

**NEMO INTERIM
COOPERATION AGREEMENT**

THIS INTERIM COOPERATION AGREEMENT (the "Agreement") is made

BETWEEN

1. **APX Commodities Ltd.**, a company incorporated under the laws of England, having its registered office at 18 King William Street, London, England, EC4N 7BP, United Kingdom, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented by [REDACTED] (hereafter "APX Commodities");
2. **APX Power B.V.**, a private limited company incorporated under the laws of the Netherlands, having its registered offices at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, registered with the commercial register in Amsterdam under the number 50969390, hereby duly represented by APX Holding B.V. which, in turn, is duly represented by [REDACTED] (hereafter "APX Power");
3. **Belpex SA**, a limited liability company, incorporated and existing under the laws of the Kingdom of Belgium, having its registered office at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium, registered with the Registry of Enterprises (Brussels) under n° 0874978602, hereby duly represented by [REDACTED] (hereafter "Belpex");
4. **BSP Regional Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661, duly represented by [REDACTED] (hereafter "BSP");
5. **Croatian Power Exchange Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia, duly represented by [REDACTED] (hereafter "CROPEX");
6. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road, Dublin 4, Ireland, duly represented by [REDACTED] (hereafter "EirGrid");
7. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number

Slovakia, with registered office in Mlynské nivy 59/A, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728, duly represented by [REDACTED]

[REDACTED] (hereafter "OKTE");

15. **OMI Polo Español S.A.**, a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI nº 6, 4ª planta, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Hoja: 506799, hereby duly represented by [REDACTED] (hereafter "OMIE");

16. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" SA**, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3rd district, Romania, registered with the National Trade Register Office Bucharest under the number J40/7542/2000, VAT n° 13278352, duly represented by [REDACTED] (hereafter "OPCOM");

17. **OTE, A.S.** a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, hereby duly represented by [REDACTED] (hereafter "OTE");

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

19. **Towarowa Giełda Energii SA**, a company duly organised and existing under the laws of the Republic of Poland, with registered office at Poleczki 23 H, 02-822 Warsaw, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714, duly represented by [REDACTED] (hereafter "TGE");

(collectively referred to as the "Parties" and each individually as a "Party").

WHEREAS:

- A. On the 14th of August 2015, the COMMISSION REGULATION (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management has entered into force (hereinafter “**CACM Regulation**”);
- B. Pursuant to article 2 paragraph 23 of CACM Regulation ‘nominated electricity market operator (hereinafter “**NEMO**”)' means “*an entity designated by the competent authority to perform tasks related to single day-ahead or single intraday coupling*”. A NEMOs tasks necessary for day-ahead and intraday market coupling are explained in article 7 of the CACM Regulation.
- C. According to article 4 paragraph 10 of the CACM Regulation the designating authority is required to inform the Agency for the Cooperation of European Regulators (hereinafter “**ACER**”) of the designation and revocation of NEMOs. ACER will maintain a list of designated NEMOs, their status and where they operate on its website.
- D. Pursuant to article 4 paragraph 3 of the CACM Regulation each of the Parties is individually designated as NEMO in a Member State by relevant designating authority.
- E. Pursuant to article 2 paragraph 30 of the CACM Regulation, market coupling operator (hereinafter “**MCO**”) function means “*the task of matching orders from the day-ahead and intraday markets for different bidding zones and simultaneously allocating cross-zonal capacities*”.
- F. Pursuant to article 9 of the CACM Regulation NEMOs are responsible for developing the terms and conditions or methodologies required by the CACM Regulation and submit them for approval to the competent regulatory authorities. This includes the development of a plan that sets out how NEMOs will jointly set up and perform the MCO functions (hereafter referred to as the “**MCO Plan**”), in accordance with article 7 paragraph 3 of the CACM Regulation.
- G. According to article 7 paragraph 4 of the CACM Regulation cooperation between NEMOs shall be strictly limited to what is necessary for the efficient and secure design, implementation and operation of single day-ahead and intraday coupling. The joint performance of MCO functions shall be based on the principle of non-discrimination and ensure that no NEMO can benefit from unjustified economic advantages through participation in MCO functions.
- H. With the aim of facilitating the execution of NEMO tasks in accordance with the CACM Regulation the Parties now wish to enter into this Agreement.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

**ARTICLE 1
SCOPE OF THE AGREEMENT**

- 1.1.** The purpose of this Agreement is to establish an interim framework to facilitate the necessary cooperation between designated NEMOs with respect to the performance of all common tasks that need to be performed in connection with the following:
- a) the development and submission of the MCO Plan in accordance with article 7, paragraph 3 of the CACM Regulation;
 - b) the development and submission of such other appropriate terms and conditions and/or methodologies as may from time to time be required in accordance with article 9 paragraph 6 of the CACM Regulation;
 - c) the development of the Enduring Cooperation Agreement as proposed in the MCO Plan. It is understood that such development shall start prior to the approval of the MCO Plan pursuant to article 7, paragraph 3 of the CACM Regulation;
 - d) any additional [common] tasks as may be agreed unanimously from time to time by the Parties.

(hereinafter, together, the “**Scope**”).

**ARTICLE 2
PRINCIPLES OF COOPERATION**

- 2.1.** The Parties shall cooperate in good faith and using their respective best efforts, taking into account their mutual interests, for the achievement of the Scope bearing in mind the multilateral spirit of the joint tasks assigned to NEMOs by the CACM Regulation.
- 2.2.** Consistently with article 7 paragraph 4 of the CACM Regulation, the Parties shall cooperate on the basis of the principle of non-discrimination and on the basis of the principle of subsidiarity meaning that, apart from the coordination which is strictly necessary for the achievement of the Scope, stipulated under Article 1 of this Agreement, each Party will keep its full independency and self-determination for its own business activities.
- 2.3.** Notwithstanding the exchange of information necessary for the achievement of the Scope, each Party shall remain at all times autonomous in as strict a manner as possible with regards to its

business, strategy, product design, commercial policy, prices definition, etc. All individual decisions of the Parties, except those strictly related and necessary to the achievement of the Scope, shall be taken individually and in uncoordinated manner.

ARTICLE 3 PERFORMANCE

- 3.1.** Each Party shall execute this Agreement in compliance with:
- a) in respect of such Party, any type of mandatory provision applicable to it, or any measure/decision of public order proclaimed by any competent authority (hereinafter “Legal Provision”), and
 - b) generally recognised standards of good practice and diligence of a prudent businessperson.
- 3.2.** Each Party declares, by signing this Agreement, that it is designated as a NEMO in at least one bidding zone in a Member State pursuant to the CACM Regulation.
- 3.3.** The Parties will each use their respective best efforts to achieve the Scope in compliance with the requirements and target deadlines provided under the CACM Regulation. In particular, the Parties will each use their respective best efforts to agree on and submit the MCO Plan to all national regulatory authorities (“NRAs”) and ACER by no later than the 14th of April 2016.

ARTICLE 4 GOVERNANCE

- 4.1.** The cooperation between the Parties shall be coordinated by means of a committee (the “Committee”) formed by 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 in respect of the Scope on behalf of the Party which they represent.
- 4.2.** The Committee may from time to time decide to create or dissolve working groups or task forces for the purpose of carrying out such tasks, as may be required to complete the Scope.
- 4.3.** The business of the Committee shall be conducted at all times in a manner that is consistent with the procedures provided under the Rules of Internal Order (the “RIO”) (Annex I).
- 4.4.** No decision of the Committee, or of any other working group or task force created by the Committee, shall be binding unless such decision is approved according to the relevant voting rules as stipulated in Article 4.5 and the RIO. For the avoidance of doubt, in the event of any

inconsistency between the terms of this Article 4.5 and the RIO, the terms of this Article will prevail.

4.5. Without prejudice to Article 11 of this Agreement, the voting rules of the Committee are as follows:

a) in respect of decisions related to Article 1 (a) and (b):

- i)* the Parties shall always in the first instance use their respective best efforts to take decisions by unanimity of the Parties in attendance at the relevant meeting of the Committee in question;
- ii)* if unanimity cannot be reached, the decision shall be taken by a qualified majority vote of the Parties in attendance at the relevant meeting of the Committee in question, where the majority vote must be carried by such number of appointed representatives as together represent not less than: (i) 55 % of the Member States of the European Union; and (ii) 65 % of the population of the European Union. For the avoidance of doubt, a blocking minority for qualified majority decisions in accordance with this paragraph must include NEMOs representing at least four Member States, failing which the qualified majority shall be deemed to have been attained;
- iii)* when a decision to submit a final document for approval by NRAs is required, each and all Parties must express their resolution explicitly in writing (e-mail included). A failure by a Party to provide such a response in the timescale set by the Committee will be treated as a “not approved” response by that Party.
- iv)* where a Member State has not provided the rules for splitting votes between NEMOs in such Member State, and where the affected NEMOs are not in agreement, the Committee will use best efforts to find a reasonable way to progress.
- v)* by way of exception, decisions related to Article 8.1 (ii) shall be taken by unanimity, consistently with Paragraph (b) below.

b) any decision within the Scope, not related to the purposes of Paragraph (a) above, shall be taken by unanimity of the Parties in attendance. Parties not attending the relevant meeting may object to the decision within 10 Business Days (as defined below) from the communication to the non-attending Parties of such decision as provided in the minutes of that meeting. For the purpose of this Agreement, “**Business Day**” means any day except Saturday, Sunday and except any other day on which banks located in the respective place of the registered office of the Party(ies) concerned are not open for normal banking business;

- 4.6. Any such Committee meeting for the purposes of Paragraphs (a) or (b) above must be quorate for such purposes, where “quorate” in this context shall mean that the appointed representatives attending such meeting must together represent not less than: (i) 55 % of the Member States; and (ii) 65 % of the population of the European Union; as specified in paragraph 2 of article 9 of the CACM Regulation.
- 4.7. The secretary or any other selected person will act as vote counter.

ARTICLE 5 CONFIDENTIALITY

5.1 Non Disclosure

- 5.1.1 The term “**Confidential Information**” used in this Agreement means any and all information, whether or not marked as confidential, which a Party (the “**Disclosing Party**”) provides or gives access to either orally, in writing, in electronic form or in any other form whatsoever to any other Party (the “**Recipient Party**”). For the avoidance of doubt, the terms of this Agreement shall not constitute Confidential Information for the purposes of this Agreement.
- 5.1.2 Any Confidential Information may be used by Recipient Party only for the implementation of the Scope (hereinafter “**Permitted Purpose**”).
- 5.1.3 Without prejudice to Article 2.1 (good faith and best efforts), this Agreement does not, and is not intended to, create an obligation for any Party to exchange information with other Parties, such as but not limited to market data of a Party which is not within the Scope. 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.
- 5.1.4 In accordance with article 13 of the CACM Regulation, each Party hereby undertakes to the other Parties that it shall:
- i) not disclose, convey or transfer to any individual or entity, other than a Party, Confidential Information in any form whatsoever without the express, prior written consent (including email) of the Disclosing Party;
 - ii) not use the 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 Disclosing Party;
 - iii) not copy or reproduce Confidential Information in any form whatsoever except as may be necessary for the performance of its obligations under this Agreement;

5.1.5 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 or is about to occur, such Party must immediately notify the relevant Disclosing Party in writing (including, but not limited to, by email).

5.1.6 The Parties agree that the obligations imposed by this Article shall: (i) survive the termination, for any reason whatsoever, of this Agreement for a term of five (5) years; or (ii) in case one or more Parties withdraws from this Agreement for any reason, survive such withdrawal for a term of five (5) years, as of the date of such withdrawal.

5.2 Permitted Disclosure

5.2.1 A Party may disclose information it has received in the event that one of the following conditions are met:

- i)* if it can demonstrate by written evidence that all Parties have agreed to such disclosure;
- 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;
- 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 this Agreement.

5.2.2 Each Party shall be entitled to disclose Confidential Information to its corporate decision-making bodies (e.g. board of directors, general assembly, supervisory board), directors, members of management, officers, employees, and legal representatives of companies' under its Control or of companies that Control such Party (hereafter the "**Internal Representative**"), subcontractors, service providers, agents, professional advisors, external consultants and insurers and attorneys-at-law (hereafter the "**External Representative**"), only if all the following conditions are met:

- a) the Internal Representative or External Representative of a Party has a definite need to know such information for the execution of its assignment which must be strictly related to the performance of this Agreement. Each Party shall directly assume full responsibility for any acts of its Internal Representative or External Representative related to the disclosed Confidential Information;
- b) the Internal Representative and/or the External Representative is informed by the Party of the confidential nature of the Confidential Information as well as of the conditions of professional secrecy set under article 13 of CACM Regulation,

and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement and of article 13 of CACM Regulation;

- c) the necessary procedures and protections must have been put into place by the Recipient Party so as to prevent disclosure and further use of such Confidential Information in the event such person is no longer an Internal Representative or External Representative of the Recipient Party;
- d) each Recipient Party is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations; and
- e) the Recipient Party undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorised use and/or disclosure of such Confidential Information by its Internal and External Representatives to whom Confidential Information is disclosed.

