



**DAY-AHEAD REGIONAL OPERATIONAL AGREEMENT**

**on**

**DE – AT –PL – 4M MC NTC BASED MARKET COUPLING**



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(the „Agreement“)

**concluded between**

1. 50Hertz Transmission GmbH (“**50Hertz**”), a company incorporated under the laws of Germany, with V.A.T. number DE813473551, having its registered office at Heidestraße 2, 10557 Berlin, Germany, registered under the number HRB 84446 B (Amtsgericht Charlottenburg); hereinafter referred to as “**50Hertz**”

and

2. AUSTRIAN POWER GRID AG (“**APG**”), a company incorporated under the laws of Austria in the form of an AG, with V.A.T. number ATU46061602, with registered office at IZD Tower, Wagramer Str.19, 1220 Wien, Austria, registered with Commercial Court in Vienna with number FN 177696v; hereinafter referred to as “**APG**”

and

3. **ČEPS, a.s.**, a company founded and duly existing in accordance with the laws of the Czech Republic and registered in the Company Register administrated by the Municipal Court in Prague, Section B, File 5597 with registered office located at Elektrárenská 774/2, 101 52 Prague 10, the Czech Republic; Registration Number of the Company (IČ): 257 02 556, hereinafter referred to as “**ČEPS**”,

and

4. NORD POOL EUROPEAN MARKET COUPLING OPERATOR A.S. (“**NORD POOL EMCO**”), a company incorporated under the laws of Norway, with company number 984 058 098, having its registered office at Lilleakerveien 2A - 0283 Oslo , Norway

and

5. EPEX Spot SE (“**EPEX**”), an European Company (Societas Europaea) incorporated under the Laws of France, with V.A.T. number FR 10508010501, having its registered office located at 5 boulevard Montmartre, 75002 Paris – France, and registered with Commercial Register in Paris under the number 508 010 501; hereinafter referred to as “**EPEX**”

and

6. EXAA Abwicklungsstelle für Energieprodukte AG (“**EXAA**”), a company incorporated under the laws of Austria, with V.A.T. ATU52153208, 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; hereinafter referred as “**EXAA**”

and



7. **HUPX** Magyar Szervezett Villamosenergia-piac Zártkörűen Működő Részvénytársaság (Hungarian Power Exchange Company Limited by Shares, HUPX Ltd.), a company founded and duly existing in accordance with the laws of Hungary and registered in the Company Register administrated by the Budapest Metropolitan Court, with registered office located at **H-1134** Budapest, Dévai utca 26-28., Hungary; Registration Number of the Company: 01-10-045666, hereinafter referred to as “**HUPX**”,

and

8. **MAVIR** Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság (MAVIR Hungarian Independent Transmission Operator Company Ltd.), a company founded and duly existing in accordance with the laws of Hungary and registered in the Company Register administrated by the Budapest Metropolitan Court with registered office located at H-1031 Budapest, Anikó u. 4., Hungary; Registration Number of the Company: 01-10-044470, hereinafter referred to as “**MAVIR**”,

and

9. **Operatorul Pietei de Energie Electrica si de Gaze Naturale “OPCOM” S.A.**, a company duly organized and existing under the laws of Romania, with registered office in 16-18 Hristo Botev Blvd, 3<sup>rd</sup> District Bucharest 030236, Romania, registered with National Trade Register Office Bucharest under number J40/7542/2000, VAT number (CIF) RO13278352, hereinafter referred to as “**OPCOM**”,

and

10. **OKTE**, a.s., a company founded and duly existing in accordance with the laws of the Slovak Republic and registered in the Company Register administrated by the District Court in Bratislava I, Section Sa, File 5087/B with registered office located at Mlynské nivy 48, 82109 Bratislava, the Slovak Republic; Registration Number of the Company (IČO): 45 687 862 , hereinafter referred to as “**OKTE**”,

and

11. **OTE, a.s.**, a company founded and duly existing in accordance with the laws of the Czech Republic and registered in the Company Register administrated by the Municipal Court in Prague, Section B, File 7260 with registered office located at Sokolovská 192/79, 186 00 Praha 8 – Karlín, the Czech Republic; Registration Number of the Company (IČ): 26 46 33 18, hereinafter referred to as “**OTE**”, OTE's contract number: [REDACTED]

and

12. **Polskie Sieci Elektroenergetyczne S.A. (“PSE”)**, a company incorporated under the laws of Poland, with V.A.T. number PL5262748966, having its registered office at Warszawska 165, 05- 520 Konstancin-Jeziorna, Poland, registered in the commercial register at District Court for the Capital City of Warsaw, 14th Commercial Department of the National Court Register under number KRS 0000197596 and the



share capital of 9.605.473.000,00 PLN paid in full amount; hereinafter referred to as “PSE”

and

13. **Slovenská elektrizačná prenosová sústava, a.s.**, a company founded and duly existing in accordance with the laws of the Slovak Republic and registered in the Company Register administrated by the District Court Bratislava I, Section Sa, File 2906/B with registered office located at Mlynské nivy 59/A, 824 24 Bratislava 26, the Slovak Republic; Registration Number of the Company (IČO): 358 29 141, hereinafter referred to as “SEPS”,

and

14. **TenneT TSO GmbH**, a company incorporated under the laws of Germany, having its registered office in Bayreuth, Berneckerstrasse 70, 95448 Bayreuth, Germany, registered in the commercial register of the district court of Bayreuth under number HRB 4923; hereinafter referred to as “TenneT”

and

15. **Towarowa Giełda 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, registered in the commercial register at National Court Register under number 0000030144 and the share capital of 14.500.000,00 PLN paid in full amount; hereinafter referred to as “TGE”

and

16. **Compania Nationala de Transport al Energiei Electrice “Transelectrica S.A.”** (Romanian Power Grid Company), a company founded and duly existing in accordance with the laws of Romania and registered in the Company Register administrated by the Municipal Court in Bucharest, with registered office located in Bucharest, Gheorghe Magheru Blvd. Nr. 33, postal code 7000 and correspondence address Olteni Street Nr. 2-4, postal code 030786, Romania, Registration Number J40/8060/2000 and Registration certificate 13328043, hereinafter referred to as „Transelectrica“

and hereinafter referred to individually as the “Party” and collectively as the “Parties”.

## Preamble

## Abbreviations

<b>4M MC</b>	4 Market Market Coupling
<b>CACM</b>	Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing guideline on capacity allocation and congestion management
<b>EU</b>	European Union
<b>ICC</b>	International Chamber of Commerce
<b>mTMF</b>	Modified TSO Management Function
<b>OPSCOM</b>	Operations Committee
<b>TSO</b>	Transmission System Operator

## Definitions

All the terms not defined in this Agreement shall have the meaning as defined in the SDAC DAOA, unless defined otherwise hereafter or the glossary attached to INT\_TH-01\_Procedures Reading Instructions (Annex 1 to this Agreement).

