in order to enforce the relevant claim against the Contractor. If it is evident from the above-mentioned notification that the Concerned Party(ies) have not, in fact, suffered or incurred any costs, losses, damages or expenses as a result of the breach of the Services Agreement by the Contractor, the Committee may decline the enforcement of the relevant claim against the Contractor. For the avoidance of doubt, the Committee is not entitled to scrutinize the validity or enforceability of any claim made by any Concerned Party(ies) from a legal perspective. If the Concerned Party(ies) are not forbidden to enforce their claim against the Contractor (indirectly through the Contracting Party), the Concerned Party(ies) alone shall:
    - c)
      - i) bear the costs and expenses resulting from such claim enforcement including any unfavourable judgment against the Concerned Party(ies),
      - ii) instruct the Contracting Party on the claim enforcement. For this purpose, the Contracting Party shall provide the Concerned Party(ies) with all necessary assistance, information, and authority. In such case the Concerned Parties shall compensate the Contracting Party of its reasonable internal costs.
- 4.5 Without the prior approval of all Mandating Parties, a Party is not entitled to withhold payments of the Contracting Party's invoices, even in case of non-fulfilment or breach by the Contractor.

- 4.6 Mandating Parties shall hold harmless the Contracting Party on an equal sharing basis (with the Contracting Party bearing one share) from any third party's claim directly related to its role as Contracting Party, provided that such third party's claim is not deriving from a breach of the present Agreement or of the law applicable to the Procurement or to any actions taken by the Contracting Party in connection with the Procurement which qualifies as fraud or intentional misconduct or gross misconduct or gross negligence committed by the Contracting Party.
- 4.7 Should any third party raise a successful claim based on a breach of procurement law that is not applicable to the Contracting Party, the Mandating Party or Mandating Parties to whom such procurement law is applicable shall indemnify and hold harmless the Contracting Party for any indemnification paid to such third party.

**ARTICLE 5. LIABILITY**

[REDACTED]

**ARTICLE 6. ENTRY INTO FORCE AND TERMINATION**

- 6.1 This Agreement shall enter into force according to the following signature process:
- i) each Party shall individually sign one original of this Agreement and send a scanned copy of all pages of the signed original (in a single file PDF format).
  - ii) all scanned originals are collected by the Chairperson who distributes them (in a single zip file) to all Parties. This Agreement will enter into force on the date on which the scanned signed copies are distributed to all Parties by the Chairperson.
  - iii) as soon as possible following the completion of the signature process outlined above, for evidence reasons and without impacting the above-mentioned entry into force, each Party shall send 17 (seventeen) original signatory pages of this Agreement to the Contracting Party. The Contracting Party will then create 17 (seventeen) original hard copies of this Agreement which will be sent to the Parties

(one original hard copy for each Party).

- 6.2** This Agreement is entered into for the duration of the Procurement and the Service Agreement. For the avoidance of doubt, the Contracting Party will not be entitled to renew the Service Agreement on behalf of the other Parties without their consent, being the powers conferred with this Agreement limited to the signature of the Service Agreement and the specific acts specified in this Agreement.
- 6.3** The Parties accept and acknowledge the importance of legal and regulatory requirements to which the NEMOs are subject as market operators. Consequently, each NEMO may request to reasonably amend or, if necessary, and without court intervention, terminate immediately by registered letter the present Agreement and without having to compensate the other Parties for such termination, if a legislative or regulatory text, decree, decision issued by a competent regulatory, administrative or other governmental authority, or an opinion, proposal or demand issued by such regulatory, administrative or other governmental authority, require any such amendment or termination.
- 6.4** Without any court intervention and without any compensation being due, the Contracting Party in respect to a NEMO (excluding itself) and each NEMO (excluding the Contracting Party) in respect to the Contracting Party may, wholly or partly, terminate by registered letter with acknowledgement of receipt this Agreement with immediate effect in respect to the Party which:
- a) Ceases its business or becomes the object of a liquidation or dissolution;
  - b) Is the object of an appointment of a receiver, or admitted in writing its inability to pay its debts generally as they come due (to the extent compatible with applicable law);
  - c) In the event of a significant and detrimental change in the legal status, legal structure, the activities and/or the financial situation of such Party, which reasonably leads to the conclusion that the terms and conditions of this Agreement can or will, in a nearby future, no longer be satisfactorily complied with.
- 6.5** It is understood that if one or more Mandating Parties terminate this Agreement pursuant to Article 6.3 and 6.4, the Agreement will continue to be valid and effective between the Contracting Party and the non-terminating Parties. Upon termination of the Agreement by one or more NEMOs, the Contracting Party will be entitled to recover the amounts under Article 4.2 from the terminating NEMO(s) consistently with the relevant provisions of the ANCA. Should the ANCA or a decision of the Committee not provide relevant provisions/rules on the cost recovery by the terminating NEMO(s) of the amounts due pursuant to Article 4.2, the Parties agree that Contracting Party will only be entitled to recover the amounts due for the services performed by the Contractor before such termination.
- 6.6** It is understood that the present Agreement shall be terminated with immediate effect in the event of termination of the Service Agreement.