5.2.3 Each Party is entitled to voluntarily disclose, at its own initiative, Confidential Information to its competent NRA(s) provided that:

- i) such NRA(s) is informed by the Recipient Party of the confidential nature of the Confidential Information; and
- ii) such NRA(s) 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 NRA is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement.

5.2.4 ~~For the avoidance of doubt, Article 5.2.3 also applies to particular national mandatory legislation existing in Norway, Sweden, Denmark, Finland (“Nordic-Baltic Region”) and Slovenia 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). The Parties are aware of the fact that according to such kinds of acts, (some of) the Receiving Party(ies) of the Nordic-Baltic Region are subject to these kinds of acts and are therefore forced to disclose (some) Confidential Information, taking into account the specific procedural rules for disclosure following from such acts, which other Parties otherwise would like to have kept confidential under this Agreement. The same shall apply in case similar legal regimes exist in other jurisdictions. For the avoidance of doubt, Article 5.2.3 also applies to particular national mandatory legislation existing in Norway, Sweden, Denmark, Finland (“Nordic-Baltic~~

Region”), the Czech Republic and Slovenia 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). The Parties are aware of the fact that certain Party(ies) of the Nordic-Baltic Region, the Czech Republic and Slovenia are subject to such kinds of acts and may therefore be forced to disclose some or all of the terms of this Agreement or other information pertaining to such Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions. Without prejudice to the foregoing provisions of this Article, 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 affected 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.

5.2.5 If the Recipient Party is requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order or request issued by a competent court or by a competent regulatory, administrative, judicial or other governmental body, 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;
- iii)* should such Confidential Information be intended to be published by a competent authority, the Recipient Party shall agree with the Disclosing Parties in providing a non-confidential version of such Confidential Information for this publication, under the exception of mandatory rules or court or administrative orders or information requested by administrative, regulatory or court authorities in which case the publication shall not be constrained.

5.2.6 For the avoidance of doubt, the Parties confirm that the Disclosure of Confidential Information in the circumstances foreseen under this Article does not affect the confidential character of the Confidential Information so exchanged.

5.2.7 In cases of doubt as to whether an information is Confidential Information or whether Confidential Information may be disclosed pursuant to this Article, 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.

5.3 Intellectual property of Confidential Information

- 5.3.1** All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party or its relevant service provider.
- 5.3.2** This Agreement does not grant the Recipient Party any license rights or any other rights related to the Confidential Information and its future use, except to the extent as set out in this Agreement or unless such is agreed upon in a separate, written, specific and signed agreement.

ARTICLE 6 COMMUNICATION

- 6.1** The principles under this Article 6 shall apply to external communication in all forms relating to any subject in the framework of this Agreement. The Parties may deviate from this Article 6 only if necessary to comply with applicable mandatory laws and regulations, and/or with binding orders, requests or resolutions of the competent national or European public authority.
- 6.2** The Parties shall be free to express written or oral positions or opinions about the cooperation between NEMOs under this Agreement without prejudice to the obligation of good faith. The Parties shall not express positions or opinions in the name of one or more other Party unless they have been in advance explicitly mandated to do so in writing.
- 6.3** The Parties shall communicate at all times correct and accurate information. In the event a communication by a Party does not comply with this Article, the other Parties are entitled to request such Party to publicly correct its communication, without prejudice to any other rights or remedies under this Agreement or by law.
- 6.4** **Joint communication**

The Committee shall decide on the communication devices 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 take place after approval by the Committee of the content of the communication. The Committee shall also decide, for any joint communication, on the date and hour at which the joint communication is effective. The following events directly related to the CACM Regulation implementation shall be subject to joint communication:

- i)* finalisation of terms and conditions or methodologies required under article 9, paragraph 6 of the CACM Regulation;
- ii)* content of this Agreement that must be disclosed to the public;
- iii)* partial or full termination of this Agreement;
- iv)* other events for which a joint communication is deemed to be necessary by the Committee.

6.5 A Party may communicate individually to third parties on the topics which are subject to joint communication as mentioned under Article 6.4 only after the Committee's approval of the content thereof.

ARTICLE 7

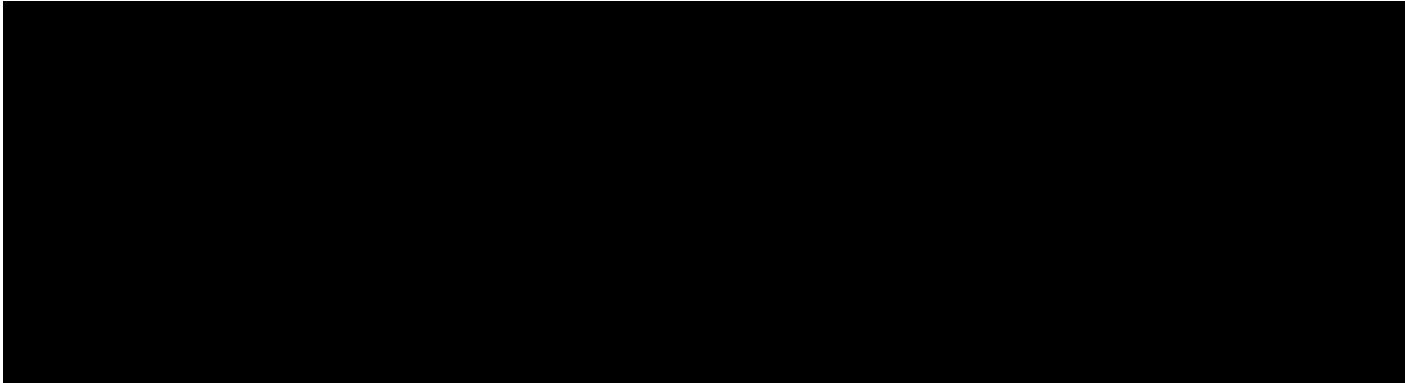
CONSULTATION

The Committee may decide on the process, form and content for any stakeholder consultation considered necessary to support the development of terms and conditions or methodologies required under article 9, paragraph 6 by the CACM Regulation, or deemed necessary to achieve the Scope of this Agreement.

ARTICLE 8

COSTS

~~8.1 For the purposes of article [80] of the CACM Regulation, costs related to the performance of the Scope shall be proposed as common costs for the purpose of the CACM Regulation (hereinafter "Common Costs") as follows:~~



8.1 The sharing of INCA Costs (as defined below) between the Parties pursuant to the terms of this Agreement in accordance with the Provisional Solution or the Enduring Solution (as the case may be) shall be subject to the approval of the Committee as follows:

i)

ii)

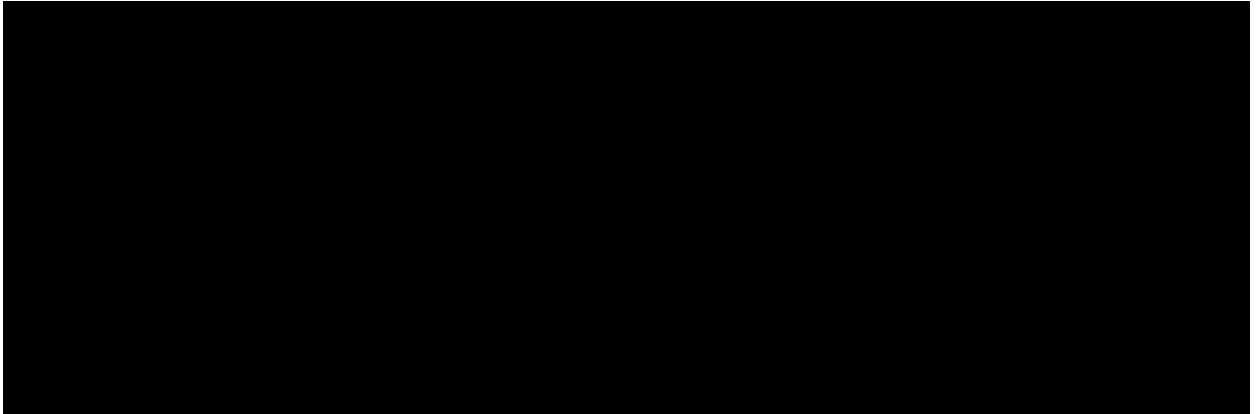
where, for the purposes of this Agreement:

- iii) **“INCA Costs”** means such costs as are approved by the Committee to be incurred by any one or more Parties in connection with the performance of INCA Tasks, including Pre-INCA Costs; and
- iv) **“INCA Task”** means any common task for benefit of all the Parties that needs to be performed in connection with the Scope, including such common tasks as may have been performed (wholly or partially) during the period from 1 January 2016 until 3 March 2016 specifically in connection with, and limited to, either: (i) the drafting of the INCA, (ii) the drafting of the MCO Plan or (iii) the performance of duties as chairman of the Committee and, for the period 3 March – 1st May, the de facto chairman of the Committee; and
- v) **“Pre-INCA Costs”** means those costs already incurred in respect of the period from 1 January 2016 until 3 March 2016 specifically in connection with, and limited to, either: (i) the drafting of the INCA, (ii) the drafting of the MCO Plan; (iii) preparing and presenting material supporting the regular meetings with the all-TSO and all-NRA coordination groups; or (iv) the costs incurred by the de facto chairman of the provisional committee of NEMOs which coordinated certain CACM-related NEMO activities prior to the official constitution of the Committee.

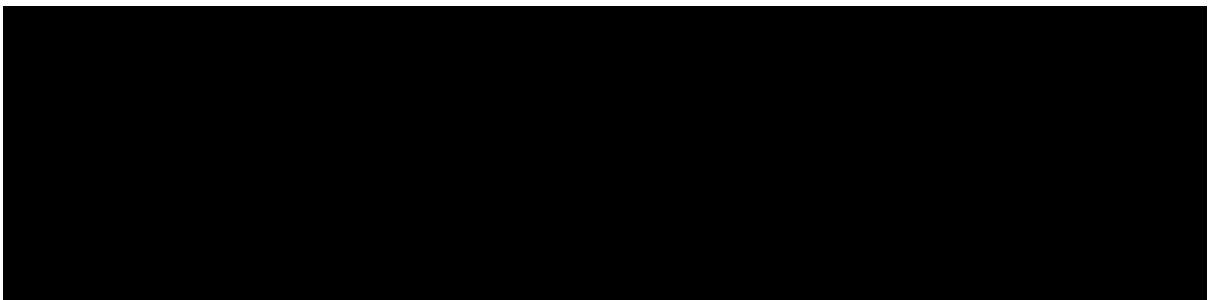
8.2 ~~The Parties shall ensure that the incurrence of Common Costs shall be adequately and effectively monitored by the Committee. All costs shall be tracked by Parties in compliance with article 80 paragraph 2 of the CACM Regulation.~~ The Parties shall ensure that all INCA Costs shall be, insofar as such costs are time costs, appropriately and fairly recorded in timesheets and, insofar as such costs are other expenses, supported by reasonable documentary evidence for the purposes of ensuring compliance with the requirements of article 80 paragraph 2 of the CACM Regulation.

INCA Costs must be either: (i) within an approved yearly budget or (ii) the subject of an approved increase in the relevant yearly budget, or (iii) subject to a specific approval by the Committee as a non-budgeted INCA Cost, each of which must be specifically approved by the Committee consistently with the terms of Article 8.1.

~~8.3 The Committee shall fix a yearly budget taking into account the following principles applicable to such costs:~~



8.3 The Committee shall approve not later than on 1st October of each year the overall yearly budget for following calendar year taking into account the following principles applicable to INCA Costs:



~~8.4 Common Costs which have been budgeted and incurred shall be tracked by Parties pursuant to article 80 paragraph 2 of the CACM Regulation and reported to the relevant regulatory authorities pursuant to article 80 paragraph 1 of the CACM Regulation. A detailed process according to which Common Costs will be identified and shared, in accordance with article 80 paragraph 3 of the CACM Regulation, shall constitute part of the MCO Plan approved by the Committee.~~

8.4 The process by which INCA Costs will be identified and shared between the Parties shall be developed and implemented as follows:

- a) A provisional solution requiring that the Parties share all INCA Costs (irrespective of the date on which such INCA Costs have been incurred, but provided that such costs do not relate to any period prior to 1 January 2016) on an equal basis (the

“Provisional Solution”) will be temporarily applied by the Parties with effect from the date of the coming-into-force of the First Amendment Agreement, subject to the understanding that such solution should not automatically form the basis for any other cost sharing mechanism between NEMOs;

- b) The Parties shall each use their respective best efforts in engaging with and obtaining from the NRAs such determination or guidance as is required to interpret the provisions of Article 80 of the CACM Regulation;
- c) As soon as is reasonably possible following the receipt of such determination or guidance from the NRAs, the Parties will procure that a draft proposal is prepared and submitted to it by no later than two months after receipt of such determination or guidance from NRAs (or such longer period as may be decided by the Committee) for implementing an enduring solution for the sharing of INCA Costs (the “**Enduring Solution**”).
- d) As soon as the Enduring Solution is implemented and takes effect, the Parties shall carry out a cost reconciliation process to ensure that all INCA Costs previously allocated between them on the basis of the Provisional Solution shall be re-allocated between them according to the terms of the Enduring Solution.
- e) In the event that, the Parties having used their respective best efforts, no determination or guidance is forthcoming from the NRAs as described in paragraph (a) above by, at the latest, the date on which the MCO Plan is approved by the NRAs, the Committee shall meet as soon as possible to determine what next steps should be taken.

