

**Master Services Agreement**

**XBID Solution**

**between**

**APX Power B.V.**

**and**

**APX Commodities Ltd.**

**and**

**Belpex NV**

**and**

**EPEX Spot SE**

**and**

**Nord Pool Spot AS**

**and**

**OMI, Polo Español, S.A.**

**and**

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

**and**

**Deutsche Börse AG**

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**Master Services Agreement XBID Solution**

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This Master Services Agreement XBID Solution (hereinafter referred to as the “**XBID-MSA**”) is made by and between:

On the one hand:

(1) **APX Power B.V.**, a company organised and existing under the laws of the Netherlands, having its registered office at Hoo-goorddreef 7, 1101 BA Amsterdam, the Netherlands, and registered with the Commercial Register in Amsterdam under the number 50969390 and VAT n° NL 822972360, hereinafter referred to as “**APX**”;

and

(2) **APX Commodities Ltd.**, a company organised and existing under the laws of England and Wales, having its registered office at 18 King William Street, London, England, EC 4N 7BP United Kingdom, and registered with the Companies House in the United Kingdom under the number 03751681 and VAT n° GB 728415527, hereinafter referred to as “**APX UK**”;

and

(3) **BELPEX NV**, a company organised and existing under the laws of Belgium, having its registered office at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium, and registered with Crossroads Bank for Enterprises under the number 874 978 602 (RPR Brussels) and VAT n° BE 0874 978 602, hereinafter referred to as “**Belpex**”;

and

(4) **EPEX Spot SE**, a European Company (Societas Europaea) organised and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereinafter referred to as “**EPEX Spot**”;

and

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(5) **Nord Pool Spot AS**, a company organised and existing under the laws of Norway, having its registered office at Vollsveien 17 B, 1366 Lysaker, Norway, and registered with Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° 984 058 098 MVA, hereinafter referred to as "**NPS**";

and

(6) **OMI, Polo Español, S.A.**, a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under section 8, Hoja: M-506799 and VAT n° ESA86025558, hereinafter referred to as "**OMIE**";

and

(7) **Gestore dei Mercati Energetici S.P.A.**, a company organised and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilsudski 122/124, Rome, Italy, and registered in the Companies' Register of Rome under the number RM 953866, under Italian tax code and VAT n° 06208031002, hereinafter referred to as "**GME**";

each of the parties (1) – (7) hereinafter being also individually referred to as the "**PX**" and collectively as the "**PXs**",

and on the other hand:

Deutsche Börse AG, an Aktiengesellschaft (AG) organised and existing under the laws of Germany, having its registered office at Mergenthalerallee 61, 65760 Eschborn, Germany, and registered in the Commercial Register Handelsregister HRB under Nr. 32232 and VAT DE 114151950, hereinafter referred to as "**DBAG**".

Each PX and DBAG hereinafter individually being also referred to as "**Party**", and the PXs and DBAG hereinafter collectively being also referred to as "**Parties**".

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**Whereas**

A) [REDACTED]

B) [REDACTED]

C) [REDACTED]

D) [REDACTED]

E) [REDACTED]

F) [REDACTED]

**NOW THEREFORE and in consideration of the foregoing premises and the mutual covenants set forth herein, the Parties agree as follows:**

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**Section 1. Definitions – Interpretation – Language**

**1.1. Definitions**

The capitalised terms used in the Agreement shall have the meaning attributed to them in **Exhibit 1** (*PPI160 – Key Terms and Glossary*). Terms, acronyms, and phrases utilized in the ICT and in telecommunication services industries or other pertinent business context which are not otherwise defined herein have their generally understood meaning in such industry or business context.

**1.2. Interpretation**

In the interpretation of the Agreement unless the context otherwise requires:

- (a) the term “PXs” shall include the PXs and all New PXs;
- (b) the headings are for convenience only and shall not affect the interpretation of the Agreement;
- (c) the Agreement includes the Exhibits and the Attachments which shall form an integral part of the Agreement;
- (d) references in the Agreement to Sections, the Exhibits and Attachments are to Sections of, or the Exhibits and Attachments to, the Agreement;
- (e) the singular shall include the plural and *vice versa*, unless the contexts implies otherwise. References to any gender shall include references to the other genders and references to persons shall include bodies corporate, unincorporated associations, business divisions and partnerships;
- (f) references to “including” or “includes” or “in particular” shall be deemed to mean “including, without limitation”;
- (g) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated from time to time;
- (h) any reference to a month shall be deemed to mean a calendar month;
- (i) any reference to a day shall be deemed to mean a calendar day;
- (j) any reference to a year shall be deemed to mean a calendar year; and

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- (k) any reference to times shall be deemed to mean the CET respective CEST.

### 1.3. Language

**1.3.1.** The language of the Agreement is English. Each Party bears the cost of any translation required for that Party if applicable law requires that it is translated in another language. Such translation shall be prepared by a publicly appointed and sworn translator and shall comply with any other requirements foreseen by applicable law. To the extent legally permitted, the English language version of the Agreement shall prevail if there is any inconsistency between the English version and a translation of the Agreement.

**1.3.2.** In the Agreement concepts of Belgian law are expressed in the English language. If any term or expression is followed by a Belgian translation of such term or expression, such Belgian translation shall prevail in the interpretation and construction of such term or expression. The use of the English language is without prejudice to the fact that legal concepts in the Agreement are to be understood as civil law concepts of Belgian law (and not as common law concepts).

## Section 2. Subject Matter of the Agreement

The XBID-MSA sets forth the main terms and conditions under which the PXs assign the provision of the Services to DBAG as described in more detail in the XBID-DSAs and under which DBAG accepts to provide such Services to the PXs.

## Section 3. Contractual Documents – Order of precedence

### 3.1. Contractual Documents

The contractual relationship between the PXs and DBAG in respect of the provision of the Services is governed by the Agreement, composed of:

- (a) the **XBID-MSA** including Exhibits (that are not XBID-DSA(s)); and
- (b) one or several **XBID-DSA(s)** including Attachments.

### 3.2. Exhibits

The following Exhibits to this XBID-MSA are hereby incorporated into this XBID-MSA by reference and shall form an integral part of this XBID-MSA:

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<b>Reference</b>	<b>Document Title</b>
<b>Exhibit 1</b>	<i>PPI160 – Key Terms &amp; Glossary</i>
<b>Exhibit 2</b>	<i>XBID-DSA Development</i>
<b>Exhibit 3</b>	<i>XBID-DSA License</i>
<b>Exhibit 4</b>	<i>XBID-DSA Maintenance</i>
<b>Exhibit 5</b>	<i>XBID-DSA Hosting</i>
<b>Exhibit 6</b>	<i>PPI170 – Equal Treatment Charter</i>
<b>Exhibit 7</b>	<i>Audit Companies</i>
<b>Exhibit 8</b>	<i>PPI150 – Risk Management/PPI120A –Risk Register</i>
<b>Exhibit 9</b>	<i>Remuneration &amp; Price List</i>
<b>Exhibit 10</b>	<i>PER120 – Change Management</i>
<b>Exhibit 11</b>	<i>PPI140 – Communication Plan</i>
<b>Exhibit 12</b>	<i>Accession Form</i>
<b>Exhibit 13</b>	<i>STT110 – Issue Management Process</i>
<b>Exhibit 14</b>	<i>Personal Data Processing Terms</i>
<b>Exhibit 15</b>	<i>Contact Details</i>
<b>Exhibit 16</b>	<i>DBAG Key Personnel</i>
<b>Exhibit 17</b>	<i>PER 110 Document Management Procedures</i>
<b>Exhibit 18</b>	<i>Standard Audit NDA</i>
<b>Exhibit 19</b>	<i>Mandatory law PXs Specific Conditions</i>
<b>Exhibit 20</b>	<i>Boundaries of Service</i>
<b>Exhibit 21</b>	<i>Subcontractors</i>