<b>Available Transfer or Transmission Capacity (ATC)</b>	As defined in ENTSO-E Capacity Allocation and Nomination System (ECAN) Implementation Guide, VERSION 6.0 (2011-03-18): Available Transmission Capacity is the part of NTC that remains available, after each phase of the allocation procedure, for further commercial activity. ATC is given by the following equation $ATC = NTC - AAC$ , whereas (i) NTC corresponds to the maximum exchange between two areas compatible with security standards applicable in both areas and taking into account the technical uncertainties on future network conditions and (ii) AAC is the total amount of allocated transmission capacity rights, whether they are capacity or exchange programmes depending on the allocation method.
<b>Bid</b>	Means a purchase or sell intention on a day-ahead spot energy market platform operated by a power exchange.
<b>Regional Change Control Procedure</b>	The procedure set forth in INT_OTH_04: Change Control Procedure, attached in Annex 4 to this Agreement.
<b>Core Flow Based Market Coupling</b>	Market coupling project based on flow-based capacity calculation approach between bidding zones which are part of the Core Capacity Calculation Region as defined under Article 5 of Annex I to ACER's decision n° 06/2016 of 17 November 2016 pursuant to Article 15(1) of CACM Regulation.
<b>Core Rollback Procedure</b>	The document describing the basic principles to be followed for a rollback procedure design in case a Rollback is announced by the Core FB MC JSC. Rollback means the reactivation and application of previously applied solutions before Core FB MC go-live.
<b>Congestion Income Agreement(s)</b>	Has the meaning set forth in Article 6.5.
<b>Decoupling</b>	A situation where it is not possible, for a specific day, to allocate the Available Transmission Capacity via Market Coupling process.
<b>Defaulting Party</b>	Has a meaning set forth in Article 14.2.1

<b>DE-AT-PL-4M MC NTC based Market Coupling (DE-AT-PL-4MMC MC)</b>	Day ahead market coupling between Germany, Austria, Poland and the 4M countries (Czech Republic, Slovakia, Hungary and Romania) introducing an NTC-based implicit capacity allocation on six borders (PL-DE, PL-CZ, PL-SK, CZ-DE, CZ-AT, HU-AT).
<b>DE-AT-PL-4M MC MC OPSCOM</b>	Has the meaning set forth in Article 9.1.3.
<b>DE-AT-PL-4M MC MC SG</b>	Has the meaning set forth in Article 9.1.1.
<b>Dispute</b>	Has the meaning set forth in Article 15.1.
<b>Disputing Parties</b>	Has the meaning set forth in Article 15.2
<b>Go-live Date of the Core Flow-Based Market Coupling</b>	Date of the go-live of Core FB MC in accordance with the Day-ahead capacity calculation methodology of the Core capacity calculation region under Annex I to ACER Decision 02-2019 of 2 February 2019 on the Core CCR TSOs' proposals for the regional design of the day-ahead and intraday common capacity calculation methodologies, as amended as the case may be.
<b>Go-live Date of the DE-AT-PL-4M MC MC</b>	The date of the go-live of DE-AT-PL-4M MC MC as decided by the DE-AT-PL-4M MC MC SG.
<b>HLM Failure Notice</b>	Has the meaning set forth in Article 15.6.
<b>Joint TSOs Components</b>	Components to which ownership, title or interest belongs to all TSOs or subset of them, that are governed by separate agreement(s).
<b>Joint NEMOs Components</b>	Components to which ownership, title or interest belongs to all NEMOs or subset of them, that are governed by separate agreement(s).
<b>Joint Parties' Developments</b>	Has the meaning set forth in Article 11.2.1
<b>mTMF Agreement</b>	The agreement concluded by the TSOs being parties to this Agreement which determines the terms and conditions of operation of the mTMF.
<b>National Regulatory Authority (NRA)</b>	Means a regulatory authority designated by each Member State pursuant to Article 57(1) of Directive (EU) 2019/944
<b>Non-Working Day</b>	Saturday, Sunday and official public holidays as listed in Annex 6 in the country of the registered office of the Party in charge of the performance of the relevant obligation.
<b>Operational Procedures</b>	Common procedures agreed by all the Parties and any other relevant third-party which describes all the actions handled by the Parties and any other relevant third party for the performance of the Market Coupling, including Backup and Fallback procedures, attached in Annex 1 to this Agreement.
<b>Operational Provisions</b>	Has the meaning set forth in Article 18.3.
<b>PCR Co-Ownership Agreement</b>	Agreement governing the co-ownership of the DA MCO Function Assets.
<b>Referral</b>	Has the meaning set forth in Article 15.3
<b>Rules of Internal Order (RIO)</b>	Governance rules set forth in Annex 3.
<b>Subcontracting Party</b>	Has the meaning set forth in Article 5.2.



**Transparency Platform** The Transparency Platform operated by ENTSO-E in accordance with Article 3.1 of Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex 1 to Regulation (EC) No 714/2009 of the European Parliament and of the Council.

**Working Days** All days that are not Saturday, Sunday or public holidays as listed in Annex 6 in the country of the registered office of the Party in charge of the performance of the relevant obligation.

**Article 1 Subject Matter of the Agreement**

- 1.1. The Agreement sets forth the scope and form of the regional cooperation between the Parties in the context of the operation of the SDAC, establishing the related regional specific rights and obligations of the Parties. DE-AT-PL-4M MC MC constitutes the Enduring Phase as provided by SDAC DAOA, as of the go-live of the Enduring Phase.
- 1.2. The operation by the Parties under the Enduring Phase shall be performed based on the SDAC DAOA provisions, including, without limitation to, the related Operational Procedures as provided by Annex 2 of the SDAC DAOA, as well as the change control procedure according to Annex 3 of the SDAC DAOA.
- 1.3. The Agreement is not replacing the SDAC DAOA, its purpose being to set forth the regional specific complementary elements needed (including regional specific Operational Procedures – hereafter “Operational Procedures”) for ensuring the operation of the Parties under the Enduring Phase of SDAC.
- 1.4. For the issues not regulated in this Agreement the respective provisions of the SDAC DAOA shall apply, mutatis mutandis.

**Article 2 Contractual Framework**

The contractual framework is structured as follows:

- The SDAC DAOA as general framework of cooperation between all the Parties in respect of the purposes set forth in Article 1;
- Between NEMOs only, the Nemo Only Agreements (including, but not limited to, ANDOA);
- Between TSOs only, the TSO Only Agreements (including, but not limited to, TCDA and the mTMF Agreement);
- This Regional Operational Agreement, which is a Local Arrangement under the SDAC DAOA, as well as other Local Arrangements (e.g. Central Counter Party agreements, shipping arrangements).

**Article 3 Principle of cooperation**

This Agreement is governed by the same principles of cooperation as stated by Art. 4.1. and Art. 4.3. of the SDAC DAOA which apply mutatis mutandis.





**Article 4 Responsibilities and roles of the parties, hierarchy**

- 4.1. Besides the roles and responsibilities as set forth in SDAC DAOA, TSOs and NEMOs are further obliged to fulfil the specific roles and responsibilities as set forth in the Operational Procedures (Annex 1) and in Article 6 (Daily Operation) of this Agreement.
- 4.2. In case of conflicts of provisions between the SDAC DAOA on the one hand and this Agreement on the other hand in relation to the responsibilities and roles of the Parties, the provisions of the SDAC DAOA shall prevail in accordance with Article 3.4 of the SDAC DAOA, and Article 6.2 of this Agreement shall be applied.