8.5 **Invoicing and payment**

8.5.1 Invoicing and payment between Parties shall be governed by the following provisions of this Article (as may be supplemented by the decisions of the Committee from time to time):

- a) Unless stipulated otherwise in this Agreement or its Annexes, all amounts due by or to the Parties under this Agreement are to be shared in accordance with the terms of the Provisional Solution until such time as the Enduring Solution is implemented and takes effect.
- b) The invoicing and payment of INCA Costs shall be performed on a calendar quarterly basis according to the following procedure:
 - ii) By no later than 10 Business Days after the end of each calendar quarter, the secretary will send via e-mail to each Committee member, a report (the “**Quarterly Report**”) based on the relevant Monthly Reports already

submitted in respect of such period which shall detail the following:

dd) in respect of such calendar quarter, a clear identification, expressed in euro, of the various incurred INCA Costs based on the tariffs set out under Article 8.3 and the relevant timesheets as submitted to the secretary in accordance with the provisions of Annex V;

ee) details of the cumulative INCA Costs incurred from 1 January 2016 which have been either specifically detailed in the relevant approved yearly budget (or an extension thereof) or which have been otherwise approved by a decision of the Committee in accordance with Article 8.1;

ff) Any other relevant matters as the secretary shall determine as reasonable for the purposes of the Quarterly Report,

together with a document (the "Quarterly Account") prepared by the secretary of the Committee which shall detail the following:

gg) a clear identification of the various INCA Cost items to be made subject to an invoice by those Party(ies) having incurred INCA Costs in respect of such calendar quarter;

hh) details of the relevant amounts, expressed in euro, which shall be subject to invoices to be paid by the Parties who did not incur such costs.

ii) Where no objection is raised by any of the Committee members within 5 Business Days after receipt by them of the Quarterly Report and the Quarterly Account, the Committee will be deemed to have approved them. For the avoidance of doubt, the Committee shall also expressly approve the relevant Quarterly Report and Quarterly Account at the next scheduled meeting of the Committee or at an ad-hoc meeting of the Committee (where such meeting takes place prior to there being a deemed approval of such documents). Irrespective whether the Quarterly Report and the Quarterly Account are approved at a meeting (either scheduled or ad-hoc) of the Committee or by deemed approval, the secretary of the Committee shall, by no later than the Business Day following the date of such approval, provide the Parties with signed copies (in PDF or other suitable electronic format) of such approved Quarterly Report and Quarterly Account.

c) Based on the approved Quarterly Report and Quarterly Account, the Parties shall issue and send the invoices, exclusively by email consistently with Article 17.5.1, within 5 Business Days after the date of receipt of confirmation of approval from the secretary of the Committee under paragraph b)(ii) above. The relevant Quarterly Account shall be attached to all invoices issued. Each invoice shall indicate how such amounts have been identified in the Quarterly Account and shall include at least the

following items:

- xii) full name and address of both invoicing and invoiced Party;
 - xiii) VAT number of both invoicing and invoiced Party;
 - xiv) invoice amount, valued in euro;
 - xv) bank account and bank address (including IBAN and BIC) on which the relevant payment shall be made;
 - xvi) invoice number;
 - xvii) invoice issue date;
 - xviii) period of performance;
 - xix) designation of the service on the invoice;
 - xx) payment term;
 - xxi) tax rate and tax amount separately, if any;
 - xxii) specific constraint for invoicing, required by the article 226 of the Directive 2006/112/CE, e.g. indication of the reference to the applicable provision of the Directive where the supply of services are subject to the VAT reverse charge procedure.
- d) Subject to Articles 8.5.2 and 8.5.4, each Party shall pay the invoiced amount (or following a Dispute regarding an invoice, such amount as is determined to be payable) within thirty (30) days from: (i) the receipt of the respective invoice; or (ii) the date of the settlement of such Dispute, as appropriate (the “Due Date”). Every invoice must contain a payment notice and be compliant with the applicable EU VAT regulations in force at the time of issue. All payment(s) shall be made by wire transfer to the bank account indicated in the invoice(s).
- e) Each Committee representative shall inform the secretary and the Committee of the payment process status if requested by any other Party.
- f) It is expressly agreed between the Parties that any INCA Cost incurred in accordance with Article 8.1 will be invoiced based on the principles described in this Agreement.

8.5.2 In the event that a Party disputes all or any part of an invoice, it shall inform the invoicing Party and the Committee as soon as possible and in any event within ten (10) Business Days of the date of the invoice of the disputed amount and the basis for disputing such invoice, together with any appropriate information supporting its position. The undisputed part of the invoiced amount shall remain payable as provided herein. Any dispute by a Party of all or any part of an invoice will be subject to the Dispute resolution procedure set out in Article 16 as integrated by the specific provisions of this Article. Notwithstanding the existence of any Dispute relating to all or any part of an invoice, the disputing Party shall remain for all purposes (other than payment of the contested part of such invoice pending resolution of such Dispute) subject to all its obligations under this Agreement.

8.5.3 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 activities performed which are subject of such a Dispute.

8.5.4 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 02/08/2002³ on combating late payment in commercial transactions, as modified by the Law of 22 November 2013, implementing Directive 2011/7/EU⁴.

ARTICLE 9 REPORTING

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 completing any obligation in respect of its performance under this Agreement:

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

ARTICLE 10 ACCESSION

10.1 This Agreement is open to accession of any legal person designated as a NEMO from time to time pursuant to the CACM Regulation.

10.2 Adherence Procedure

A designated NEMO which intends to adhere to this Agreement (the “**Applicant**”) shall address to the secretary of the Committee a written request. The secretary shall inform such Applicant about the adherence procedure and shall provide it with a copy of this Agreement as well as of the draft the adherence form which shall be substantially similar to the template hereby provided

³ The law is available in French at:

http://www.ejustice.just.fgov.be/cgi_loi/change_lg.pl?language=fr&la=F&table_name=loi&cn=2002080232

⁴ The Belgian legal rate is available on the Belgian official journal, which is published on the following website:

<http://www.ejustice.just.fgov.be/cgi/welcome.pl> and on the following website:

http://finances.belgium.be/fr/sur_le_spf/structure_et_services/administrations_generales/tr%C3%A9sorier/taux-dinter%C3%AAt-l%C3%A9gal-applicable

as Annex II (the "Adherence Form") provided that the Applicant has previously entered into a confidentiality arrangement substantially similar to the template provided under Annex III. The Parties agree to be bound by the provisions of the Adherence Form with no further signature required, as soon as approved by the Committee and signed by the Applicant.

ARTICLE 11 AMENDMENTS

11.1 General

Amendments to this Agreement shall only be valid, if approved unanimously in writing and signed by an authorised representative of each of the Parties. In deviation from the foregoing, Annex IV – Contacts may be amended by way of notification by an appointed representative of the concerned Parties to the secretary, exclusively in relation to its own contact information.

11.2 Amendments due to changes to Legal Provisions

- 11.2.1** The Parties expressly agree to review this Agreement if relevant modifications to Legal Provisions that could impact this Agreement emerge. In case changes to Legal Provisions - including, for the avoidance of doubt, measures and/or decisions of administrative or other public authorities as far as within the competence of these authorities – require an amendment or modification of this Agreement, any Party(ies) affected by this change or measure and/or decision may send a request for modification of this Agreement to the other Parties containing:
- i)* the provisions of this Agreement that are subject to modification;
 - ii)* the reason why such modification is necessary; and
 - iii)* a proposal of amendment of the concerned provisions.
- 11.2.2** 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 2.
- 11.2.3** To the extent a Party is not concerned by the change to a Legal Provisions relevant for another Party, it may refuse to make the necessary amendment to this Agreement by giving justified reasons. In such case, the concerned Party(ies) shall inform its (their) competent regulatory authority to see if execution of this Agreement is still possible without making the necessary amendment. In case this competent regulatory authority would object, the affected Parties can apply Article 12, provided that the other requirements of Article 12.3.2 are met.
- 11.2.4** In the event that an amendment to this Agreement is a consequence of a change in legal provisions of the European Union, the costs thereof shall be shared equally among the Parties.

In the event that an amendment to this Agreement is a consequence of a change in a national Legal Provision applicable to one Party, such Party will bear the implementation costs of such amendment.

ARTICLE 12 ENTRY INTO FORCE, DURATION, TERMINATION

12.1 Entry into force

This Agreement enters into force on 3 March 2016 provided that each Party has individually signed one original of this Agreement and sent a scanned copy to all the other Parties via e-mail. In case one or more individual Parties has/have not signed the Agreement by 3 March 2016, the Agreement shall enter into force in respect of all the Parties which have already signed the Agreement.

The Parties shall sign for record purposes one original of this Agreement for each of the Parties, inserting in the headings of each original the date of entering into force of this Agreement.

12.2 Duration

This Agreement shall remain in full force and effect until it is replaced by the Enduring Cooperation Agreement proposed in the MCO Plan in stipulation with Article 1(c) of this Agreement. It being understood that each Party participates in the cooperation set by this Agreement subject to its enduring status of NEMO.

12.3 Termination

12.3.1 Full Termination

12.3.1.1 This Agreement may be terminated at any time by written agreement of all Parties, without any court intervention and without any compensation being due.

12.3.1.2 The Parties shall not refuse to terminate such agreement in the event that termination is ordered by a concurrent valid order of all competent regulatory authorities or any other relevant authorities pursuant to article 4 paragraph 3 of the CACM Regulation.

12.3.2 Partial Termination

12.3.2.1 One or more Parties shall automatically terminate this Agreement without any

court intervention and without any compensation due, should one of the following events occur (i.e. condition subsequent):

- i)* in the event that the Party is no longer designated as a NEMO in at least one bidding zone in a Member State, as a result of revocation or no renewal, pursuant to the CACM Regulation. In this event, such Party is obliged to inform in writing the other Parties immediately without delay;
- ii)* in the event of bankruptcy or any other insolvency proceeding (to the extent compatible with applicable legal provisions), dissolution or liquidation of such Party. In this event, such Party is obliged to inform in writing the other Parties by sending a written notice via registered letter at least one (1) month prior to the start of the relevant proceeding;

Consistently with Article 12.2 above (Duration), the Parties agree that the events described under i) and ii) above are conditions subsequent to the participation of a Party in the cooperation set by this Agreement.

12.3.2.2 One or more Parties may terminate the participation in this Agreement without any court intervention and without any compensation due:

- i)* Subject to a three (3) months' prior written notice, to be sent to all other Parties, by registered letter in the event of a change due to regulatory reasons, in case of failure to reach an agreement with regard to the modification of this Agreement according to Article 11.2;
- ii)* Subject to a six (6) months' prior written notice, to be sent to all other Party(ies), by registered letter, without any motivation being due by the exiting Party;

12.4 Upon termination of this Agreement, all documents and other material in possession, custody or control of the terminating Party, which bear or incorporate disclosed Confidential Information shall, within eight (8) days of the expiration or termination, be destroyed by it or returned by it to the non-terminating Parties, except that a copy may be kept:

- i)* if necessary to comply with mandatory record-keeping obligations (i.e. obligations set up by national law and/or EU law) incumbent on the terminating Party from which it cannot deviate, or
- ii)* if the destruction of automatically generated back-up files would involve a disproportionate effort, provided that the content of these back-up files is

not disclosed to any person and the terminating Party undertakes to destroy all back-up files in the routine deletion of back-up files.

The terminating Party shall inform the non-terminating Parties in writing if it intends to invoke any of the exceptions listed above under (i) and (ii) and demonstrate that the conditions of the relevant exception are met.

ARTICLE 13 LIABILITY

13.1 General

- 13.1.1.** In the event of a breach (whether by act or omission) by a Party, the affected Parties shall in aggregate be entitled to claim compensation or indemnification within [REDACTED] all incurred direct losses, damages, charges, fees or expenses, arising out, or resulting from such breach to the extent the breach is a consequence of the defaulting Party's gross misconduct ("*grove fout*" / "*faute grave*") or gross negligence ("*grosse negligence*"). For avoidance of doubt no consequential or indirect damages, such as loss of profit, loss of business, or incidental damages shall be compensated. Should the breach be a consequence of fraud ("*bedrog*" / "*fraude*"), intentional fault, intentional misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") of the defaulting Party, the affected Parties shall be entitled to claim full compensation or indemnification for all losses, damages, charges, fees without any cap being applicable, to the exclusions of indirect and consequential damage.
- 13.1.2.** In the event of a breach by a Party, the Committee shall decide upon possible measures to mitigate the negative consequences of such breach. The defaulting Party shall be allowed to participate in the deliberations of the Committee in this respect, but shall not be entitled to vote in respect of the measures to be taken.
- 13.1.3.** Should the sum of all damages suffered by two or more affected Parties exceed the amount of the liability cap, the maximum compensation or indemnification to be paid by the defaulting Party towards the affected Parties shall be reduced pro rata.