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<b>Exhibit 22</b>	<i>Business outcome maintenance &amp; hosting</i>
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**3.3. Order of Precedence**

If and to the extent that there is any inconsistency or conflict between any of the provisions in this XBID-MSA, the Exhibits to the XBID-MSA and/or the Attachments to any Exhibit to this XBID-MSA, the order of priority for the purposes of construction, is in the following descending order:

- (a) the provisions in the XBID-DSAs, unless the XBID-DSA specifically states that the XBID-MSA overrules the pertaining XBID-DSA, in which case the XBID-MSA will take precedence over the XBID-DSA to the extent specified in the XBID-DSA;
- (b) the provisions in this XBID-MSA (excluding the Exhibits and Attachments);
- (c) the Exhibits other than the XBID-DSAs, unless such Exhibit specifically states that an Attachment overrules the pertaining Exhibit, in which case the Attachment will take precedence over the Exhibit to the extent specified in the Exhibit;
- (d) the Attachments to the XBID-DSAs, unless an Attachment specifically states that it overrules the pertaining XBID-DSAs, in which case the Attachment will take precedence over the XBID-DSA to the extent specified in the Attachment;
- (e) any other document explicitly incorporated by reference into the Agreement.

**Section 4. PXs' Relationship**

**4.1. No joint and several rights and obligations**

**4.1.1.** Rights granted to the PXs by the Agreement are granted to each PX individually. Any right granted to a PX shall be subject to and exercised in accordance with the terms of the Agreement and in particular the specific procedures provided by each XBID-DSA in this respect, if any.

**4.1.2.** Each obligation incumbent upon the PXs provided by the Agreement binds each PX individually. Thus, each PX is liable for its own commitment only and the PXs

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shall, in no event, bear any joint and several liability (“*geen hoofdelijkheid*”/ “*pas de solidarité*”).

- 4.1.3. The provisions in Section 4.1 are without prejudice to the provisions in Section 4.2 on Group Members.

### 4.2. Group Members

- 4.2.1. DBAG shall apply the following rules to PXs for which two or more PXs have indicated in a joint written declaration that they should be considered as one PX for the application of the Agreement (hereafter collectively “**Group Members**” or individually “**Group Member**”) because 100% of the issued and outstanding share capital of these PXs is directly or indirectly held by the same (holding) company.

In the event that and as long as these PXs are Group Members, they shall, for the purpose of the XBID-MSA, be considered as one PX in respect of the following:

- (a) all rights granted to the Group Members under the XBID-MSA are considered granted to each Group Member individually;
- (b) the consequences of the exercise of any right or the consequences of any legal act by a Group Member shall apply to or bind all of the Group Members;
- (c) Group Members shall jointly have one share in the costs;
- (d) in the context of the exercise of its rights under the XBID-MSA by DBAG towards two or more Group Members, DBAG shall for such exercise only have one legal claim or action against the Group Members jointly;
- (e) the consequences of the exercise of any right or the consequences of any legal act by DBAG towards a Group Member, such as (but not limited to) the rights related to performance and to the exercise of remedies, the termination rights or the effectiveness of the notices shall produce its effects towards all of the Group Members;
- (f) in deviation of Section 4.1.2, Group Members shall be jointly and severally liable for commitments undertaken under this XBID-MSA.

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PXs hereby jointly declare that APX, APX UK and Belpex are to be considered Group Members as of the Effective Date.

- 4.2.2.** The Group Members shall appoint a Group Member amongst themselves which shall act as the single point of contact for communication or notices to be given under the Agreement between the Group Members and DBAG.
- 4.2.3.** The foregoing rules for Group Members shall no longer apply to PXs for which DBAG received a joint declaration from the PXs indicating that such PXs should no longer be considered Group Member(s). As of the date of receipt of such notification these PXs will no longer be considered as Group Members.
- 4.3.** Specific PXs conditions
- 4.3.1.** DBAG acknowledges that due to mandatory applicable national laws, specific terms and conditions as set forth or referred to in **Exhibit 19** (*Mandatory law PXs Specific Conditions*) need to be complied with for the provision of the Services to the PX mentioned in **Exhibit 19** (*Mandatory law PXs Specific Conditions*), and DBAG commits to comply with such specific terms or conditions. Since the specific terms and conditions are mandatory, the PXs agree that such commitment by DBAG is in compliance with DBAG's obligations under equal treatment as set forth in Section 9.9 and **Exhibit 6** (*PPI170 - Equal Treatment Charter*).
- 4.3.2.** The foregoing is not to be understood as a right for New PXs to have specific terms and conditions included in the Agreement and any such inclusion is subject to mutual agreement by all Parties.

### Section 5. Nature of obligations

All commitments of a Party under the Agreement are to be considered as obligations of means ("*inspanningsverbinten*is" / "*obligations de moyens*") unless indicated explicitly that the obligation is an obligation of result ("*resultaatsverbinten*is" / "*obligation de résultat*") or unless the obligation is by its nature to be considered as an obligation of result.

### Section 6. Remedies

The rights and remedies under this Agreement are cumulative with and not exclusive of any rights and remedies provided by law it being understood however that:

- (a) the statutory termination rights other than the rights regarding early termination for cause set forth in Section 8.2 are excluded;

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- (b) the remedy to request performance in kind ('uitvoering in natura' / 'exécution en nature') is to be understood as the right to request performance in accordance with the Agreement;
- (c) all statutory rights to demand price reductions other than the rights regarding Service Credits as set forth in Section 9.4.4 shall be excluded.

**Section 7. Adherence by other PXs**

**7.1.** The Agreement is open to accession by other power exchanges operating a market within the Anticipated Scope of the EU XBID PX Cooperation and that adhere to the EU XBID PX Cooperation (hereinafter "**Beneficiaries**") under the same conditions as those granted to the PXs under the Agreement. The accession shall be effected by the Beneficiary signing the accession form as provided in **Exhibit 12 (Accession Form)** and all Parties countersigning it. Upon signature of such accession form as provided in the preceding sentence, the Agreement shall become effective vis-à-vis the Beneficiary, and the Beneficiary shall be treated as a New PX under the Agreement, with the same rights and obligations of the existing PXs.