**Article 5 Delegation of Rights and Obligations to Third Parties**

- 5.1. This Agreement is governed by the same provisions on delegation of rights and obligations to third parties as stated by Article 4.4. of the SDAC DAOA applied mutatis mutandis.
- 5.2. In case of regional specific tasks, the Parties are entitled to involve subcontractors in order to exercise their rights and fulfil their obligations under this Agreement.  
Any Party subcontracting or delegating to delegates/subcontractors (the "Subcontracting Party") shall remain fully responsible and liable towards the other Parties for the performance and execution of its rights and obligations according to this Agreement. Each Subcontracting Party shall ensure that each such subcontractor or delegate complies with the obligations of the Subcontracting Party under this Agreement. In the case of involvement of a delegate or subcontractor, each Subcontracting Party is obliged to ensure that its delegate(s) or subcontractor(s) will be subject to confidentiality obligations compliant with the provisions provided under Article 12 of this Agreement and Article 20 of SDAC DAOA.

**Article 6 Daily Operation**

- 6.1. [Redacted]
- 6.2. [Redacted]
- 6.3. [Redacted]
- 6.4. [Redacted]

6.5. [Redacted]

6.6. [Redacted]

6.7. [Redacted]

6.8. [Redacted]

6.9. [Redacted]

**Article 7 Cost sharing, monitoring and settlement**

- 7.1. Cost sharing, reporting, settlement and invoicing, and, as the case may be, recovery, of common regional costs under this Agreement shall be done in accordance with the principles defined in CACM.
- 7.2. 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 CACM, more specifically costs shall be reasonable, efficient and proportionate.
- 7.3. [Redacted]

[REDACTED]

**Article 8 Regional Change Control Procedure**

8.1. [REDACTED]

8.2. [REDACTED]

8.3. [REDACTED]

**Article 9 Governance and communication**

The local governance structure (referring strictly to regional-specific aspects) is as follows:

9.1. General  
principles

9.1.1. The  
governance of the DE-AT-PL-4M MC NTC based Market Coupling shall be carried out by the Parties by means of a Steering Group ("DE-AT-PL-4M MC MC SG"). The DE-AT-PL-4M MC MC SG shall be empowered to discuss and decide on any matter related to the implementation and operation of this Agreement and any other matter for which it is expressly made competent pursuant to any other provision of this Agreement.

9.1.2. Decisio  
ns of the DE-AT-PL-4M MC MC SG shall be binding on all Parties under the terms of the Rules of Internal Order ("RIO") of the DE-AT-PL-4M MC MC SG set forth in Annex 3.

9.1.3. The DE-AT-PL-4M MC MC SG shall be supported, in accordance with the provisions of the RIO, by a DE-AT-PL-4M MC NTC based Market Coupling Operations Committee ("DE-AT-PL-4M MC MC OPSCOM") and any other committee or working group as decided by the DE-AT-PL-4M MC MC SG.

9.1.4. On an exceptional basis, governance can also be carried out by the High Level Meeting ("HLM") being the governance body comprising the Parties' chief executive officers or any other representative of a Party at executive level with all necessary power and authority to take decisions binding upon their respective entity concerning any aspect of the DE-AT-PL-4M MC NTC based Market

Coupling. The HLM shall, only as a last resort, deal with questions where the DE-AT-PL-4M MC MC SG cannot come to a decision and is the escalation body in case of deadlock at DE-AT-PL-4M MC MC SG level.

## 9.2. Composition and meetings of DE-AT-PL-4M MC MC SG

9.2.1. All Parties are entitled to participate to, deliberate and vote in the DE-AT-PL-4M MC MC SG, unless explicitly stated otherwise in this Agreement. To this effect, each Party shall designate one (1) voting representative in accordance with Annex 3 (RIO) and shall ensure that its DE-AT-PL-4M MC MC SG voting representative has all necessary powers and authority to take decisions binding upon its company on all items of the agenda.

9.2.2. Each Party shall be duly represented, with respect to each meeting of the DE-AT-PL-4M MC MC SG, in accordance with Annex 3 (RIO).

9.2.3. The meetings of the DE-AT-PL-4M MC MC SG shall be chaired by one (1) representative from the NEMOs or from the TSOs in accordance with Annex 3 (RIO).

9.2.4. Meetings shall be organized in accordance with the RIO.

## 9.3. DE-AT-PL-4M MC MC SG decision making rules and recording

9.3.1. The DE-AT-PL-4M MC MC SG shall meet and take decisions according to the principles set forth in the Annex 3 (RIO).

9.3.2. Decisions of the DE-AT-PL-4M MC MC SG shall, unless otherwise provided in this Agreement, be taken by unanimous consent of the members of the DE-AT-PL-4M MC MC SG in accordance with the decision making process rules in Annex 3 (RIO).

9.3.3. The DE-AT-PL-4M MC MC SG chair shall record the decisions of the DE-AT-PL-4M MC MC SG and provide a copy of it to each Party, which shall be considered sufficient proof of the decisions to which it relates.

## Article 10 External communication

This Agreement is governed by the same principles for external communication as those set forth in Article 16 of the SDAC DAOA applied mutatis mutandis. In case the subject of the joint communication as set out in Article 16.3 of SDAC DAOA falls also under the SDAC DAOA, then the SDAC DAOA shall apply. In case where the situation is not clear, the DE-AT-PL-4M MC MC SG shall make a decision.

## Article 11 Data Ownership and Intellectual Property Rights

### 11.1. General

11.1.1. Each Party (or subset of Parties) shall remain the exclusive owner of its own Intellectual Property Rights.

11.1.2. Unless otherwise specified under the Agreement, the disclosure, access or use of developments, data or Confidential Information pursuant to the Agreement shall not affect the ownership of any Intellectual Property Rights, nor is it to be construed as granting any right (such as license), express or implied, on or in connection with any Intellectual Property Rights on such development, data and/or Confidential Information, between the Parties or towards any third party.

11.1.3. Except for the purpose of publishing data as allowed under this Article 11.6, Article 12 shall apply to the developments made and data used or exchanged pursuant to this Article 11.

## 11.2. Joint Parties Developments

11.2.1. All works, documentation and information elaborated by all the Parties jointly or on their joint behalf in the framework of this Agreement whether prior to or after entry into force of this Agreement, such as but not limited to the studies, researches, schemes, presentations, documentation, manuals, methods, statistical analyses, technical or other data, test reports, a joint website (if any) or other information elaborated by all the Parties jointly or on their joint behalf (hereafter “Joint Parties’ Developments”) shall as of their creation be jointly owned by all Parties and all (Intellectual) Property Rights, interests and title in respect to them shall be vested with all the Parties to the fullest extent possible under applicable law.

11.2.2. As co-owner, each Party is entitled to use the Joint Parties’ Developments as if it were the sole owner thereof for performance of this Agreement, SDAC DAOA and for internal business purposes only, without prejudice to the confidentiality obligations in Article 12. A Party may only use Joint Parties’ Developments for external business purposes provided that it has obtained the prior written consent of all the other co-owners.

11.2.3. Ownership rights of Joint Parties’ Developments may be transferred to Parties’ affiliated companies subject to the prior written consent of all Parties, which shall not be unreasonably withheld.