13.2 Hold harmless obligation ("*Vrijwaring*" / "*Garantie*") for damages claimed by third parties

- 13.2.1** In the event of a breach (whether by act or omission) by a Party results in a claim by a third party, the defaulting Party shall hold harmless the affected Party consistently with and subject to the limitations set forth in article 13.1 above.

13.2.2 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.

13.3 Specific provisions in the event of breach of confidentiality

13.3.1 In case of a breach by a Recipient Party of any of its confidentiality obligations under this Agreement, the Disclosing Party shall be entitled to cease immediately the disclosure of any further Confidential Information.

13.3.2 The Disclosing Party shall have no liability towards third parties with respect to the use by a Recipient Party of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Disclosing Party and the Recipient Parties.

13.3.3 The rights a Disclosing Party may have against third parties pursuant to any other agreement shall in no event restrict a Disclosing Party's right to claim damages under this Article 13 from the breaching Recipient Party.

13.3.4 Within the limits set under Article 13.1, the Recipient Party undertakes to hold the Disclosing Party(ies) harmless and indemnify it against any third party claim, including claims raised by MCO's service providers, directly related

- i)* to a breach by the Recipient Party of its confidentiality obligations under this Agreement, or
- ii)* to the access or use of the Confidential Information in violation of the laws and Regulations applicable to the Recipient Party.

13.3.5 The Parties acknowledge that unauthorised disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Disclosing Party(ies). Accordingly, the Disclosing Party(ies) may seek immediate injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.

13.3.6 To the extent a Disclosing Party and a Recipient Party have entered into other agreement(s) that protect the confidentiality of the same Confidential Information:

- i)* subject to the limits set under Article 13.1, the Disclosing Party shall be entitled to claim compensation or indemnification from a Recipient Party for damages caused by a breach of art. 5 (Confidentiality), except to the extent that the same action or

omission by such Recipient Party has already given rise to a claim and compensation or indemnification under such other agreement(s).

- ii) the Disclosing Party is not entitled to claim compensation or indemnification under such other agreement(s) from a Recipient Party for damages caused by a breach of confidentiality to the extent that the same action or omission by such Recipient Party has already given rise to compensation or indemnification under this Agreement.

13.4 No Party shall be liable for delay or failure to fulfil its obligations under this Agreement if the delay or failure in performing the concerned obligation results from "*force majeure*" or sovereign compulsion ("*fait du prince*").

ARTICLE 14 INTELLECTUAL PROPERTY RIGHTS

All works, preparations, creations, studies, researches including all documents, drawings, documentation, manuals, reports, schemes, software (system programs, applications, object codes, source codes), algorithms, technologies, business secrets, methods, jointly elaborated by the Parties or by a subset of them within the Scope of this Agreement shall become the joint property of the Parties or of the relevant subset of them as they are developed, at no additional cost or remuneration, it being understood that all Intellectual Property Rights in respect thereto shall be vested with the Parties.

ARTICLE 15 GOVERNING LAW

This Agreement, its conclusion, performance and interpretation, including the issue of its valid conclusion and its pre- and post-contractual effect shall be governed by Belgian law.

ARTICLE 16 DISPUTE RESOLUTION

16.1 Any dispute arising under, in connection to, or in the framework of this Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties (hereafter a "**Dispute**") shall be subject to the provisions hereafter.

- 16.2** In the event of a Dispute arising between two or more Parties, such Parties (the “**Disputing Parties**”) shall first submit the Dispute to amicable settlement by referring the matter in Dispute to the Committee.
- 16.3** A referral for amicable dispute settlement by the Committee (the “**Referral**”) shall be sent by email by one Disputing Party to all Committee Members in writing and shall at least contain the following information:
- a) a description of the Dispute, and
 - b) the indication of the Party(ies) to whom it is addressed, and
 - c) the scope of the demand(s) or claim(s) of the Disputing Party referring the Dispute to the Committee, and
 - d) the legal basis of the demand(s) or claim(s); and
 - e) a proposal for settlement.
- 16.4** The Committee shall then appoint within 8 (eight) days between their members a person responsible for the amicable dispute settlement procedure. This 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.
- 16.5** The Committee shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable dispute settlement procedure. The Committee may hear and/or request opinions of experts provided that they are bound by confidentiality obligations at least equivalent to those in this Agreement.
- In particular, the Committee shall:
- a. assess the facts;
 - b. assess the interests of the Parties in light of the objectives of this Agreement;
 - c. in case of damage:
 - i)* estimate the damage (and its nature and extent);
 - ii)* determine which Party(ies) suffered the damage;
 - iii)* determine which Party(ies) is(are) liable for the damage; and
 - iv)* determine the extent and modalities of indemnification; and
 - d. formulate a proposal for settlement.
- 16.6** In the event that the Committee fails to achieve an amicable settlement within 1 (one) month as of the receipt of the Referral, the Parties shall be notified thereof by the person

responsible for the amicable dispute settlement procedure and the Committee shall solicit ACER for a non-binding opinion on the Dispute (hereafter the “**Opinion**”). Upon receipt of the Opinion, the Disputing Parties shall pursue an amicable settlement based on this Opinion.

16.7 In the event that:

- a) the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt, or
- b) ACER 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 International Chamber of Commerce (“**ICC**”) Rules of Arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have (3) three arbitrators, regardless of the number of Parties involved. They shall be appointed by the ICC Court of Arbitration, according to the ICC Rules of Arbitration. All appointed arbitrators shall preferably be familiar with the applicable sector, specific legislations and Regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned. The Parties agree that the arbitrators validly appointed shall not be allowed to impose the termination of this Agreement as a solution of any dispute.

16.8 Any amicable settlement reached pursuant to this Article 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.

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

ARTICLE 17 MISCELLANEOUS

17.1 Interpretation Rules

17.1.1 No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.

17.1.2 Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.

17.1.3 The headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation.

17.1.4 Any reference to any rule, enactment, statutory provision, Regulation or code or any subdivision or provision thereof shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced.

17.1.5 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, unless otherwise specified.

17.1.6 Any Annex referred to in this Agreement forms an integral and inseparable part of this Agreement. Any reference to this Agreement includes a reference to its Annexes and vice versa.

17.1.7 In case of any discrepancy or contradiction between the provisions in the main body of this Agreement and the contents of the Annexes, the wording of the main body shall prevail.

17.2 Relationship

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

17.3 No assignment

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 this Agreement to a third party without the prior written consent of the other Parties.

17.4 No Waiver

No waiver of any term, provision or condition of this Agreement shall be effective except to the extent to which it is made in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege under this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this Agreement. For the avoidance of doubt, if a Party fails to perform any of its obligations hereunder, and another Party fails to enforce the provisions relating

thereto, such Party's failure to enforce this Agreement shall not prevent its later enforcement.

17.5 Notices

17.5.1 All notices and correspondence under this Agreement shall be in writing and shall be delivered, previously anticipated by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested, to the following addresses, or at such different address as may be designated by such party by written notice to the other party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail provided that, in either case, where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Working Day. The invoices shall be delivered by email. In case of failure of the email systems, the invoices shall be sent by personal service or express courier using an internationally recognised courier company.

17.5.2 The addresses, e-mails and phone numbers of the Parties for the purpose of this Agreement are indicated in the common internet archive and each Party may update such references by means of a written notice to the secretary of the Committee.

17.5.3 The Parties agree that the working language for all notifications and for all matters relating to their cooperation under this Agreement shall be English, to the extent compatible with the applicable legal provisions, if any.

17.6 Severability

The invalidity or ineffectiveness of any Article of this Agreement shall not affect the validity of the remainder of this Agreement.

17.7 Nominated Contact Person

Each Party will appoint a nominated person (hereinafter the "**Nominated Contact Person**") which shall be possibly recorded in a common internet archive. The Nominated Contact Person for each Party will act as the initial contact point for such Party for all issues connected to this Agreement. Each Party may replace its Nominated Contact Person at any time and shall inform the other Parties via e-mail providing all relevant contact details for such replacement Nominated Contact Person.

17.8 Survival

In the event of the termination of this Agreement for whatever reason the provisions which expressly are intended to survive the termination of this Agreement are Article 5, 12, 13, 14 and 15 (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 this Agreement in accordance with all the provisions of this Agreement.

17.9 Entire Agreement

This Agreement and the Annexes, as supplemented by decisions of the Committee in the performance of this Agreement, contain the entire agreement of the Parties hereto with respect to the subject matter hereof and contain everything the Parties have negotiated and agreed upon relating to the same subject matter.

17.10 Records

Each Party shall maintain records that are complete and accurate for all the relevant material regarding the performance by it of all its obligations under this Agreement and each Party shall retain such records for a period as required under the applicable legal provisions applicable to it, with a minimum of three (3) years unless in conflict with the applicable legal provisions. On another Party's first substantiated request, a Party shall provide the other Parties with a copy of all or part of the records as indicated by the requesting Parties, if available.

17.11 Remedies provided by law

The rights and remedies under this Agreement are cumulative with and not exclusive of any rights and remedies provided by law.

This Agreement has been duly executed in nineteen (19) original copies, one for each of the undersigned parties.

APX Commodities Ltd

Name:

[REDACTED]

Function:

[REDACTED]

Date:

Signature

Name:

[REDACTED]

Function:

[REDACTED]

Date:

Signature

APX Power B.V.

Name:



Function:



Date:

Signature

Name:



Function:



Date:

Signature

Belpex SA

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

BSP Regional Energy Exchange LLC

Name:



Function:



Date:

Signature

Croatian Power Exchange Ltd

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

EirGrid plc

Name



Function:



Date:

Signature

-

EPEX SPOT SE

Name:



Function:



Date:

Signature

EXAA - Abwicklungsstelle für Energieprodukte AG

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Gestore dei Mercati Energetici S.p.A.

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

HUPX Hungarian Power Exchange Company Limited by Shares

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Independent Bulgarian Energy Exchange EAD

Name:



Function:



Date:

Signature

Operator of Electricity Market S.A.

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Nord Pool AS

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

OKTE a.s.

Name

[REDACTED]

Function:

[REDACTED]

Date:

Signature

Name:

[REDACTED]

Function:

[REDACTED]

Date:

Signature

OMI Polo Español S.A.

Name:



Function:



Date:

Signature

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

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

O.T.E.A.S.

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Name [REDACTED]

Function: [REDACTED]

Date:

Signature

SONI Limited

Name: [REDACTED]

Function: [REDACTED]

Date:

Signature

Towarowa Giełda Energii SA

Name:



Function:



Date:

Signature

Name:



Function:



Date:

Signature

ANNEX I

Rules of Internal Order

1. GENERAL

These Rules of Internal Order set forth the rules of the Committee as defined under Article 4 of this Agreement which shall be the body responsible of the making of such decisions between the Parties as are required from time to time to facilitate the Parties' fulfilment of their obligations under this Agreement with respect to the Scope.

2. COMPOSITION OF THE COMMITTEE

2.1. Appointed Representatives

2.1.1. The appointed representatives of each Party in the Committee shall be designated in writing (email included). The list of such appointed representatives including their contact details shall be held by the secretary.

2.1.2. A Party may change its appointed representatives provided such change is notified to the secretary at least three (3) Business Days before the Committee meeting that the new appointed representative attends.

2.1.3. Each Party is, with respect to each meeting of the Committee, duly represented either:

- i.* by one of the appointed representatives (as designated by it in the conditions described above); or
- ii.* by any other person, duly mandated and empowered to take decisions binding upon its company on all items of the agenda, if the appointed representative cannot attend a meeting of the Committee.

2.2. Non-voting members

Each Party is entitled to designate non-voting representatives who are entitled to participate in the meetings and deliberations of the Committee, but are not entitled to vote.

2.3. Chairperson

2.3.1. The Chairperson is appointed by a decision of the Committee upon proposal of the Parties. The Chairperson shall always act in a neutral manner, representing the general interest of the Committee.

2.3.2. The Chairperson is non-voting member unless there is no voting representative from the Chairperson's Party attending the meeting for exceptional reasons. In such situation, the Chairperson is entitled to duly represent its Party in any voting of the Committee.

2.4. Secretary

2.4.1. The secretary is yearly chosen by decision of the Committee upon proposal of the Parties. The secretary shall not be from the same Party as the Chairperson. Alternatively, the function of the secretary of the Committee can be assigned to a third party, provided that the compliance with confidentiality requirements of Article 13 of the CACM Regulation and this agreement is duly assured under a written agreement.

2.4.2. The secretary has no voting rights. For the avoidance of doubt, the secretary cannot be mandated as appointed representative of one of the Parties even in exceptional circumstances when the official voting representative cannot attend a meeting of the Committee.

2.4.3. The secretary is in charge of the follow up of the following activities, amongst others, as confirmed and detailed from time to time by the Committee:

- a) Drafting the agenda, preparing session files of meetings and notices for meetings and sending them, on behalf of the chair person;
- b) Preparing the attendance list of the meetings;
- c) Verifying before each meeting of the Committee that the voting representatives attending have been either listed on the list of official representatives or announced in case of replacement. In the event of representation by another Party, the secretary verifies whether a valid power of attorney has been given by the Party not attending;
- d) Ensuring the drafting and circulation of the minutes of the meetings and/or of decisions;
- e) Planning process;
- f) Budgeting process;
- g) Cost reporting, share calculation and input for invoicing processes;
- h) Overall status and progress reporting;
- i) Collecting the agenda points and preparation of the session file for the Committee;
- j) Meetings minutes;
- k) Document management in the common IT Platform;
- l) Organisation of calls and meetings;
- m) Entry/Exit point for incoming/outgoing communication from/to external stakeholders;
- n) Support of consultation process.

