

MPLS Services Framework Agreement

BETWEEN ON THE ONE HAND

(1) **APX Power B.V.**, a company organized and existing under the laws of the Netherlands, having its registered office at Hoogvoorddreef 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 organized and existing under the laws of England and Wales, having its registered office at Building 11, Westferry Circus, Canary Wharf, London E14, 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 organized and existing under the laws of Belgium, having its registered office at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium, and registered with the 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) organized and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereinafter referred to as "EPEX Spot";

and

(5) **Nord Pool AS**, a company organized and existing under the laws of Norway, having its registered office at Vøllsveien 17 B, 1366 Lysaker, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° NO984 058 098 MVA, hereinafter referred to as "Nord Pool";

and

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(6) **OMI; Polo Español, S.A.**; a company organized and existing under the laws of Spain; having its registered office at Alfonso XI n° 6; 4a planta; 28014 Madrid, Spain; and registered with the Commercial Register in Madrid under section 8; Hoja: M-306799 and VAT n° ESA86023358; hereinafter referred to as "**OMIE**";

and

(7) **Gestore dei Mercati Energetici S.P.A.**; a company organized and existing under the laws of Italy; having its registered office at Viale Maresciallo Pilsudski 132/134, Rome, Italy; and registered in the Companies Register of Rome under the number RM 953866; under Italian tax code and VAT n° IT06208031003; 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:

Colt Technology Services, a company organized and existing under the laws of France; having its registered office at 23-27 rue Pierre Valette, 92240 Malakoff, France and registered in the Commercial Register under Nr. B402 628 838 and VAT FR404 0 262 883 8; hereinafter referred to as "**Service Provider**" or "**COLT**".

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

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Provider shall provide to each PX the MPLS Communication Network Services under a Services Contract to be entered into by each PX and the Service Provider.

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

Section 1. Definitions – Interpretation – Language

1.1. Definitions

The capitalised terms used in the Framework Agreement shall have the meaning attributed to them in Annex I (Definition List) or in the GTC.

1.2. Interpretation

In the interpretation of this Framework Agreement, unless the context otherwise requires:

- (a) the term “PX” shall mean a PX and any New PX; the term PXs shall mean all PXs together;
- (b) the headings are for convenience only and shall not affect the interpretation of the Framework Agreement;
- (c) the Framework Agreement includes the Annexes which shall form an integral part of the Framework Agreement;
- (d) references in the Framework Agreement to Sections and Annexes are to Sections of, or Annexes to, the Framework Agreement;
- (e) 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; references to “including” or “includes” or “in particular” shall be deemed to mean “including, without limitation”;
- (f) a reference to a document, or a provision of a document, is to that document, or provision as amended, supplemented, replaced or novated from time to time;
- (g) any reference to a month shall be deemed to mean a calendar month;
- (h) any reference to a day shall be deemed to mean a calendar day;
- (i) any reference to a year shall be deemed to mean a calendar year; and
- (j) any reference to times shall be deemed to mean the CET respectively CEST.

1.3. Language

1.3.1. The language of any Service Contract 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

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English language version of the Service Contract shall prevail if there is any inconsistency between the English version and a translation of the Service Contract:

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

1.4: Governing Law

Each Service Contract and any Dispute arising in the context of a Service Contract, is governed and construed in accordance with the laws of France to the exclusion of the conflict of law provisions thereof (which if applicable could lead to the applicability of another law than the laws of France). The United Nations Convention on Agreements for the International Sale of Goods shall not apply hereto.

Section 2. Subject Matter of the Framework Agreement

The Framework Agreement sets forth the specific terms and conditions under which the PXs assign the provision of the Services to the Service Provider and under which the Service Provider accepts to provide such Services to the PXs.

Section 3. Contractual Documents – Order of precedence

3.1. Contractual Documents

Any Service Contract entered into between a PX and the Service Provider in respect of the provision of the Services is composed by:

- (a) this Framework Agreement (including its Annexes to the exception of the accepted Order Forms);
- (b) the GTC;
- (c) the accepted Order Forms.