## ARTICLE 7. MISCELLANEOUS PROVISIONS

- 7.1 No Party has relied upon any other promise, representation or warranty other than those contained herein, in executing this Agreement.
- 7.2 If one or more of the provisions of this Agreement is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Agreement is not affected in any material manner adverse to any Party. In such event, the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- 7.3 The Parties agree that the working language for all notifications and for all matters relating to this Agreement shall be English, to the extent compatible with the applicable provisions of mandatory law, if any.
- 7.4 The Annexes to this Agreement form an integral part thereof and any reference to this Agreement shall include a reference to the Annexes and vice versa.
- 7.5 Any change to this Agreement can only be validly agreed upon in writing, duly signed by the legal representatives of the Parties with exception of Annex 1 which may be amended through notification by the relevant Party.
- 7.6 Each Party acknowledges that the Parties to this Agreement are independent entities and that it will not, except in accordance with this Agreement, represent itself as an agent or legal representative of the other Party.
- 7.7 No Party may assign or transfer this Agreement, partially or as a whole, unless with the prior explicit written consent of the Parties which will not be unreasonably withheld or delayed.
- 7.8 No agency, partnership or joint venture relationship is created between the Parties as a result of this Agreement.
- 7.9 The Parties shall be responsible for their individual commitments only and do not bear any joint and several liability under this Agreement or the Service Agreement.
- 7.10 The present Agreement is governed by and construed with Belgian law without regard to the conflict of laws principles of it. Any dispute arising out of or in connection with this Agreement shall be settled in accordance with the dispute settlement procedure set forth in the ANCA.
- 7.11 The Parties hereby acknowledge that regardless of the governing law of the Agreement, OTE is considered as the obliged person within the meaning of the section 2/1 of Czech Act No 340/2015 Coll. on Registration of Contracts (the "Act on Registration") and therefore the Agreement shall be published by OTE in the Czech Registry of Contracts pursuant to section 5 of the Act on Registration.



In witness thereof, the Parties have caused their duly authorized representatives to execute the present Contract in 17 (seventeen) original copies. Each Party shall receive an original copy.

***[Insert appropriate execution blocks]***

**Annex 1: Contact information\***

**Annex 2: Contacts for invoicing and payment\***

\* Contact information and addresses can be changed by sending a note to above mentioned addressees.

Annex 3: Third Party Service Provider Agreement

**CONTRACT FOR [•] SERVICES**

**BETWEEN:**

....., a company incorporated under the laws of .....with company number ..... whose registered office is at ....., ....., ....., (the "**Contracting Entity**") hereto represented by ....., duly authorized to act on the Contracting Entity's behalf for the present agreement.

**AND:**

....., a company incorporated and existing under the laws of ..... with company number ..... whose registered office is at ....., ....., ....., (the "**Contractor**") hereto represented by ....., duly authorized to act on the Contractor's behalf for the present agreement,

each a "**Party**" and collectively the "**Parties**".

**WHEREAS:**

- 1) On 15th August 2015 Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (hereinafter "**CACM**") entered into force. Pursuant to article 4.1 of Commission Regulation (EU) 2015/1222, "Each Member State electrically connected to a bidding zone in another Member State shall ensure that one or more NEMOs ('nominated electricity market operator', entity designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling) are designated by four months after the entry into force of this Regulation to perform the single day-ahead and/or intraday coupling"
- 2) On the 3rd of March 2016 certain designated NEMOs entered into the Interim NEMO Cooperation Agreement (the "**INCA**") on a voluntary basis. The INCA was succeeded by the enduring All NEMO Cooperation Agreement, which became effective on 28 March 2018. The INCA established and the ANCA reconfirms a contractual framework for the governance and coordination of NEMOs with respect to the performance of CACM tasks and the responsibilities of the All NEMO Committee (hereinafter the "**Project**"). The NEMO Cooperation is governed by the committee of all NEMOs (hereinafter the "**Committee**"). The Project is a cooperative undertaking of NEMOs: European Market Coupling Operator AS, EPEX SPOT SE, OMI– Polo Español S.A., Gestore dei Mercati Energetici S.p.A., OTE, a.s., Towarowa Gielda Energii SA, Operatorul Pieței de Energie Electrică și de Gaze Naturale "**OPCOM**" SA., BSP Energy Exchange LL.C., Croatian Power

Exchange Ltd., EirGrid plc, EXAA Abwicklungsstelle für Energieprodukte AG, HUPX Hungarian Power Exchange Company Limited by Shares, Independent Bulgarian Energy Exchange EAD, Hellenic Energy Exchange S.A., OKTE, a.s., SONI Limited and NASDAQ Oslo ASA (the “NEMOs”).