**7.2.** DBAG accepts the fundamental principle of open accession to the Agreement as stipulated in Section 7.1. As an exception to this principle, upon written request of DBAG containing DBAG's motivation, the Parties shall enter into good faith discussions about the accession of a power exchange which itself is or which has its registered office in a country subjected to an international, supranational, US or German trade ban, embargo, political or economic sanction and whose accession would expose DBAG to a real risk to be subjected to sanctions or in which country the compliance with the rights and obligations under this XBID-MSA or any XBID-DSA is regarded as illegal (collectively hereinafter "**Impediment**"). The accession right is suspended for the term of such discussions. The discussions shall be targeted at finding a solution for an accession of such power exchange, which avoids the risk of sanctions, including without limitations civil, criminal or administrative sanctions, on the part of a Party. The Parties shall decide in good faith that a power exchange may not accede to the Agreement for the duration of an Impediment, if such accession would impose a real risk for a Party to be subjected to sanctions and the Parties are unable to establish reasonable joint counter measures to avoid such risk. If no decision can be reached within a period of six (6) months, a Party may refer the discussion to dispute settlement under Section 17.

**7.3.** In the event a PX becomes subject to an Impediment during the course of the Agreement, the Parties shall enter into good faith discussions how to deal with

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this situation. The discussions shall be targeted at finding a solution for the participation of such PX to the Agreement which avoids the risk of sanctions, including without limitations civil, criminal or administrative sanctions, on the part of a Party. If a solution cannot be found within four (4) weeks from the Impediment arising, a Party may refer the discussion to dispute settlement under Section 17. During such dispute settlement such PX(s) shall be suspended from the Services. If the arbitration award confirms the existence of an Impediment, DBAG is entitled to terminate the Agreement towards this/these PX(s).

7.4. The Parties agree that the exercise of the above mentioned right to terminate is in line with the obligation to pursue equal treatment according to Section 9.9.

**Section 8. Term – Early Termination for cause – Effect of termination**

8.1. Term

8.1.1. This XBID-MSA enters into force upon signing by all Parties with retroactive effect as of 1 March 2015 (hereinafter the "**Effective Date**").

8.1.2. The Agreement terminates automatically between all Parties when all XBID-DSAs are terminated or have expired between all Parties in accordance with the terms of the XBID-DSAs.

8.1.3. The Agreement terminates automatically between DBAG and a PX when all XBID-DSAs are terminated or have expired in accordance with the terms of the XBID-DSAs between DBAG and that PX.

8.2. Early Termination for cause

8.2.1. [Redacted]

8.2.2. [Redacted]

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(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

8.2.3. [Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

(d) [Redacted]

(i) [Redacted]

(ii) [Redacted]

(iii) [Redacted]

[Redacted]

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(e) [Redacted]  
[Redacted]

(f) [Redacted]

(g) [Redacted]  
[Redacted]  
[Redacted]

(h) [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

8.2.4. [Redacted]  
[Redacted]  
[Redacted]

8.2.5. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
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8.2.6. [Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

8.2.7. [Redacted]

(a) [Redacted]  
[Redacted]

(b) [Redacted]  
[Redacted]

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(c) [Redacted]

8.2.8. [Redacted]

(a) [Redacted]

(b) [Redacted]

8.3. Effect of Termination

8.3.1. [Redacted]

8.3.2. [Redacted]

8.3.3. [Redacted]

[Redacted]

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[Redacted text block]

**8.3.4.** [Redacted text]

(a) [Redacted text]

(b) [Redacted text]

**8.3.5.** [Redacted text]

(a) [Redacted text]

(b) [Redacted text]

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(c) [Redacted]

[Redacted]

(i) [Redacted]

(ii) [Redacted]

8.3.6. [Redacted]

(a) [Redacted]

(b) [Redacted]

(i) [Redacted]

(ii) [Redacted]

(iii) [Redacted]

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[Redacted]

Termination / nullity is invoked:	DBAG restitutes:
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[Redacted]	[Redacted]
[Redacted]	[Redacted]
[Redacted]	[Redacted]
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[Redacted]	[Redacted]
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[Redacted]	[Redacted]
[Redacted]	[Redacted]

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[Redacted]

8.3.7.

[Redacted]

8.3.8.

[Redacted]

8.3.9.

[Redacted]

**Section 9. Services**

9.1. Specification and Scope of Services

9.1.1. DBAG shall provide the Services in accordance with the Agreement.

9.1.2. Any changes to a Service description set forth in a XBID-DSA shall be subject to **Exhibit 10** (*PER120 Change Management*). Amendments to the Agreement (except changes to the Service descriptions) are subject to Section 18.1.

9.2. Quality of Services

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**9.2.1.** DBAG shall provide any of the Services in the scope and in the quality as set forth in the XBID-MSA and the respective XBID-DSA governing such Service.

**9.3.** Performance of Services

**9.3.1.** DBAG shall be free in the organisation of its performance of the Services, in particular in instructions towards its employees and the choice of the employees used in the context of the provision of the Services without prejudice to Section 9.6 unless

- (a) explicitly set forth otherwise in the Agreement, in particular the XBID-DSAs;
- (b) this implies a unilateral adaptation by DBAG of the Agreement; or
- (c) such organisation compromises DBAG's compliance with the Agreement.

**9.3.2.** In particular DBAG undertakes and warrants:

- (a) that the Services and Deliverables will meet all the terms and conditions set forth in the Agreement and DBAG acknowledges having knowledge and understanding of the Services and Deliverables and any other specific specifications or requirements agreed between the Parties in the course of the Agreement;
- (b) to provide the Services and Deliverables within the timetables specified in the Agreement;
- (c) to use for the performance of its obligations under the Agreement suitable materials or equipment, sufficient number of trained and competent staff with appropriate experience and to work in accordance with the industry standards applicable in the ICT sector;
- (d) to perform its obligations under the Agreement with a view of assuring the good implementation of the Agreement; and
- (e) that at the time of entering into the Agreement and at the time when its obligations under the Agreement are performed, it has all necessary licenses and rights to enter into the Agreement and to perform hereunder and that it has the knowledge, experience, competencies as well as the financial, human and technical resources necessary for the proper performance in accordance with the Agreement of the activities under the

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Agreement and with the mandatory Belgian and German legal obligations applicable to the Services provided by DBAG under the Agreement.

**9.3.3.** Unless explicitly set forth otherwise in the Agreement, in particular the XBID-DSAs, DBAG shall not be bound to any fixed daily hours in performing the Services. The location of its activity is only subject to a specific arrangement with the PXs to the extent the Services need to be performed at a specific location; otherwise DBAG is free to choose the location in its sole discretion as long as this location is in the EU or EFTA. In case DBAG performs the Services from outside Germany or Belgium, the warranty to comply with mandatory legal obligations as provided in Section 9.3.2 shall extend to the mandatory legal obligations of such location of performance.

**9.4.** Service Levels – Service Credits – Lump sum for delays

**9.4.1.** Only the Service Level(s) as explicitly set forth in the XBID-DSAs shall apply to the provision of the Services.

**9.4.2.** DBAG shall create monthly reports on all agreed Service Levels and provide the PXs with these reports in accordance with **Exhibit 11** (*PPI140 - the Communication Plan*).