2.4.4. The costs of the secretary will be considered as a Common Cost.

3. MEETINGS OF THE COMMITTEE

3.1. The Committee meets at least once every two months except if the chairperson considers such meeting is not necessary given the absence of matters to be discussed assuring that a meeting is set in advance of each European Stakeholder Committee/ESC⁵ meeting.

3.2. The notices for a meeting of the Committee are notified by the secretary in writing to the members of the Committee at least ten (10) calendar days before such Committee. The notices contain the date, place and time as well as the agenda, approved by the chairperson, of the meeting. Any supporting documentation, including topics requiring decision of the Committee to the points on the agenda, is sent at least five (5) Business Days before the meeting.

3.3. Additional meetings shall be held whenever at least three (3) Parties require so by written request containing the date, place and time as well as the agenda of the meeting, to be sent to all the Parties not less than seven (7) Business Days in advance.

A Party may propose to add issues on the agenda of a meeting of the Committee, and these proposals are taken into account provided they have been received by the secretary at the latest five (5) Business Days before such Committee meeting. The secretary will forthwith notify in writing the new agenda to the other Parties.

3.4. A member of the Committee who attends the meeting or is represented to it is considered as having received due notice.

3.5. The Committee may meet either physically or by distant meeting devices (such as e.g. conference call, video call, written procedure, etc.).

3.6. The duty of the practical organisation of the physical meetings of the Committee is borne by each Party on a rotating basis. The secretary keeps track of the rotation and indicates within a reasonable period of time prior to the Committee which Party is responsible for organising

⁵ The European stakeholder committee is formed by the representatives of the European Commission, ACER, ENTSO-E, NEMOs and the associations representing Distribution System Operators (DSOs), the European association of energy exchanges (Europex) and other stakeholder groups representing generators, suppliers and customers from across the European electricity sector. The European Stakeholder committee is governed by the Terms of Reference published on ACER internet site.

the meeting. The duty of the practical organisation of the non physical meetings of the Committee is borne by the secretary.

4. DECISION MAKING PROCEDURE

4.1. Normal procedure

- 4.1.1.** The decisions of the Committee are recorded by the secretary in minutes
- 4.1.2.** The draft minutes are circulated to the members of the Committee by the secretary, within a maximum of three (3) Business Days of the meeting concerned.
- 4.1.3.** Members of the Committee may comment on the minutes within ten (10) Business Days after sending of the minutes. Should no comments be provided within ten (10) Business Days, the minutes are deemed approved.
- 4.1.4.** The comments on the minutes received in the abovementioned deadlines are ordinarily discussed via e-mail, until a final agreement is reached on the text of the minutes. Adapted minutes are considered approved when all members of the Committee have given their consent by mail or if no further comments are provided within ten (10) Business Days from the last comment.
- 4.1.5.** The decision(s) as recorded in the finalised minutes, are binding, as of the approval by all Parties. A copy of the finalised minutes is signed by the chairperson and is circulated to the members of the Committee by the secretary (in scanned version), within five (5) Business Days from their approval.

4.1.6. The secretary will keep the minutes on a shared device accessible to all Parties, but each Party ensures its own record keeping of the copies of the minutes it receives from the secretary.

4.2. Urgent decisions

4.2.1. Urgent decision(s) of the Committee are recorded by the Secretary in a separate written decision document, prepared, shown and discussed during the Committee meeting.

4.2.2. A copy of this separate decision document is circulated to the members of the Committee by the secretary, on the very same date of the meeting. This separate decision document is also reflected in the minutes of the Committee meeting during which it was adopted. Such minutes are elaborated in accordance with the provisions above, it being understood, for the avoidance of any doubt, that neither the urgent decision(s) nor the separate decision document can be subject to any further commenting.

5. TASK FORCES AND WORKING GROUPS OF THE COMMITTEE

The Committee may set up other bodies to assist the Committee. In such event, the Committee determines the composition and approves all the organisational aspects of such further bodies. Any body created by the Committee shall decide by unanimity. Should unanimity not be achieved, the body shall escalate the decision to the Committee. Each Party is entitled to participate in such additional bodies.

ANNEX II

Adherence Form

to become a Party to the NEMO Interim Cooperation Agreement

This adherence form (hereinafter Adherence Form) is made on [SAME DATE OF THE SIGNATURE] by

....., a company incorporated and existing under the laws of, with enterprise number, address,, represented by, acting in his capacity of, hereafter called **"Adhering Party"**,

towards

- 1. APX Commodities Ltd.**, a company incorporated under the laws of England, having its registered office at 18 King William Street, London, England, EC4N 7BP, United Kingdom, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented by [REDACTED] hereafter **"APX Commodities"**);
- 2. APX Power B.V.**, a private limited company incorporated under the laws of the Netherlands, having its registered offices at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, registered with the commercial register in Amsterdam under the number 50969390, hereby duly represented by APX Holding B.V. which, in turn, is duly represented by [REDACTED] hereafter **"APX Power"**);
- 3. Belpex SA**, a limited liability company, incorporated and existing under the laws of the Kingdom of Belgium, having its registered office at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium, registered with the Registry of Enterprises (Brussels) under n° 0874978602, hereby duly represented by [REDACTED] hereafter **"Belpex"**);
- 4. BSP Regional Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661, duly represented by [REDACTED] hereafter **"BSP"**);
- 5. Croatian Power Exchange Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia, duly represented by [REDACTED] hereafter **"CROPEX"**);

6. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road, Dublin 4, Ireland, duly represented by [REDACTED] (hereafter "EirGrid");
7. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501, represented by [REDACTED] (hereafter "EPEX");
8. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208, hereby duly represented by [REDACTED] (hereafter "EXAA");
9. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002, duly represented by Mr [REDACTED] (hereafter "GME");
10. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808, duly represented by [REDACTED] (hereafter "HUPX");
11. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria, duly represented by [REDACTED] (hereafter "IBEX");
12. **Operator of Electricity Market S.A.**, a company incorporated under the laws of the Hellenic Republic, with registered office at 72 Kastoros Street, 18545 Piraeus, Greece, under the registration number ARMAE 47733/02/B/00/9 and Tax Registration Number 099936480, hereto duly represented by [REDACTED]

of Chairman of the Board of Directors and CEO, duly authorised to act on the company's behalf for the present agreement, (hereafter "LAGIE");

13. Nord Pool AS, a company incorporated and existing under the laws of the Kingdom of Norway, having its registered office at Vollsveien 17B, PO Box 121, 1325 Lysaker, Norway, registered with the commercial register in Norway n° 984 058 098, hereby duly represented by [REDACTED] (hereafter "NP");

14. OKTE, a.s., a company duly organised and existing under the laws of Republic of Slovakia, with registered office in Mlynské nivy 59/A, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728, duly represented by [REDACTED] in his capacity of Chairman of the Board of Directors (hereafter "OKTE");

15. OMI Polo Español S.A., a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Hoja: 506799, hereby duly represented by [REDACTED] (hereafter "OMIE");

16. Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" SA, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3rd district, Romania, registered with the National Trade Register Office Bucharest under the number J40/7542/2000, VAT n° 13278352, duly represented by [REDACTED] (hereafter "OPCOM");

17. OTE, A.S. a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, hereby duly represented by [REDACTED] (hereafter "OTE");

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

19. Towarowa Giełda Energii SA, a company duly organised and existing under the laws

of the Republic of Poland, with registered office at Poleczki 23 H, 02-822 Warsaw, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714, duly represented by [REDACTED]

[REDACTED] (hereafter "TGE");

and

.....

hereinafter individually referred to also as a "Party" and collectively as the "Parties".

WHEREAS:

- A. On the 3rd of March 2016, APX Commodities, APX Power, Belpex, BSP, CROPEX, EirGrid, EPEX, EXAA, GME, HUPX, IBEX, LAGIE, NP, OKTE, OMIE, OPCOM, OTE, SONI and TGE have entered into the NEMO Interim Cooperation Agreement, hereby enclosed as Attachment 2 (hereinafter "Agreement").
- B. On, the Adhering Party has expressed to the Parties its wish to adhere to the AGREEMENT.
- C. On....., the Adhering Party has been provided with a copy of the AGREEMENT by by the Secretary of the Committee.
- D. According to Article 9.2 of the AGREEMENT, all Parties accept the adherence to the AGREEMENT of the Adhering Party provided that it has duly executed this Adherence Form which is substantially similar to the template provided under Annex II to the AGREEMENT

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

1. Adherence to the AGREEMENT

1.1 The Adhering Party agrees to adhere to the AGREEMENT accepting all the terms and conditions thereby provided, with no exclusion whatsoever.

1.2 Pursuant to art. 4 of the AGREEMENT, it is understood that the Parties agree to the adherence of the Adhering Party without that any further acceptance must be formalised following the execution of this Adherence Form.

2. Acknowledgement by the Adhering Party

Upon signature of this Adherence Form, the Adhering Party declares to be fully aware of, all obligations of the AGREEMENT having received by the Parties full and complete access to the relevant documentation

3. Entry into force and termination

3.1 This Adherence form shall enter into force on the 4th of December 2015 when all the Parties have received the signed Adherence Form by electronic mail to e-mail addresses listed in Attachment 1. An original hard copy of this Adherence Form duly signed by the Adhering Party shall be sent to each of the Parties for record purposes.

3.2 This Agreement is entered into for the duration of the AGREEMENT as set forth under art 12.2 of the AGREEMENT. For the avoidance of any doubt, should the AGREEMENT be earlier terminated, this agreement shall be terminated accordingly.

4. Miscellaneous

4.1 No provision of this Adherence Form shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.

4.2 Any change to this Adherence Form can only be validly agreed upon in writing, duly signed by the legal representative of the Adhering Party and of all the Parties.

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

4.4 The Parties agree that the working language for all notifications and for all matters relating to this Adherence Form shall be English, to the extent compatible with the applicable provisions of mandatory law, if any. Any term used in this Adherence Form with capital letter and not otherwise defined herein, shall have the same meaning ascribed to it in the AGREEMENT.

4.5 The Attachments and the recitals to this Adherence Form form an integral part thereof and any reference to this Adherence Form shall include a reference to the Attachments and vice versa.

4.6 In case of contradiction or discrepancy between this Adherence Form and the AGREEMENT and/or any of their respective annexes the precedence shall be

1. Main text of the AGREEMENT;
2. Annexes to the AGREEMENT;
3. Main body of this Adherence Form;

It is understood that the Parties have specifically approved the deviation from art 4.1 of the AGREEMENT set under art 3.1. above

4.7 The Adhering Party may not assign or transfer this Adherence Form, partially or as a whole.

4.8 The present Adherence Form is governed by and construed with Belgian laws without regard to the conflict of laws principles of it.

4.9 Any dispute arising out of or in connection with this Agreement shall be settled in accordance with art 9 of the AGREEMENT.