- 3) On ... the NEMOs have entered into a power of attorney (the "Power of Attorney" or "PoA") which sets forth the terms and conditions under which the Contracting Entity shall manage the contractual relationship with a [**Third Party Service Provider**] in its own name as well as for and on behalf of the other NEMOs (hereinafter the “Beneficiaries”).
- 4) In order to ensure a proper support to NEMOs in the fulfilment of their tasks, the NEMOs decided to select, through a procurement procedure (hereinafter the "Procurement"), a [**Third Party Service Provider**] to supply the services described in Annex I (hereinafter the “Services”).
- 5) On ..., following the assessment of the candidates which have expressed an interest and participated in the Procurement, the Committee decided to appoint the Contractor, being the best qualified candidate participating in the Procurement.
- 6) The Contractor has accepted this appointment and committed to dedicate exclusively [insert name] to the performance of the Services, consistently with its proposal submitted as part of the Procurement (attached to this Agreement as Annex 3).

**NOW THEREFORE IT IS DECLARED AND AGREED AS FOLLOWS:**

**Article 1. SUBJECT MATTER**

- 1.1 The present agreement (the “**Agreement**”) sets forth the terms and conditions under which the Contractor shall provide, against the agreed remuneration, the Services within the time limits agreed and strictly in accordance with the criteria of quality and performance set forth in the present Agreement.
- 1.2 The Contracting Entity, as sole counterparty of the Contractor, acts in its own name and for and on behalf of itself and the Beneficiaries and is responsible for the contractual management of the Agreement. It is understood that, any decision taken under this Agreement by the Contracting Entity shall respect the decision processes agreed among the NEMOs.

**Article 2. CONTRACTUAL DOCUMENTS, VALIDITY AND PRECEDENCE**

- 1.1 The Services to be provided by the Contractor are governed by the terms and conditions of this Agreement. No other terms and conditions shall apply to the supply of the Services under this Agreement, unless explicitly otherwise agreed in writing.
- 1.2 The documents constituting this Agreement are:

(i) this Agreement;

(ii) the annexes and supplementary documents attached to this Agreement.

1.3 In the event of difficulty of interpretation, contradiction, ambiguity or difference between the documents constituting this Agreement, each document shall prevail over the following in the order listed above in Article 2.2.

1.4 The nullity or invalidity of one or more provision(s) of the present Agreement shall not affect the validity of the other provisions. Any provision declared null, invalid or unenforceable shall be considered as omitted from the present Agreement without affecting the other provisions, which shall continue to be applicable, unless the provision(s) declared null or invalid is (are) essential to the object hereof. In that case, the Parties shall consult each other on the request of the most diligent Party in order to negotiate and agree upon a legally valid replacement provision with the same economic effect as the null, invalid or unenforceable provision.

### **Article 3. SERVICES PROVIDED BY THE CONTRACTOR**

3.1 The Contractor shall provide the Services in accordance with the specifications set forth in Annex 1.

3.2 For the avoidance of doubt, the Parties agree that the Contractor shall have no exclusivity of providing services identical or similar to the Services to any one or more of the NEMOs.

3.3 The Contractor undertakes and warrants:

- a) to render and provide the Services in strict compliance with all the requirements of this Agreement and any other further written specifications and/or requirements subsequently provided by the Contracting Entity, subject to Committee decision, as far as those further specifications and/or requirements are directly related to the Project;
- b) to provide the Services within the deadlines specified in Annex 1 and to respect any deadlines in connection with the Services defined by the Contracting Entity, subject to Committee decision. Any expected delay in the Services must be reported in and deadlines may only be extended with prior written consent (including e-mail) of the Contracting Entity, subject to Committee decision;
- c) to perform its obligations under this Agreement in the best interest of the NEMOs and with a view of assuring the good and successful implementation of this Agreement and of the Project;
- d) to use the highest degree of diligence, prudence and foresight that is exercised by experienced service providers engaged in the same line of business under the same or similar circumstances;

- e) to report to the NEMOs on a regular basis on the progress of the Services as well as highlight and report on the important decisions that need to be taken during the term of this Agreement;
- f) that at all time during the duration of this Agreement, it shall fulfil all the legal obligations and technical relating to its activities.