**9.4.3.** The Service Credits and immediately payable lump sum as set forth in the XBID-DSAs shall be applied in the event of non-performance by DBAG, except in case DBAG proves that the non-performance is:

- (a) not due to its misconduct or negligence and not due to the misconduct or negligence of its subcontractors; or
- (b) due to an event of Force Majeure.

**9.4.4.** The relevant Service Credits due by DBAG in the event of non-performance, as set forth in the XBID-DSAs, express the price reduction the PXs are entitled to receive. Service Credits apply without prejudice to compensation of damages incurred by such non-performance in accordance with Section 11. The price reduction granted due to the Service Credits shall be deducted from any damage claim the PXs may have.

**9.4.5.** The immediately payable lump sum due by DBAG as set forth in Section 5.4 of the XBID-DSA Development shall be conclusive as regards any damages the PXs may have incurred out of or in connection with DBAG's delay in performance, and damage which the PXs might have incurred in excess of the imme-

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diately payable lump sum as set forth in Section 5.4 of the XBID-DSA Development shall not be reimbursed by DBAG, unless in cases of willful breach by DBAG. Lump sum payments by DBAG shall count against the liability limits in Section 11. For the avoidance of doubt, payment of an immediately payable lump sum due by DBAG as set forth in the XBID-DSA Development does not release DBAG of its obligations to perform under such XBID-DSA Development.

**9.5.** Close cooperation

**9.5.1.** The Parties agree that the objective of the Agreement requires close cooperation and regular consultation on the provision of the Services, and Parties will make their best efforts to cooperate actively and closely in good faith. DBAG recognises that the TSOs play an important role in the context of this Agreement and that certain tasks under this Agreement will require some cooperation between the PXs and the TSOs. Although PXs and TSOs understand that no direct rights of the TSOs vis-à-vis DBAG shall arise from the preceding sentence, TSOs may be in direct contact with DBAG on their initiative on agreed topics, and under the overall oversight of PXs.

**9.5.2.** Each Party shall provide the other Parties on reasonable request and in due time the information and the decisions necessary to perform their respective obligations under the Agreement. Each Party shall inform the other Parties of any changes in the legal or regulatory framework of its jurisdiction which affect or may affect the Services, it being understood that any change to the Services as a result thereof is subject to **Exhibit 10 (PER120 Change Management)**.

**9.5.3.** In case of an error, problem or disruption of the Services, Parties will cooperate in good faith to identify the origin of such error, problem or disruption.

**9.5.4.** Parties undertake to use their best efforts to cooperate to find a solution to mitigate the risk of damage caused by Third Party Users .

**9.6.** Replacement of employees

**9.6.1.** Parties intend and will maintain reasonable efforts that the employees initially assigned to the performance under the Agreement remain in principle so assigned for the term of the relevant part of the Agreement, it however being understood that the respective Party may deem it under certain circumstances necessary to exchange such employees, e.g. due to promotions, termination of employment, sickness, vacation, operational requirements, or other similar circumstances.

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- 9.6.2.** If DBAG replaces Key Personnel in accordance with Section 9.6.1, such Key Personnel shall be replaced by an employee of similar qualification and the selected candidate shall be subject to approval by the PXs. The PXs shall not unreasonably withhold their consent.
- 9.6.3.** The PXs reserve the right to request a change of DBAG's project manager (the "**Project Manager**") or of Key Personnel, where they deem it to be in their respective best interests, with no impact to previously negotiated deadlines and costs. The PXs shall inform DBAG of any intention to invoke this right with the motivation for such request and Parties shall enter into good faith discussions to find a solution agreeable for the Parties. If such discussions do not lead to an agreed solution within ten (10) Business Days, PXs are entitled to request a change of the Project Manager or of the concerned Key Personnel. In that case DBAG shall replace the Project Manager or the relevant Key Personnel in accordance with Section 9.6.2 which shall apply *mutatis mutandis*.
- 9.7.** Sub-contractors
- 9.7.1.** DBAG may not sub-contract or outsource Services that are to be performed by Key Personnel.
- 9.7.2.** DBAG may sub-contract or outsource other Services it being understood that:
- (a) the PXs shall be notified in writing (including by e-mail) of the sub-contracting or outsourcing of Core Services to be provided to the PXs under the Agreement prior to the start of such sub-contracting or outsourcing; and
  - (b) the PXs have the right to object in writing to such sub-contracting or outsourcing within ten (10) Business Days of receipt of DBAG's notification regarding sub-contractors. The sub-contractors mentioned in **Exhibit 21 (Subcontractors)** have at date of signing of this Agreement been accepted by the PXs; in case of sub-contracting or outsourcing to such sub-contractors, PXs are not entitled to object.
- 9.7.3.** DBAG warrants that the performance by the sub-contracted or outsourced third party or the external personnel as referred to in Section 9.7.4 shall always be in accordance with the terms and conditions of the Agreement. DBAG shall at all times remain fully responsible and liable in accordance with Section 11 for the performance of the sub-contracted or outsourced part of the Services and for the part of the Services performed by external personnel in accordance with the Agreement.

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**9.7.4.** The Parties acknowledge that the use by DBAG of external personnel, such as e.g. freelancers or temporary workers, for the delegation of specific functions in the context of the performance the Service shall not be considered as sub-contracting to which Section 9.7.2 applies if:

- (a) such external personnel is a natural person, contracted by DBAG directly or delegated by a consultancy company or a temporary employment company;
- (b) such external personnel works regularly on the premises of DBAG for the performance of the specific functions assigned to it in the context of the performance of the Service; and
- (c) such external personnel works under DBAG's supervision and guidance (no direct instructions).

However in case such external personnel performs tasks attributed to Key Personnel pursuant to Section 9.6, Section 9.6 applies. For the avoidance of doubt Section 9.7.3, remains applicable.

Use of external personnel is at DBAG's own risk.

Without prejudice to the foregoing, Section 9.7.2 remains applicable to the extent that for providing a Core Service, the majority of personnel used by DBAG for such Core Service is external personnel.

**9.8.** Open Source Software

Provided quality of Service and the rights of the PXs under the XBID-DSA License (amongst others (to the extent granted) exclusivity) are not affected, DBAG may – in its reasonable discretion, taking into account the interests of the PXs – use Open Source Software in developing the Deliverables. In such case, the relevant open source licensing terms apply to the used Open Source Software. DBAG shall prior to any use of Open Source Software inform the PXs in writing (including by e-mail) about the Open Source Software used in the Deliverables, and the applicable licensing terms. In any event DBAG shall not use Open Source Software if this would have as a consequence that a Deliverable would as a whole also become Open Source Software.