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

COMPANY NAME

Signature(s)

Name(s)

Title(s)

ATTACHMENT 1 TO THE ADHERENCE FORM – CONTACTS

1. For APX Commodities
2. For APX Power
3. For Belpex
4. For BSP
5. For CROPEX
6. For EirGrid
7. For EPEX
8. For EXAA
9. For GME
10. For HUPX
11. For IBEX
12. For LAGIE
13. For NP

14. For OKTE

15. For OMIE

16. For OPCOM

17. For OTE

18. For SONI

19. For TGE

ATTACHMENT 2 TO THE ADHERENCE FORM – NEMO AGREEMENT IN FORCE

ANNEX III

Confidentiality Declaration

This confidentiality declaration (hereinafter Confidentiality Declaration) is made on [SAME DATE OF THE SIGNATURE] by

....., a company incorporated and existing under the laws of....., with enterprise number, address,, represented by, acting in his capacity of, hereafter called “**Member**”,

towards

- 1. APX Commodities Ltd.**, a company incorporated under the laws of England, having its registered office at 18 King William Street, London, England, EC4N 7BP, United Kingdom, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented by [REDACTED] (hereafter “**APX Commodities**”);
- 2. APX Power B.V.**, a private limited company incorporated under the laws of the Netherlands, having its registered offices at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, registered with the commercial register in Amsterdam under the number 50969390, hereby duly represented by APX Holding B.V. which, in turn, is duly represented by [REDACTED] (hereafter “**APX Power**”);
- 3. Belpex SA**, a limited liability company, incorporated and existing under the laws of the Kingdom of Belgium, having its registered office at Boulevard de l’Impératrice 66, 1000 Brussels, Belgium, registered with the Registry of Enterprises (Brussels) under n° 0874978602, hereby duly represented by [REDACTED] (hereafter “**Belpex**”);
- 4. BSP Regional Energy Exchange LLC**, a company duly organised under the laws of the Republic of Slovenia, having its registered office in Ljubljana, Dunajska cesta 156, Slovenia, registered at the District Court of Ljubljana under the registration number 3327124000 and VAT n° SI37748661, duly represented by [REDACTED] hereafter “**BSP**”);
- 5. Croatian Power Exchange Ltd.**, a company incorporated and existing under the laws of the Republic of Croatia, with the enterprise number HR14645347149, address Ulica grada Vukovara 284, HR-10000 Zagreb, Croatia, duly represented by [REDACTED] (hereafter “**CROPEX**”);

6. **EirGrid plc**, a public limited company incorporated under the laws of the Republic of Ireland, with registered office at The Oval, 160 Shelbourne Road, Dublin 4, Ireland, duly represented by [REDACTED] (hereafter “EirGrid”);
7. **EPEX SPOT SE**, a European Company (Societas Europae) incorporated under the laws of the French Republic, with its registered office at 5 boulevard Montmartre, 75002 Paris, France, and registered with the commercial register in Paris under the number 508 010 501, represented by [REDACTED] (hereafter “EPEX”);
8. **EXAA Abwicklungsstelle für Energieprodukte AG**, a stock corporation incorporated and existing under the laws of the Republic of Austria, having its registered offices at Alserbachstraße 14-16, 1090 Vienna, Austria, registered with the commercial register in Vienna under FN 210730y and VAT n° ATU52153208, hereby duly represented by [REDACTED] (hereafter “EXAA”);
9. **Gestore dei Mercati Energetici S.p.A.**, a company duly organised and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122-124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002, duly represented by Mr [REDACTED] (hereafter “GME”);
10. **HUPX Hungarian Power Exchange Company Limited by Shares**, a company duly organised and existing under the laws of Hungary, with registered office in 1134 Budapest, Devai u. 26-28, Hungary, and registered under the company registration number 01-10-045666, VAT n° HU13967808, duly represented by [REDACTED] (hereafter “HUPX”);
11. **Independent Bulgarian Energy Exchange EAD**, a company incorporated and existing under the laws of the Republic of Bulgaria, with the enterprise number 202880940, address: 19 Dondukov Boulevard, Sofia 1000, Bulgaria, duly represented by [REDACTED] (hereafter “IBEX”);
12. **Operator of Electricity Market S.A.**, a company incorporated under the laws of the Hellenic Republic, with registered office at 72 Kastoros Street, 18545 Piraeus, Greece, under the registration number ARMAE 47733/02/B/00/9 and Tax Registration Number 099936480, hereto duly represented by [REDACTED]

[REDACTED]
[REDACTED] (hereafter “LAGIE”);

13. Nord Pool AS, a company incorporated and existing under the laws of the Kingdom of Norway, having its registered office at Vollsveien 17B, PO Box 121, 1325 Lysaker, Norway, registered with the commercial register in Norway n° 984 058 098, hereby duly represented by [REDACTED] (hereafter “NP”);

14. OKTE, a.s., a company duly organised and existing under the laws of Republic of Slovakia, with registered office in Mlynské nivy 59/A, 821 09 Bratislava, Slovakia, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862, VAT n° SK2023089728, duly represented by [REDACTED] (hereafter “OKTE”);

15. OMI Polo Español S.A., a company incorporated and existing under the laws of the Kingdom Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Hoja: 506799, hereby duly represented by [REDACTED] (hereafter “OMIE”);

16. Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA, a company duly organised and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3rd district, Romania, registered with the National Trade Register Office Bucharest under the number J40/7542/2000, VAT n° 13278352, duly represented by [REDACTED] (hereafter “OPCOM”);

17. OTE, A.S. a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague 8, Czech Republic, and registered with the Commercial Register at the Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, hereby duly represented by [REDACTED] (hereafter “OTE”);

18. SONI Limited, a company incorporated in Northern Ireland with registered number NI 38715 and registered office at Castlereagh House, 12 Manse Road, Belfast, BT6 9RT, United Kingdom, represented by [REDACTED] (hereafter “SONI”);

19. Towarowa Giełda Energii SA, a company duly organised and existing under the laws

of the Republic of Poland, with registered office at Poleczki 23 H, 02-822 Warsaw, Poland, registered with National Court Register under number 0000030144 and VAT no PL5272266714, duly represented by Mr [REDACTED]

[REDACTED] (hereafter “TGE”);

Hereinafter individually referred to also as a “Party” and collectively as the “Parties”.

WHEREAS:

- A. On the 3rd of March 2016, APX Commodities, APX Power, Belpex, BSP, CROPEX, EirGrid, EPEX, EXAA, GME, HUPX, IBEX, LAGIE, NP, OKTE, OMIE, OPCOM, OTE, SONI and TGE have entered into the NEMO Interim Cooperation Agreement, hereby enclosed as Attachment 2 (hereinafter the “Agreement”).
- B. On the....., the [REDACTED] Member has expressed to the Parties its wish to adhere to the AGREEMENT.
- C. Bearing in mind that the NEMO documentation contains confidential business information, the NEMO Members are willing to provide access to a part of these documents in the context of the provided that confidentiality is sufficiently guaranteed
- D. According to Article 9.3 of the AGREEMENT, the Parties may accept the application of the Applicant (as hereinafter defined) provided that it has duly executed this Confidentiality Declaration which is substantially similar to the template provided under Annex III to the AGREEMENT (hereafter the “Confidentiality Declaration”).

NOW THEREFORE:

[Company name of the NEMO [REDACTED] Member], a company duly organised and existing under the laws of [Country], with registered office in [address of the NEMO [REDACTED] Member], registered with [...] under number [Company number, VAT number], duly represented by [Representative] in his capacity of [Title], hereafter referred to as “[Company short name]” or “the NEMO Applicant”,

HEREBY ACCEPTS THE FOLLOWING AND COMMITS TOWARDS THE NEMO MEMBERS TO COMPLY WITH THE FOLLOWING:

1. CONFIDENTIAL INFORMATION

- 1.1 The term “Confidential Information” as used in this Confidentiality Declaration means all information whether or not marked as confidential, directly or indirectly related to the NEMO Cooperation, which a NEMO Member provide(s) verbally or in writing or give(s) access to through the Projectplace (hereafter each, also, a “Disclosing Party”), to the NEMO Applicant for the purpose of the examination and/or deeper understanding of the

documentation in light of the possible adherence to the NEMO Cooperation (the "Examination"). The information (to be strictly interpreted) defined in Article 3 of this Confidentiality Declaration (hereinafter referred to as the "Available Information") is not to be considered as Confidential Information.

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

2. NON DISCLOSURE OF CONFIDENTIAL INFORMATION

- 2.1** The NEMO Applicant hereby expressly undertakes towards the NEMO Members that it shall:

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

- 2.2** The NEMO Applicant furthermore expressly undertakes towards the NEMO Members that it shall:

- i) immediately notify the Disclosing Party in writing (including email) in the event of any unauthorised use or disclosure of Confidential Information of the Disclosing Party and

take all reasonable steps to mitigate any harmful effects the Disclosing Party may sustain or incur as a result of such a breach of this Confidentiality Declaration;

- ii) immediately (and in any event within three days) return or destroy all Confidential Information in any tangible form whatsoever at the first written request of Disclosing Party;
- iii) indemnify the Disclosing Party in accordance with this Confidentiality Declaration (see Article 4.3 and Article 4.4. below).

3. AVAILABLE INFORMATION

3.1 Notwithstanding Article 2, the NEMO Applicant may disclose Confidential Information it has received:

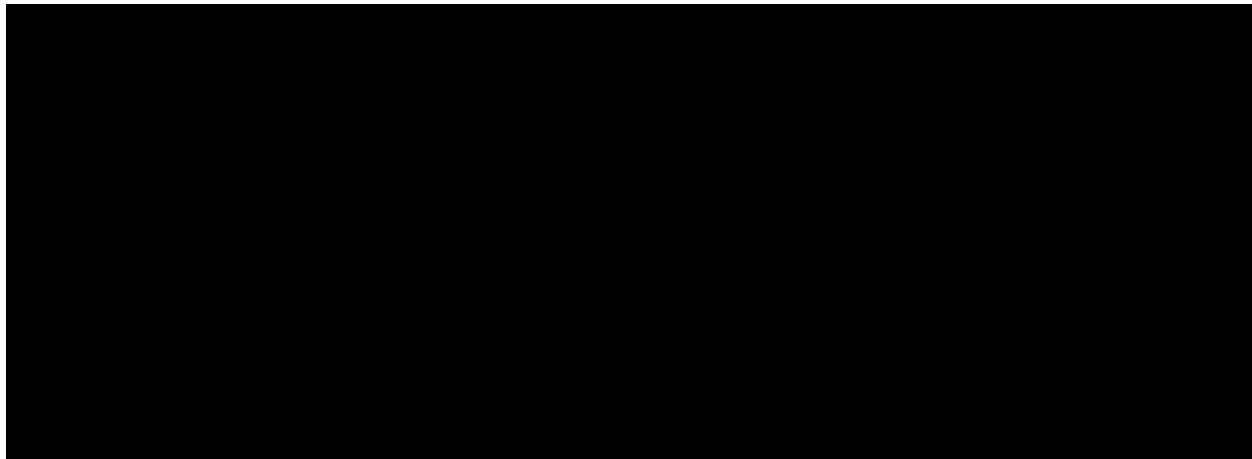
- i) If it can document by written evidence that the information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the Disclosing Party;
- ii) If it can document by written evidence that the Confidential Information has come into the public domain through no fault or negligence of the NEMO Applicant;
- iii) If, in the event of disclosure by a NEMO Applicant to its directors, members of management, officers, employees, (referred to as "Internal Representative"), subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (referred to as "External Representative"), the following conditions are met:
 - a) the Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be related to the Examination; and
 - b) the Internal Representative or an External Representative is informed by the NEMO Applicant of the confidential nature of the Confidential Information; and
 - c) the Internal Representative or an External Representative is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Confidentiality Declaration.
 - d) For the avoidance of doubt, the Parties confirm that the Disclosure of Confidential Information in the circumstances foreseen under (iii) of this article does not affect the confidential character of the Confidential Information so exchanged.
 - e) The NEMO Applicant 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 220 and External Representatives to whom Confidential Information is disclosed. It is understood that the Recipient remains at all times fully liable pursuant to the present art 3 n. (iii) for any breach by its Internal Representative or External Representative

- iv) If the NEMO Applicant is requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if the NEMO Applicant considers itself to be under a legal obligation to disclose all or part of the Confidential Information, in which case the NEMO Applicant undertakes to:
 - a) immediately and in any case prior to proceeding with any disclosure (and to the extent lawful), notify the Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation; and
 - b) if consistent with the terms assigned by law or public authority to disclose the Confidential Information, consult with the Disclosing Party on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the Disclosing Party to take such legal steps itself, and to agree on the content and form of the Confidential Information to be disclosed; and
 - c) . if disclosure of such Confidential Information is required, exercise its best efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed. Best efforts shall mean performing its obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result (“middelenverbintenis” / “obligation de moyen”).

4. RESPONSIBILITY

4.1 The NEMO Applicant acknowledges and agrees that a Disclosing Party shall have no liability with respect to the use by the NEMO Applicant of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Disclosing Party and the NEMO Applicant.



4.3 The NEMO Applicant undertakes to hold the Disclosing Party harmless and indemnify it against any third-party claim, including claims of participants to the market operated by the Disclosing Party, directly related to a breach by a NEMO Applicant of its obligations under this Confidentiality Declaration.

4.4 The NEMO Applicant acknowledges that unauthorised disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Disclosing Party. Accordingly, the NEMO Applicant agrees that the Disclosing Party may seek immediate injunctive relief to enforce obligations under this Confidentiality Declaration in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.

4.5 The rights a NEMO Applicant may have against third parties pursuant to a confidentiality agreement shall in no event affect a NEMO Member's right to claim damages under this Article 4 from the NEMO Applicant (to the extent that such damages have not yet been recovered by the claiming NEMO Member with the third party).

5. INTELLECTUAL PROPERTY RIGHTS (IPR)

5.1 All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party/ies.

5.2 This Confidentiality Declaration shall not be construed as granting the NEMO Applicant any license right or any other right related to the Confidential Information and its future use, except to the extent as set out in this Confidentiality Declaration or unless such is agreed upon in a separate, written, specific and signed agreement.

6. ENTRY INTO FORCE, TERM AND TERMINATION

6.1 This Confidentiality Declaration enters into force as of the date of its signature by the NEMO Applicant provided that its Applicant status has been conferred in writing by the NEMO Committee. In respect of any adhering party to the NEMO Agreements, this Confidentiality Declaration shall enter into force as of the date in which such new NEMO Member shall inform in writing (including e-mail) the NEMO Applicant about the completion of its adherence process to the NEMO Agreements.

6.2 This Confidentiality Declaration shall remain in effect towards the NEMO Members for the duration of the NEMO Applicant status of the NEMO Applicant, with a maximum of two (2) years. The NEMO Member may terminate its NEMO Applicant status by giving the NEMO Members by 14 (fourteen) days prior written notice. The NEMO Members may terminate the NEMO Applicant status by giving the NEMO Applicant 14 (fourteen) days prior written notice. In the event of expiration or termination by the NEMO Applicant of its NEMO Applicant status the obligations of confidentiality and restriction of use of the Confidential Information shall survive the expiration or termination for ten (10) years.