3.4 Provision of services *intuitu personae*

- a) The Contractor commits that the Services shall be exclusively performed by [insert name].
- b) The Contractor declares and undertakes that [insert name] shall be available hours of [x] and [y]/ [z] days per week/ [w] hours per week
- c) Contractor shall ensure that the Services are provided with its own infrastructure.
- d) Substitution or support of [insert name] by another person during the course of this Agreement is subject to prior approval by the NEMOs of the substituting or supporting person, on the basis of its curriculum-vitae and references to be provided by the Contractor to the SPOC, as defined in Article 10.5.
- e) The Contractor shall organize the provision of the Services at its discretion, but in accordance with the business needs of the Project as the case may be.
- f) [insert name] shall never be considered from any point of view whatsoever as having the capacity of employee of the Contracting Entity. No contract of employment shall mutually link [insert name] or other employees of the Contractor to the Contracting Entity
- g) The employees, if any, used by the Contractor to provide the Services shall remain under its exclusive authority and supervision. Possible instructions or directives formulated by the Contracting Entity to the Contractor's representatives or personnel shall not be considered as interference in Contractor's employer's authority vis-à-vis its personnel.
- h) As employer, the Contractor shall be responsible for any payment and any procedure, formality and/or obligation of a fiscal, social security (in its broadest sense) or other nature, including obtaining, if necessary, any work permits in good and proper form and for the term of the present Agreement, for any person who, in one way or another, would be led to intervene or to provide Services on behalf of the Contractor within the context of the execution of the present Agreement. In this regard, any member of staff of the Contractor shall in all respects remain a member of staff of the Contractor and the Contractor shall be responsible for the payment of wages, social contributions, employer's contributions, fiscal retentions, insurance premiums and all other legal or extra-legal obligations to which the Contractor is bound and/or has agreed with its staff.

**Article 4. INVOICING AND PAYMENT**

- 1.1 For the proper execution by the Contractor of its commitments under this Agreement, the Contracting Entity, following the invoice receipt, shall pay to the Contractor a Calendar Quarterly fee (the “Fee”) computed on the basis of Annex 3 and subject to provisions of Annex 4.
  
- 1.2 It is explicitly agreed that all taxes, levies, deductions, duties and/or other fees, excluding VAT, either directly or indirectly, relating to the Services and to other services provided within the context of the Agreement and all costs and disbursements incurred by the Contractor in connection with the performance of the present Agreement and/or the provision of the Services, shall be deemed wholly included in and covered by the Fees, with no exception whatsoever.

Telephone costs (e.g. phone conferences), travel and accommodation reimbursements (the “Costs”) may be invoiced separately by the Contractor at cost to the Contracting Entity provided that:

- a) such telephone costs have been incurred either for periodic or ad-hoc telephone conferences with the bodies created by the NEMOs in relation to the Project (Steering Committee, High Level Meeting, workgroup, workgroup conveners) or are necessary for the efficient management of the Project;
- b) such Costs have been expressly priorly approved by a Committee decision;
- c) such Costs specified as travel and accommodation costs have been incurred following a travel request from the Committee;
- d) such Costs specified as travel and accommodation costs have been expressly accepted by a Committee decision.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- 1.3 The Fees and Costs shall be paid by the Contracting Entity according to the following terms and conditions:
  - a) Each invoice shall include:
    - the VAT number of Contractor;
    - detailed timesheet with any references useful to identify clearly the Services to which the invoice relates;



- bank account details to which the relevant payment shall be made.
  
- b) The Contractor shall send detailed timesheets of the month following the month in which work is performed or a draft invoice and related detailed timesheets of the month following the Calendar Quarter in which the Services have been provided to the Contracting Entity, with a copy thereof to the NEMOs through the e-mail contacts mentioned in Annex 2, within the fifth (5th) Business Day (for the purposes of this Agreement, "**Business Day**" means: in relation to each Party, any day, with the exception of Saturdays and Sundays, on which banks are generally open to public in the country or city of incorporation of the relevant NEMO).
  
- c) The Contracting Entity will inform the Contractor of its approval or of remarks on the draft invoice and related detailed timesheets in written form (including e-mail) within ten (10) Business Days from the date of receipt of the pro forma invoice. The Contracting Entity is entitled to object the pro forma invoice and related detailed timesheets. In such case, the Contracting Entity shall notify the Contractor promptly the reason of its objection. The Contracting Entity and the Contractor will use their respective best efforts to find an agreement within ten (10) Business Days from such notification. In the event an agreement is confirmed in writing by both Parties within this period, the Contractor shall issue its final invoice.
  
- d) The Contractor shall notify the Contracting Entity promptly in case of any issue in respect of invoicing and payment.
  
- e) The Contracting Entity commits to pay the Contractor within thirty (30) calendar days from the receipt of Contractor's invoice, if duly compliant with EU VAT regulation in force. Payments due on a day other than a Business Day shall be made on the first (1<sup>st</sup>) following Business Day. Payments shall be made by wire transfer to the bank account indicated by the Contractor in the invoice.
  
- f) In the event of late payment by the Contracting Entity, Contractor shall be entitled to claim late payment interests equal to Euribor rate per year of the amount due as determined on the date following the one in which the relevant amount was due.
  