3.2. Order of Precedence

If and to the extent that there is any inconsistency or conflict between any of the documents mentioned under Section 3.1, the order of precedence is the order of listing in Section 3.1. For the avoidance of doubt, i) the GTC will not apply to the extent they are in contradiction with the Framework Agreement in which case the Framework Agreement shall prevail, and ii) any provision in the Order Form deviating from the Section 3.1 and this Section 3.2 (e.g. by listing other documents that govern the Service Contract) or in contradiction with this Framework Agreement is null and void.

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Section 4. Service provision


4.1. Services

4.1.1. With a view to allowing satisfactorily and secure communication between the Local Trading Solutions of each PX and the XBID Solution, the Service Provider shall provide each PX, against payment of the Charges, with the following services:









- a) the services related to project management as described in Annex V (Project Management Services and Installation Services) (hereafter the “Project Management Services”);
- b) the MPLS Communication Network Services consisting of:
 - 1) installation services to be provided by the date indicated in Annex V (Project Management Services and Installation Services).
 - i. the installation services required at each PXs’ end for the PXs’ Local Trading System to be connected to the MPLS Communication Network;
 - ii. the installation services at DBAG’s end for the XBID Solution to be connected to the MPLS Communication Network;
 - 2) operational MPLS Communication Network Services to be provided on recurrent basis throughout the duration of the Service Contract and consisting of the making available and accessible on a 24h basis of the MPLS Communication Network allowing information transfers on a 24h basis between the Local Trading System of each PX and the XBID Solution and *vice versa* in accordance with the solution described in the Annex II (Technical Design) as well of the provision of the services described in Annex VI (Operational MPLS Communication Network Services);

the services described under a) and b) being collectively referred to as the “Services”.

4.1.2. 

4.1.3. Any Service shall be ordered individually by a PX via the submission of an Order Form and following the process described in the GTC. 



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Upon acceptance of an Order Form by the Service Provider a Service Contract is entered into.

The PXs are entitled to request additional services and changes subject to agreement on the related fees, if any, and resources availability such as (but not limited to) in the event the changes are required by technical conditions, Legal Provisions or by competent administrative or judicial authorities.

4.1.4. The Service Provider commits that the MPLS Communication Network Services shall be provided to each of the PXs under the same terms and conditions for all PXs, unless otherwise agreed by the PXs and the Service Provider in writing in this Framework Agreement. Additional services or changes to the Services can only be implemented provided all PXs have agreed to such services or changes, except if otherwise agreed in writing by the PXs or except if the additional service or change concerns an aspect of the MPLS Communication Network Services that does not impact or affect all PXs.

Whenever a PX needs to change the location of sites this will be done in accordance with the financial offer in Annex IV (Pricing and Finance Conditions). All PXs should always be informed about the changes of Annex II (Technical Design) which include sites locations and bandwidth definition in order to confirm there is no impact on the MPLS architecture or the XBID Solution.

PXs are entitled to exchange information on their individual Service Contracts in accordance with the agreements amongst the PXs.

For the change in the information exchange on individual Service Contracts the Service Provider is not to verify compliance with the agreements amongst the PXs.

4.2. Performance

4.2.1. The Service Provider shall ensure that the connections to the MPLS Communication Network are installed according to the planning and are operational at the same date for all PXs according to the planning, unless otherwise agreed between the Parties.

Timely delivery is of essence for the PXs and the provisions on the consequences of delay (service credits) in delivery as provided in Annex III (SLA) shall apply in case of late delivery of the Services for the test phase, as well as for the implementation phase of each Service Contract.

4.2.2. The Services shall be provided in compliance with the descriptions in Annex V (Project Management Services and Installation Services) and Annex VI (Operational MPLS

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Communication Network Services) and taking into account the service levels set forth in Annex III (SLA), if any.

4.3. [REDACTED]

4.3.1. [REDACTED]

4.4. Subcontracting

4.4.1. By deviation from Article 19.17 GTC, any sub-contracting, outsourcing or delegation to third parties of Services that qualify as Core Services is subject to the prior written consent of all the PXs. Subcontracting of Off-net Services to local telecommunication operators and the change of local telecommunication operators is not subject to prior consent.

4.4.2. At signature date, the local telecommunication operators used by the Service Provider are those listed in Annex XI (Local Telecommunication Operators).

The Service Provider shall inform immediately the PXs of any change in the appointment of a local telecommunication operator. PXs may terminate the Framework Agreement, subject to payment of the fee for termination for convenience as set forth in Annex IV (Pricing and Finance Conditions), if they are not satisfied that with the local telecommunication operator the Service Provider will reach the quality standard that can be expected by the PXs on the basis of the Framework Agreement.