## 11.3. Joint TSOs Components/Joint NEMOs Components

11.3.1. Ownership over, title to or interest in the Joint TSOs Components or in the Joint NEMOs Components of all or a subset of NEMOs/TSOs respectively shall be governed by the agreement(s) entered into between the TSOs and between the concerned NEMOs respectively. In particular the NEMOs acknowledge that the mTMF System is owned by SEPS and used by the other participating TSOs.

11.3.2. All Parties, in particular the TSOs, acknowledge that the DA MCO Function Assets and all components of the DA MCO Function Assets are co-owned by the parties

to the PCR Co-ownership Agreement and access or using rights of these components are submitted to the specific conditions of the PCR Co-ownership Agreement.

11.3.3. Nothing in this Agreement shall be understood as a transfer of ownership, title or interest in the Joint TSOs Components to the NEMOs and the NEMOs shall not benefit from any right on the Joint TSOs Components (without prejudice, for the avoidance of doubt, to the fact that the Joint TSOs Components are put at the disposal of DE-AT-PL-4M MC MC in accordance with this Agreement).

11.3.4. Nothing in this Agreement shall be understood as a transfer of ownership, title to or interest in the Joint NEMOs Components to the TSOs and the TSOs shall not benefit from any right on the Joint NEMOs Components (without prejudice, for the avoidance of doubt, to the fact that the Joint NEMOs Components are put at the disposal of DE-AT-PL-4M MC MC in accordance with this Agreement).

#### 11.4. Individual NEMO/TSO Components

11.4.1. Each NEMO shall remain the sole owner of its individual Components and each TSO shall remain the sole owner of its individual Components, and the respective other Parties shall not have any rights on such individual Components of the NEMO or such individual Components of the TSO.

#### 11.5. Data

11.5.1. Confidential Information disclosed in the framework of this Agreement shall remain the exclusive property of the Party(ies) from which it emanates and this Agreement shall not be construed as providing any Intellectual Property Rights or any other rights, title to or interest in the Confidential Information to the Party receiving Confidential Information.

11.5.2. Data ownership and rights to use NEMO data by TSOs in the relationship between NEMOs and TSOs for the purposes of DE-AT-PL-4M MC MC shall be – mutatis mutandis – governed by article 11.3 of the SDAC DAOA. Data ownership and rights to use TSO data by NEMOs in the relationship between NEMOs and TSOs for the purposes of DE-AT-PL-4M MC MC shall be – mutatis mutandis – governed by article 11.3 of the DAOA. For the avoidance of doubt, article 11.3 of the SDAC DAOA does not govern NEMO data ownership and rights to use NEMO data amongst NEMOs, which are governed by bilateral or multi-lateral agreements between the respective NEMOs, in compliance with the applicable European legislation or regulation.

#### 11.6. Data publication

11.6.1. Data publication for the purpose of the DE-AT-PL-4M MC NTC based Market Coupling shall be – mutatis mutandis – governed by Art. 11.5 of the SDAC DAOA.

11.6.2. On the basis of Art. 11.5.1.ii) of the SDAC DAOA, the Parties agree that NEMOs are entitled individually to publish TSOs data, i.e. ATC, for DE-AT-PL-4M MC NTC

based Market Coupling purposes, on condition that these data have been previously published by the respective TSOs on the Transparency Platform.

- 11.6.3. TSOs hereby award authorization to NEMOs to publish scheduled exchanges between bidding zones in line with the rules stipulated in Art. 11.3.3 SDAC DAOA, if NEMOs decide to.

## Article 12 Confidentiality

This Agreement is governed by the same principles of confidentiality as stated by Article 20 of the SDAC DAOA applied mutatis mutandis.

## Article 13 Force Majeure

This Agreement is governed by the same provisions on force majeure as stated by Art. 24 and defined by Annex 1 of the SDAC DAOA applied mutatis mutandis.

## Article 14 Liability

### 14.1. Generalities

14.1.1. P

Parties to the Agreement shall not bear joint and several liability. Except otherwise stipulated in this Agreement, each Party is liable for its own commitments only.

14.1.2. With respect to operational liability related to specific obligations under the Operational Procedures set forth in Annex 1 to this Agreement, this Article 14 shall apply in case of a breach of such specific obligation.

14.1.3. In case of a conflict of liability arising under this Agreement and liability under SDAC DAOA, Parties agree to settle the liability of the Party respectively under SDAC DAOA (it being understood that the liability provisions of SDAC DAOA, when applicable, prevail over this Article 14).

14.1.4. For the avoidance of any doubt, no Party is entitled to claim compensation (for Party claims) or indemnification (for third party claims) under both this Agreement and SDAC DAOA for the same breach or for the same damage.

### 14.2. Liability between the Parties

14.2.1. In case of a breach by a Party of any of its obligations under this Agreement (the “Defaulting Party”), the affected Party shall be entitled to claim compensation from the Defaulting Party for any and all losses, damage, charges, fees or expenses, expected and unexpected, which can be considered as a direct damage arising out, or resulting from a default or negligence in the execution of the obligations provided by this Agreement only and under the terms and conditions explicitly provided below.

14.2.2. [REDACTED]



[REDACTED]

- 14.2.3. Except in the event of fraud or intentional breach, the Parties shall not be held liable for any indirect, immaterial, incidental or consequential damages.
- 14.2.4. If the sum of all damages exceeds the amount of the liability limitation in Article 14, the compensation payable to the Party(ies) suffering damages shall be reduced pro rata.
- 14.2.5. For the avoidance of doubt, to the extent that no obligation under Annex 1 has been breached, Decoupling shall not be considered as a breach of the present Agreement. Parties acknowledge that Fallback procedures have been designed by the Parties and shall apply in case of Decoupling and are considered a satisfactory solution by the Parties in case of Decoupling.

14.3. Third party claims

- 14.3.1. In case a Party receives a claim for damages suffered by a third party and resulting directly from the act or omission of any Defaulting Party, it shall:
  - a) notify promptly the other Party(ies) in writing of any such claim or of any matters in respect of which such third party claim may apply and keep them informed of the proceedings; and
  - b) fully cooperate with the Defaulting Party in such response and defense as reasonably required in order to minimize or settle the said claim.
- 14.3.2. The Defaulting Party shall hold harmless the defendant Party from and against the third party claim brought against the defendant Party as specified under this Article 14.3.
- 14.3.3. In case the third party claim is based on mere contractual fault, and causing a mere contractual damage, in the framework of an agreement between this third party and the defendant party, there shall be no indemnification obligation(s) of the Defaulting Party towards the defendant party.

14.3.4. [REDACTED]

14.3.5. The defendant Party has the right to request the Defaulting Party to join any discussions or dispute settlement procedure (whether amicable, judicial or arbitral) following a third party claim, and the right of defense of the Defaulting Party shall be duly observed.

14.3.6. The defendant Party shall not approve any proposed settlement without the agreement of the Defaulting Party. This agreement shall not be unreasonably withheld, conditioned or delayed.

14.4. Total Cap

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

14.5. Mitigation Obligation

The Defaulting Party and the Party suffering damage shall mitigate damage occurring, in particular, but not limited to, damage towards Market Participants.