- g) The absence of any of the abovementioned or statutory references will render the invoice(s) null and void. In this case the Contracting Entity reserves the right to return the invoice(s) to the Contractor, such returning being equivalent to disputing it. Moreover, Contractor shall issue the Tax Residence Certificate when requested by the Contracting Entity or a Beneficiary
  
- h) In the event of a dispute regarding the payment of the invoice(s) or of a credit note, any amount due shall be paid within thirty (30) days of the date of the

agreement reached on the dispute or of the judicial decision by which the dispute is definitively settled between the Parties.

- i) The Parties agree that the Fees covers full payment for all Services performed under this Agreement. For the avoidance of any doubt, the Parties agree that there will be no other remuneration due to the Contractor other than the Fees and the recovery of Costs.
- j) Payment by the Contracting Entity of an invoice, wholly or in part, shall not be considered as an acceptance or validation of the Services performed which are subject of such a dispute and does not prejudice of any claim or right of the Contractor and NEMOs pursuant to the execution of these Services.

## Article 5. COLLABORATION OF THE NEMOs

- 5.1 The Beneficiaries are entitled to directly contact the Contractor with respect to the performance of the Services. To this extent, the Contractor shall be entitled to have direct contact with each Beneficiary. For the avoidance of any doubt, it is understood that the Beneficiaries shall in no event be held liable contractually by Contractor for the obligations provided under this Agreement since they are not parties to the latter.
- 5.2 The Contracting Entity shall facilitate the provision of the Services to the Beneficiaries. In particular, the Contracting Entity shall support the Beneficiaries, if needed, in:
  - a) transmitting or communicating to the Contractor the information which is required for provision of the Services as indicated by the Contractor;
  - b) putting the Contractor in contact with the relevant representatives of the NEMOs.

## Article 6. CONFIDENTIALITY

- 6.1 The Contractor undertakes not to disclose and to maintain strictly confidential any confidential information, as hereafter defined, of which it gains knowledge or to which it has access within the context of providing the Services. The Contractor acknowledges, the specific provisions with regard to confidentiality to which the NEMOs are subject as market operators, in particular with respect to market data, having been personally and specifically informed on such provisions and having fully understood and accepted them.
- 6.2 For the purpose of this Agreement any information exchanged between the NEMOs and Contractor in respect of the Services, as well as this Agreement is to be considered as confidential information (hereafter called "**Confidential Information**"), to the exception of information which is:
  - a) Already in the public domain at the time it is divulged, it being understood that the foregoing only applies to the extent the Contractor proves to the satisfaction of the NEMOs that the information was already in the public domain at the time of divulgation;

- b) Already known to the Contractor at the time it is divulged and not having been previously obtained either directly or indirectly from the NEMOs, it being understood that the foregoing only applies to the extent the Contractor proves to the satisfaction of the NEMOs that the information was already known to it at the time of divulcation;
  - c) After having been divulged, it becomes accessible to the Contractor following a lawful communication by a third party without breaching any obligation of confidentiality (explicit or implied) to the extent the Contractor proves to the satisfaction of the NEMOs that the information was lawfully communicated by such third party.
- 6.3 Notwithstanding the foregoing, the Contractor undertakes to maintain strictly confidential any Confidential Information and not to divulge it, in whatever form that may be, except if communication thereof is required by law or by competent administrative or judicial authorities provided that such authorities have a legally justified need to know such information and are, by law or contractually, bound to respect the confidential nature of this information under terms equivalent to the terms of this Agreement.
- 6.4 In the event that the Contractor is required in accordance with this Article 6.4 to disclose any Confidential Information, it shall first give immediate written notice of such requirement to the disclosing NEMO(s) to allow it/them, if possible, to intervene in the proceedings or to take all possible measures to protect their interests in the matter.
- 6.5 The Contractor shall make no reference either to the Agreement or to the work done within its context or even to the relationship with the NEMOs, in any publication or presentation of a technical, commercial or other nature, without the prior explicit Committee approval. The Contractor is however allowed to refer to the NEMOs as one of its clients and to mention in brief the scope of the Project. For the avoidance of doubt, each of the NEMOs shall be entitled to provide any report delivered to it by the Contractor to its clients or to make it public in whatever form, provided that reference is made to the Contractor, except in the event the Contractor has indicated in a motivated writing that such report contains sensitive information and may not be communicated. In such event the Parties shall in good faith determine how such report can be communicated without disclosing such sensitive information.
- 6.6 Contractor is entitled to grant access to such Confidential Information to its representatives, NEMOs of staff and any third party to whom it has subcontracted or delegated part of the Services (always in compliance with the provisions set forth under Article 3.4 above), on a need-to-know basis and provided that the relevant NEMO is previously informed and such persons undertake non-disclosure obligations on the Confidential Information at least as strict as these undertaken by the Contractor under this Agreement. Such disclosure obligations undertaken by representatives, NEMOs of staff and any third party shall be disclosed on request from the relevant NEMO.
- 6.7 Moreover, the Contractor undertakes to fulfil the confidentiality undertakings under this Article 6 and to have them fulfilled by their representatives, NEMOs of staff and any third party to whom it has subcontracted or delegated part of the Services, throughout

the term of the Agreement and during five (5) years following its termination or expiration. Any breach of the confidentiality undertakings under this Article 6 by NEMOs of staff of the Contractor and/or (possibly) by a third party to which Contractor has subcontracted or delegated part of the Services, shall be considered as being a material breach on the part of the Contractor. The Contractor shall be jointly and severally liable with such representatives, NEMOs of staff and/or such third party for any loss (including indirect loss) resulting from a breach by such representative, member of staff or third party of this Article 6.