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**9.9. Equal Treatment**

**9.9.1.** DBAG acknowledges and understands the importance of ensuring an equal treatment of the PXs and of maintaining a level playing field between them. In this context, for any Service provided by DBAG under this XBID-MSA:

- (a) DBAG is subject to a duty of loyalty to each PX; the following behaviours are examples of disloyal behaviour:
  - (i) Service provision towards one PX would be prioritized over the Service provision towards the other PXs, unless this is compliant with the relevant procedure or otherwise instructed by the PXs;
  - (ii) DBAG would provide more services to one PX compared to the others for the same remuneration;
- (b) DBAG shall treat all PXs in a fair, transparent and non-discriminatory manner;
- (c) DBAG shall provide the Services in the interest of all PXs and in the interest of the EU XBID PX Cooperation and shall refrain from any preferential treatment of one or more contracting PXs; the interest of the EU XBID PX Cooperation is to be understood as the collective interest of all PXs in the context of this cooperation.

Services provided in compliance with the Services description or instructions given to DBAG jointly by all the PXs or by one or more PXs or a representative, in name and on behalf of all PXs are to be considered consistent with the interest of all PXs of the EU XBID PX Cooperation;

- (d) DBAG shall whenever it is aware or should have been aware, during the provision of the Services, of a conflict between:
  - (i) the interest of DBAG and those of one or more other Parties or the EU XBID PX Cooperation; or
  - (ii) between the interests of one or more PXs and the EU XBID PX Cooperation;

promptly inform all PXs thereof.

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The interest of the EU XBID PX Cooperation is to be understood as the collective interest of all PXs in the context of this cooperation.

Services provided in compliance with the Services description or instructions given to DBAG jointly by all the PXs or by one or more PXs or a representative, in name and on behalf of all PXs are to be considered consistent with the interests of all PXs;

- (e) in respect of conflict of interests as mentioned under Section 9.9.1. (d) (i) DBAG shall put into place the reasonable measures it deems appropriate to prevent such conflicts of interests as well as the measures agreed between all PXs and DBAG to solve such conflict of interests;
- (f) in respect of conflict of interests as mentioned under Section 9.9.1. (d), (ii) it is up to the PXs to decide upon the manner in which these conflicts of interests are solved and DBAG shall implement the measures decided in that respect by the PXs once technical feasibility implementation is discussed with DBAG and provided a costs coverage mechanism for costs entailed by such measures (if any) is agreed between the PXs and DBAG; and
- (g) in any event DBAG shall comply with the measures, provisions and procedures as described in **Exhibit 6 (PPI170 – Equal Treatment Charter)**.

**9.9.2.** If DBAG complies with the specific obligations set forth in **Exhibit 6 (PPI170 – Equal Treatment Charter)** and the Service Levels in respect of these points above, it is presumed that it has complied with the principles under Section 9.9.1 in respect of those specific obligations of the **Exhibit 6 (PPI170 – Equal Treatment Charter)** or of the Service Levels, unless the PXs demonstrate a relevant difference in treatment between the PXs by DBAG and in case of repetitive actions that there is a consistent pattern of such difference in treatment.

**9.9.3.** The PXs shall have the right to review the **Exhibit 6 (PPI170 – Equal Treatment Charter)** and the contractual implementation of the transparent level playing field. Any changes shall be mutually agreed in accordance with the change management procedure in **Exhibit 10 (PER120 – Change Management)**.

**9.10.** Audit

**9.10.1.** To verify DBAG's compliance with the provisions of Section 9.9, the PXs shall be entitled to carry out at any time – up to two (2) times during the develop-

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ment and implementation phase and once (1) a year during the operational phase – an external collective audit and DBAG shall participate in such audit.

- 9.10.2.** The cost for the audit company is to be borne by the PXs provided that the support required from DBAG to this audit is reasonable and proportionate. Should the audit reveal any material incompliance with this Section 9, the costs of the audit will be borne by DBAG. For the sake of clarity, the support required to the auditors from DBAG will be provided at no cost.
- 9.10.3.** The audit should be conducted by an international audit company of good reputation and the audit company and the persons designated by such audit company to conduct such audit should be bound by standard confidentiality obligations substantially in line with the template set forth in **Exhibit 18** (*Standard Audit NDA*).
- 9.10.4.** The audit shall be performed by an audit company from the list in **Exhibit 7** (*Audit Companies*). The list shall foresee at least ten (10) audit companies.
- 9.10.5.** DBAG may reject this audit company only in the event of a conflict of interest related to events that occur after completion of **Exhibit 7** (*Audit Companies*) and that reasonably justifies that this audit company cannot perform the audit. In case of an acceptance the relevant audit company may carry out an audit provided it is bound by standard confidentiality obligations substantially in line with the template set forth in **Exhibit 18** (*Standard Audit NDA*). If DBAG rejects the audit company, the PXs shall select another audit company from the list in **Exhibit 7** (*Audit Companies*). DBAG shall not be entitled to reject more than twice (2) per audit.
- 9.10.6.** The PXs shall receive a report from the audit company indicating what has been audited and the conclusion of the audit company in respect of compliance or not with this Section 9. In case the audit reveals any incompliance with this Section 9, PXs shall be entitled to receive all information supporting the conclusions of the audit company.
- 9.10.7.** To verify that the remuneration invoiced by DBAG for the investments mentioned under Section 8.1, paragraph 3 of **Exhibit 9** (*Remuneration & Price List*) complies with Section 8.1 of **Exhibit 9** (*Remuneration & Price List*), PXs are entitled to carry out an audit. Sections 9.10.2 to 9.10.6 shall apply accordingly.

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**9.11. Risk Management**

DBAG shall manage the risks set out in **Exhibit 8** (*PPI150 – Risk Management/ PPI120A – Risk Register*) in accordance with, and as set out in, **Exhibit 8** (*PPI150 – Risk Management/ PPI120A – Risk Register*).

**Section 10. Remuneration – Invoicing**

**10.1. Remuneration**

**10.1.1.** The PXs shall, for the performance of the Services by DBAG in accordance with the Agreement, pay to DBAG the remuneration for the Services set forth in **Exhibit 9** (*Remuneration & Price List*), in accordance with the payment terms of the relevant XBID-DSA.

**10.1.2.** Unless set forth otherwise in the Agreement, in particular the XBID-DSAs, the remuneration due to DBAG shall be equally shared (the “**Sharing Key**”), for the relevant invoice, between:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

Thus, DBAG will invoice each PX in accordance with the principles set forth in the preceding sentence. For the avoidance of doubt, this shall not be construed a deviation from Section 4.2, thus when calculating the number of PXs that are Party to the Agreement, Group Members shall be considered as only one Party.

Example: At the time the Agreement enters into effect, seven (7) PXs are Party to the Agreement, three (3) of which are APX, APX UK and Belpex, which are Group Members and are to be considered as one Party. Thus, DBAG will invoice each PX (except for APX, APX UK and Belpex where the invoice will be sent to one of them) with 1/5 (one fifth) of the remuneration plus applicable value added tax.

The PXs are entitled to adapt the Sharing Key subject to prior written consent of DBAG, such consent not to be unreasonably withheld or delayed. For adaptation of the Sharing Key because of the following reasons, a consent of DBAG shall not be required:

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- (a) a PX becomes a Group Member with another PX in the sense of Section 4.2;
- (b) a PX ceases being a Group Member with another PX in the sense of Section 4.2;
- (c) the change of the Sharing Key is required by mandatory law or mandatory regulatory decision, e.g. if so set forth in the CACM ;
- (d) accession of a PX, in accordance with Section 7; or
- (e) termination of the Agreement towards/by a PX.

