

First Amendment to the All NEMO Intraday Operational Agreement (ANIDOA) – Annex 7: Consolidated All NEMO Intraday Operational Agreement with the First ANIDOA Amendment provisions
Confidential

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ANNEX 7

Annex 7: Consolidated All NEMO Intraday Operational Agreement with the First ANIDOA Amendment provisions

All NEMOs Intraday Operational Agreement (ANIDOA)

Between:

1. **BSP Energy Exchange LL C (“BSP”)** a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at the district court of Ljubljana under registration n° 3327124000 and VAT n° SI37748661;
2. **CROATIAN POWER EXCHANGE Ltd. (“CROPEX”)**, a company incorporated under the laws of Republic of Croatia, having its registered office at Ulica grada Vukovara 284, 10000 Zagreb, Croatia, registered in the commercial register at the commercial court of Zagreb under number 080914267 and VAT n° HR14645347149;
3. **EirGrid plc (“EirGrid”)**, a company incorporated under the laws of Ireland, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4 and registered with the Company Registration Office under number 338522 and VAT n° IE6358522H;
- (...)¹
4. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, F-75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501 [(in the meantime also legal successor of EPEX Spot Belgium SA as a result of a merger by acquisition)]²;
5. **[European Market Coupling Operator AS (“EMCO”)]**, a company incorporated under the laws of Norway, with V.A.T. number NO 984 058 098 MVA, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway, registered in the Register of Business Enterprises under number 984 058 098;³
6. **EXAA Abwicklungsstelle für Energieprodukte AG (“EXAA”)**, a company incorporated under the laws of Austria, having its registered office at Palais Liechtenstein, Alserbachstrasse 14-16, A-1090 Vienna, registered in the commercial register at Handelsgericht Wien under number FN 210730y and V.A.T. ATU52153208,;
7. **Gestore dei Mercati Energetici S.p.A. (“GME”)**, a company duly organized and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122/124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002;
8. **[HELLENIC ENERGY EXCHANGE S.A. (“HEEnEx”)]**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000;⁴
9. **HUPX Hungarian Power Exchange Company Limited by Shares (“HUPX Ltd.”)**, a company incorporated under the laws of Hungary, having its registered office at 1134 Budapest, Dévai u. 26-28, Hungary, registered in the commercial register of the Budapest metropolitan court, under number 01-10-045666 and VAT. n° HU13967808;
10. **Independent Bulgarian Energy Exchange (“IBEX”)**, a company incorporated under the laws of Bulgaria, having its registered office at [19 Kniaz Alexander Dondukov Blvd., 1000, Sofia, Bulgaria]⁵,

¹ EPEX Belgium removed as Party to ANIDOA by article 2.1, i) First ANIDOA Amendment.

² Wording added by article 2.1, ii) First ANIDOA Amendment.

³ Identification of EMCO as a Party inserted by article 2.1, iv) First ANIDOA Amendment.

⁴ Identification of HEEnEx as a Party inserted by article 2.1, v) First ANIDOA Amendment.

⁵ Adaptation inserted by article 2.1, iii) First ANIDOA Amendment.

registered in the commercial register at Bulgarian registry agency under number 202880940 and VAT n° BG202880940;

(...)⁶

- 11. OMI, POLO ESPAÑOL, S.A. (“OMIE”)**, a company incorporated and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, hoja: M-506799 and VAT n° ESA86025558;

(...)⁷

- 12. Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at Bd. Hristo Botev 16-18, sector 3, București, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;

- 13. OTE, a.s. (“OTE”)**, a company incorporated and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague, Czech Republic, and registered with the commercial register in municipal court of Prague, Section B 7260 under the number 264 63 318 and VAT n° CZ26463318; OTE’s contract number: 25/17;

- 14. SONI Limited (“SONI”)**, a company incorporated under the laws of Northern Ireland, with V.A.T. number GB945676869, having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, UK and registered with the Companies House under number BT6 9RT;

- 15. Towarowa Gielda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144;

Hereafter individually also referred to as “**NEMO**” or “**Party**” and collectively as “**NEMOs**” or “**Parties**”;

⁶ Identification of Nord Pool as a Party deleted by article 2.1, iv) First ANIDOA Amendment.

⁷ Identification of LAGIE as a Party deleted by article 2.1, v) First ANIDOA Amendment.

WHEREAS:

- A) On 15 July 2014, some Parties entered into the XBID Market APCA with some TSOs, in order to design, develop, and contribute together to the implementation of an European continuous implicit (and to a certain extent explicit) cross border intraday market (the “**Target Model**”);
- B) On 5 June 2014, some Parties entered into the EU XBID PX Cooperation Agreement (the “**PCA**”), with a view to determining in that agreement the main terms and conditions of their cooperation for the further design, the development, the implementation and the operation of the XBID Solution in compliance with the Target Model in particular regarding the roles and responsibilities incumbent on NEMOs in that respect and the settlement of the financial aspects thereof;
- C) In the context of implementing the XBID Market APCA and the PCA, some of the Parties have concluded with the XBID System Service Provider the XBID-MSA which sets forth the general terms and conditions under which the Parties have assigned to the XBID System Service Provider the provision of certain ICT services amongst which the development, hosting and maintenance of the XBID System to be used to implement the Target Model;
- D) In the context of implementing the XBID Market APCA and the PCA, some of the Parties have concluded with the MPLS Network Service Provider the MPLS Services Framework Agreement which sets forth the general terms and conditions under which the Parties have assigned to the MPLS Network Service Provider the provision of network communication services that allow for communication between the XBID System and each NEMO’s LTS;
- E) In the meantime, the CACM Regulation, which provides a mandatory framework for the Single Intraday Coupling (“**SIDC**”) and describes the roles and responsibilities of the NEMOs and the ID MCO Function to be jointly performed by the NEMOs, entered into force in August 2015;
- F) Certain of the Parties (BSP, CROPEX, EirGrid, EPEX (also as legal successor of APX Commodities and APX Power BV), EPEX Belgium, EXAA, GME, HUPX, IBEX, LAGIE, NP, OKTE, OMIE, OPCOM, OTE, SONI, TGE) have entered into the Interim NEMO Cooperation Agreement dated 3 March 2016 (hereinafter the “**INCA**”), as further amended, with the aim of facilitating the necessary cooperation between designated NEMOs with respect to the performance of all common tasks that need to be performed in connection with the CACM Regulation; the Parties intend to enter] into the All NEMO Cooperation Agreement (hereafter the “**ANCA**”) which shall establish the enduring solution for cooperation among NEMOs and shall supersede the INCA;
- G) Pursuant to the CACM Regulation, the Parties established the MCO Plan, setting forth how the NEMOs shall jointly set up and perform the ID MCO Function as described in the CACM Regulation, including the contractual structure for this cooperation between the NEMOs. The MCO Plan has been approved by all NRAs on 26 June 2017 and endorses the proposal of the Parties regarding the joint set up and performance of the ID MCO Function and adopts the XBID Solution as the ID MCO Function;
- H) The SIDC requires also contracts to be concluded between the NEMOs and TSOs involved in SIDC. The Parties have entered into the Intraday Operations Agreement (the “**IDOA**”) with all the TSOs participating in the SIDC, regulating their cooperation in respect of the operation and further development of the SIDC;
- I) According to the MCO Plan an intraday operational agreement setting forth the terms of their cooperation for the ID MCO Function, is to be signed by all NEMOs designated for operating the SIDC (even if such NEMO is not yet an Operational NEMO). Therefore, the Parties wish to determine in this agreement (the “**Agreement**”), taking into account article 7 of the CACM Regulation and the MCO Plan, the main terms and conditions of their cooperation in respect of the ID MCO Function for the SIDC and in particular the terms and conditions under which the Parties will:
- design, further develop and maintain, test, and request changes to the Identical NEMO Components (including selection of common service providers);
 - manage, and operate the ID MCO Function on a daily basis;
 - connect their LTS to the XBID System;
 - act towards the XBID System Service Provider and the TSOs;
 - participate in the bodies established by the Agreement; and

- manage cost reporting;

hereafter collectively referred to as the “**ID NEMO Cooperation**”;

- J) The ID NEMO Cooperation shall be strictly limited to what is necessary to perform the ID MCO Function, as required by article 7(4) of the CACM Regulation. Therefore apart from what is strictly necessary to coordinate their matching of orders via the XBID System, each Party shall keep its full independency and self-determination for its own business;
- K) The Agreement shall as of its entry into force be the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the the PCA for the signatories to that agreement. The PCA shall be terminated as of such entry into force of the Agreement (without prejudice to the application and the survival of certain clauses between the Parties that have signed the PCA and the right to claim under that agreement).

NOW THEREFORE, the Parties agree as follows:

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ARTICLE 1. Definitions

For the purpose of the Agreement, the capitalized terms and expressions used herein shall have the meaning set forth in Annex 1 (Definition list).

ARTICLE 2. Contractual documents and precedence

2.1 The documents constituting the Agreement are:

- i) The main text of the Agreement; and
- ii) The following Annexes attached to the Agreement:
 - (a) Annex 1 (Definition list)
 - (b) Annex 2 (Identical NEMO Components)
 - (c) Annex 3 (Financial modalities / budget / invoicing modalities)
 - (d) Annex 4 (Contact and invoicing details)
 - (e) Annex 5 (Procurement procedure)
 - (f) Annex 6 (Technical requirements)
 - (g) Annex 7 (NEMO Operational Procedures)
 - (h) Annex 8 (NEMO Central Admin services)
 - (i) Annex 9 (Rules of Internal Order (RIO))
 - (j) Annex 10 (Accession Declaration form)
 - (k) Annex 11 (NEMO Change Control Procedure)

2.2 In the event of contradiction, ambiguity or difference between the documents constituting the Agreement, the main body shall prevail over the Annexes listed above in Article 2.1, ii).

2.3 In the event of contradiction, ambiguity or difference between the IDOA and the Agreement, the NEMO ID SC shall be informed hereof and shall provide guidance on how the contradiction, ambiguity or difference is to be solved, possibly with indication of the amendment to be made.

2.4 In the event of a discrepancy between the Agreement on the one hand and the ANCA on the other hand, the NEMO Committee together with all Parties (as the case may be) shall meet to resolve such discrepancy amicably and in good faith within 10 Business Days. In the event that the NEMO Committee and all Parties are not able to resolve the outstanding issue, the provisions of Article 36 (Dispute resolution and jurisdiction) shall apply.

2.5 The Parties shall ensure that all necessary Local Arrangements (including Clearing & Settlement Arrangements) to further implement and elaborate the general framework set forth by the Agreement are in place, with the aim to have an efficient SIDC mechanism.

Each Party shall, to the extent possible, ensure that any Local Arrangement it is or will be involved in or party to - that are either affected by the SIDC or have an impact on the SIDC - are compliant with the terms and conditions of the Agreement, it being understood that this obligation only applies:

- i) to the extent that purely operational matters as referred to in the NEMO Operational Procedures are concerned; and
- ii) to the extent necessary for the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement). For the avoidance of doubt, the foregoing implies e.g. that compliance is not

required in respect of those provisions in the Local Arrangements (or part of them) that concern purely regional or local issues.

For any other elements in the Local Arrangements compliance is not required.

The Parties hereby expressly confirm that (provisions in) Local Arrangements specifying rights and obligations in respect to post-coupling processes do not fall under the matters referred to in this Article 2.5 so that compliance of these (provisions in) Local Arrangements with the Agreement is not required.