4.4.3. By deviation from Article 19.17 GTC, Services that do not qualify as Core Services may be sub-contracted, outsourced or delegated to third parties by the Service Provider subject to prior notification to all PXs. The information provided under Annex V (Project Management Services and Installation Services) is considered to constitute such notification for the third parties mentioned therein.

4.4.4. The Service Provider shall make its best efforts to ensure that the performance by the sub-contracted, outsourced or delegated third party shall always be in accordance with the terms and conditions of the Service Contract.

[REDACTED]

4.5. [REDACTED]

4.5.1. [REDACTED]

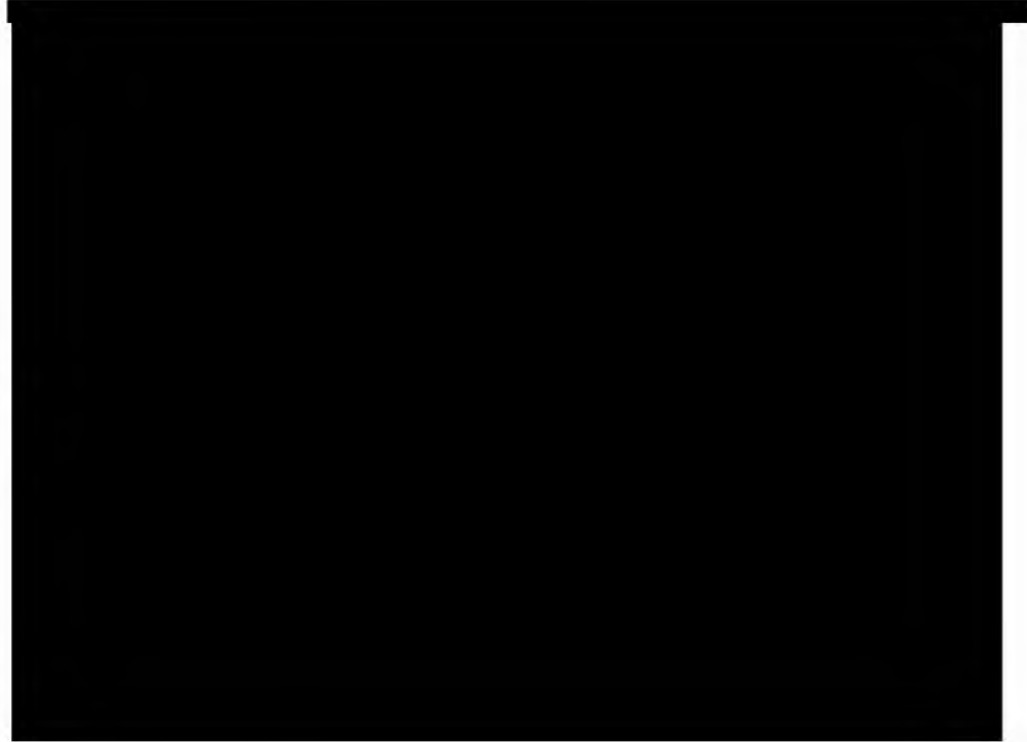
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

(a)

(b)

(c)

(d)



4.6. Governance

For the matters indicated in Annex V (Project Management Services and Installation Services) and Annex VI (Operational MPLS Communication Network Services) for which a SPOC is assigned for the PXs, such SPOC shall act as contact person for all the PXs, it being understood that such SPOC shall only be entitled to represent the PXs for administrative purposes and not for legal acts.

Section 5. Invoicing

The MPLS Communication Network Services at DBAG's end and the Project Management Services shall be invoiced by the Service Provider to each PX according to the cost sharing key which will be communicated by the PXs to the Service Provider.