**Article 15 Dispute Settlement**

15.1. Any dispute arising under, in connection to or in the framework of the Agreement (including, for the avoidance of doubt, related to the conclusion thereof and its validity) between two (2) or more Parties (hereafter a “Dispute”) shall be subject to the provisions hereafter.

15.2. In the event of a Dispute arising between two (2) or more Parties, such Parties (the “Disputing Parties”) shall first submit the Dispute to amicable settlement by referring the matter in Dispute to the HLM.

15.3. A referral for amicable dispute settlement by the HLM (the “Referral”) shall be sent in writing by the claiming Party to all HLM members 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 Party referring the Dispute to the HLM;
- iv) The legal basis of the demand(s) or claim(s); and
- v) A proposal for settlement.

15.4. The HLM shall then appoint within five (5) Working Days amongst its members a person responsible for the amicable dispute settlement procedure. This person shall invite the

Disputing 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 of the date of the receipt of the Referral.

15.5. The HLM 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 HLM may hear and/or request opinions of experts provided they are bound by confidentiality obligations at least equivalent to those in the Agreement.

In particular, the HLM shall:

- i) assess the facts;
- ii) assess the interests of the Disputing Parties in light of the objectives of the Agreement;
- iii) in case of damage:
  - a) estimate the damage (and its nature and extent);
  - b) determine which Party(ies) suffered the damage;
  - c) assess which Party(ies) is (are) liable for the damage;
  - d) determine the extent and modalities of liability and/or indemnification;
 and
  - e) formulate a proposal for settlement.

15.6. In the event that the HLM fails to achieve an amicable settlement within one (1) month or within a longer term if agreed by all Disputing Parties as of the receipt of the Referral, the Disputing Parties shall be notified thereof by the person responsible for the amicable dispute settlement procedure (the "HLM Failure Notice"). In this case the Disputing Party(ies) may submit its/their Dispute to mediation under the mediation rules of International Chamber of Commerce ("ICC").

15.7. The mediator shall be chosen unanimously, within one (1) month of the HLM Failure Notice, by the Disputing Parties. In absence of a joint nomination of a mediator, the mediator shall be nominated by the ICC in accordance with the ICC mediation rules. Such external mediator must (a) be committed to comply with the European code of conduct for mediators, and (b) have experience in the electricity and/or the information and communication technologies sector. The Disputing Parties will pay the mediator fees and expenses in an equal proportion, unless otherwise agreed. The Disputing Parties shall be informed of and invited to participate to the mediation to ensure that any amicable settlement is compliant with the Agreement.

15.8. Any amicable settlement reached pursuant to Articles 15.2 to 15.7 shall be effective and binding upon the Disputing Parties, provided it is laid down into a written settlement contract, signed by the Disputing Parties and the other Parties impacted by the amicable settlement (if any).

- 15.9. In the event of an HLM Failure Notice or if mediation proceedings pursuant to Article 15.6 and 15.7 have not been successful in thirty (30) days, if not agreed otherwise by all Disputing Parties, the Dispute shall be finally settled by arbitration under the ICC rules of arbitration.
- 15.10. The arbitral tribunal shall have three (3) arbitrators, regardless of the number of Parties involved and shall be appointed by the ICC court of arbitration. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the information and communication technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations.
- 15.11. The place of arbitration shall be Brussels, Belgium and all procedures and the arbitration award shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.
- 15.12. The Parties support, and shall, as the case may be, facilitate and take all steps necessary to allow joinder and/or consolidation of ICC arbitrations deriving from the Agreement and other related agreements, where the Disputes are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.
- 15.13. Nothing in this Article 15 shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before any competent judicial authority. The application of a Party to a judicial authority for such measures or for the implementation of any interim or conservatory measures ordered by the arbitration tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitration tribunal. Any order or provision issued by the judicial authority must be notified without delay to the arbitrators.
- 15.14. For the purposes hereof, the Parties elect domicile at the addresses set forth in the identification description of the Parties at the beginning of the Agreement, or at a different address as may be designated by written notice.

## **Article 16 Governing Law**

This Agreement is governed by and construed in all its aspects (including, but not limited to, the conclusion, coming into force and proof of this Agreement) in accordance with the laws of Belgium, without regard to the conflict of law principles of it.

## **Article 17 Amendments**

- 17.1. The Agreement may only be amended in writing and signed by all Parties.
- 17.2. In derogation from Article 17.1 for the sake of clarity, the Operational Procedures set forth in Annex 1 to this Agreement may only be amended in accordance with Article 8.1 of this Agreement.
- 17.3. Any amendment will enter into force and become effective – if not expressly agreed otherwise by the Parties – on the date on which the last Party signs such amendment. Before signing

an amendment, the Parties are obliged to obtain all the regulatory and other approvals and consents to the respective amendment that may be required under the applicable national, international or EU laws.

- 17.4. In derogation from Article 17.1, if the contact details, public holiday list or company specific regulation have to be updated (Annex 5, 6 or 7), the Party that needs to do the update shall send by email a new Annex with the updated information to the other Parties. In this case, there is no need to execute any formal amendment to the Agreement. The update shall be effective for each individual Party on the day following the day of the delivery of such notification.
- 17.5. In derogation from Article 17.1, the following Annexes can be adopted and/or amended by unanimous decision of the DE-AT-PL-4M MC MC SG:
- i. Annex 2 Cost sharing
  - ii. Annex 3 RIO
  - iii. Annex 4 Regional Change Control Procedure
  - iv. Annex 1 and Annex 4, prior to the Go-live Date of the DE-AT-PL-4M MC MC, if required pursuant to the operational tests performed by the Parties for the preparation of such go-live.
- 17.6. Each Party is responsible for keeping the Annexes mentioned in Article 17.4. up-to-date.
- 17.7. Should any of the Parties propose an amendment to the Agreement, the Parties shall cooperate and negotiate with each other in good faith concerning the proposed amendment. The Parties shall start the negotiations within thirty (30) calendar days of the date of the proposal.
- 17.8. If any provisions of this Agreement is declared invalid or unenforceable by national laws of the Parties (including request from NRA), or becomes invalid or unenforceable for any reason, the remaining provisions remain in full force and effect. Any provision found to be invalid or unenforceable has to be substituted by a valid and enforceable provision (if this is legally possible) that is closest to the Parties' original intentions under the Agreement. The same applies to cases in which the Agreement is found to contain erroneous provisions.

## **Article 18 Commencement, Term and Termination**

- 18.1. The Parties declare that they have obtained all of the regulatory and other approvals and consents to the conclusion of the Agreement that are required under the applicable national, international or EU laws.
- 18.2. This Agreement, except for its Operational Provisions (as defined below), shall enter into force as of the date on which all the Parties have signed it. Following signature, each Party shall immediately send a scan of its signed signatory page of the Agreement to the coordinating party (OTE) (defined in Annex 5) assigned by the Parties. For evidentiary purposes, the coordinating party (OTE) will collect all copies of the received signed signatory pages and

provide a PDF copy to all the Parties of the the Agreement with copies of all the signed signatory pages incorporated into it.