- 2.6** If the Parties involved in Local Arrangements notice that any of these arrangements are not in line with the terms and conditions of the Agreement as regards the matters for which compliance is required as provided in Article 2.5, these Parties shall without delay notify in writing the NEMO ID SC thereof, stipulating the reasons for not being able to ensure that the Local Arrangements are in line with the Agreement, and provide a proposal of reasonable solution. The NEMO ID SC shall decide on the matter in accordance with Article 8 (Governance).

ARTICLE 3. Purpose of the Agreement

The purpose of the Agreement is to set forth the main terms and conditions of the ID NEMO Cooperation between the Parties, taking into account article 7 of the CACM Regulation and the MCO Plan.

The complementary regional intraday auctions as referred to in article 63 of the CACM Regulation are outside of the scope of the Agreement.

ARTICLE 4. The ID NEMO Cooperation

- 4.1** For the purpose of the ID NEMO Cooperation the Parties undertake to cooperate in accordance with the terms of the Agreement, the CACM Regulation, the MCO Plan, and any applicable Methodology.

In this respect, each Party commits to:

- i) jointly ensure the development, testing, and maintenance of the Identical NEMO Components;
- ii) jointly manage and operate the ID MCO Function;
- iii) jointly manage the relationship with the TSOs under the IDOA and the relationship with the service providers that are jointly contracted or that provide services to the benefit of all Parties;
- iv) connect its LTS with the XBID System so as to allow its Global Products to be matched via the XBID System;
- v) ensure that the ID NEMO Cooperation is limited to what is necessary to perform the ID MCO Function; and
- vi) ensure that the performance of the ID MCO Function shall be based on the principle of non-discrimination and ensure that no NEMO receives unjustified economic advantages deriving from its role in the ID MCO Function.

ARTICLE 5. General Principles

5.1 Best Efforts obligation

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

5.2 No joint and several obligations

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

5.3 Good faith cooperation and non-discriminatory treatment

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

5.4 Accession on non-discriminatory terms

The Agreement is open to the accession by any Third Party designated as a NEMO from time to time pursuant to the CACM Regulation. The accession by any Third Party to the Agreement shall be on non-discriminatory terms and shall be managed by the then current Parties to the Agreement in accordance with the provisions of Article 25 (Accession).

5.5 ID NEMO Cooperation

5.5.1 The ID NEMO Cooperation is based on the fundamental principle of subsidiarity and decentralization, meaning that, apart from the provisions which are strictly necessary to facilitate the ID NEMO Cooperation, each Party shall retain its full independence and self-determination with respect to its own business.

5.5.2 Each Party is individually responsible for ensuring that its participation in the ID NEMO Cooperation is compliant with Applicable Law (in particular but not limited to Applicable Law relating to public procurement and competition). To the extent that a Party violates Applicable Law by entering into the Agreement or by performing its obligations under the Agreement or by exercising its rights under the Agreement, it shall hold harmless in accordance with Article 30.3 the other Parties and indemnify them for any direct damage or loss incurred as a result of a Third Party claim (including claims of Competent Authorities).

5.5.3 The Parties commit to comply with the terms of the CACM Regulation, the MCO Plan and the agreed Methodologies, including without limitation: (i) the objectives of the CACM Regulation and (ii) the use of the governance mechanisms established in the CACM Regulation and the MCO Plan.

5.5.4 Any NEMO or Power Exchange wishing to participate in the SIDC must be a Party to the Agreement.

5.6 Evaluation of the ID NEMO Cooperation

5.6.1 The Parties agree to subject the performance of the Agreement to a yearly evaluation by the NEMO ID SC or an ad hoc evaluation by the NEMO ID SC at written request of one or more Parties, with a view to examine possible improvements to the ID NEMO Cooperation. In particular, the Parties agree to verify the feasibility, consistently with Applicable Law, of alternative modalities for the participation to

the ID NEMO Cooperation, such as the use of bilateral service provision agreements by which a Party delegates in compliance with Applicable Law some of its tasks in the context of the ID NEMO Cooperation.

5.6.2 A written request for evaluation formulated by one or more Parties shall contain one or more proposals for possible improvements.

5.7 State of the art performance

5.7.1 Each Party shall perform its obligations under the Agreement:

- i) in compliance with all requirements of the Agreement and Applicable Law;
- ii) in compliance with good practice, state of the art and professional standards applicable to the type of obligations required to be performed during the term of the Agreement;
- iii) by no later than such target dates and/or target deadlines as the NEMO ID SC may determine from time to time in accordance with the terms of the Agreement;
- iv) using, where appropriate, suitable materials and/or equipment and trained and competent staff for the execution of its obligations under the Agreement;
- v) with a view to assuring the proper implementation of the Agreement; and
- vi) with all necessary licenses and authorisations.

5.7.2 Each Party declares, by signing the Agreement, that it has the knowledge, experience and human and technical competences and resources necessary for the satisfactory performance of its obligations in accordance with the Agreement.

5.8 Competition compliance

Each NEMO shall exercise due care and attention for the entire duration of the ID NEMO Cooperation with regards to the compliance of the Agreement and its performance and the implementation and/or operation of the SIDC with competition law. The ID NEMO Cooperation is operated on the basis of the principle of subsidiarity and decentralization, meaning that it aims at delivering market coupling solutions while respecting, the independence, autonomy and self-determination of any NEMO and the differing regulatory situations of each Member State and individual NEMO. Notwithstanding the exchange of information necessary for the achievement of the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement), each Party shall remain at all times autonomous in as strict a manner as possible with regards to its business, strategy, product design, commercial policy, prices definition, etc.

ARTICLE 6. Delegation of obligations by a Party

- 6.1.** Each Party shall be entitled to delegate all or part only of the performance of any of its obligations under the Agreement provided that such delegation is made in compliance with the requirements of article 81 of the CACM Regulation which applies *mutatis mutandis*.
- 6.2.** A Party delegating all or part only of the performance of any of its obligations under the Agreement shall at all times ensure that the performance of such obligation by the delegate is in accordance with the terms and conditions of the Agreement and of the CACM Regulation. A Party delegating all or part only of the performance of any obligation under the Agreement shall at all times remain fully responsible and liable towards the other Parties for the performance of the delegated tasks in accordance with the Agreement and the fulfilment of its obligations under the Agreement and under the CACM Regulation.

ARTICLE 7. Roles and responsibilities

7.1 General principle

As a general rule, actions, tasks or obligations attributed to a NEMO are individual actions. They shall only be considered joint or common actions, tasks or obligations if they are expressly identified as such in the Agreement or by the CACM Regulation.

7.2 NEMOs joint roles and responsibilities

The following shall be considered a joint NEMOs' role and responsibility:

- i) performing the actions, tasks or obligations imposed on NEMOs jointly by the CACM Regulation or the MCO Plan;
- ii) performing the actions, tasks or obligations attributed to the NEMOs jointly in the IDOA;
- iii) performing the actions, tasks or obligations attributed to the NEMOs jointly in the Agreement (including the Annexes);
- iv) the following actions in respect of NEMOs' requirements for the XBID Solution provided in accordance with the CACM Regulation, the MCO Plan, the approved Methodologies or deriving from the XBID Market APCA or the IDOA and as agreed upon from time to time in compliance with the NEMO Change Control Procedure: design of the requirements; validating and testing them according to Article 11.5.2.5; monitoring and correct implementation of the requirements;
- v) determination of the terms and conditions with service providers that are jointly contracted or that provide services to the benefit of all Parties; the NEMO ID SC shall decide if all Parties are to be involved in the negotiations and signing of such agreements;
- vi) acceptance and testing procedures by the NEMOs of new elements of the XBID System as defined and subject to the terms of the XBID-MSA, except as regards testing by the TSOs as mentioned in article 6.5. of the IDOA; and
- vii) ensure that the above tasks are performed on their behalf in case of joint delegation of such tasks.

7.3 Individual NEMO responsibilities

- 7.3.1** Without prejudice to the general principle under Article 7.1., at least the following shall be a NEMO's individual responsibility: the operation of its LTS, its business processes, agreements with implicit (market) participants, individual reporting to NRAs and/or stakeholders on specific issues and any

actions, tasks or obligations imposed on a NEMO individually by the CACM Regulation or the Agreement.

ARTICLE 8. Governance

8.1. NEMO ID SC

8.1.1. The NEMO ID SC has the competence to decide on all issues that arise within the context of the Agreement, except for matters that fall under the competences of the NEMO Committee according to the provisions of the ANCA and the MCO Plan.

In particular, the NEMO ID SC has the power to take decisions in respect of the following tasks:

- i) approval of the relevant rules and procedures, other than the NEMO relevant proposals for the Methodologies listed in article 9, paragraph 6 of the CACM Regulation, for the operation of the SIDC;
- ii) preparation of proposals for investment, budget and planning for the further development of the ID MCO Function, to be submitted to and approved by the NEMO Committee;
- iii) management of the NEMO Change Control Procedure and its impact assessment and overseeing the implementation of Changes;
- iv) maintenance and day-to-day operation of the ID MCO Function according to the rules and procedures agreed by the Operational NEMOs;
- v) real-time application of the procedures in ID MCO Function operation;
- vi) analysis of incidents incurred in the ID MCO Function operation; and
- vii) provide the necessary support for analysis and testing related to further development of the ID MCO Function for any decision to be taken by the Operational NEMOs.

8.1.2. All decisions of the NEMO ID SC shall be taken unanimously. The decision shall be escalated to the NEMO Committee if no unanimity can be reached among Voting Members provided this falls within the competence of the NEMO Committee as set forth in the ANCA and in the MCO Plan.

Without prejudice to the principle of unanimity, any actions of the NEMO ID SC needed in order to fulfil the tasks mentioned under Article 8.1.1, iv) to vii) shall be taken according to the NEMO Operational Procedures.

The business of the NEMO ID SC shall be conducted at all times in a manner that is consistent with the terms of Annex 9 (Rules of Internal Order (RIO)).

8.1.3. In order to perform the tasks mentioned in Article 8.1.1, the NEMO ID SC shall be comprised of the appointed representatives of each of the Parties, it being understood and agreed that each Party's appointed representative shall be vested with all necessary powers and authority to take binding decisions within the competence of the NEMO ID SC on behalf of the Party which they represent.

8.1.4. Only Voting Members are allowed to vote at a meeting of the NEMO ID SC or of any other body created by the NEMO ID SC pursuant to Article 8.1.5.

The rules below set forth which Party shall be considered as Voting Member at a meeting of the NEMO ID SC or of any other body created by the NEMO ID SC pursuant to Article 8.1.5.

Any decision to be taken by the Voting Members shall fall under one of the following categories:

- i) **“Common Decisions”** shall refer to any decision in the context of the Agreement with the exception of Operational Decisions. With respect to Common Decisions all Parties shall be considered as Voting Members; or
- ii) **“Operational Decisions”** shall refer to decisions or actions taken in the day to day operation of the SIDC, needed for the well-functioning of the operations and/or having an impact on such operations. As regards Operational Decisions, only Operational NEMOs shall be considered as Voting Members. The following decisions and activities, shall e.g. but without limitation, be considered as Operational Decisions:
 - a) any decision related to the application, interpretation or adaptation of the NEMO Operational Procedures;
 - b) any decision related to the resolution of incidents;
 - c) any decision related to the SIDC NEMOs-Only Common Costs of operating the SIDC, unless non-operational NEMOs are to share in such costs in which case it will be a Common Decision; and
 - d) any decision related to change requests towards the jointly contracted service providers or under the NEMO Change Control Procedure or the IDOA Change Control Procedure which are necessary to ensure the continuity of operations (to the exclusion of change requests that are related to further developments, i.e. do not relate to maintenance in the context of operations, which shall be considered a Common Decision).