Section 6. Entry into force - Term - Termination

6.1. Entry into force and term of Service Contracts

- 6.1.1.** The Framework Agreement enters into force at the date all Parties have signed it and remains in force between a PX and the Service Provider as long the Service Contract between that PX and the Service Provider is into force.
- 6.1.2.** In deviation from Article 5 of the GTC, any Service Contract concluded under this Framework Agreement is entered into for an Initial Term starting (subject to the previous signature of this Framework Agreement) from the acceptance of the Order Form and lasting four (4) years following the ready for use (RFU) date as indicated in Annex V (Project Management Services and Installation Services).
- 6.1.3.** In case a Service Contract extension beyond the Initial Term would not involve all PXs, the remaining PXs and the Service Provider will discuss in good faith what the impact thereof is on the pricing of the MPLS Communication Network Services and on terms affected by the change in number of the PXs. This discussion with the remaining PXs shall begin six (6) months before the end of the Initial Term; if no agreement is found three (3) months before the end of the Initial Term the Framework Agreement shall not be extended beyond the Initial Term.

6.2. Termination

Each PX has the possibility to terminate, without any court intervention, its Service Contract for convenience and in particular (but without limitation) in the event of termination of its participation to the XBID PX cooperation, in the event of the termination of its Services Contract with DBAG or in the event mentioned in Section 4.4.2, subject to payment to the Service Provider of the termination fee agreed in the Annex IV (Pricing and Finance Conditions).

Section 7. Confidentiality

The Service Provider hereby expressly consents to the disclosure by the PXs to DBAG of Confidential Information (except pricing terms) related to the Service Provider and to the information exchange as mentioned under Section 4.1.4.

Section 8. PXs' Relationship

8.1. Individual rights - No joint and several liability

- 8.1.1.** The rights granted to the PXs by the Framework Agreement are granted to each PX individually and any commitment of the Services Provider to the PXs under the Framework Agreement is an individual commitment to each PX. Any right granted to a PX shall be subject to and exercised in accordance with the terms of the Framework Agreement.
- 8.1.2.** Each obligation incumbent upon the PXs provided by the Framework Agreement binds each PX individually. Thus, each PX is liable for its own commitment only and the PXs shall, in no event, bear any joint and several liability ("*pas d'obligation in solidum*").

Each PX has only an individual legal action against the Service Provider regarding its relationship with the Service Provider and the Service Provider shall be liable towards each PX

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individually (no collective liability), although the PXs have signed jointly the Framework Agreement.

- 8.2.
- 8.2.1.
- 8.2.2.



Section 9. Accession by other PXs

9.1. The Framework Agreement and the Service Contract are 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 XBID PX cooperation under the same conditions as those granted to the PXs under the Framework Agreement. The accession shall be effected by the power exchange wishing to accede signing the accession agreement as provided in Annex X (Accession Agreement) and all Parties countersigning it. Upon signature of such accession agreement, the Framework Agreement shall become effective *vis-à-vis* the power exchange wishing to accede, and the power exchange wishing to accede shall be treated as a New PX under the Framework Agreement, with the same rights and obligations of the existing PXs.

Any New PX shall thus be entitled to the Services as soon as such New PX has acceded in accordance with this Section 9.

9.2. The provision of the Services to the New PX is subject to the agreement between the Service Provider and the New PX on the local operators assigned by the Service Provider or other subcontractors that provide Core Services for the Service Provider.

Section 10. Personal Data

10.1. All Parties agree to comply with their respective obligations under all applicable Data Protection Legislation, including French data protection Law of 06/01/1978.

The Service Provider will not have access to Personal Data transferred via the MPLS Communication Network.

The Service Provider will only process the Personal Data concerning the contact people of the different parties, in the terms set forth in the GTC. Personal Data concerning the contact people of the different parties will be transferred by the Service Provider outside the European Economic Area (India). If Personal Data is transferred to a Subprocessor or subcontractor or Affiliate established outside the European Economic Area, PXs will be informed by the Service Provider.

10.2. Each PX shall be considered Controller for its own Personal Data and each PX is solely responsible for compliance with its obligations as Controller under Data Protection Legislation applicable to such PX.