- 18.3. The Operational Provisions of this Agreement shall become effective and applicable and the Parties will commence their cooperation according to the Operational Provisions from the Go-live Date of the DE-AT-PL-4M MC MC. For the purposes of this Agreement, the term „Operational Provisions“ means Article 6 and Annexes 1 and 4 of this Agreement.
- 18.4. For evidence reasons, each Party shall also provide the coordinating party (OTE) with 16 (sixteen) original signed signatory pages (one per Party) of the Agreement. The coordinating party (OTE) will collect all copies of the original signed signatory pages, compile them into 16 (sixteen) original executed copies of this Agreement and provide one such executed hard copy to each of the Parties. The foregoing will not impact the date of entry into force of the Agreement.
- 18.5. The Parties are aware of the fact that OTE, irrespective of the Applicable Law of this Agreement, has a national legal obligation within the meaning of Section 2 (1) of the Czech Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, to publish this Agreement in the National Contract Registry of the Czech Republic and that, insofar as OTE is concerned, the entry into force of this Agreement is subject to such prior publication of this Agreement.
- 18.6. The Agreement is concluded for an indefinite period, with the aim that this Agreement shall be applicable until the Go-live Date of the Core Flow-Based Market Coupling. The provisions of this Agreement shall automatically cease to be applicable upon the Go-live Date of the Core Flow-Based Market Coupling based on the CORE FB MC JSC decision to the exception of the provisions regarding the Core Rollback Procedure.
- 18.7. In derogation of Article 18.6., if the Core FB MC JSC decides upon the activation of the Core Rollback Procedure following the Go-live of the Core Flow-based Market Coupling, the provisions of this Agreement shall be respectively applied only for the period of the application of the Core Rollback Procedure.
- 18.8. After the expiry of the period of applicability of the Core Rollback Procedure, if that procedure is not activated, this Agreement shall automatically terminate.
- 18.9. The Agreement may be terminated in line with Article 22 of the SDAC DAOA, applied mutatis mutandis, based on the relevant DE-AT-PL-4M MC MC SG decision.

## **Article 19    Exit**

- 19.1. The cases of Exit of a Party from this Agreement and the procedure to be applied in such cases are governed by the same principles as those set forth in Article 17 of the SDAC DAOA, applied mutatis mutandis.
- 19.2. Notwithstanding the above, Parties agree that a Party should Exit or may be forced to Exit this Agreement in case this Party Exits the SDAC DAOA (regardless whether it is a result of Voluntary or Forced Exit from SDAC DAOA).



## Article 20 Miscellaneous

### 20.1. Contract management

20.1.1. The Parties shall appoint an entity / person (which can be the same as the DE-AT-PL-4M MC MC SG chair) to establish a common (online) storage place for keeping 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, and any amended version of Annexes, or new Annexes as the case may be, pursuant to Article 17.

20.1.2. The costs of the contract management may be shared as common regional costs when decided in accordance with Article 7.

### 20.2. Notices

20.2.1. Unless otherwise stated, notices required under the main text of this Agreement shall be served in writing (either by registered letter, courier, regular mail, or email) and in English to the persons indicated in Annex 5.

20.2.2. By derogations to Article 20.2.1, notices in case of urgent situation may be delivered by phone, it being understood that such notice shall be re-confirmed in writing as soon as possible.

20.2.3. Service of notices shall be deemed effective:

- a) by email: at the time/date when the email sent by the sender is indicated as delivered to the recipient or when the recipient acknowledges the receipt of it.
- b) by registered letter or courier: at the time/date when the mail sent by the sender is delivered as evidenced by the acknowledgement of receipt.

20.2.4. In case notice is received on a Working Day after 5 PM CET or on a Non-Working Day, the notice is deemed given and effective at 9 AM CET on the first following Working Day.

### 20.3. Severability

Without prejudice to Article 17, in case one or more provisions of this Agreement is/are declared invalid, illegal or unenforceable under any Applicable law or public policy, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected and they shall remain in full force and effect as long as the economic or legal substance of this Agreement is not affected.

The Parties shall as soon as possible negotiate a legally valid replacement provision with the same economic effect as the invalid/illegal/unenforceable provision.

### 20.4. Non waiver



The failure or delay of any Party to exercise any right or remedy under this Agreement shall not be considered as a final waiver of it.

#### 20.5. Language of the Agreement

The language of this Agreement shall be English. Any exchange or notice in the framework of this Agreement shall be made in English. The use of the English language is however without prejudice to the fact that legal concepts in this Agreement are to be understood as civil law concepts of Belgian Law (and not as common law concepts).

#### 20.6. Assignment and legal succession

20.6.1. Rights and obligations under this Agreement shall be transferable to a legal successor by way of universal legal succession without prior written consent of the Parties.

20.6.2. Assignment of rights and/or obligations other than by way of universal legal succession to another party shall be subject to the prior written consent of all Parties, which consent shall not be unreasonably withheld, conditioned or delayed.

20.6.3. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted assignees and/or their legal successors.

20.6.4. In the event a change of control of a Party occurs, this Party shall, as soon as reasonably possible (taking into account the confidential and sensitive nature of such transactions), notify in writing the other Parties of it.

#### 20.7. Interpretation

20.7.1. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision. Words denoting the singular may where the context requires include the plural and vice versa. Words denoting one gender shall include another gender.

20.7.2. The headings of Articles, (sub)paragraphs or Annexes are inserted for convenience only and do not affect their interpretation.

20.7.3. Any reference to any agreement, rule, enactment, statutory provision, regulation or code or any subdivision or provision of it 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.

20.7.4. All references to Articles or Annexes refer to the corresponding Articles or Annexes of this Agreement as amended, supplemented or modified from time to time, in accordance with Article 17 unless otherwise specified.

20.7.5. All references to the term "person" shall refer to any individual, company, entity, business, trust, partnership, joint venture or other person whatsoever, in the broadest meaning of the word.



## **Article 21 Anti-Corruption**

21.1. Neither Party nor any of its subsidiaries or affiliates, nor any director, officer, or employee, nor, to the Party's knowledge, any agent or representative of the Party or of any of its subsidiaries or affiliates, has taken or will take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any "government official" (including any officer or employee of a government or government-owned or controlled entity or of a public international organization, or any person acting in an official capacity for or on behalf of any of the foregoing, or any political party or party official or candidate for political office) to influence official action or secure an improper advantage.

## **Article 22 Company specific regulations**

Every Party has the right to provide their company specific regulations in Annex 7. Parties agree that Annex 7 shall not create any additional obligations on other Parties.

## **Article 23**

Notwithstanding Art. 27.9 of SDAC DAOA, the Parties shall agree that the personal data (listed in Annex 5 of this Agreement) of Parties' natural persons (managed in connection with and in the course of conclusion and performance of this Agreement will be handled in accordance with European Union data protection legislation (Regulation 2016/679, hereinafter referred to as GDPR).

**IN WITNESS WHEREOF**, and without prejudice to the procedure of sending scanned signatory pages set forth in Article 18, the Parties have caused its/their duly authorised representative(s) to execute this Agreement in sixteen (16) original counterparts.