In addition to the foregoing, any Party that, pursuant to any provision of the Agreement is not entitled to vote (such as in the cases mentioned in Article 13.4.2, xiv) (Decisions on services provided by NEMOs), Article 32.2 (Forced Exit), Article 32.3.1 (Suspension) and Article 32.4.5 (rights during exit or suspension), shall not be a Voting Member for the matters for which its vote is excluded.

- 8.1.5.** The NEMO ID SC may from time to time decide to create or dissolve subcommittees, working groups or task forces for the purpose of carrying out its tasks mentioned in Article 8.1.1. In such event, the NEMO ID SC shall determine the purpose, composition, as well as the organisational and governance arrangements for such task force or working group, taking into account where relevant Annex 9 (Rules of Internal Order (RIO)).

At least the subcommittee NEMO OPSCOM shall be effective at the latest as of the date of Initial Go-Live:

The NEMO ID SC delegates powers and assigns the tasks to the NEMO OPSCOM as defined under Annex 9 (Rules of Internal Order (RIO)). Decision making in the NEMO OPSCOM is subject to the related provisions of Annex 9 (Rules of Internal Order (RIO)).

- 8.1.6.** All Parties may participate in the discussions and vote for Common Decisions of the NEMO OPSCOM in the context of the Agreement. Only Operational NEMOs may vote for Operational Decisions of the NEMO OPSCOM in accordance with the NEMO Operational Procedures (it being understood that all Parties are entitled to participate in the discussions). For the avoidance of doubt, the foregoing is without prejudice to the right of each Party to submit a change request in accordance with Annex 11 (NEMO Change Control Procedure).

- 8.1.7.** No decision of the NEMO ID SC, or of any other subcommittee, working group or task force created by the NEMO ID SC, shall be binding unless such decision is approved according to the relevant voting rules as stipulated in Annex 9 (Rules of Internal Order (RIO)).

- 8.1.8.** The NEMO ID SC Secretary (as appointed from time to time in accordance with the relevant provisions of Annex 9 (Rules of Internal Order (RIO)), the PMO (where appointed) or such other person as may be nominated by the NEMO ID SC will act as vote counter.

obligations under the Agreement and the IDOA or ii) subject to prior written authorization of the concerned NEMO and the terms and conditions (if any) of such NEMO's authorization .

- 9.4.2.** Cross NEMO Data are individually owned by each of the two concerned NEMOs, i.e, the two relevant NEMOs shall be individually vested with all rights (including but not limited to Intellectual Property Rights), title and interests pertaining to such Cross NEMO Data. Cross NEMO Data may be freely used (without payment or consent) by the relevant NEMOs only, acting independently for their respective business. Any use of Cross NEMO Data by other Parties shall be either i) strictly limited to the purpose of exercising their respective rights (e.g. monitoring of the performance of the XBID System, simulations with anonymized data under common tool (if available and agreed according to [Article 9.4.3](#))) or performing their respective obligations under the Agreement and the IDOA or ii) subject to prior written authorization of both concerned NEMOs and the terms and conditions (if any) of such NEMOs' authorization.
- 9.4.3.** NEMOs may agree on a common tool to be able to perform simulations with anonymized Historical Data. Such agreement shall contain the modalities of use of the tool to perform simulations and the terms and conditions in respect of publication of the results of the simulations.

ARTICLE 10. Requirements of the XBID Solution

- 10.1.** All Identical NEMO Components, to be developed, implemented and/or used for or in the context of the XBID Solution and the IT Operation of such Identical NEMO Components shall comply at least with the following requirements:
- i) the requirements set forth in the CACM Regulation, the MCO Plan and the applicable Methodologies;
 - ii) any requirements set forth in the XBID-MSA or otherwise agreed with the XBID System Service Provider;
 - iii) the requirements agreed with the TSOs in the IDOA (as long as not conflicting with the XBID-MSA);
 - iv) the requirements set forth in the Agreement (and in particular [Annex 2 \(Identical NEMO Components\)](#), [Annex 6 \(Technical requirements\)](#) and the NEMO Operational Procedures) and any other requirements as agreed upon in writing by all the Parties (if any).
- 10.2.** Each Party is responsible for its Individual NEMO Components and without prejudice to [Article 11.5.2](#) each Party shall individually ensure that Individual NEMO Components involved in the XBID Solution enable the operation of the SIDC.
- 10.3.** Parties shall comply with the High Level Architecture of the XBID Solution attached as exhibit 4 to the IDOA (as updated from time to time).

ARTICLE 11. Identical NEMO Components

11.1. General principles

- 11.1.1.** For those Identical NEMO Components that are not already developed at the entry into force of the Agreement and for any further developments of Identical NEMO Components, the Parties shall jointly design, develop and test the Identical NEMO Components (or ensure that they are designed, developed and tested on their joint behalf) in accordance with the timeframes and requirements set forth in [Article 10 \(Requirements of the XBID Solution\)](#). During the development process, the NEMO ID SC or any other body designated by the NEMO ID SC shall coordinate and follow up the progress made by the Parties in respect of the development and testing.

11.1.2. In respect of rights, title and interests pertaining to the developments of the Identical NEMO Components the following principles shall apply:

- i) the Parties must be entitled to jointly use such Identical NEMO Component for the implementation and operation of the SIDC to the fullest extent possible under Applicable Law. Licenses granted, as the case may be, by a service provider, to the Parties shall always be jointly granted to all Parties, to ensure a non-discriminatory treatment between the Parties in accordance with the principles set forth in Article 9 (Intellectual Property Rights – Right of use);
- ii) any changes to the Identical NEMO Components are governed by Article 11.5.2;
- iii) any rights (including IPR) granted by a service provider to the Parties shall be made subject to adequate proof by the service provider of the existence and scope of the rights granted (e.g. via due diligence of relevant documents); and
- iv) if one or several Parties are (co-)owner(s) of a technology or application that is part of Identical NEMO Components, such Parties shall assure that all the other Parties will have the possibility to be granted an equal share in such rights.

11.2. XBID System

11.2.1. The Parties agree to maintain and make available to each other, the TSOs and the relevant Explicit Participants, the XBID System with a view to allowing 24/7 trading of Global Products.

11.2.2. [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

11.2.3. [Redacted]

11.2.4. [Redacted]

11.2.5. Each Party shall take measures to prevent incidents in or related damage to the XBID System.

11.2.6. [Redacted]

i) [Redacted]

ii) [Redacted]

iii) [Redacted]

11.3. Connection of LTS to the XBID System

11.3.1. Each Party shall have a right, in accordance with the specifications and the timings set forth in exhibit 7 of the IDOA (Technical Readiness), to have its LTS connected to the XBID System so that it can communicate with the XBID System on a 24/7 basis.

11.3.2. [Redacted]

11.4. Communication network and rack space

11.4.1. [Redacted]

■ [Redacted]

■ [Redacted]

[Redacted text block]

■ [Redacted text block]

11.4.2. [Redacted text block]

11.4.3. [Redacted text block]

[Redacted text block]

11.5. Management, maintenance and future changes to Identical NEMO Components

11.5.1. General

The Parties shall jointly manage and maintain the Identical NEMO Components (possibly via intervention of service providers) and assure that such management and maintenance are compliant with the requirements set forth by the CACM Regulation, the applicable Methodologies, the IDOA and any further agreement between the Parties or with service providers.

11.5.2. Change request

11.5.2.1. Any changes or enhancements to the Identical NEMO Components and Individual NEMO Components that are governed by the IDOA Change Control Procedure, are subject to the IDOA Change Control Procedure. For any decision to be taken by the NEMOs under the IDOA Change Control Procedure, Article 19.2 shall apply.

11.5.2.2. [Redacted text block]

⁸ Article 11.4.3 ANIDOA inserted by article 2.2 First ANIDOA Amendment.

13.1.4. Principles set forth in this Article 13.1 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

13.2. Services related to specific Individual NEMO Components

13.2.1. A Party may contract the development of specific functionalities of a LTS connected to the XBID System and developed by the XBID System Service Provider provided that:

- i) the XBID System Service Provider has undertaken appropriate commitments to ensure that:
 - a) the granting of rights by the XBID System Service Provider shall in no way prevent the other NEMOs to be granted at least the same rights in the specific functionalities; and
 - b) NEMOs who have procured or wish to procure a trading system connected to the XBID System and developed by the XBID System Service Provider are treated in a fair and non-discriminatory manner by the XBID System Service Provider in respect of the costs charged for and the terms and modalities applicable to any granted rights; and
- ii) the possibility is guaranteed towards other Parties to convert upon agreement of all Parties such rights into a joint license or joint ownership.

13.2.2. The compliance of the service agreement with any Applicable Law is the duty of the Party(ies) that contract the concerned services (if applicable).

13.2.3. Principles set forth in this Article 13.2 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

13.3. Any other service in respect of the ID NEMO Cooperation

13.3.1. Services other than the services referred to under Articles 13.1 and 13.2 in the context of the execution of the Agreement will be contracted individually or jointly by all or a subset of the Parties, it being understood that the access to and use of these services as well as the costs, rights and obligations related to these services is limited to the Parties benefitting directly or indirectly from such services.

13.3.2. The compliance of the service agreement with any Applicable Law is the duty of the Party(ies) that contract the concerned services (if applicable).

13.3.3. Principles set forth in this Article 13.3 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

13.4. Service Providers

13.4.1. Without prejudice to Article 5.5.2, in the event that the Parties or a subset of the Parties decide to select a service provider for the provision of works or services in the context of the ID NEMO Cooperation, (i.e. works or services referred to under Articles 13.1, 13.2 and 13.3), the following principles shall apply:

- i) the service provider shall be selected according to one of the procedures described in Annex 5 (Procurement procedure). It is understood that the NEMO ID SC is entitled to approve unanimously deviations from the procedures set in Annex 5 (Procurement procedure). Any procurement procedure for the provision of works or services in the context of the ID NEMO Cooperation shall be consistent with the principles of equal treatment, objectiveness of the selection criteria, transparency, economic efficiency, efficacy and timeliness, taking in consideration:
 - a) the principle of proportionality in respect of the overall value and the urgency related to events not due to Parties' conduct, of the contract; and

- b) the uniqueness of the services to be provided by a service provider due to its particular and specific technical skills, if applicable.

Should the NEMO ID SC disagree on the procurement procedure to be applied, or how the procedure shall be applied, Article 36 (Dispute resolution and jurisdiction) shall be triggered.

- ii) instructions to the service provider and decisions in respect of the service provision are subject to prior joint decision by the relevant Parties; Parties may assign a special point of contact (SPOC) based on a mandate (“*mandaat*” / “*mandat*”) to represent them in the communications with the service provider.