**10.1.3.** If the participation of a PX to the Agreement is terminated, the remuneration to be paid for Services provided after such termination becoming effective, will be shared between the remaining PXs.

### 10.2. Currency

All invoices shall be issued in EUR.

### 10.3. Due Date – Payment

**10.3.1.** Each valid invoice shall be paid within thirty (30) days upon receipt of the invoice. Payments due on a day other than a Business Day shall be made on the first following Business Day. All payments shall be made by wire transfer to the bank account indicated by DBAG on the invoice.

### 10.4. Default Interest

In case of delay or default in payment of the remuneration due pursuant to Section 10.1, a default interest shall be due by the Party in breach, at the yearly rate applicable in accordance with the Law of 2 August 2002 on late payment in commercial transactions (*“Wet van 2 augustus 2002 betreffende de bestrijding van de betalingsachterstand bij handelsstransacties” / “Loi de 2 aout 2002 concernant la lutte contre le retard de paiement dans les transactions commerciales”*).

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10.5. Taxes

- 10.5.1. Any prices in the Agreement are exclusive of the applicable VAT.
- 10.5.2. The PXs are responsible for paying all taxes, customs and similar charges incumbent on them related to the supply of the Deliverables, e.g. value-added taxes (VAT), sales taxes, transaction taxes or the like.
- 10.5.3. The PXs shall make all payments without any withholding, deduction, counter-claim or set-off for or on account of taxes, unless the relevant PX is required by law to make such a payment subject to a deduction or withholding. If a PX is required by law to make such a deduction or withholding from a payment, the PXs shall pay DBAG such additional amount as is necessary to ensure that, after the making of such deduction or withholding, DBAG receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have received had no such deduction or withholding been made or required to be made. Taxes in the sense of this Section 10.5.3 means any tax, levy, impost, duty or other charge, fine, contribution, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

**Section 11. Liability – Force Majeure – Insurance – Hold harmless**

11.1. Liability

- 11.1.1. Nothing in this Section 11 shall be construed in a way to exclude or limit mandatory liability under Belgian Law such as e.g. for fraud (“bedrog”/“*fraude*”) or willfull misconduct (“*opzettelijke fout*”/“*faute intentionnelle*”).
- 11.1.2. Except where explicitly otherwise provided, each Party is only liable (“*aansprakelijk*” / “*responsable*”) in the event of a breach or a non-performance (including delay of performance) of an obligation under or arising out of an XBID-DSA (including breaches of clauses of the XBID-MSA applicable to such XBID-DSA), committed by such Party or its subcontractors or any person acting for or on behalf of such party (“**Breach**”).

11.2. Limitations on liability for DBAG

- 11.2.1. [REDACTED]

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[Redacted]

(a) [Redacted]

(b) [Redacted]

11.2.2.

[Redacted]

(a) [Redacted]

(b) [Redacted]

(c) [Redacted]

11.2.3.

[Redacted]

(a) [Redacted]

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(b) [Redacted]

[Redacted]

[Redacted]

11.2.4. [Redacted]

11.2.5. [Redacted]

11.2.6. [Redacted]

11.2.7. [Redacted]

11.2.8. [Redacted]

11.3. Limitations on liability for PXs

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11.3.1. [Redacted]

[Redacted]

[Redacted]

11.3.2. [Redacted]

[Redacted]

[Redacted]

[Redacted]

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11.3.3. [Redacted]

11.3.4. [Redacted]

11.3.5. [Redacted]

11.4. Third Party Users

[Redacted]

11.5. Force Majeure

11.5.1. Force Majeure means any event or situation reasonably beyond the control of the Party invoking such event and not due to a misconduct of that Party, which was not foreseeable and which cannot be reasonably avoided or overcome and makes it impossible for such Party to fulfil temporarily or permanently, its obligations under the Agreement in accordance with the terms of the Agreement.

Force Majeure shall include (but shall not be limited to) the following events, except if the event could have reasonably been overcome:

- (a) explosions, fire, flood, earthquakes, natural disasters, pandemics or other forces of nature;

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- (b) acts of war (whether or not declared), terrorist acts, riots, unrest, civil disobedience, rebellion, sabotage, strikes (other than those limited to DBAG or respectively to a PX), embargos;
- (c) telecommunication outage, to the extent not attributable to a misconduct of the Party invoking Force Majeure and provided that such outage could not be avoided by such Party by taking fall back measures that may be reasonably expected from a normal reasonable and diligent person engaged in the same line of business under the same circumstances and conditions; or
- (d) acts of authorities or courts, unless caused by an act or omission of the Party invoking Force Majeure.

**11.5.2.** The Party invoking Force Majeure shall:

- (a) provide the other Parties as prompt as possible notification describing the nature of Force Majeure, as well as the elements that prove fulfilment of the conditions for Force Majeure and its probable duration and the impact on the performance of its obligations under the Agreement;
- (b) endeavour expeditiously to adopt measures to mitigate or cure the circumstances giving rise to the event of Force Majeure;
- (c) provide regular notices to the other Parties about the actions and plans under point (b);
- (d) make its best efforts to limit the consequences and duration of the Force Majeure; and
- (e) provide prompt notice to the other Parties of the termination of the event of Force Majeure.

**11.5.3.** The Party affected by Force Majeure shall be suspended from the performance of its obligations under the Agreement for as long as and to the extent that the performance of such obligations is rendered impossible by the event of Force Majeure. Depending of the nature of the Force Majeure, performance shall be resumed after a reasonable start-up time. For as long as the Party affected by Force Majeure is suspended from performing its obligations under the Agreement and until performance is resumed, the other Parties shall also be entitled to withhold the performance of their obligations that correspond to the suspended obligations of the Party claiming Force Majeure.

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**11.5.4.** A Party cannot, under any circumstances, be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of its obligations, when such non-performance or faulty performance is due to a Force Majeure event.

**11.5.5.** Upon notification by registered letter to each Party, each non-affected Party has in the event of Force Majeure the right to terminate the Agreement with immediate effect as a whole or in relation to the affected XBID-DSA, without any court intervention and without any specific termination compensation being due, to the extent Force Majeure has continued for more than thirty (30) days.

**11.6.** Insurance

**11.6.1.** [Redacted]

**11.6.2.** [Redacted]

**Section 12. Communication**

The Parties shall comply with **Exhibit 11** (*PPI140 – Communication Plan*).

**Section 13. Intellectual Property**

**13.1.** Any intellectual property right and any other rights including any and all intellectual and industrial property rights pertaining to any software (including Source Code), specifications, documentation, or any other material or information (all together the **“Materials”**) provided by a Party to any other Party

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shall remain with the first Party (or with the third party with whom such Party cooperates) and shall not transfer to the latter, even if such information is incorporated in a document prepared by another Party and regardless of the fact that such document bears or not the logo of such other Party, the name of such other Party or is otherwise labelled in relation to such other Party. For the avoidance of doubt, the foregoing is without prejudice to the application of Sections 13.2. and 13.3.