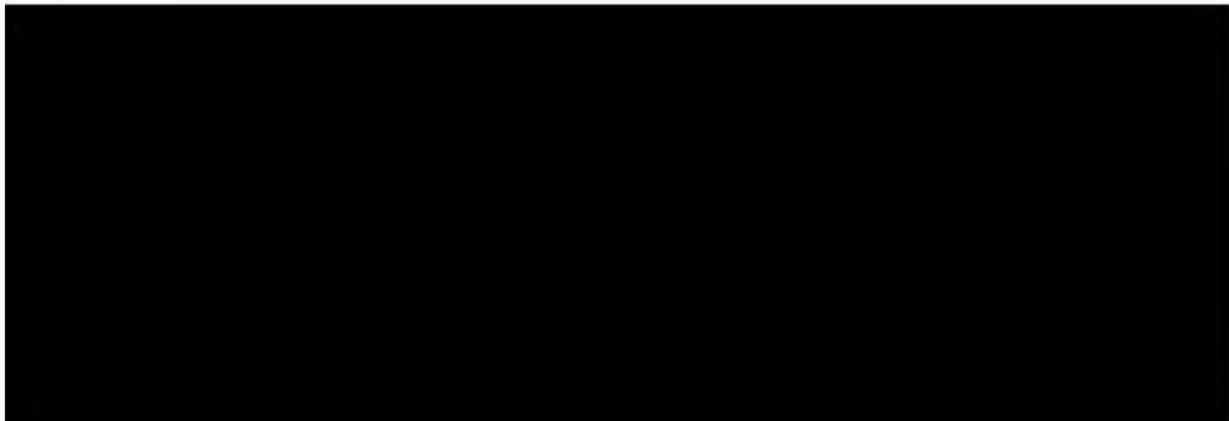
**List of Annexes:**

1. Annex no. 1: Daily Operation Procedures
2. Annex no. 2: Cost Sharing
3. Annex no. 3: RIO
4. Annex no. 4: Regional Change Control Procedure
5. Annex no. 5: Contact Details
6. Annex no. 6: List of Public Holidays
7. Annex no. 7: Company Specific Regulation



**Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling**

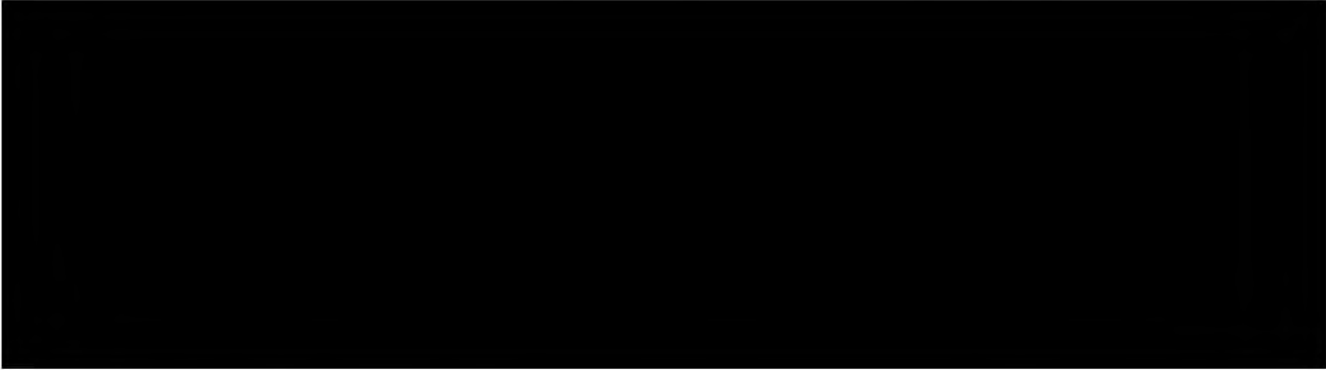




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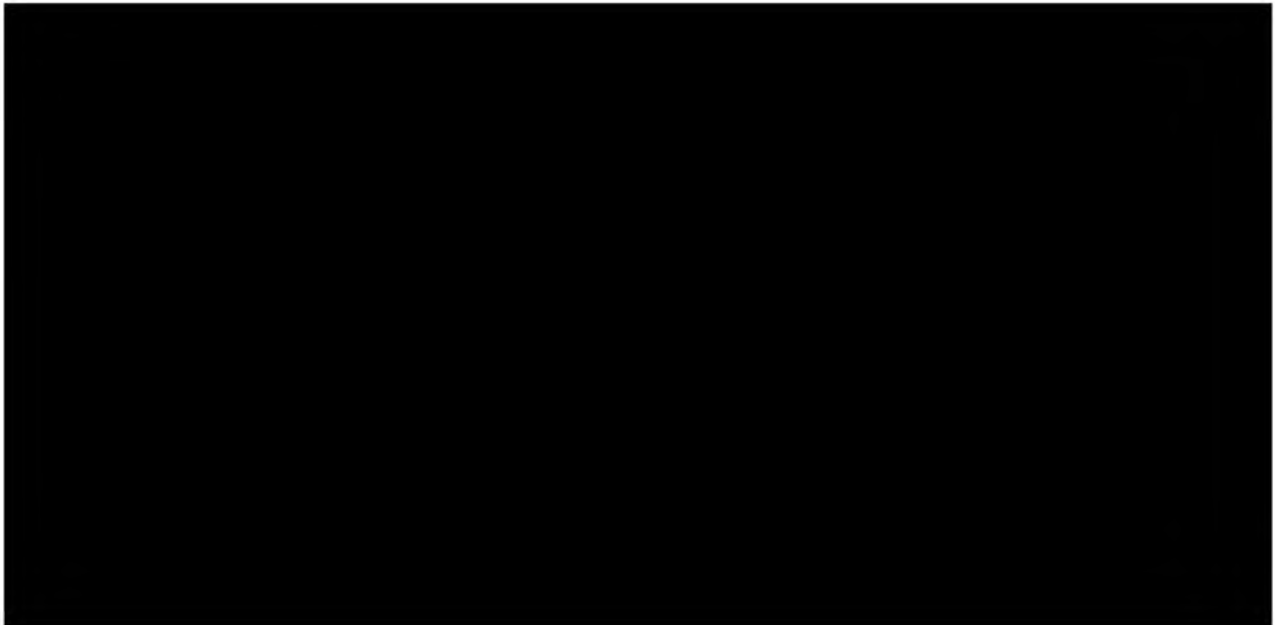