13.4.2. Unless otherwise agreed in writing by the relevant Parties, any agreement between a service provider and all or a subset of the Parties shall include at least the following elements and principles and any further instructions decided upon by the Parties:

- i) the service provider may only act upon instructions given jointly by all the contracting Parties or by the SPOC appointed by the Parties or a subset thereof (as the case may be); conversely all communications of the service provider shall be addressed to all the contracting Parties or to the SPOC appointed by the Parties (as the case may be);
- ii) the possibility for the relevant Parties 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 Applicable Law or by Competent Authorities;
- iii) subcontracting by a service provider of certain parts of the services is allowed subject to prior written consent of all the relevant Parties;
- iv) the obligation for the service provider to inform the Parties as soon as reasonably possible or practical on possible improvements that could be undertaken to improve the efficiency and the quality of the services;
- v) the obligation for the service provider to provide the Parties with all information and assistance necessary to explain the functioning of the services towards any Competent Authority, the TSOs or the Market Participants, if required;
- vi) the service provider shall be subject to a duty of loyalty to each Party and of fair, non-discriminatory and equal treatment of all Parties. The foregoing implies that the agreement with the service provider shall foresee an obligation for the service provider 1) to provide the services in the interest of all Parties and in the interest of the ID NEMO Cooperation, 2) to refrain from any preferential treatment of one or more contracting Parties and 3) to maintain a level playing field between all Parties. The agreement with the service provider shall foresee that in the event the service provider is confronted during the provision of the services with a conflict between a) the interests of the service provider and those of one or more Parties of the ID NEMO Cooperation or b) between the interests of one or more Parties and of the ID NEMO Cooperation, the service provider shall promptly inform all Parties thereof and request the Parties to decide upon the manner in which the conflict shall be handled;
- vii) the obligation for the service provider to put in place the necessary measures (e.g. “Chinese walls”) to prevent conflicts of interests and disclosure of information;
- viii) the principles in respect of delivery and delays in delivery;
- ix) the possibility to terminate the agreement in the event of termination of the ID NEMO Cooperation or if the IDOA is terminated and in as many other cases as reasonably possible, without any court intervention and without any specific termination compensation being due;
- x) the possibility for a Party to terminate its participation to the service agreement in the event of termination of its participation to the Agreement subject to payment of its share of the agreed costs;

- xi) the exclusion of the joint and several liability of the Parties towards the service provider;
- xii) the possibility for each Party to initiate individual legal proceedings against the service provider;
- xiii) the decision to fully terminate an agreement with a service provider shall always be a unanimous decision of all Parties except in the case mentioned under xiv);
- xiv) in the event the Parties enter into a service agreement with a NEMO/service provider, the NEMO/service provider shall be allowed to be heard in the NEMO ID SC in respect of all decisions related to the services it procures. Such NEMO/service provider shall not be entitled to vote in the NEMO ID SC in respect of such decisions and in particular those that concern or are related to the compliance of its performance as NEMO/service provider with the concluded service agreement;
- xv) in relation with the service provider, the necessary provisions to comply with Article 13.2.2.

Parties can, subject to agreement of all Parties, deviate from the above list following negotiations with the service provider. Such deviation can be taken via a NEMO ID SC decision.

13.4.3. The Parties or a subset of Parties party to the agreement with the service provider commit to cooperate to ensure good performance of their joint commitments (if any) under any agreement entered into with the service provider and to ensure good performance by the service provider.

13.4.4. The Parties may, by way of a NEMO ID SC decision, deviate from the principles set out in Articles 13.1.1, 13.2.1 and 13.3.1 for the services that shall be contracted jointly under a multilateral services agreement.

The Parties shall in such case:

- i) provide the conditions for the deviation from this principle; and
- ii) ensure that sufficient measures are put in place to maintain equal treatment between the Parties.

ARTICLE 14. Specific provisions regarding the relation with the XBID System Service Provider

14.1. [Redacted]

14.2. [Redacted]

14.3. [Redacted]

ARTICLE 15. Traded products

15.1. Global Products

Only Global Products can be traded via the XBID System.

In respect of Global Products NEMOs shall comply with the relevant provisions of the CACM Regulation and the applicable Methodologies.

Changes to the Global Products shall be subject to the IDOA Change Control Procedure.

ARTICLE 16. Go-Live & Technical readiness

16.1. In respect of Go-Live, NEMOs shall comply with the relevant provisions of the IDOA regarding Go-Live and technical readiness.

16.2. Accession to all agreements with joint service providers, including any agreements to be signed according to such agreements with such service providers (e.g. the escrow agreement mentioned in attachment 3A to the XBID-DSA License), is required for an Operational NEMO's Go-Live.

ARTICLE 17. Day to day operation of the ID MCO Function

17.1. General principle

17.1.1. This Article 17 (Day to day operation of the ID MCO Function) only applies for Operational NEMOs.

17.1.2. The Operational NEMOs shall operate the ID MCO Functions and in particular the SOB in compliance with the provisions on operations as set forth in the CACM Regulation, the MCO Plan, the Methodologies, the IDOA and the Agreement (including the NEMO Operational Procedures as set forth in the NEMO Operational Procedures. To the extent the NEMO Operational Procedures refer to all NEMOs or to all PXs, such reference is to be understood as a reference to the Operational NEMOs only.

17.1.3. Detailed local procedures may be defined in the Local Arrangements, if need be, between the relevant subset of Parties. These local procedures shall comply with the principles set forth in Article 2.5.

17.1.4. The Parties shall comply with the technical requirements regarding the day to day operation of the ID MCO Function, as set forth in section III of the Annex 6 (Technical requirements).

17.1.5. In the event the NEMOs and TSOs decide to rollback in accordance with article 7.1.5 of the IDOA and during the period of application of the rollback, the rights and obligations of the Parties under the following Articles of the Agreement shall be suspended:

- Article 17 (Day to day operation of the ID MCO Function), to the exception of the provisions regarding rollback in this Article 17.1.5 and the provisions regarding Admin roles in Article 17.2.1; and
- Any other Article in relation to or impacting operations as decided by the NEMO ID SC,

until the NEMOs and TSOs decide, in accordance with article 12 of the IDOA, to end the application of the rollback and to re-launch the XBID System, and the NEMO ID SC decides to end the application of this Article 17.1.5 in accordance with Article 8 (Governance).

17.2. Operational roles

17.2.1. Admin roles

In respect of administration of the SOB and the Shipping Module (SM), the following tasks are distinguished, as further described in the NEMO Operational Procedures, in particular in the document with the title “XBID_NEMO_OTH_03 – XBID NEMO Admins”:

- i) the SOB NEMO Admin (SOB NA);
- ii) the SM NEMO Admin (SM NA); and
- iii) the NEMO Central Admin (NCA).

The abovementioned roles are to be performed in accordance with the description in the NEMO Operational Procedures, and each NEMO performing this role shall take the necessary measures to avoid the damage caused to other NEMOs while performing these roles and to take the required actions in case of errors or irregularities. In case of errors or irregularities the other NEMOs shall as soon as possible inform the relevant NEMOs in order to perform the relevant actions.

Each Operational NEMO shall nominate a SOB NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures, in particular in the document with the title “XBID_NEMO_OTH_03 – XBID NEMO Admins”, and Annex 8 (NEMO Central Admin services).

Each Operational NEMO shall nominate a SM NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures, in particular in the document with the title “XBID_NEMO_OTH_03 – XBID NEMO Admins”. The NEMO Central Admin services shall be governed by Annex 8 (NEMO Central Admin services).

All Operational NEMOs agree to appoint the NEMO Central Admin in accordance with Annex 8 (NEMO Central Admin services).

The Parties shall comply with the technical requirements regarding the NEMO Central Admin, as set forth in section III.4 of the Annex 6 (Technical requirements).

17.2.2. IC SPOC Role

Annex 1 to exhibit 15 of the IDOA regarding IC SPOC Services (as amended from time to time) shall apply to the IC SPOC Services provided by a NEMO to the other NEMOs.

Parties agree that in case IC SPOC Services are provided by a NEMO as back-up in a primary role, such NEMO shall be entitled to receive the remuneration of the NEMO initially providing the IC SPOC Services s. Such remuneration will be calculated on the basis of 100% of the overall daily rate as specified in annex 1 to exhibit 15 of the IDOA according to the rules set below.

The remuneration of the NEMO that provided the IC SPOC Services as back-up shall be calculated, for each day during which it takes over the primary provision of the IC SPOC Services, on the basis of ¼ shares of the overall daily rate as specified in annex 1 to exhibit 15 of the IDOA as follows:

- i) [REDACTED]
- ii) [REDACTED]
- iii) [REDACTED]

iv) [REDACTED]

The NEMO assigned to perform effectively the IC SPOC Services shall pay such amount to the NEMO that provided the IC SPOC Services as back-up.

17.2.3. MPLS Network Service Provider SPOC

In respect of the network communication services for connection between the XBID System and the LTS of the NEMOs provided by the MPLS Network Service Provider, all Operational NEMOs agree to appoint a MPLS Network Service Provider SPOC for the services described in the document “XBID_NEMO_OTH_04-MPLS Incident Management”, as taken up in Annex 7 (NEMO Operational procedures). The NEMO providing the IC SPOC Services shall act as MPLS Network Service Provider SPOC.

17.3. Process in case of an incident during operations

17.3.1. In case of an incident during operations the Parties shall follow the relevant operational procedures as attached to the IDOA and of NEMO Operational Procedures, and in particular the document with the title “XBID_NEMO_BUP_01-Transaction_Process” .

17.3.2. In case of an incident during operations, the Parties agree that any instruction to XBID System Service Provider to stop the XBID System from running shall be subject to a unanimous decision of all affected Operational NEMOs. Any decision to restart the XBID System, as well as the decision to make it again available for operations (in case the restart and the use for operations is not at the same time (“market put on hold”)), shall be subject to a unanimous decision of all affected Operational NEMOs and each affected Operational NEMOs shall take the necessary measures to avoid that in cases where the XBID System Service Provider has restarted the XBID System but that the market is put on hold, orders are submitted to the XBID System.

17.3.3. Article 7.2. IDOA also applies *mutatis mutandis* in case of incidents affecting Operational NEMOs only.

17.4. Data reporting

The Parties shall, when fulfilling their reporting obligations under REMIT, take into account section IV of Annex 6 (Technical Requirements).

ARTICLE 18. Communication

18.1. The principles under this Article 18 (Communication) shall apply to external communication in all forms relating to any subject within or related to the ID NEMO Cooperation. The Parties may deviate from this Article 18 (Communication) only if necessary to comply with Applicable Law, and/or with binding orders, requests or resolutions of a Competent Authority.

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

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

- 18.4.** The Parties acknowledge the goal to present commonly agreed positions with respect to the ID NEMO Cooperation, but agree that each Party may present and discuss its own views on the ID NEMO Cooperation with regulators, ACER, TSOs and the European Commission. In doing so, the Parties may use relevant materials developed within the ID NEMO Cooperation regarding project planning, cost estimates, and descriptions/evaluations of options/issues (to the extent consistent with the confidentiality obligations under the Agreement). Such materials shall be used fairly and without distortion. The Parties shall provide to the other Parties copies of material they intend to use in this context for ACER and the European Commission at least three (3) Business Days in advance, and shall amend any references to such material where other Parties reasonably can show it may be misleading.
- 18.5.** Prior to any joint communication of the Parties regarding a commonly agreed position on any issue relating to the Agreement, the NEMO ID SC shall give its formal approval on the content of such communication. The NEMO ID SC shall decide on the appropriate communication media through which joint communications are released. Each joint communication shall bear the logo of each Party or a common NEMO logo, if available. Joint communications shall only be published after approval by the NEMO ID SC of the content of such communication. The NEMO ID SC shall also decide, for any joint communication, on the date and time from which each joint communication is to be effective. The following shall be subject to joint communication:
- i) the disclosure to the public of all or any part of the Agreement;
 - ii) any Party's exit from, or the termination of, the Agreement; and
 - iii) other events or circumstances in respect of which a joint communication is determined to be necessary by the NEMO ID SC.
- 18.6.** A Party may communicate individually to Third Parties on the topics which are the subject of a joint communication as mentioned under Article 18.5 only after the NEMO ID SC's approval of the content of such individual communication.