- 6.8 Immediately upon receiving the written request of a disclosing NEMO thereon, the Contractor shall return any and all Confidential Information to the disclosing NEMO, and shall, to the extent possible, at first written request of the disclosing NEMO destroy all not returned Confidential Information and prove such destruction to the disclosing NEMO. To the extent the computer back-up procedures of the Contractor create copies of the Confidential Information, the Contractor may retain those copies for the period they normally archive backed-up computer records, which copies are subject to the provisions of this Agreement until they are destroyed.
- 6.9 In case of a breach by the Contractor with regard to its obligations under this Article 6, the relevant NEMO shall be entitled to cease immediately the disclosure of any further Confidential Information and to claim full compensation of the Contractor for any and all direct losses, damages, charges, fees or expenses, expected and unexpected, arising out, or resulting from, a breach of the terms of this Article 6.
- 6.10 In deviation from Article 9 below, the Contractor shall immediately pay a lump sum of twenty thousand (20.000) EUR for any breach of this Article 6, without prejudice to the right of each NEMO to claim further compensation.
- 6.11 The Contractor acknowledges that unauthorized disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the NEMOs. Accordingly, the Contractor agrees that the concerned NEMO may seek immediate injunctive relief to enforce obligations under this Article 6 in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.

## **Article 7. INTELLECTUAL PROPERTY**

- 7.1. It is explicitly agreed between the Parties that the documentation, software, specifications and any other information provided by the NEMOs within the context of the Services (the “Data”) to the Contractor shall be and remain the exclusive property of the NEMOs providing such Data, as the case may be, and that the Contractor shall not benefit from any right in their regard, except the non-exclusive and non-transferable, right to use those Data solely to the extent that such use is strictly necessary for the provision of the Services.
- 7.2. All works, preparations, creations, studies, researches, experiences, inventions or other information, including without limitation all documents, drawings, documentation,

manuals, reports, schemes, software (system programs, applications, object codes, source codes), algorithms, technologies, business secrets, methods, inventions, findings, know-how technical or other data, databases, statistical analyses as well as information derived directly or indirectly there from, of whatever kind, developed by the Contractor, as the case may be, pursuant to or in connection with the Services provided under this Agreement or constituting a direct or indirect result of the performance by the Contractor of this Agreement (the “**Developments**”), shall become the NEMOs’ joint property as they are developed, at no additional cost or remuneration and all intellectual property rights in respect thereto shall be vested with the NEMOs to the fullest possible extent, and to the extent necessary, immediately transferred and/or assigned to the NEMOs as from their creation.

- 7.3. In case of termination of this Agreement the NEMOs shall thus be considered the co-owners of all Developments and the intellectual property rights pertaining thereto and the NEMOs shall thus be entitled to maintain and use all these Developments, at no additional cost or remuneration.
- 7.4. The Contractor undertakes to provide, costless, the NEMOs with all useful support in obtaining and maintaining the right or legal title concerned, this including but not limited to the signature of documents useful to its participation in procedures for obtaining the said right or title.
- 7.5. Notwithstanding the above, the Contractor reserves the right to use the Developments, for internal work purposes for other projects, this however only in as far as such Developments do not contain Confidential Information. The Contractor is not entitled to convey any rights of any nature thereon to any of its other clients.
- 7.6. For the purpose of this Article, intellectual property rights shall mean all existing and future, registered or unregistered, intellectual, industrial, commercial and all other property and similar or related rights, title and interest including applications for the same, anywhere in the world, including but not limited to copyrights, neighbouring rights, portrait rights, moral rights, sui generis database rights, models and design rights and all other possible rights in the field of literature, arts and science, rights to patents or patent applications, topography rights, rights to know-how or trade secrets, and all other rights on intellectual creations in the field of technology, trademarks, trade names rights to statutory and commercial denominations, domain names and all other possible rights to signs used in business to distinguish one good or service from another in trade.
- 7.7. The Contractor will ensure that its representatives, employees and agents also comply with the obligation under this Article 7.