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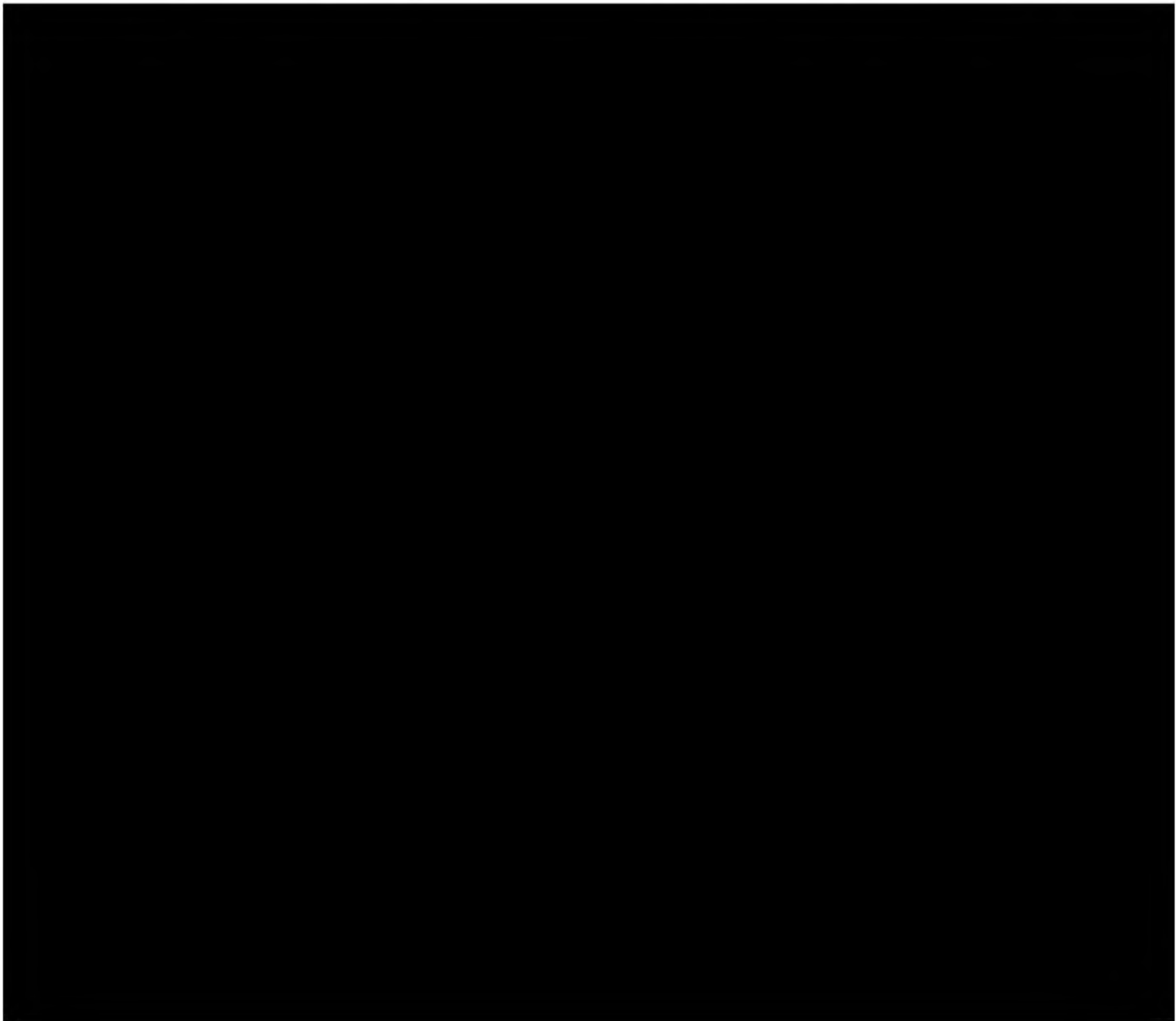


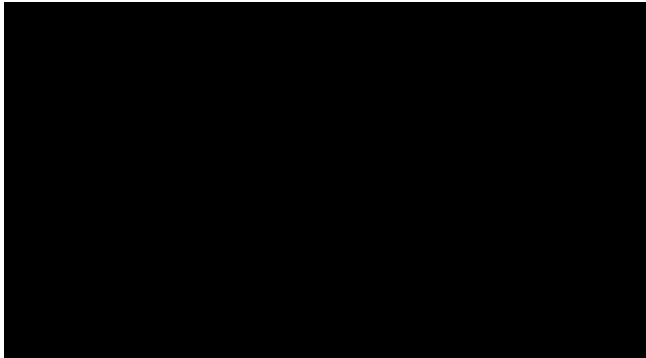


**Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling**



Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling






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For: **EPEX Spot SE (“EPEX”)**  
 By: .....  
 Function: .....  
 Date: .....

**Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling**



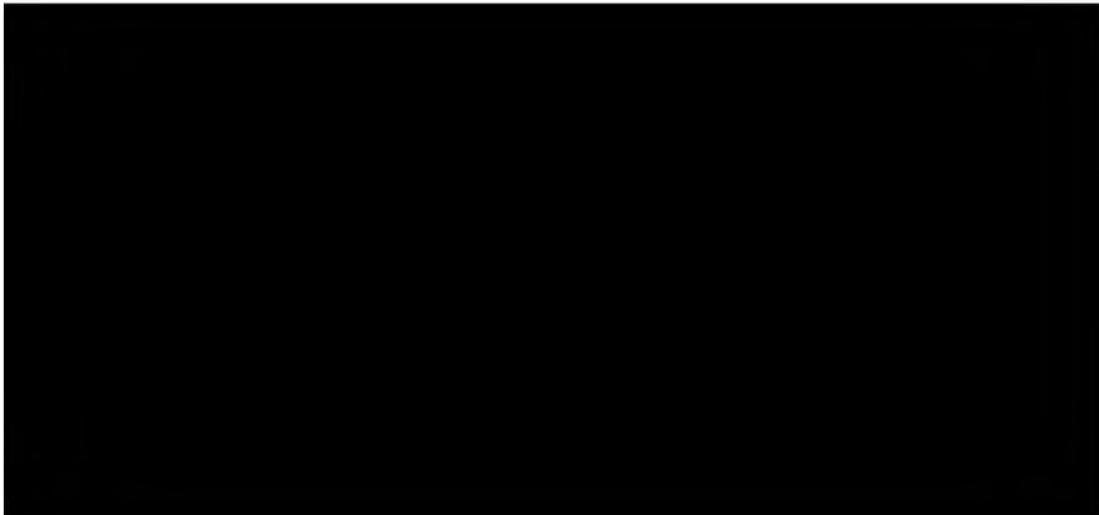
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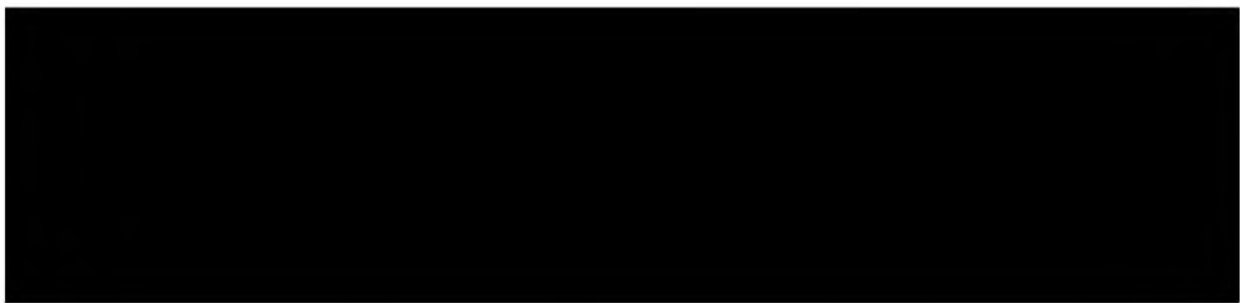
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**Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling**



**Day-Ahead Regional Operational Agreement on DE-AT-PL-4M MC NTC Based Market Coupling**