ARTICLE 19. Specific rules governing relationship with TSOs

- 19.1.** The relationship with TSOs in respect of the SIDC is governed by the IDOA and Local Arrangements.
- 19.2.** Parties shall, to the extent compatible with their obligation to cooperate only to the extent necessary under the CACM Regulation, as much as possible try to align their positions towards TSOs in respect of decisions to be taken jointly by the NEMOs and the TSOs under the IDOA. Such alignment shall take place under and be governed by the Agreement in accordance with Article 8 (Governance).

ARTICLE 20. Information exchange

In the event a Party becomes aware of any facts or circumstances which may materially affect or may lead to any potential, or threatened, delay in its ability to complete any of its obligations under the Agreement:

- i) it shall promptly inform the NEMO ID SC of such facts or circumstances in reasonable detail, provided that revealing such information is compatible with the confidentiality undertakings of such Party; and
- ii) the concerned circumstances shall be discussed at the next available meeting of the NEMO ID SC, or any subcommittee, work group or task force created by the NEMO ID SC in accordance with Article 8.1.5 or, in case of urgency, at an earlier ad hoc meeting of the NEMO ID SC or any subcommittee work group or task force created by the NEMO ID SC in accordance with Article 8.1.5.

ARTICLE 21. Consultation

The NEMO ID SC may decide on the process, form and content for any stakeholder consultation considered necessary in connection with the fulfilment of the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement).

ARTICLE 22. Implementation of the XBID Solution

22.1. Each Operational NEMO commits to conclude the necessary agreements for the implementation of the XBID Solution and to put into service, use and operate the Identical NEMO Components as soon as reasonably possible, with the objective to implement, in accordance with the Applicable Law, the XBID Solution in the Market Areas where such Party operates.

The foregoing implies that the Operational NEMO(s) on each side of an interconnector that take into account the cross border capacity in the continuous matching of the bids submitted in its (their) Market Area are competent for ensuring and commit to ensure that i) the necessary arrangements with the TSO(s) and/or the necessary regulation(s) to allocate intraday cross border capacity for the interconnector concerned and ii) the related cross border shipping arrangements and Clearing and Settlement Arrangements are in place as soon as possible and in any event as of the Go-Live for the Parties concerned by such Go-Live

22.2. The Operational NEMOs shall decide unanimously on the operational readiness of the Identical NEMO Components.

The Operational NEMOs may unanimously decide to put into operation Identical NEMO Components even though not all requirements referred to in Article 10.1 are yet available.

22.3. Without prejudice to Article 22.2, if any NEMO(s) is(are) ready and wish(es) to use Identical NEMO Components for operating the XBID Solution subject to successful testing for a local isolate market, it (they) may exceptionally and temporarily use Identical NEMO Components provided that the productive environment provided by the XBID System Service Provider (and only that one) is used, subject to decision of the NEMO ID SC (which shall address amongst others related cost sharing aspects) and in compliance with the IDOA Change Control Procedure and the NEMO Change Control Procedure.

22.4. The operation of the LTS of an Operational NEMO remains the individual responsibility of such Operational NEMO and falls outside the scope of the Agreement although the operation of the LTS must be in accordance with the Agreement.

ARTICLE 23. Clearing and Settlement Arrangements

23.1. Parties commit to cooperate to ensure that the Clearing and Settlement Arrangements are put into place by the concerned entities performing clearing and settlement as of Go-Live for the Parties concerned by such Go-Live.

23.2. Operational NEMOs shall only Go-Live provided the relevant Clearing and Settlement Arrangements are in force.

23.3. Parties shall discuss and decide on the joint requirements in respect of Clearing and Settlement Arrangements and shall ensure that any such agreed joint requirements are implemented in the Clearing and Settlement Arrangements.

ARTICLE 24. Observer status

- 24.1.** Any Power Exchange, having its operations within or outside the EU, may, following a written request to the NEMO ID SC, be granted by a NEMO ID SC decision the status of Observer, for the purpose of acceding at a later stage to the Agreement, in the following cases:
- i) in the case of Power Exchange being a designated NEMO and having its operations either: (a) in a country within the EU; or (b) within a non-EU country which has a valid intergovernmental agreement in place, provided the Power Exchange accedes to the Global NDA or signs a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA (such confidentiality declaration/agreement being the only condition required);
 - ii) in the case of a Power Exchange not being a designated NEMO and having its operations in a country within the EU or within a non-EU country which has a valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) satisfactory evidence being provided to the NEMO ID SC that at least one NEMO designation application has been lodged in accordance with article 4 of the CACM Regulation (or equivalent where an intergovernmental agreement is in place); (b) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (c) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (d) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances; or
 - iii) in the case of a Power Exchange not being a designated NEMO and having its operations within a non-EU country (or countries) for which there is no valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) compatibility with Applicable Law; (b) satisfactory evidence being provided to the NEMO ID SC that the necessary intergovernmental agreements are under negotiation; and (c) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (d) satisfactory evidence being provided to the NEMO ID SC that there is an intention to physically couple the Power Exchange's markets to the existing SIDC; (e) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (f) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances.
- 24.2.** Any Power Exchange granted the status of Observer in accordance with the provisions of this Article 24 (Observer status) may be granted access to such documentation and may be entitled to participate in such meetings relating to the ID NEMO Cooperation as may be decided by the NEMO ID SC. For the avoidance of doubt an Observer shall have no voting rights.

ARTICLE 25. Accession

- 25.1.** The Agreement is open to accession of any legal person designated as a NEMO from time to time pursuant to the CACM Regulation and Applicable Law. It is acknowledged by the Parties that accession to the Agreement is subject to the signing of the Accession Declaration and the approval of the NEMO ID SC.
- 25.2.** A designated NEMO which intends to accede to the Agreement (the “**Applicant**”) shall address to the NEMO ID SC Secretary a written request. The NEMO ID SC Secretary shall inform such Applicant about the accession procedure and shall, provided that the Applicant has executed a confidentiality declaration substantially similar to the Global NDA, provide it with a copy of the Agreement and the specimen Accession Declaration. The Applicant shall be bound by the provisions of the Accession Declaration with effect from its signature by or on behalf of the Applicant.

25.3. An entity designated as a NEMO in a non-EU country may be entitled to request to accede to the Agreement subject to:

- i) Applicable Law;
- ii) absence of any regulatory objection on the part of the Applicant's NRA (or other Competent Authority); and
- iii) such accession being compliant with legal or regulatory requirements (e.g. an intergovernmental agreement with the EU), if any, to enter into the Agreement.

25.4. Accession to the INCA, or should the INCA be replaced by the ANCA, to the ANCA, accession to the IDOA and accession to the PMO Consultancy Contract are a precondition to become a Party to the Agreement.

ARTICLE 26. Financial Provisions

26.1. SIDC NEMOs-Only Common Costs sharing and remuneration

SIDC NEMOs-Only Common Costs sharing, reporting and settlement and invoicing under the Agreement shall be done in accordance with the CACM Regulation and the details set forth in Annex 3 (Financial modalities / budget / invoicing modalities). NEMOs that were not a party to the PCA have no obligation to participate in costs incurred under the PCA before 14 February 2017. Sharing of costs incurred under the PCA before 14 February 2017 by NEMOs that were a party to the PCA has been done in accordance with the PCA.

The remuneration to be paid by all NEMOs to another NEMO for the provision of services by the latter NEMO to the benefit of all Parties (if any) is set forth in Annex 3 (Financial modalities / budget / invoicing modalities), unless regulated under another agreement or Annex 8 (NEMO Central Admin services).

26.2. Cost efficiency

The Parties shall ensure cost efficiency and shall co-operate to avoid unnecessary costs and identify and implement efficient solutions. Parties shall ensure that costs are in line with the CACM Regulation, more specifically costs shall be reasonable, efficient and proportionate.

26.3. Budget and monitoring

26.3.1. SIDC NEMOs-Only Common Costs between the Parties pursuant to the terms of the Agreement shall be subject to the approval of the NEMO ID SC in accordance with Article 8 (Governance).

26.3.2. The Parties shall ensure that all SIDC NEMOs-Only Common Costs shall be, insofar as such costs are time costs, appropriately and fairly recorded in timesheets and, insofar as such costs are disbursements, supported by reasonable documentary evidence for the purposes of ensuring compliance with the requirements of article 80 paragraph 2 of the CACM Regulation. SIDC NEMOs-Only Common Costs must be either:

- i) within an approved yearly budget;
- ii) the subject of an approved increase in the relevant yearly budget; or
- iii) subject to a specific approval by the NEMO ID SC as non-budgeted SIDC NEMOs-Only Common Costs,

each of which must be specifically approved by the NEMO ID SC consistently with the terms of Article 8 (Governance).

26.3.3. The NEMO ID SC and the NEMO Committee shall approve no later than on 1st November of each year the overall yearly budget for the following calendar year. The budget for the first calendar year after entry into force is the budget approved by the NEMO Committee as attached to Annex 3 (Financial modalities / budget / invoicing modalities). Any budget shall be prepared take into account principles set forth in Annex 3 (Financial modalities / budget / invoicing modalities).

26.4. Invoicing

26.4.1. Invoicing and payment between the Parties of SIDC NEMOs-Only Common Costs shall be performed in accordance with Annex 3 (Financial modalities / budget / invoicing modalities).

26.4.2. In the event that a Party disputes all or any part of an invoice, it shall inform the invoicing Party and the NEMO ID SC as soon as possible and in any event within ten (10) Business Days of the date of the invoice of the disputed amount and the basis for disputing such invoice, together with any appropriate information supporting its position. The undisputed part of the invoiced amount shall remain payable as provided herein. Any Dispute with respect to all or any part of an invoice shall be subject to the Dispute resolution procedure set out in Article 36 (Dispute resolution and jurisdiction). Notwithstanding the existence of any Dispute relating to all or any part of an invoice, the Disputing Party shall remain for all purposes (other than payment of the contested part of such invoice pending resolution of such Dispute) subject to all its obligations under the Agreement.

26.4.3. Payment by either Party of the invoice, wholly or in part, shall not itself, in case of a Dispute regarding such invoice, be considered as an acceptance or validation of the invoice or of the activities to which such invoice relates to.

26.4.4. Default interest on any amounts not paid by the Due Date, shall accrue at the legal interest rate as specified in the Belgian Law of 02/08/2002 on combating late payment in commercial transactions, as modified by the Law of 22 November 2013, implementing Directive 2011/7/EU.

ARTICLE 27. Elaboration of further terms, conditions and modalities

The Parties shall as soon as practicable negotiate in good faith the terms of:

- Annex 5 (Procurement procedure).

Annex 5 (Procurement procedure) to be agreed upon by the Parties in accordance with this Article 27 (Elaboration of further terms, conditions and modalities) shall be approved by the NEMO ID SC and may be incorporated into the Agreement by an NEMO ID SC decision.

ARTICLE 28. Monitoring of the implementation of SIDC and review of the operation of SIDC

28.1. Any information to be provided to ENTSO-E in accordance with article 82.6 of the CACM Regulation shall, to the extent the information concerns or is related to the performance of the Agreement, be jointly prepared by the NEMO ID SC upon request of the NEMO Committee and taking into account the instructions of the NEMO Committee. Such information shall be provided to and approved by the NEMO Committee before being submitted to ACER.

28.2. Any review to be done pursuant to article 37.6 of the CACM Regulation, shall be performed jointly by the Parties upon request of the NEMO Committee and taking into account the instructions of the NEMO Committee. Any part of the report to be prepared in respect of the SIDC shall be prepared by the NEMO ID SC if requested by the NEMO Committee.