- 13.2.** Any intellectual property right and any other rights (including any and all intellectual and industrial property rights) pertaining to documents jointly created by the Parties in the performance of the Agreement and explicitly labelled as such (hereinafter “**Joint Documents**”) shall be the joint property of the Parties. As a result each Party has an equal undivided share in the rights (including Intellectual Property Rights), title and interests pertaining to such Joint Documents. Any use, commercialisation or exploitation of Joint Documents is subject to the explicit written agreement of all Parties.
- 13.3.** Section 13.2 shall not apply to parts of Joint Documents that are marked as intellectual property of DBAG or a PX in accordance with **Exhibit 17 (PER 110 Document Management Procedure)**. For these parts of Joint Documents Section 13.1 applies.
- 13.4.** Any information provided by a Party either pre-existing or created during execution of the Agreement may only be used by another Party for the purpose of and within the context of the Agreement, unless otherwise agreed in writing by the Party providing said information.
- 13.5.** To the extent necessary for the performance of its obligations, the PXs grant DBAG and/or its subcontractors the non-exclusive, non-sub-licensable and non-transferable right to use the Materials of the PXs (hereinafter “**PX Information**”) solely to the extent that such use is necessary for the execution of the Agreement. For the avoidance of doubt, the rights of use as per the preceding sentence shall continue to exist, even if the relevant PX granting such right ceases to be Party to the Agreement (e.g. because it terminates the Agreement or DBAG terminates the Agreement vis-à-vis it). DBAG will thus not be entitled to exploit or commercialise such PX Information for other projects except unless otherwise agreed between the concerned Parties.
- 13.6.** The rights of the PXs to use the Deliverables (including the XBID Solution) are governed by the XBID-DSA License.

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**Section 14. Issue Management**

Issue management shall be governed by the procedures as set out in **Exhibit 13** (*STT110 – Issue Management Process*).

**Section 15. Personal Data Protection**

The processing of Personal Data by DBAG for the PXs shall be governed by the rules and provisions of the Data Processing Terms set forth in **Exhibit 14** (*Personal Data Processing Terms*).

**Section 16. Confidentiality**

**16.1.** Each Receiving Party shall keep confidential all Confidential Information and will procure that its employees and subcontractors also maintain such confidentiality. A Receiving Party shall be entitled to disclose Confidential Information to its corporate decision-making bodies (e.g. board of directors, general assembly, supervisory board), its officers, employees, and legal representatives or the officers, employees and legal representatives of its Affiliates (hereinafter “**Internal Representative**”), its subcontractors, its outsourcers, its agents, its professional advisors, its external consultants, its insurers, its attorneys-at-law and the auditor as referred to in Section 9.10 (hereinafter “**External Representative**”) if:

(a) such Internal Representative or External Representative must have access to this Confidential Information in the context of the performance of the Agreement or to fulfil their legal duties; and

(b) such Internal Representative or External Representative is bound to keep confidentiality and protect such Confidential Information under terms which are equivalent to the terms set forth herein.

**16.2.** The obligations contained in this Section 16 do not apply to any Confidential Information which the Receiving Party can demonstrate that:

(a) at the date of the Agreement, or at any time after the date of the Agreement it is or comes into, the public domain other than through breach of the Agreement by the Receiving Party;

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- (b) it was known by or lawfully in the possession of the Receiving Party prior to the disclosure by the Disclosing Party to the Receiving Party;
- (c) it has been developed by the Receiving Party independently, without reference to any information provided by or otherwise obtained from the Disclosing Party, its associates or subcontractors; or
- (d) it has come lawfully into the possession of the Receiving Party from a third party without this party being in breach of a confidentiality obligation towards the Disclosing Party.

**16.3.** Confidential Information may be disclosed:

- (a) by any of the Parties, if disclosure is required by law or by a court of competent jurisdiction or by any regulatory or other authority having jurisdiction or competence over the Receiving Party, provided that the Disclosing Party is informed at least two (2) days beforehand of the disclosure or, if this is not possible, is informed thereof as soon as reasonably possible after disclosure;
- (b) by any of the Parties, if the Disclosing Party gives its consent to the disclosure;
- (c) by any of the PXs to the PXs' project manager, TSOs, PX Observers and provided they have undertaken appropriate standard confidentiality obligations towards the PXs that are at least as strict as the confidentiality obligations set forth in this Section 16;
- (d) by any of the PXs to the competent NRAs and ACER; and
- (e) by DBAG to the Project Manager.

**16.4.** DBAG shall keep confidential and not disclose any market data - such as the number of transactions, volumes, prices etc. – of a PX to third parties nor to another PX without prior approval of the concerned PX.

DBAG is however entitled to:

- (a) disclose market data to the extent the disclosure is foreseen in a written incident procedure agreed between PXs and DBAG and only to the extent such disclosure is permitted under such procedure; and

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(b) provide to any of the PXs historical aggregated information of the entire XBID Solution level – such as for example total volume and total transactions within XBID etc. – in a manner which does not allow disaggregating the data to deduce individualized information per PX or per customer.

**16.5.** DBAG shall keep confidential and not disclose to any third party nor to a PX, any business information of another PX, such as for example plans, configuration settings or testing data required for opening of new markets or new products in existing market areas when specifically requested in writing by that PX. Each Party's obligations under this Section 16 will survive during 5 (five) years following termination or expiration of the Agreement.

**Section 17. Dispute Settlement – Governing Law – Venue**

**17.1.** Amicable settlement

**17.1.1.** [Redacted]

**17.1.2.** [Redacted]

[Redacted]

**17.1.3.** [Redacted]

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17.1.4.

[Redacted text block]

17.1.5.

[Redacted text block]

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[Redacted]

17.1.6.

[Redacted]

17.2. Arbitration

[Redacted]

17.3. Conservatory measures and injunctive relief

[Redacted]

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**17.4. Governing Law & Venue**

The Agreement and any Dispute, is governed and construed in accordance with the laws of Belgium to the exclusion of the conflict of law provisions thereof. The United Nations Convention on Agreements for the International Sale of Goods shall not apply hereto.

**Section 18. Miscellaneous**

**18.1. Amendment of the Agreement**

Except otherwise explicitly provided in the Agreement, Amendments to the Agreement shall only be valid, if approved unanimously in writing and signed by each Party, represented by a duly empowered representative. The same applies to a waiver of this written form requirement.

**18.2. Election of domicile**

For the purposes hereof, the Parties elect domicile at the addresses set forth herein, or at a different address as may be designated by written notice.

**18.3. Costs**

Except as otherwise provided in the Agreement, each Party shall pay the costs, charges and other expenses incurred by it and its Affiliates in connection with the negotiation, preparation, execution and completion of the Agreement.

**18.4. No Partnership**

Except as expressly otherwise stipulated in the Agreement, no provision of the Agreement creates a partnership between the Parties or makes a Party the agent of the other Party for any purpose. A Party has no authority to bind, to contract in the name of or to create a liability for the other Party in any way or for any purpose except as may be expressly permitted hereunder or authorized in writing by such other Party.