6.3 Upon termination of this Confidentiality Declaration, the NEMO Applicant undertakes within eight (8) days following termination of this Confidentiality Declaration:

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

7. NEMO MEMBER STATUS AND ADHERENCE TO THE NEMO COOPERATION

7.1 For the avoidance of doubt, the NEMO Applicant agrees that the granting of NEMO Applicant status does not constitute adherence to the NEMO Cooperation. The adherence to the NEMO Cooperation by the NEMO Applicant shall require its explicit written consent with its content to be formalised in writing by adherence to the Lol, the Data Sharing Agreement (as amended), the NDA and any other agreement the NEMO Members may have concluded in respect of the NEMO Cooperation. Nothing in this Confidentiality Declaration, nor the exchange of Confidential Information with or use of the Confidential Information by the NEMO Applicant shall be deemed to constitute an expression of the adherence to the NEMO Cooperation. The NEMO Applicant

shall agree beforehand with the NEMO Members on any external communication related to such adherence. The NEMO Applicant agrees and accepts that it has no decision rights in respect of the NEMO Cooperation as long as it has not adhered to the NEMO Cooperation.

7.2 Without prejudice to Article 7.1 by signing this Confidentiality Declaration, the NEMO Applicant commits to support the NEMO Cooperation.

8. MISCELLANEOUS

8.1 Severability. If any term of this Confidentiality Declaration is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective by operation of law, then this Confidentiality Declaration, including all of the remaining terms, will remain in full force and the NEMO Applicant and the NEMO Members shall negotiate in good faith to replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to their intentions.

8.2 Beneficiaries. For the avoidance of doubt the NEMO Applicant acknowledges that the commitments hereunder are its binding commitments towards each of the NEMO Members individually and agrees and accepts that the NEMO Members may, individually or collectively, claim performance by the NEMO Applicant in compliance with this Confidentiality Declaration.

8.3 Assignment. This Confidentiality Declaration shall protect the NEMO Member and its permitted assignees and successors in interest. A NEMO Member may assign its rights hereunder to another third party, provided the NEMO Applicant informed thereof by written notification.

9. DISPUTE PROCEDURE

9.1 In case of a dispute between the NEMO Applicant and one or more NEMO Members, arising out of or in relation with this Confidentiality Declaration, the NEMO Applicant undertakes to meet in good faith with the concerned NEMO Members at their first written request to resolve such dispute without recourse to legal proceedings and to achieve a reasonable and fair amicable settlement amongst each other within fourteen (14) days, or within any other timeframe agreed between the NEMO Applicant and the concerned NEMO Members after the NEMO Members' request. Should the parties to the dispute not reach an amicable settlement within the above set days, or within the aforementioned agreed timeframe, the dispute will be submitted for settlement to the Chief Executive Officers of each of the parties concerned or any person appointed to this aim by the party concerned. The most diligent party shall thereto address a written request (telefax, e-mail, etc.) for settlement to the Chief Executive Officer(s) of the other party (s) or any person appointed to this aim.

9.2 If no amicable settlement can be reached by the Chief Executive Officers of each of the parties to the dispute or any person so appointed within fourteen (14) days, or within any other timeframe agreed between the parties to the dispute, following written request of the NEMO

Members referred to in Article 9.1, the NEMO Applicant commits to enter into an arbitration agreement with the NEMO Members at their first request, with a view to submit the dispute to arbitration under the International Chamber of Commerce (hereafter the "ICC") rules, provided such agreement foresees that: a) the arbitral tribunal shall have three arbitrators, regardless of the number of the parties involved, b) the place of arbitration shall be Paris and all procedures shall be in English, c) the award of the arbitration will be final and binding upon the Parties concerned.

9.3 Nothing in this Article shall preclude the NEMO Members from applying for injunctive relief in summary proceedings before any competent court.

9.4 This Confidentiality Declaration is governed and shall be construed in accordance with Belgian law.

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







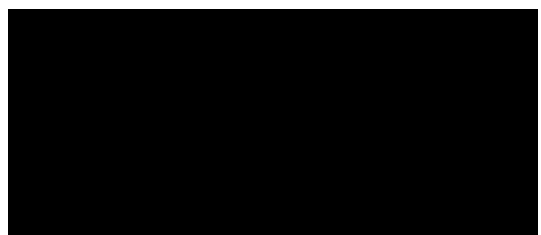


[Company name of Applicant] _____ [Name] [Title]




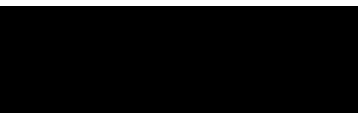

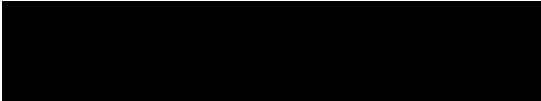



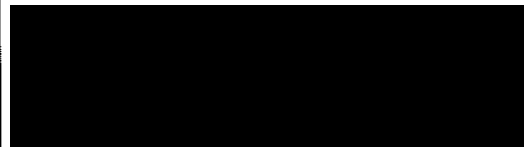
ANNEX IV


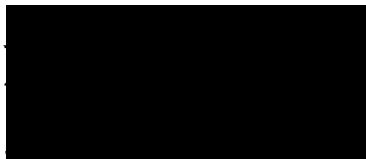

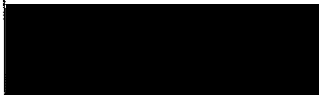
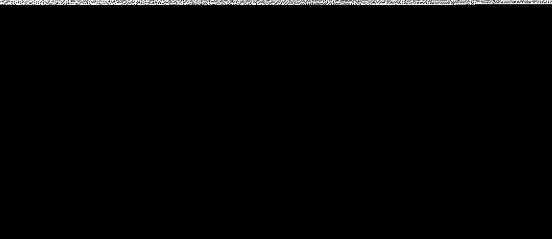
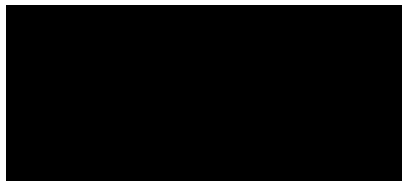

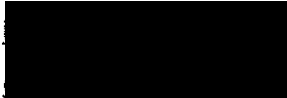


Contacts

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NORD POOL SA		
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E-mail: [REDACTED]

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VAT number EPEX SPOT SE : FR10508010501

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Responsible person: [REDACTED]

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ANNEX V

INCA Task Allocation, Work Group/Task Force Budgeting and Monitoring

1. OBJECTIVES, ASSUMPTIONS AND GENERAL PRINCIPLES

- (a) This document sets out the procedures - including administrative tasks, approval steps and templates - to be followed by the Committee (and such bodies as may be established by the Committee from time to time in accordance with paragraph 5 of ANNEX I (Rules of Internal Order)) in the assignment of tasks to be undertaken in connection with the Scope, their modification, the relevant process of approval, follow-up and invoicing of such activities, whether by means of the internal resources of such Party allocated to such task or by means of external resources selected and appointed in accordance with the terms of this document. It is the intention of the Parties that such procedures as outlined herein shall be compliant with Article 8 of the Agreement.
- (b) For the purposes of this Annex it is assumed that:
- i) Time and effort dedicated for specific roles such as the chairmanship of the Committee and/or the leader of any work group or task force created by the Committee should be separately recognized.
 - ii) Tasks performed for the common benefit of the Parties will be more efficient if performed by one dedicated, motivated person or group of persons.
 - iii) The availability of resources is different per Party, may vary from one work group or task force to another and may vary from time to time.
 - iv) Allocating scarce internal resources on a time-consuming job could create resourcing concerns to individual Parties.
- (c) In light of the above, the following general principles shall apply:
- i) All Parties shall use their respective best efforts to make their own internal resources available, at least for the necessary review of a work group's or task force's deliverables before approval of the relevant budget.
 - ii) The Committee may appoint external resources when appropriate.
 - iii) Those Parties providing their own internal resources in performing tasks should, subject to such tasks having been assigned and carried out in accordance with the terms of paragraph 3 of this Annex, be reimbursed for their costs.
 - iv) INCA Costs which have been budgeted and incurred (or which have been otherwise approved by a decision of the Committee in accordance with Article 8.1) shall be tracked by Parties pursuant to article 80 paragraph 2 of the CACM Regulation with the goal that such costs shall be capable of being reported to the relevant NRAs as Common Costs pursuant to article 80 paragraph 1 of the CACM Regulation.
 - v) Tasks that must be performed in the same manner by all Parties, such as the necessary 'reviews' of deliverables before their approval, are out of the scope of this

Annex, as it is assumed they will be performed with the same level of effort by each Party.

- vi) In the case of any activity being undertaken by one or more members of any work group or task force, the evaluation of quality of deliverables should be made, as a first step, at the level of the work group or task force itself, by consent of all members, subject to the final approval of the Committee.

2. WORK GROUP/TASK FORCE ACTIVITIES AND RESPONSIBILITIES

(a) The following general principles will govern the activity of each work group or task force:

- i) Work group or task force leaders shall be designated by the Committee.
- ii) Work group or task force activity will be supported by each Party using their respective best efforts.
- iii) Work group or task force leader activity per work group or task force will be previously estimated and agreed at the Committee level on per work group or task force basis.
- iv) Work group or task force leader activity will be reimbursed on the basis of time sheets approved by the Committee.
- v) Each work group or task force will be required to provide an estimate of the monthly time/cost input required to fulfil the relevant work group or task force's activities delegated to such work group or task force as part of the annual work group/task force budget.
- vi) Each work group or task force will be required to provide monthly time/cost report to the secretary of the Committee based on the relevant work group or task force's activities during such month.
- vii) The activity of the work group or task force may be allocated, within an assumed workload, to one or more members of the work group or task force in question. The details of how such activity may be allocated is set out below in Section 3.
- viii) All work group/task force decisions or evaluations shall be subject to the consensus of all the members of such work group/task force. In the event of any disagreement or difference between any of the members, the matter shall be resolved by escalating such question to the Committee for a determination/ruling.

(b) Evaluation by work group or task force members and the Committee

- i) The Committee will be ultimately responsible for the evaluation of the quality of any deliverables of the relevant work group or task force and the amount of the work undertaken by the work group or task force.
- ii) In the case of work group/task force activity being allocated to a one or more members, the evaluation of the quality of the deliverables shall be made, as a first step, at the work group level, by the members of such work group/task force.

- iii) Work group or task force leaders will follow up the progress of the work with the support of the secretary of the Committee.
- iv) The following activities must be recorded through timesheets and valued at the applicable Standard Daily Rate:
 - o Chairman of Committee activity
 - o Work group or task force leader activity
 - o Any other INCA Task allocated pursuant to the terms of this Annex V and carried out by any one or more individual members of a work group/task force or any third party on behalf of the work group/task force members as whole.
- v) Monthly, the secretary of the Committee will collect all the timesheets recording details of the time spent for each activity from:
 - o The chairman of the Committee;
 - o Work group or task force leaders;
 - o Any one or more individual members of a work group/task force allocated an INCA Task pursuant to the terms of this Annex V;
 - o The contract managers of third parties who have been allocated work pursuant to the terms of this Annex V, if appropriate.
- vi) The work group or task force leader will prepare and maintain a record of the INCA Tasks and the workload per work group or task force and shall provide an up-to-date copy of such record to the secretary of the Committee no less than once per month.
- vii) Monthly, on basis of the timesheets recording details of the time spent per approved task, the secretary of the Committee will establish the value of such work at the Standard Daily Rate and communicate it to the work group or task force leader and the Committee.

3. ALLOCATION OF TASKS TO INTERNAL AND/OR EXTERNAL RESOURCES

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

(a) INCA Tasks shall include:

- i) The Committee chairman's work
- ii) The secretary of the Committee's work
- iii) Any work group or task force leader's work
- iv) Performance of INCA Tasks by one or more of the Parties utilizing their own "internal resources";
- v) Performance of INCA Tasks by an external resource, i.e. a third party appointed for such purpose with the approval of the Committee.