ARTICLE 29. Confidentiality

29.1. In accordance with article 13 of the CACM Regulation and subject to the further provisions of this Article 29 (Confidentiality), each Party hereby undertakes to the other Parties that it shall:

- i) not disclose, convey or transfer to any individual or entity any Confidential Information without the express, prior written consent (including email) of the other Parties; such consent not to be unreasonably withheld or delayed;
- ii) not use Confidential Information in any way, or for any purpose, other than for the Permitted Purpose, unless this is previously and specifically authorised in writing (including email) by the other Parties;
- iii) not copy or reproduce Confidential Information in any form whatsoever, except as may be necessary for the performance of its obligations under the Agreement;
- iv) safeguard Confidential Information which is in its possession, using the same degree of care that it applies to safeguard its own respective confidential and proprietary information and to take all necessary measures to prevent unauthorized or accidental disclosure of the Confidential Information. In this respect, each Party warrants that it has sufficient procedures and protections in place in order to enforce and maintain confidentiality and to prevent unauthorized use and unauthorized disclosure of such Confidential Information; and
- v) not incorporate Confidential Information into data, documents, databases, or any other media save to the extent necessary for the ID NEMO Cooperation or as permitted under the Agreement, without the explicit prior written consent (including email) of the Disclosing Party(ies), such consent not to be unreasonably withheld or delayed.

29.2. Each Party shall be entitled to disclose Confidential Information to any of its own Internal Representatives, or External Representatives, only if all the following conditions are met:

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

Representatives of a Party) shall be allowed if such Internal Representative has a definite need to know such information for the performance of the XBID-MSA, and provided that such directors, members of management, officers, legal representatives and employees are bound by appropriate confidentiality obligations.

- 29.3.** A Party may disclose Confidential Information it has received if one of the following conditions are met:
- i) the Disclosing Party can demonstrate by written evidence that all Parties have agreed to such disclosure and that such information is not otherwise subject to any confidentiality obligation owed to any Third Party;
 - ii) if it can demonstrate by written evidence that the received information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the concerned Party; or
 - iii) if it can demonstrate by written evidence that the received information has come into the public domain through no fault or negligence of a Party to the Agreement.
- 29.4.** Without prejudice to Article 5.3, the Agreement does not, and is not intended to, create an obligation for any Party to exchange information with other Parties which is not within the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement). Moreover, the Parties acknowledge and agree that a Disclosing Party may request a Recipient Party to enter into one of the confidentiality arrangements before disclosing any Confidential Information.
- 29.5.** In the event that any Party becomes aware of, or reasonably suspects, that any unauthorised use or disclosure of Confidential Information by any Party has occurred or is about to occur, such Party must immediately notify the relevant Disclosing Party in writing (including, but not limited to, by email).
- 29.6.** The Parties agree that the obligations imposed by this Article 29 (Confidentiality) shall:
- i) survive the termination, for any reason whatsoever, of the Agreement for a term of five (5) years; and
 - ii) in case one or more Parties withdraws from the Agreement for any reason, survive such withdrawal with respect to such withdrawing Parties for a term of five (5) years from the date of such withdrawal.
- 29.7.** Each Party is entitled to voluntarily disclose, at its own initiative, Confidential Information to a Competent Authority provided that:
- i) such Competent Authority is informed by the Recipient Party of the confidential nature of the Confidential Information; and
 - ii) such Competent Authority is bound to respect the confidential nature of the Confidential Information in accordance with relevant national legislation or in the absence of such legislation, such Competent Authority is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of the Agreement.
- 29.8.** The Parties are aware of the fact that certain Party(ies) in Norway, Romania, Sweden, Denmark, Finland, the Czech Republic and Slovenia are subject to acts relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called “freedom of information acts”) or to the legal obligation of publishing all relevant documents named by particular national legislation (so called “act on registration of contracts”) and may therefore be forced to disclose some or all of the terms of the Agreement or other information pertaining to such Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions. Without prejudice to the foregoing provisions of this Article 29 (Confidentiality), any Party subject to such a disclosure obligation shall use its Best Efforts to ensure that no Confidential Information is disclosed during the course of complying with such obligation, including by (in consultation with the Disclosing Parties where it is reasonable for it to do so) redacting all such Confidential Information from any materials or

documents (in whatever form) prior to such disclosure, so that sharing of Confidential Information is avoided.

- 29.9. If the Recipient Party is requested to disclose all or any part of the Confidential Information pursuant to an Applicable Law or pursuant to a valid and effective order or request issued by any Competent Authority, in such case:
 - i) to the extent lawful, the Recipient Party undertakes to notify each Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation prior, if possible, or in any case soon after proceeding with any disclosure, provided that such disclosure does not constitute a breach of national rules;
 - ii) each Disclosing Party shall cooperate to respond adequately, consistently and in time; and
 - iii) should such Confidential Information be intended to be published by the relevant Competent Authority, the Recipient Party shall agree with the Disclosing Party(ies) in providing a non-confidential version of such Confidential Information for this publication, under the exception of mandatory rules or court or administrative orders or information requested by administrative, regulatory or court authorities in which case the publication shall not be constrained.
- 29.10. For the avoidance of doubt, the Parties confirm that the disclosure of Confidential Information in the circumstances foreseen under this Article 29 (Confidentiality) does not affect the confidential character of the Confidential Information so exchanged.
- 29.11. In cases of doubt as to whether an information is Confidential Information or whether Confidential Information may be disclosed pursuant to this Article 29 (Confidentiality), confidentiality shall be maintained until written confirmation (including by email) has been obtained from the other Parties (or, as the case may be, by the relevant Disclosing Parties) that one of the above exclusions applies.
- 29.12. All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party or its relevant service provider.
- 29.13. The Agreement does not grant the Recipient Party any license rights or any other rights related to the Confidential Information and its future use, except to the extent as set out in the Agreement or unless such rights are agreed upon in a separate, written, specific and signed agreement.
- 29.14. As of the entry into force of the Agreement, the provisions of this Article 29 (Confidentiality) shall solely govern the confidentiality obligations of the Parties that have signed the Confidentiality Declaration for the XBID EU Cooperation, it being understood that such declaration remains applicable for any confidentiality breach committed before the entry into force of the Agreement.

ARTICLE 30. Liability and Force Majeure

30.1. General Principles

30.1.1. The provisions of this Article 30 (Liability and Force Majeure) apply to any liability whether based on contractual liability or non-contractual liability, of a Party (the “**Defaulting Party**”) towards another Party (the “**Affected Party**”) i) for any breach (whether by act or omission) of an obligation arising out of the Agreement or ii) for any breach of an extra-contractual duty (whether by act or omission) arising in the context of the Agreement (hereafter collectively “**Non-Performance**”).

30.1.2. [REDACTED]

30.1.3. [Redacted]

30.1.4. The liability limitations and limitations regarding hold harmless and indemnification obligations contained in this Article 30 (Liability and Force Majeure) do not apply:

- i) in the event of fraud (“*bedrog*”/“*fraude*”);
- ii) in the event of own intentional fault or misconduct (“*opzettelijke fout*”/“*faute intentionnelle*”);
- iii) in the event of delay or default in payments of any amount due under the Agreement; and
- iv) in the cases explicitly mentioned in this Article 30 (Liability and Force Majeure).

30.1.5. A Party receiving a claim for damages related to the Agreement shall inform the NEMO ID SC thereof in writing without undue delay and shall keep the NEMO ID SC informed of the proceedings of such claim.

30.2. Liability between the Parties

30.2.1. The Defaulting Party shall be liable, subject to the limitations set out below, to an Affected Party for any direct loss, damage, charges, fees, expenses or any other direct prejudice (“*rechtstreekse schade*”/“*dommage direct*”) (the “**Loss**”) which the Affected Party(ies) suffer(s) or incur(s) as a result of any Non-Performance and provided that i) such Non-Performance is attributable to the Defaulting Party and ii) that such Non-Performance is not excused on the basis of Force Majeure.

30.2.2. Without prejudice to Article 30.1.4, Parties shall not be liable for indirect loss or damage, including loss of profit, reputational damage, or loss of business opportunity.

30.2.3. The liability of a Defaulting Party for Loss caused by a Non-Performance of a contractual obligation arising out of the Agreement, is limited to Loss that the Defaulting Party foresaw or could reasonably be expected to have foreseen at the time when the contractual obligation was concluded as a likely result of such Non-Performance, unless the Non-Performance was intentional or fraudulent.

30.2.4. A Party shall not be entitled to claim compensation for any Loss it suffers as a result of the installation (if any) by such Party of an Identical NEMO Component in its local ICT environment or the use of ancillary software, without complying with the technical instructions agreed upon by the Parties.

30.2.5. Without prejudice to Article 30.1.4, the indemnification obligations of each Defaulting Party shall at all times, irrespective of the number of Non-Performances and the number of Affected Parties, be limited to

- i) [Redacted]
- ii) [Redacted]

30.2.6. [Redacted]

30.2.7. [Redacted]

[Redacted]

30.2.8. Provided it is proven that a Party breaches any terms of Article 9 (Intellectual Property Rights – Right of use) or Article 29 (Confidentiality), the Affected Parties are entitled to claim from this Defaulting Party a lump sum indemnification of:

i) [Redacted]

ii) [Redacted]

in both cases without such Party having to prove any Loss and without prejudice to such Affected Parties’ right to claim compensation for actual damage or losses incurred in excess of the aforementioned lump sum within the limitation set forth in this Article 30 (Liability and Force Majeure).

30.2.9. [Redacted]

30.2.10. If the sum of all Losses per calendar year exceeds the amount of the liability limitation as set forth in Article 30.2.5, the compensation payable to the Affected Party(ies) shall be reduced *pro rata*.

30.2.11. Each Party is responsible for any action or conduct of its employees, assistants, consultants, contractors and/or agents, provided the conditions under this Article 30 (Liability and Force Majeure) are met.

30.2.12. [Redacted]

30.3. Third Party Claims – Hold Harmless (“Vrijwaring” / “Garantie”)

30.3.1. [Redacted]

[Redacted]

30.3.2. [Redacted]

30.3.3. [Redacted]

30.3.4. The Party(ies) shall in no event (including in the event of a gross misconduct and regardless of whether such indemnification obligation is based upon an action or claim in contract, tort or negligence) hold harmless and indemnify another Party for any incidental, indirect or consequential damage including, but not limited, to loss of opportunity, loss of goodwill, loss of business, loss of profit, reputation damage, suffered by the Third Party initiating the Third Party claim.

30.3.5. A Party receiving a Third Party claim shall immediately inform the Defaulting Party thereof and such Defaulting Party shall upon request provide assistance in defending the Third Party claim.

The defendant Party has the right to request the Defaulting Party to join any discussions or Dispute settlement procedure (whether amicable, judicial or arbitrational) following a Third Party claim, and the Defaulting Party also has the right to join such procedure (except provided otherwise under Applicable Law). The right of defence of the Defaulting Party shall always be duly observed.

The defendant Party shall not approve any proposed settlement with respect to the Third Party claim without the approval of the Defaulting Party. Such approval shall not be unreasonably withheld, conditioned or delayed.

In the event a Party receives a claim by a Third Party, it shall inform the other Parties:

- i) as soon as possible of the main elements of such claim (such as the object of the claim, legal basis, main arguments and submitted proof if any); and
- ii) of the outcome regarding such claim (such as the outcome of any legal proceedings or of any amicable settlement, any withdrawal of the claim) as soon as that outcome is available.

30.3.6. [Redacted]

30.4. Total Cap

30.4.1. [Redacted]

[Redacted]

30.4.2. For the avoidance of doubt, in the specific cases set forth in Articles 30.3.3 and 30.5, any Party’s liability, irrespective whether between the Parties or following Third Party claims and including liability related to a breach of Article 29 (Confidentiality), shall, in deviation of the foregoing, not exceed the total liability cap per calendar year set forth in Articles 30.3.3 and 30.5.