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Section 11. Liability

- 11.1. This Section 11 replaces Article 14 of GTC which is suppressed.
- 11.2. In deviation from Article 14 of the GTC, the liability of the Service Provider or a PX for all causes of action, whether for breach of contract, negligence or otherwise including arising from any indemnity, out of, or in connection with a particular Service Contract (hereafter "Non-Performance"), is subject to the provisions set forth in this Section 11 to the extent permitted by applicable law.
- 11.3. The liability limitations contained in this Section 11 shall not apply in the event of fraud, intentional fault or willful misconduct.
- 11.4. Liability of the Service Provider
 - 11.4.1. The Service Provider's aggregate indemnification obligation to a PX for liability for all Non-Performances occurring in a calendar year (i.e. 1 January to 31 December inclusive), is limited in aggregate to an amount [REDACTED]
[REDACTED] For the avoidance of doubt the sums paid for the Services rendered to which the Non-Performance relates are not included in the calculation of the limit of the liability cap applicable to the Service Provider.
 - 11.4.2. The Service Provider shall not be liable to a PX for any loss of profits; loss of anticipated savings; loss of business; loss of opportunity; loss of revenue; loss of time; loss of goodwill or injury to reputation; loss of or harm to data (including corruption to and reinstatement of any data); or any indirect loss or damage howsoever caused and whether foreseeable or not.
 - 11.4.3. The Service Provider shall not be liable to the PXs for any Non-Performance caused by an event of force majeure as defined by applicable law.
- 11.5. Liability of a PX
 - 11.5.1. A PX' indemnification obligation to the Service Provider for liability for all Non-Performances occurring in a calendar year (i.e. 1 January to 31 December inclusive), is limited in aggregate to an amount [REDACTED]
[REDACTED] For the avoidance of doubt the sums due for the Services rendered in compliance with the Framework Agreement are not included in the calculation of the limit of the liability cap applicable to the PXs.
 - 11.5.2. A PX shall not be liable to the Service Provider for any loss of profits; loss of anticipated savings; loss of business; loss of opportunity; loss of revenue different than the sums due the Service Provider for its Services ; loss of time; loss of goodwill or injury to reputation; loss of or harm to data (including corruption to and reinstatement of any data); or any indirect loss or damage howsoever caused and whether foreseeable or not.

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

11.5.3: A PX shall not be liable to the Service Provider for any Non-Performance caused by an event of force majeure as defined by applicable law:

Section 12: Dispute Settlement

12.1: Amicable settlement

12.1.1: In deviation of Article 19.31 of the GTC, any dispute arising under a Service Contract, (including, for the avoidance of doubt, a dispute related to the negotiation, the conclusion and the validity of it), between any PX and the Service Provider (the "Dispute") shall be subject to this Section 12.

12.1.2: Any Dispute between any PX and the Service Provider (the "Disputing Parties") shall first be subject to amicable settlement between the Disputing Parties, each represented by a person with power of representation appointed to this aim (called the "Dispute Settlement Representative" or the "DSR"). To start the amicable settlement a Disputing Party shall notify a written request (the "Dispute Settlement Request") thereto to the other Disputing Party(ies).

12.1.3: If the DSRs of the Disputing Parties fail to achieve an amicable settlement within one (1) month of the Dispute Settlement Request, the Dispute shall be subject to settlement in accordance with Section 12.2.

12.2. Local Courts

If no amicable settlement is reached in accordance with Section 12.1, the Dispute shall be exclusively and finally settled by Paris courts, under French law except application of another mandatory local law.

12.3: To the extent a Dispute in arbitration is involving DBAG and PXs, the Service Provider shall provide the arbitrators with all relevant and reasonable information.

12.4: Nothing in this Section 12 shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts.

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Agreement in 8 original copies on _____ 2016.

- Signature Pages Follow -

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SIGNATORY PAGE - APX



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SIGNATORY PAGE - APX UK

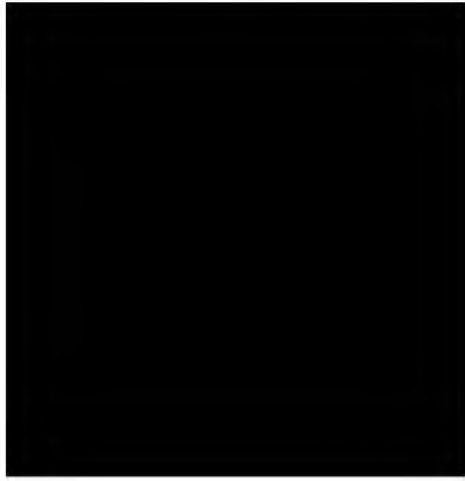


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SIGNATORY PAGE - OMIE



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SIGNATORY PAGE - GME



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SIGNATORY PAGE - SERVICE PROVIDER



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