**18.5. Third party rights**

**18.5.1.** Notwithstanding rights of the Beneficiaries under Section 7.1, the Agreement does not create any rights of any person or entity that is not a Party, except as explicitly set forth otherwise in the Agreement.

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**18.5.2.** The Parties may terminate or vary the Agreement (including the Exhibits and Attachments and any documents entered into pursuant to or in connection with it) in accordance with the terms of the Agreement, without the consent of the Beneficiaries as long as they are not a party to this Agreement.

**18.6.** Notices

**18.6.1.** Any notice to be given by a Party under the Agreement shall, unless set forth otherwise:

(a) be in writing and signed by the Party giving it;

(b) be served by delivering it by hand, or sending it by pre-paid recorded delivery, special delivery or registered post, to the address set out in Section 18.6.2 and in each case marked for the attention of the relevant Party set out in this Section 18.6 (or as otherwise notified from time to time in accordance with the provisions of Section 18.6.3);

(c) be deemed to have been served on the other Party:

(i) in the case of delivery by hand, when delivered;

(ii) in the case of pre-paid recorded delivery, special delivery or registered post, at 10am on the second (2<sup>nd</sup>) Business Day following the date of posting,

provided that where delivery by hand occurs after 6pm on a Business Day, or on a day which is not a Business Day, service shall be deemed to occur at 9am on the following Business Day. References to time in this clause are to local time at the address to which the relevant notice is sent; and

(d) be in the English language or, if in any other language, accompanied by a translation into English. If there is a conflict between the English text and the text in any other language, then the English text shall prevail.

**18.6.2.** The addresses and fax numbers of the Parties for the purpose of this clause are set forth in **Exhibit 15** (*Contact Details*).

**18.6.3.** A Party shall notify the other Parties of a change to its contact details mentioned in **Exhibit 15** (*Contact Details*). Such notice shall only be effective on:

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(a) the date specified in the notice as the date on which the change is to take place; or

(b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date following five (5) Business Days after notice of any change has been given.

**18.7. Waiver and remedies**

No failure or delay by a Party in exercising any right or remedy provided by law or under the Agreement shall impair the right or remedy, or operate as a waiver or variation of it, or preclude its exercise at any subsequent time. No single or partial exercise of any right or remedy shall preclude any further exercise of the right or remedy or the exercise of any other right or remedy.

**18.8. Severability**

Each of the provisions of the Agreement is severable. If a provision is held to be or becomes illegal, invalid or unenforceable in any respect under the law of any jurisdiction, then:

(a) to the extent that it is illegal, invalid or unenforceable, it shall be deemed not to be included in the Agreement, it shall not affect or impair the legality, validity or enforceability in that jurisdiction of the other provisions of the Agreement, or any provisions of the Agreement in any other jurisdiction; and

(b) the Parties shall use all reasonable endeavours to replace it with a valid and enforceable substitute provision or provisions, with an effect as close as possible to the intended effect of the illegal, invalid or unenforceable provision.

**18.9. Entire Agreement**

**18.9.1.** The Agreement sets out the entire agreement and understanding between the Parties in connection and with respect to the subject matter hereof as set forth in Section 2. The terms of the RFO and the Offer are replaced by the XBID-MSA and the relevant XBID-DSA as soon as the relevant XBID-DSA enters into force. For the avoidance of doubt, the terms of the RFO and the Offer relating to the Optional Trading Solution are not part of the Agreement and are not replaced by it.

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The ESA shall from the Effective Date no longer apply to the Deliverables forming **Attachment 2A** (*Description of the XBID Solution*) and **Attachment 2F** (*Initial Change Request List*), as such are governed solely by the Agreement. For all other aspects, the ESA remains unchanged.

**18.9.2.** The Parties will enter in good faith into negotiations for an XBID-DSA Maintenance and an XBID-DSA Hosting. The Parties further agree to attach the documents AIP100 and AIP110 to this XBID-MSA as **Exhibit 22** (*Business outcome maintenance & hosting*). The Parties agree that **Exhibit 22** (*Business outcome maintenance & hosting*) reflects a business arrangement, that the legal obligations of the Parties out of **Exhibit 22** (*Business outcome maintenance & hosting*) shall be detailed in the XBID-DSA Hosting (if concluded) and that **Exhibit 22** (*Business outcome maintenance & hosting*) shall be transferred as an attachment to the XBID-DSA Hosting (if concluded). This Section 18.9.2. and **Exhibit 22** (*Business maintenance & outcome hosting*) shall, to the extent it relates to hosting services only, be valid until signature of the XBID-DSA Hosting with DBAG or until PXs signed a hosting agreement with a third party provider or until the XBID Solution goes live. This Section 18.9.2. and **Exhibit 22** (*Business outcome maintenance & hosting*) shall, to the extent it relates to maintenance services, only be valid until signature of the XBID-DSA Maintenance with DBAG or until PXs signed a maintenance agreement with a third party provider or until the XBID Solution goes live.

**18.9.3.** The general terms and conditions of the Parties shall not form part of the Agreement and shall not apply to the Services.

**18.10.** Counterparts and proof of the Agreement

**18.10.1.** The Agreement may be executed in any number of counterparts, and by each Party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of the Agreement by e-mail attachment or telecopy shall be an effective mode of delivery.

**18.10.2.** [Redacted]

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**18.11. No exclusivity**

The Agreement does not grant any exclusivity, except if provided explicitly in the XBID-DSAs.

- Signature Pages Follow -

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**SIGNATORY PAGE – APX**

\_\_\_\_\_  
for and on behalf of

**APX Power B.V.**

Name:

Title:

Date:

\_\_\_\_\_  
for and on behalf of

**APX Power B.V.**

Name:

Title:

Date:

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**SIGNATORY PAGE – APX UK**

\_\_\_\_\_  
for and on behalf of  
**APX Commodities Ltd.**  
Name:  
Title:  
Date:

\_\_\_\_\_  
for and on behalf of  
**APX Commodities Ltd.**  
Name:  
Title:  
Date:

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**SIGNATORY PAGE – BELPEX**

\_\_\_\_\_  
for and on behalf of

**BELPEX NV**

Name:

Title:

Date:

\_\_\_\_\_  
for and on behalf of

**BELPEX NV**

Name:

Title:

Date:

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**SIGNATORY PAGE – EPEX SPOT**

\_\_\_\_\_

for and on behalf of

**EPEX SPOT SE**

Name:

Title:

Date:

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**SIGNATORY PAGE – NPS**

\_\_\_\_\_

for and on behalf of

**Nord Pool Spot AS**

Name:

Title:

Date:

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**SIGNATORY PAGE – OMIE**

\_\_\_\_\_

for and on behalf of

**OMIE Polo Espanol S.A.**

Name:

Title:

Date:

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**SIGNATORY PAGE – GME**

\_\_\_\_\_

for and on behalf of

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

Name:

Title:

Date:

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**SIGNATORY PAGE – DBAG**

\_\_\_\_\_  
for and on behalf of  
**Deutsche Börse AG**

Name:

Title:

Date:

\_\_\_\_\_  
for and on behalf of  
**Deutsche Börse AG**

Name:

Title:

Date:

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