30.5. Trade recall and cancellation

30.5.1. [Redacted]

30.5.2. [Redacted]

i) [Redacted]

ii) [Redacted]

iii) [Redacted]

iv) [Redacted]

v) [Redacted]

30.6. Mitigation obligation

The Defaulting Party(ies) and the Affected Party(ies) shall mitigate any damage occurring, in particular, but not limited to, damage towards Market Participants.

30.7. Subrogation

Any Party shall be entitled to subrogate (“*conventionele subrogatie*”/ “*subrogation conventionnelle*”) its insurance company to its rights and obligations under the Agreement against the Defaulting Party, who, by signing the Agreement, is deemed to agree with this subrogation.

30.8. Force Majeure

30.8.1. No Party shall be liable for delay or failure to fulfil its obligations under the Agreement if the delay or failure in performing the concerned obligation results from Force Majeure.

30.8.2. Any Party affected by Force Majeure, shall:

- i) send the other Parties prompt notification describing the nature of Force Majeure, its probable duration and the impact thereof on the performance of the Party's obligations under the Agreement;
- ii) use its Best Efforts to limit the consequences and duration of the Force Majeure;
- iii) provide regular (and, in any event, weekly) notices to the other Parties about its actions and plans for action under Article 30.8.2, ii); and
- iv) provide prompt notice to the other Parties as soon as the circumstances giving rise to the event of Force Majeure have been cured, mitigated or have otherwise ceased.

30.8.3. A Party affected by Force Majeure shall be excused from any delay or failure in performance, in whole or in part, of its obligations under the Agreement for so long as, and to the extent that, the performance of such obligations is affected by Force Majeure.

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

30.8.5. If Force Majeure continues for two (2) consecutive months following the notice under Article 30.8.2, i), the Party(ies) that has (have) invoked Force Majeure shall be entitled to Voluntary Exit (under the terms and conditions of Article 32.1) immediately upon notice sent in writing and provided that it demonstrates that:

- i) the event of Force Majeure invoked in the notice under Article 30.8.2, i) prevents it from performing its obligations under the Agreement which are to be considered as essential obligations under the Agreement; and
- ii) it (they) has (have) taken all reasonable measures to remedy such Force Majeure but it is impossible to remedy the Force Majeure by such reasonable measures.

ARTICLE 31. Entry into force – Term

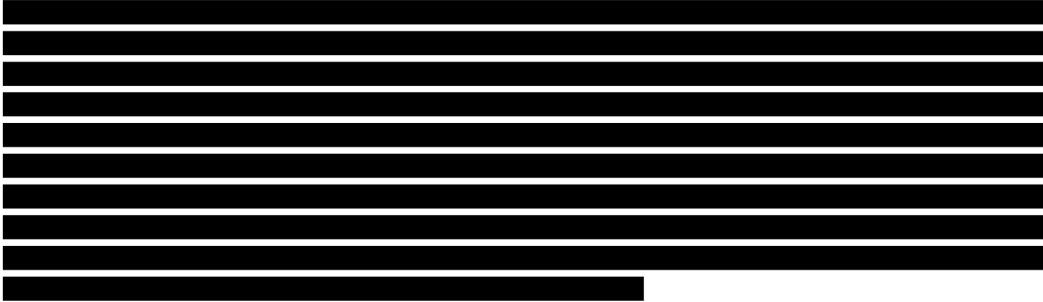
31.1. Entry into Force

The Agreement shall enter into force as of 12 June 2018, provided all Parties have signed it by sending a scan of the signed signatory page of the Agreement to a third coordinating party assigned by the Parties. The third coordinating party will collect all copies of the received signed signatory pages and provide a copy of the main text of the Agreement with the copies of the signed signatory pages to the Parties.

For evidence reasons:

- i) each Party shall also provide the third coordinating party with sixteen (16) original signed signatory pages (one per Party) of the Agreement. The third coordinating Party will collect all copies of the original signed signatory pages, compile them with the main text of the Agreement and provide each of the Parties one (1) original of the main text of the Agreement with the original signed signatory pages, which constitutes valid proof of the main text of the Agreement. The foregoing will not impact the date of entry into force of the Agreement; and

ii) [REDACTED]



31.2. Term

The Agreement is entered into for an indefinite period of time and shall remain in full force and effect until it is terminated in accordance with its terms.

31.3. The Agreement governs the Parties’ relationship as of its entry into force and shall be the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to this agreement. The PCA is terminated by the entry into force of the Agreement (without prejudice to the application of any survival clauses and the right to claim under that agreement and without prejudice to the mandate specified in annex XVII of the PCA, which remains in force)

ARTICLE 32. Voluntary Exit, Forced Exit and suspension

32.1. Voluntary Exit

32.1.1. Any Party (hereinafter, the “**Voluntary Exit Party**”) may at any time, without cause and without any court intervention, exit the Agreement by means of a Voluntary Exit. A Voluntary Exit shall not trigger the payment of any compensation, but shall be without prejudice to: i) any pre-existing payment obligations towards or between the other Parties under the Agreement up to and including the effective date of exit by the Voluntary Exit Party; and/or ii) such already committed payment obligations towards Third Parties up to and including the earliest possible termination date applicable to such Third Party agreement, which in each case shall remain due unless agreed otherwise in the relevant Exit Plan.

32.1.2. The Voluntary Exit Party shall notify the NEMO ID SC of its intention to exit the Agreement. The NEMO ID SC shall meet within two (2) weeks after any such notification to commence the preparation of the Voluntary Exit Party’s Exit Plan according to Article 32.4.1. In particular, the NEMO ID SC shall assess the timescales within which such exit shall occur. Except if decided otherwise by the NEMO ID SC, with the consent of the Voluntary Exit Party, or except if provided otherwise by Applicable Law or regulatory decision, the following timescales for the effectiveness of such exit shall apply by default:

- i) in the event of Force Majeure, subject to Article 30.8.5 immediately upon the concerned notice sent in writing;
- ii) in the event of change due to regulatory reasons, in case of failure to reach an agreement with regard to the modification of the Agreement according to Article 34 (Amendment), subject to three (3) months as from the notification of the Voluntary Exit Party;
- iii) in the event of a Dispute as set forth in Article 36 (Dispute resolution and jurisdiction) and provided the conditions of Article 36.8 are met, subject to three (3) months as from the notification of the Voluntary Exit Party;
- iv) to the extent compatible with Applicable Law, in the event of bankruptcy or any other insolvency proceeding, dissolution or liquidation of such Voluntary Exit Party upon one (1) month as from the notification of the Voluntary Exit Party;

- v) in the event of an order of a Competent Authority to end the participation of a Party to the SIDC, upon one (1) month from the notification of the Voluntary Exit Party; or
- vi) in all other cases, upon six (6) months as from the notification of the Voluntary Exit Party.

32.2. Forced Exit

32.2.1. A Party (hereinafter, the “**Forced Exit Party**”) may be compelled to exit the Agreement by the other Parties, without any court intervention and without any compensation being due to the Forced Exit Party, through decision of the NEMO ID SC in consultation with the relevant NRAs. The effective date of such exit shall be decided by the NEMO ID SC. A Forced Exit Party may be compelled to exit the Agreement only in the following circumstances:

[Redacted]

32.2.2. The consequences of any Forced Exit shall be decided by the NEMO ID SC in consultation with the relevant NRAs. The consequences will be laid down in the relevant Exit Plan.

For the avoidance of doubt, Dispute settlement does not affect the effectiveness of the NEMO ID SC decision. However, the NEMO ID SC (it being understood that the Forced Exit Party shall not take part to the decision in this respect) may decide to suspend its decision under Article 32.2.1 in case of Dispute settlement (Article 36 (Dispute resolution and jurisdiction)).

32.2.3. For all decisions of the NEMO ID SC in respect of the Forced Exit the Forced Exit Party shall not be entitled to vote it being understood that the Forced Exit Party shall be able to defend its case.

32.3. Suspension of Party

32.3.1. A Party (hereinafter the “**Suspended Party**”) may be made subject to a suspension of its rights and obligations under the Agreement by the other Parties without any court intervention, through decision of the NEMO ID SC in consultation with the relevant NRAs. The effective date of such suspension and, if possible, its duration shall be decided by the NEMO ID SC. A Party may be subject to a suspension of its rights and obligations under the Agreement only in the following circumstances:

[Redacted]

32.3.2. Following the expiry of a period of suspension imposed under the terms of this Article 32.3, the Suspended Party’s rights to vote at the NEMO ID SC, a subcommittee, a work group or a task force meeting and its rights and obligations with respect to the Agreement, any related Third Party agreement and with respect to all joint property shall be immediately and unconditionally restored.

32.3.3. For all decisions of the NEMO ID SC in respect of a suspension of a Suspended Party, such Suspended Party shall not be entitled to vote it being understood that such Suspended Party shall be able to defend its case.

32.4. Exit Plan/Suspension Plan and Consequences of Exit/Suspension

32.4.1. In case of any exit or suspension of a Party in accordance with the provisions of this Article 32 (Voluntary Exit, Forced Exit and suspension), the remaining Parties shall each use their respective Best

Efforts to secure the continuity of the SIDC. The NEMO ID SC shall prepare a plan (the “**Exit Plan**” or “**Suspension Plan**”, as appropriate), setting forth the actions and measures to be taken to ensure continuity during the period of suspension of any Party or following a Party’s exit (as the case may be) including, but not limited to, the following:

- i) an assessment of the changes to be made to the Agreement (if any) with the aim of continuing the SIDC without the Voluntary Exit Party, Forced Exit Party or the Suspended Party;
- ii) an assessment of the costs related to such exit or suspension and the allocation thereof;
- iii) the status of the licenses and sublicenses granted under the Agreement or granted by Third Party service providers (termination of the licenses and sublicenses at the date of exit, unless agreed otherwise in the Exit Plan);
- iv) the measures for ensuring continuity of the SIDC;
- v) the measures to ensure that the exit or suspension is conducted as smoothly as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and
- vi) the exact date on which the exit or suspension shall become effective, according to the abovementioned timescales.

32.4.2. The NEMO ID SC shall propose the Exit Plan/Suspension Plan to the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) for its approval. If the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) does not approve the Exit Plan/Suspension Plan, the matter shall be resolved in accordance with Article 36 (Dispute resolution and jurisdiction). If the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) approves the Exit Plan/Suspension Plan, it shall be submitted to the NEMO ID SC for formal approval. If the NEMO ID SC does not approve the Exit Plan/Suspension Plan, the matter shall be resolved in accordance with Article 36 (Dispute resolution and jurisdiction).

32.4.3. The Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) shall, in accordance with the Exit Plan/Suspension Plan, use its Best Efforts to assist the remaining Parties to enable continuity of the SIDC and to enable the migration of any services it performs or the documentation/information it provides until the date of its exit or for the duration of its suspension (as the case may be) or for such other period as referred to in the relevant Exit Plan or Suspension Plan.

32.4.4. The Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) shall in no event object to the solutions implemented by the remaining Parties to ensure the continuity of the SIDC, including the granting of rights on any joint asset to any other entity appointed to take over the services performed by such Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be).

32.4.5. Until the exit or suspension becomes effective, the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) shall have the right to vote on all matters having financial impact on itself and (if the Exiting Party is an Operational NEMO) all matters related to daily operations on the agenda of the NEMO ID SC or of any work group or task force constituted by it. For other matters, the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) shall not be entitled to vote unless the NEMO ID SC decides otherwise or unless the vote has direct consequences for the relevant Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be).