## **Article 8. ENTRY INTO FORCE, DURATION AND EARLY TERMINATION**

- 8.1. This Agreement enters into force on the date of signature by the Contracting Entity and the Contractor and shall terminate on the (three years ) ..... In the event the

Contracting Entity and the Contractor do not sign on the same date, the date of last signature will trigger the entry into force.

- 8.2. The Contracting Entity may extend the duration of this Agreement under the same terms and conditions by a two (2) months' prior notice, in written form (including e-mail). Any extension or renewal of the Agreement is subject to the Committee's approval
- 8.3. The Contracting Entity, subject to the Committee's approval, may terminate, wholly or partly, this Agreement by registered letter to the Contractor with acknowledgement of receipt, without any court intervention and without any compensation being due in the event the Contractor is in material breach of this Agreement. If the breach is capable of remedy, the Contractor shall be entitled to a grace period of fifteen (15) days to remedy the breach in the absence of which the Agreement may be terminated, subject to the Committee's approval, by the Contracting Entity. The Agreement may be terminated immediately, subject to the Committee's approval, in case of a material breach by the Contractor which is not capable of remedy (such as including but not limited to breach of confidentiality obligations, third party intellectual property rights and the warranties given under this Agreement).
- 8.4. The Contractor may unilaterally terminate this Agreement by registered letter to the Contracting Entity with acknowledgement of receipt, without any court intervention and without any compensation being due, in case of lack of payment by the Contracting Entity of non-disputed Fees or Costs and subject to a notice period of thirty (30) days such notice being sent in copy to all NEMOs. The Contractor may only rely on this right if it is complying with its obligations under this Agreement.
- 8.5. The Contracting Entity, subject to the Committee's approval, may decide to terminate the Agreement for any reason subject to a one-month prior notice sent by registered letter to the Contractor.
- 8.6. Any termination for breach of Agreement shall be without prejudice to any other rights and remedies the non-defaulting Party may have against the defaulting Party, including any claim for damages or reimbursement of paid Fees.
- 8.7. The Parties accept and acknowledge the importance of legal and regulatory requirements to which the NEMOs are subject as market operators. Consequently, the Contracting Entity, subject to the Committee's approval, may reasonably request to amend or, if necessary, and without court intervention, terminate immediately by registered letter the present Agreement and without having to compensate the Contractor for such amendment or termination of the present Agreement, if a legislative or regulatory text, decree, decision issued by a competent regulatory authority, or an opinion, proposal or demand by such an authority, require, any such amendment or termination.
- 8.8. The Contracting Entity, subject to the Committee's approval, may terminate, wholly or partly, this Agreement with immediate effect by registered letter to the Contractor with

acknowledgement of receipt, without any court intervention and without any compensation being due, if the Contractor:

- a) ceases its business or becomes the object of a liquidation or dissolution;
- b) is declared bankrupt or becomes the object of a filing of a voluntary or involuntary petition under the applicable Bankruptcy Act;
- c) is the object of an appointment of a receiver, or admitted in writing its inability to pay its debts generally as they come due (to the extent compatible with applicable law);
- d) in the event of a significant and detrimental change in the legal status, legal structure, the activities and/or the financial situation of the Contractor, which reasonably leads to the conclusion that the terms and conditions of this Agreement can or will, in a nearby future, no longer be satisfactorily complied with by the Contractor.

8.9. In case of early termination pursuant to this Article 8, the Contracting Entity will pay to the Contractor only the services already performed consistently with terms and conditions of the Agreement.

#### **Article 9. LIABILITY**

[REDACTED]

#### **Article 10. MISCELLANEOUS PROVISIONS**

- 10.1. This Agreement constitutes the entire agreement between the Parties with respect of the subject matter thereof and supersedes any prior or contemporaneous agreements, whether oral or written, between the Parties with respect to said subject matter. No Party has relied upon any other promise, representation or warranty other than those contained herein, in executing this Agreement.
- 10.2. Any change to this Agreement can only validly be agreed upon in writing, duly signed by the representatives of the Parties.
- 10.3. Each Party acknowledges that the other Party to this Agreement is an independent contractor.
- 10.4. All notices shall be sent by registered letter or delivered by courier to the Contracting Entity at the addresses mentioned in Annex 2.

- 10.5. Save as otherwise expressly stated throughout the Agreement, the Parties acknowledge and agree that the Beneficiaries have appointed the Contracting Entity as its single point of contact (the "SPOC") with the Contractor. The Parties agree that the working language for all notifications and for all matters relating to this Agreement shall be English, to the extent compatible with the applicable provisions of mandatory law, if any.
- 10.6. Contractor may not assign or transfer this Agreement without the prior explicit written consent of the other Party which will not unreasonably withhold or delay its consent. On the other hand, the Contractor hereby agrees to any transfer of this Agreement or any substitution of the Contracting Entity with another NEMO.
- 10.7. No agency, partnership or joint venture relationship is created between the Parties as a result of this Agreement.
- 10.8. The present Agreement shall be governed by the laws of Norway without regard to the conflict of laws principles thereof.
- 10.9. Any dispute arising out of this Agreement, including those relating to its existence, shall be within the exclusive competence of the courts in Oslo, without prejudice to the fact that each Party can apply for injunctive relief before any other competent court.