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

- vi) Tasks that must be performed in the same manner by all Parties, including e.g.:
 - o The time spent and expenses incurred in attending all-Party meetings either in person or via any kind of electronic communications equipment;

- The necessary 'review' of the deliverables before their approvals; and
 - Any other tasks as may be determined as non-INCA Tasks by the Committee.
- vii) The travel time spent and the travel or other expenses incurred by the chairman of the Committee or by any work group or task force leaders in attending meetings either in person or via any kind of electronic communications equipment.
- (b) For the purposes of distinguishing between "internal" and "external" resources, it is acknowledged by the Parties that any individual, company or other firm retained by any Party to provide professional services (each a "consultant") shall be regarded as that Party's own "internal" resources for the purposes of this Agreement, provided always that any Party utilising consultants as "internal" resources in this way shall remain liable to the other Parties (in accordance with the terms of this Agreement) for any failure to deliver all or any part of the INCA Tasks undertaken by such consultant.
- (c) In any case where the Committee chairman, in compliance with the Rules of Internal Order, attends any meeting of the Committee (whether in person or via any form of electronic communications equipment) in both his capacity as chairman and as the sole representative of his employer at such meeting, due to exceptional reasons, it will be assumed for time-recording purposes that such person dedicates fifty per cent (50%) of his time to the Committee chairman's work and the other fifty per cent (50%) of his time to the fulfilment of his duties to the Party by whom he has been required to such meeting. In any case where the chairman is accompanied at such meeting by one or more persons acting in the capacity of representative of such Party at such meeting, it will be assumed for time-recording purposes that such person dedicates one hundred per cent (100%) of his time to the Committee chairman's work at the meeting in question.
- (d) In any case where a work group or task force leader attends any work group or task force meeting (whether in person or via any form of electronic communications equipment) in both his capacity as work group or task force leader and as the sole representative of his employer at such meeting, it will be assumed for time-recording purposes that such person dedicates fifty per cent (50%) of his time to the task force leader's work and the other fifty per cent (50%) of his time to the fulfilment of his duties to the Party by whom he has been required to such meeting, provided always that all Parties are required to appoint a representative to the work group or task force in question. In any case where the appointment by a NEMO of a representative to the work group or task force in question is discretionary, or where the making of such appointment is not discretionary but the work group or task force leader is accompanied at such meeting by one or more persons acting in the capacity of Party representative, it will be assumed for time-recording purposes that the work group or task force leader dedicates one hundred per cent (100%) of his time to the work group or task force's work at the meeting in question.

- (e) The members of a work group or task force may from time to time allocate responsibility for the performance of one or more INCA Tasks to one or more Parties or third parties (each, an "Allocation"). Each Allocation will be carried out by the work group or task force members in accordance with the following principles:
- i) The members will first decide how the performance of the necessary INCA Tasks should be best procured from the Parties, including the extent to which multiple INCA Tasks should be packaged together for allocation purposes;
 - ii) The members will invite the Parties to make proposals to it concerning one or more of the INCA Tasks (or packages of INCA Tasks, as appropriate);
 - iii) The members will require Parties submitting proposals to give details in such proposals of:
 - (aa) the estimated level of work (in man-days) required to complete each INCA Task;
 - (bb) which elements of the work will be done by employees or by consultants and how much work on each INCA Task that will be done by each;
 - (cc) whether any consultants have been or will be specifically retained for the purposes of such INCA Tasks; and
 - (dd) Any other details that the members may require.
 - iv) The members will consider the various proposals it receives from the Parties (if any) relating to the performance of INCA Tasks (or packages of INCA Tasks, as appropriate). In considering such proposals, the members shall:
 - (aa) favour the most efficient solution (considering the expertise and the availability of internal resource of the Parties);
 - (bb) favour the most cost-effective solution, whereby when presented with several proposals with equal scope and quality:
 - (AA) the least costly proposal should be selected; and
 - (BB) a permanent (full-time or part-time) employed resource of a Party will be assumed to be cheaper than a consultant resource proposed to be utilised by another Party for performance of the equivalent INCA Task unless there is clear evidence to the contrary; and

- (cc) in so far as is reasonably possible, favour a fair distribution of the performance of INCA Tasks amongst the Parties.
- v) No Allocation shall become finally effective until such Allocation, including the proposed budget for the relevant INCA Tasks comprised in it, has been approved by the Committee.
- vi) The work group or task force leader will, on receiving confirmation of any Allocation to a Party or third party from the Committee, issue a notice to such person specifying:
- (aa) the subject of the Allocation;
 - (bb) the contents of the expected deliverables comprised in such Allocation;
 - (cc) the quality objectives (deliverable form, respect of scope, finishing level, detail level, required level of support,...);
 - (dd) the budgeted workload (i.e. an estimated budget, considering the internal Standard Daily Rate);
 - (ee) the target date for completion;
 - (ff) the person(s) to which the INCA Task has been allocated.
- (f) All Allocations made by work group members shall be made by consensus of all the members of such work group and all such Allocations shall be recorded in the minutes of the relevant work group or task force.
- (g) In any case where either:
- (i) no Party is willing or able to assume the risk of non-delivery of an INCA Task (whether through the utilisation of one or more of its own employees or one or more of its own retained consultants, or any combination of these); or
 - (ii) the proposals in respect of one or more INCA Tasks are rejected by the Committee (e.g. on grounds that the budget is too high, the resources offered do not have the requisite skills or experience or are insufficient in number),
- the Committee shall be entitled to make such arrangements as it considers necessary and reasonable in all the circumstances for the engagement of a suitable external resource to perform such INCA Tasks.

(h) In considering any proposals from a third party for the performance of INCA Tasks, the Committee shall take into account (to the extent reasonably necessary) such relevant considerations as it is required to take into account when allocating INCA Tasks to Parties under paragraph (d)(iv) above.

(i)



(j) Subject to prior approval by the Committee, an Allocation to a third party may be contracted by one or more of the Parties for and on behalf of all of the Parties as a whole. Such contract shall, at a minimum, specify:

- (i) the subject of the Allocation;
- (ii) the contents of the expected deliverables comprised in such Allocation;
- (iii) the quality objectives (deliverable form, respect of scope, finishing level, detail level, required level of support,...);
- (iv) the estimated workload (i.e. an estimated budget, considering the internal Standard Daily Rate);
- (v) the target date for completion;
- (vi) such other matters as the Committee may require.

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

4. WORK GROUP AND TASK FORCE BUDGET PROCESS

(a) Approval of Work Group and Task Force Budgets

The budgets of all work groups or task forces shall be agreed by the consensus of all members of the relevant work group/task force and then subject to the approval of the Committee. No work group or task force shall be permitted to incur expenditure in excess of its applicable yearly budget (including any available contingencies), unless such additional expenditure is expressly approved by the Committee. Contingency amounts shall be specifically attributable to a particular budgeted task or activity of the work group

or task force. No contingency amount applicable to such budget may be reallocated from its original task or activity without the express prior approval of the Committee.

The aggregate yearly work group or task force budgets themselves may each be composed of one or more activity sub-budgets and may, at the discretion of the Committee, comprise one or more contingency margins. The contingency margins for a work group or task force's yearly budget will be calculated in accordance with the following guidelines:

- (i) the Committee may allocate the work group a specific contingency margin to one or more tasks or activities of such work group or task force;
- (ii) it is the responsibility of the work group or task force members, acting by unanimity, to approve the utilisation of a specific contingency margin. All decisions of the work group or task force members to use a contingency amount must be notified to the Committee at the earliest opportunity. In the event that a unanimous decision cannot be reached, the matter must be escalated to the Committee for resolution.

Subject to paragraph (b) below, the incurring of INCA Costs by any one or more of the members of any work group or task force will be conditional upon:

- (iii) the INCA Task in question having been anticipated by the yearly budget in question; and
- (iv) there being sufficient headroom in the relevant work group or task force yearly budget to accommodate such INCA Costs.

(b) Approval of non-budgeted INCA Tasks

The work group or task force leader will, with the consensus of all members of the relevant work group/task force, update the secretary of the Committee with details of any requests for approval in connection with any necessary but not yet budgeted INCA Costs by no later than 5 pm CET of the last Wednesday before each scheduled Committee meeting. All such requests will be submitted to the Committee for approval consistent with the requirements of Article 8.1. In considering such requests, the Committee will consider the

overall INCA annual budget, the overall work group or task force budget already approved by the Committee plus any contingency margin.

Records of all such requests and of the Committee decisions relating to them will be kept in the Committee Meeting minutes.

5. MONITORING OF PROGRESS, QUALITY AND TIME SPENT – REPORTING

(a) Monitoring of progress, quality and time spent

The work group or task force leader will, with the support of the members of the work group or task force in question, regularly monitor the progress being made by internal or external resources allocated to any one or more INCA Tasks, including with respect to the observance of any applicable milestones and/or target dates and/or the accumulated costs incurred with respect to such INCA Task against the relevant approved budget.

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

External resources' work on INCA Tasks will be recorded through detailed timesheets and valued at the contractually agreed tariff. Such timesheets will be submitted directly to the relevant contracting Party(ies) and then by such Party(ies) to the secretary of Committee (with a copy to the members of the relevant work group or task force).

Work group or task force leader work and the use of a Party's own internal resources will be recorded through timesheets at the Standard Daily Rate. If any work group or task force leader is in receipt of, with the approval of the Committee, assistance from any Party in connection with the performance of any one or more of the work group or task force leader tasks, this will be reported to the secretary of the Committee in the same manner.

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

- (i) the quality with which such deliverable has been performed with respect to the quality objectives provided at the start of the INCA Task; and

- (ii) the amount of INCA Costs incurred with respect to the budget for such INCA Task (if any) or with respect to the aggregate yearly budget (less the already incurred INCA Costs within such budget).

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

(b) Reporting to the secretary

Individual members of a work group/task force allocated an INCA Task pursuant to the terms of this Annex V shall complete and under a best efforts obligation submit the relevant timesheets to the secretary of the Committee by no later than the 5th Business Day of the month following the month in which work is performed. The Secretary shall circulate the submitted timesheets to the relevant work group/task forces. The timesheets shall be reviewed and validated by the taskforce. The task force leader shall confirm validation or forward any proposed changes to the timesheets to the secretary of the Committee by no later than the 9th Business Day of the month following the month in which work is performed.

By exception, in the event that any one or more individual members of a work group/task force allocated an INCA Task pursuant to the terms of this Annex V fails for whatever reason to submit any relevant timesheet(s) by the 5th Business Day of the month following the month in which work is performed, the individual member may submit such timesheet(s) for inclusion in the next month's report to the secretary of the Committee, provided that such report shall clearly identify such late-reported items:

- (i) For internal costs: Exceptionally (subject to explicit INC approval) some deviation to the above mentioned provision may be accepted, provided there is a reasonable justification, in which case there should be a maximum of 1 month of delay after the original deadline.
- (ii) For external costs: If the contractor is systematically invoicing too late, the contracting NEMO should inform the INC. INC shall then decide what should be done to improve the situation.

The chairman of the Committee and any parties undertaking tasks for the Committee not otherwise covered under a particular TF shall complete their own timesheets on a fair basis and transmit them to the secretary of the Committee by no later than the 9th Business Day of the month following the month in which work is performed.

Third party external resources shall be required under the terms of their contracts to submit relevant timesheets to their contracting NEMO(s) by no later than the 5th Business Day of the month following the month in which work is performed. The relevant contracting NEMO(s) shall validate the time entries detailed in the timesheets supplied it are reported on a fair basis and forward the timesheets to the secretary of the Committee by no later than the 9th Business Day of the month following the month in which work is performed. It must be noted that the contracts with third party resources and the (possibly) associated power of attorney agreements may contain additional approval steps (re: the approval of pro-forma invoices), which are not considered here but which also must be respected.

In the event that any work group/task force leader, or the chairman of the Committee or relevant contracting NEMO fails for whatever reason to submit any relevant timesheet(s) to the secretary of the Committee by the 9th Business Day of the month following the month in which work is performed, the relevant work group/task force leader, the chairman of the Committee or the relevant contracting NEMO (as the case may be) may submit such timesheet(s) to the secretary of the Committee for inclusion in the next month's report, provided that such report shall clearly identify such late-reported items, in which case there should be a maximum of 1 month of delay after the original deadline.

By no later than the 10th Business Day of each month following the month in which work is performed, the secretary of the Committee will collect from the work group or task force leaders or contracting NEMOs (in the case of sub-paragraph (i) below) details of the following by reference to each INCA Task under the responsibility of such work group or task force:

- (i) the time spent per external resource during the previous month
- (ii) the time spent per internal resource during the previous month
- (iii) the time spent by the chairman, secretary and work group or task force leaders in their duties during the previous month
- (iv) reasonable documentary evidence (including without limitation invoices) relating to the expenses incurred by the chairman, secretary and work group or task force leaders, external and internal resources during the previous month in performing their duties, provided in line with the provisions of this Annex.
- (v) any possible negative evaluation of the quality of any INCA Task deliverable or of the amount of time spent.

Save in respect of each month falling after the end of a calendar quarter, the secretary of the Committee shall process the information received in connection with paragraphs (i)-

(v) above and shall prepare and submit on 15th Business Day of each month following the month in which work is performed an overview of the previous month's costs (the "Monthly Report") to the Cost Work Group/Task Force for validation and, following which, to the Committee for final approval.

In respect of each month falling after the end of a calendar quarter, the secretary of the Committee shall process the information received in connection with paragraphs (i)-(v) above and shall prepare and submit on the 10th Business Day of such month as the relevant Quarterly Report an overview of the previous month's costs together with details of the already validated Monthly Reports in respect of such calendar quarter to the Committee for final approval.

The secretary of the Committee shall procure that all timesheets (including from third parties) provided to it and all documentary evidence with respect to expenses provided to it by the chairman, secretary and work group or task force leader or any third party, in addition to all Monthly Reports and Quarterly Reports are made freely available to all the Parties by means of an appropriate on-line document management system (for example, Project Place) prior to the approval of such costs.

ANNEX VI

EPEX/APX Merger