For all decisions of the NEMO ID SC in respect of the Exit Plan or Suspension Plan the Voluntary Exit Party, Forced Exit Party or Suspended Party shall not be entitled to vote it being understood that such Party shall be able to defend its case.

32.4.6. As of the date on which the exit becomes effective as determined in the Exit Plan in accordance with Article 32.4.1, vi), any co-owned Intellectual Property Rights of the Voluntary Exit Party or Forced Exit Party (as the case may be) pertaining to joint developments (such as Identical NEMO Components) or any right of the Voluntary Exit Party or Forced Exit Party (as the case may be) to use data and systems (including the XBID System) under the Agreement and the jointly owned developments in accordance with Article 9.2.1, shall automatically terminate for such Voluntary Exit Party or Forced Exit Party (as

the case may be), it being understood that any share in co-ownership rights shall automatically be retransferred in equal parts to the remaining Parties without any compensation being due.

In case of any exit or suspension, the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) is authorized to communicate about its exit or suspension with the relevant NRAs (and ACER as the case may be) without this constituting a breach of confidentiality.

ARTICLE 33. Nominated Contact Person

Each Party shall appoint a nominated person (the “**Nominated Contact Person**”) to act as the initial contact point for such Party for all issues connected to the Agreement. The names of each Party’s Nominated Contact Person are to be recorded in Annex 4 (Contact and invoicing details). Each Party may replace its Nominated Contact Person at any time in accordance with Article 34.1.

ARTICLE 34. Amendment

34.1. Amendments to the Agreement shall only be valid, if approved unanimously in writing and signed by an authorised representative of each of the Parties.

In deviation from the foregoing, Annex 4 (Contact and invoicing details) may be amended or modified by way of written notification by the concerned Party to the NEMO ID SC (via the NEMO ID SC Secretary).

In deviation from the foregoing, the NEMO ID SC is entitled, subject to a NEMO ID SC decision in compliance with Article 8 (Governance) and subject as the case may be to the NEMO Change Control Procedure, to change, amend or modify the following Annexes:

- i) Annex 2 (Identical NEMO Components);
- ii) Annex 5 (Procurement procedure);
- iii) Annex 6 (Technical requirements);
- iv) Annex 7 (NEMO Operational Procedures); and
- v) Annex 11 (NEMO Change Control Procedure).

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

- i) the provisions of the Agreement that should be modified;
- ii) the reason why such modification is necessary; and
- iii) its proposals for the amendment of the relevant provisions of the Agreement.

34.3. At the latest thirty (30) calendar days after receipt of the request of amendment, the Parties shall convene a meeting to consult each other in respect of the requested amendment. The Parties shall negotiate any amendment taking into account the principles of cooperation as defined in Article 5 (General Principles).

34.4. To the extent a Party is not affected by a change to any Applicable Law notified to it by another Party, it may refuse to make the requested amendments to the Agreement on reasonable grounds, stating its reasons for such refusal. In such case, the Affected Party(ies) shall inform its (their) Competent

Authority(ies) to see if execution of/continued participation in the Agreement is still possible without making the requested amendment. If the relevant Competent Authority(ies) raise any objection to the rejection of such requested changes, the Affected Parties may apply Article 36 (Dispute resolution and jurisdiction).

- 34.5.** In the event that an amendment to the Agreement is a consequence of a change in Applicable Law of the European Union, the costs thereof shall be shared equally among the Parties.
- 34.6.** In the event that an amendment to the Agreement is a consequence of a change in national Applicable Law the concerned Party(ies) shall individually bear the implementation costs of such amendment.

ARTICLE 35. Governing law

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

ARTICLE 36. Dispute resolution and jurisdiction

- 36.1.** Any dispute arising under, in connection to, or in the framework of the Agreement (including, for the avoidance of doubt, related to its conclusion and its validity) between one or more Parties (“**Dispute**”) shall be subject to the provisions of this Article 36 (Dispute resolution and jurisdiction).
- 36.2.** In the event of a Dispute arising between two or more Parties, such Parties (each a “**Disputing Party**”) shall first submit the Dispute to amicable settlement by referring the matter in Dispute to the NEMO ID SC.
- 36.3.** A referral for amicable Dispute settlement by the NEMO ID SC (the “**Referral**”) shall be sent by email by one Disputing Party to the NEMO ID SC members in writing and shall at least contain the following information:
- i) a description of the Dispute;
 - ii) the indication of the Party(ies) to whom it is addressed;
 - iii) the scope of the demand(s) or claim(s) of the Disputing Party referring the Dispute to the NEMO ID SC;
 - iv) the legal basis of the demand(s) or claim(s); and
 - v) a proposal for settlement.
- 36.4.** The NEMO ID SC shall thereafter within eight (8) days appoint a person amongst their members responsible for the amicable Dispute settlement procedure. If there is no agreement on this appointment after two (2) voting sessions, this role shall be performed by the NEMO ID SC chair. Such person shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) to be held within one (1) month as of the receipt of the Referral.
- 36.5.** The NEMO ID SC shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable Dispute settlement procedure. The NEMO ID SC may hear and/or request opinions of experts provided that they are bound by confidentiality obligations at least equivalent to those in the Agreement. In particular, the NEMO ID SC shall:
- i) assess the facts;
 - ii) assess the interests of the Parties in light of the objectives of the Agreement; and

- iii) in case of damage:
 - a) estimate the damage (and its nature and extent);
 - b) determine which Party(ies) suffered the damage;
 - c) determine which Party(ies) is(are) liable for the damage;
 - d) determine the extent and modalities of indemnification; and
 - e) formulate a proposal for settlement.

36.6. In the event that the NEMO ID SC fails to achieve an amicable settlement within one (1) month of receipt of the Referral, the Parties shall be notified thereof by the person responsible for the amicable Dispute settlement procedure and the Dispute shall be referred to the NEMO Committee to the extent it is foreseen in the ANCA, or should it not be foreseen in the ANCA, it is agreed by the NEMO ID SC.

36.7. Should the Dispute directly concern a regulatory issue (e.g. amendment of the Agreement due to regulatory reasons or change requests related to Applicable Law) and in the event that the NEMO Committee (in the case mentioned in Article 36.6) or the NEMO ID SC (if Article 36.6 is not applicable) fails to achieve an amicable settlement within one (1) month of receipt of the Referral, the Parties shall be notified thereof by the person responsible for the amicable Dispute settlement procedure and the NEMO ID SC may solicit the NRAs and/or ACER for a non-binding opinion on the Dispute (the “**Opinion**”). Upon receipt of the Opinion, the Disputing Parties shall pursue an amicable settlement based on this Opinion.

36.8. In the event that:

- i) the Disputing Parties decide not to seek an Opinion from the NRAs and/or ACER;
- ii) the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt, or
- iii) ACER and/or the NRAs denies its competence to provide an Opinion or does not provide an Opinion within a timeframe of one (1) month of the filing of the request thereto,

the Dispute shall be exclusively and finally settled by arbitration under the ICC’s rules of arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have three (3) arbitrators, regardless of the number of Parties involved. They shall be appointed by the ICC court of arbitration, according to the ICC rules of arbitration. All appointed arbitrators shall preferably be familiar with the applicable sector, specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration shall be final and binding upon the Parties concerned.

36.9. Each Party agrees that it may be joined as an additional party to any arbitration involving one or more parties to the ANCA. If more than one arbitration is begun under the Agreement and/or the ANCA and any party to any such arbitrations contends that two or more arbitrations are substantially related and that the issues should be heard in one proceeding, the arbitrator(s) selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

36.10. Any amicable settlement reached pursuant to this Article 36 (Dispute resolution and jurisdiction) shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract, signed by the Parties participating in the concerned amicable settlement.

36.11. In the event of a Dispute, nothing in this clause shall preclude a Party from applying for injunctive relief in summary proceedings before any competent court.

ARTICLE 37. Miscellaneous

37.1. In connection with the interpretation of the Agreement:

- i) no provision of the Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision;
- ii) words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender;
- iii) the headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation;
- iv) any reference to any rule, enactment, statutory provision, regulation or code, Applicable Law or any subdivision or provision thereof shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced;
- v) all references to Articles or Annexes refer to the corresponding Articles or Annexes of the Agreement as amended, supplemented or modified from time to time, unless otherwise specified; and
- vi) any Annex referred to in the Agreement forms an integral and inseparable part of the Agreement. Any reference to the Agreement includes a reference to its Annexes and vice versa.

37.2. Each Party acknowledges and agrees that the Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and that neither Party shall have the right to bind the other without that Party's prior express written consent.

37.3. Each of the Parties, unless expressly provided otherwise herein, is prohibited from assigning (including by means of merger, split-off, or transfer or contribution of universality or a branch of activity or otherwise) all or part of its rights and obligations arising from the Agreement to a Third Party without the prior written consent of the other Parties.

37.4. No waiver of any term, provision or condition of the Agreement shall be effective except to the extent to which it is made in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege under the Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under the Agreement. For the avoidance of doubt, if a Party fails to perform any of its obligations hereunder, and another Party fails to enforce the provisions relating thereto, such Party's failure to enforce the Agreement shall not prevent its later enforcement.

37.5. Unless otherwise stated in the NEMO Operational Procedures all notices and correspondence under the Agreement shall be in writing and may be delivered by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested to the recipient Party at the relevant postal and/or email address specified for such purposes in Annex 4 (Contact and invoicing details). Unless otherwise stated in the NEMO Operational Procedures a notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail, provided that, in either case, where delivery occurs outside Working Hours, the notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.

37.6. The Parties agree that the working language for all notifications and for all matters relating to their cooperation under the Agreement shall be English, to the extent compatible with the Applicable Law.

- 37.7.** The invalidity or ineffectiveness of any Article of the Agreement shall not affect the validity of the remainder of the Agreement.
- 37.8.** In the event of the termination of the Agreement for whatever reason, the provisions which, expressly are intended to survive the termination of the Agreement are Articles 1 (Definitions), 9 (Intellectual Property rights / Rights of use), 29 (Confidentiality), 30 (Liability and Force Majeure), 35 (Governing law), 36 (Dispute resolution and jurisdiction) and 37 (Miscellaneous) (for the term indicated therein) and without prejudice to the right of a Party to settle any Dispute arising after termination out of or in connection with the Agreement in accordance with all the provisions of the Agreement.
- 37.9.** The Parties may appoint a legal or natural person (which person may be the same person as is appointed Secretary) to establish a common (online) storage location for the keeping of records of contractual documents (including meeting minutes and contracts with third parties) and to keep the common storage up to date (amongst others by collecting and storing all minutes).
- The costs of the contract management are SIDC NEMOs-Only Common Costs and shall be shared as set forth in the the Agreement.
- 37.10.** The Agreement and the Annexes, as supplemented by decisions of the NEMO ID SC, or as the case may be, of the NEMO Committee in the performance of the Agreement, contain the entire agreement of the Parties hereto with respect to the subject matter hereof and contain everything the Parties have negotiated and agreed upon relating to the same subject matter.
- 37.11.** Each Party shall maintain records that are complete and accurate for all the relevant material regarding the performance by it of all its obligations under the Agreement and each Party shall retain such records for a period as required in accordance with Applicable Law, with a minimum of three (3) years unless otherwise required by Applicable Law. On another Party's first substantiated request, a Party shall provide the other Parties with a copy of all or part of the records as indicated by the requesting Parties, if available.
- 37.12.** The rights and remedies under the Agreement are cumulative with and not exclusive of any rights and remedies provided by law.