**In witness thereof**, the Contracting Entity and the Contractor have caused their duly authorised representatives to execute the present Agreement in two (2) original copies.

For: .....

By :

Function :

Signature :

Date:

For: .....

By :

Function :

Signature :

Date:



**ANNEX 1: Services**

**ANNEX 2: CONTACT INFORMATION**

**General Contact**

**For the Contracting Entity:**

Mrs.

.....

Telephone: .....

Fax: .....

E-mail: .....

And to be added in communications, in copy mode:

Mr. ....

E-mail in Cc: .....

**For the Contractor:**

**[DETAILS TO BE PROVIDED]**

**Contacts for invoicing and payment**

**For the Contracting Entity:**

Mr. ....

.....

Telephone: .....

Fax: .....

E-mail: .....

And to be added in communications, in copy mode:

Mr. ....

E-mail in Cc: .....

**For the Contractor:**

**[DETAILS TO BE PROVIDED]**

**For NEMOs:**

**[insert email address for each NEMO]**

**ANNEX 3: CONTACTOR PROPOSAL**

**ANNEX VIII**  
**Contact Details of the Parties**

**A. General contact details**

<b>BSP ENERGY EXCHANGE LLC</b>		
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]
<b>CROATIAN POWER EXCHANGE LTD.</b>		
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]
<b>EIRGRID PLC</b>		
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]

<b>EPEX SPOT SE</b>		
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]  [REDACTED] [REDACTED]
<b>EUROPEAN MARKET COUPLING OPERATOR AS</b>		
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]
<b>EXAA ABWICKLUNGSSTELLE FÜR ENERGIEPRODUKTE AG</b>		
[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]  [REDACTED] [REDACTED]
<b>GESTORE DEI MERCATI ENERGETICI S.P.A.</b>		
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]  [REDACTED] [REDACTED]
<b>HELLENIC ENERGY EXCHANGE S.A.</b>		

<p>[REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED]</p>
<p>HUPX HUNGARIAN POWER EXCHANGE COMPANY LIMITED BY SHARES</p>		
<p>[REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED]</p>
<p>INDEPENDENT BULGARIAN ENERGY EXCHANGE EAD</p>		
<p>[REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED]</p>
<p>NASDAQ OSLO ASA</p>		
<p>[REDACTED] [REDACTED] [REDACTED]</p>	<p>[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]</p>	<p>[REDACTED]</p>
<p>OKTE, A.S.</p>		
<p>[REDACTED] [REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>

[REDACTED]	[REDACTED]	[REDACTED]
<b>OMI-POLO ESPAÑOL, S.A.</b>		
[REDACTED]	[REDACTED]	[REDACTED]
<b>OPERATORUL PIEȚEI DE ENERGIE ELECTRICĂ ȘI DE GAZE NATURALE "OPCOM" SA</b>		
[REDACTED]	[REDACTED]	[REDACTED]
<b>OTE, A.S.</b>		
[REDACTED]	[REDACTED]	[REDACTED]
<b>SONI LIMITED</b>		
[REDACTED]	[REDACTED]	[REDACTED]

<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p>
<p><b>TOWAROWA GIEŁDA ENERGII SA</b></p>		
<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>



**B. Invoicing contact details**

**BSP ENERGY EXCHANGE LLC**

[REDACTED]

**CROATIAN POWER EXCHANGE Ltd.**

[REDACTED]

**EirGrid**

[REDACTED]

**EPEX SPOT SE**

[REDACTED]

**EUROPEAN MARKET COUPLING OPERATOR AS**

[REDACTED]

[REDACTED]

**EXAA ABWICKLUNGSSTELLE FÜR ENERGIEPRODUKTE AG**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**GME**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**HELLENIC ENERGY EXCHANGE S.A. Company name: Hellenic Energy Exchange S.A.**

[REDACTED]  
[REDACTED]  
[REDACTED]

**HUPX**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**INDEPENDENT BULGARIAN ENERGY EXCHANGE EAD**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**NASDAQ OSLO ASA**

[REDACTED]  
[REDACTED]  
[REDACTED]

**OMI-POLO ESPAÑOL S.A**

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**OKTE, A.S.**

[REDACTED]

**OPERATORUL PIETEI DE ENERGIE ELECTRICA SI DE GAZE NATURALE "OPCOM" SA**

[REDACTED]

**OTE, A.S.**

[REDACTED]

**SONI**

[REDACTED]

[REDACTED]

**ANNEX IX**  
**Expert Panel Deadlock Procedure**  
**[TO BE INSERTED]**