

## **SECOND AMENDMENT TO THE ALL NEMO INTRADAY OPERATIONAL AGREEMENT**

BETWEEN:

1. **BSP Energy Exchange LL C (“BSP”)** a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at the district court of Ljubljana under registration n° 3327124000 and VAT n° SI37748661;
2. **CROATIAN POWER EXCHANGE Ltd. (“CROPEX”)**, a company incorporated under the laws of Republic of Croatia, having its registered office at Slavonska avenija 6/A, 10000 Zagreb, Croatia, registered in the commercial register at the commercial court of Zagreb under number 080914267 and VAT n° HR14645347149;
3. **EirGrid plc (“EirGrid”)**, a company incorporated under the laws of Ireland, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4 and registered with the Company Registration Office under number 338522 and VAT n° IE6358522H;
4. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, F-75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501
5. **Gestore dei Mercati Energetici S.p.A. (“GME”)**, a company duly organized and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122/124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002;
6. **HUPX Hungarian Power Exchange Company Limited by Shares (“HUPX Ltd.”)**, a company incorporated under the laws of Hungary, having its registered office at 1134 Budapest, Dévai u. 26-28, Hungary, registered in the commercial register of the Budapest metropolitan court, under number 01-10-045666 and VAT. n° HU13967808;
7. **Independent Bulgarian Energy Exchange (“IBEX”)**, a company incorporated under the laws of Bulgaria, having its registered office at 138, Vasil Levski, Blvd., Sofia, 1527, Bulgaria, registered in the commercial register at Bulgarian registry agency under number 202880940 and VAT n° BG202880940;
8. **Nord Pool European Market Coupling Operator AS, (“Nord Pool EMCO”)**, a company organised and existing under the laws of Norway, having its registered office at Lilleakerveien 2A - 0283 Oslo, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° NO 984 058 098 MVA,

9. **OKTE, a.s., (“OKTE”)**, a company duly organised and existing under the laws of Republic of Slovakia, with registered office in Mlynské nivy 48, 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;
10. **OMI, POLO ESPAÑOL, S.A. (“OMIE”)**, a company incorporated and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, hoja: M-506799 and VAT n° ESA86025558;
11. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)** (previously Operator of Electricity Market S.A. also called Lagie), a company incorporated under the laws of Greece, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000, with V.A.T. n° 801001623;
12. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at Bd. Hristo Botev 16-18, sector 3, București, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
13. **OTE, a.s. (“OTE”)**, a company incorporated and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague, Czech Republic, and registered with the commercial register in municipal court of Prague, Section B 7260 under the number 264 63 318 and VAT n° CZ26463318; OTE’s contract number: [REDACTED];
14. **SONI Limited (“SONI”)**, a company incorporated under the laws of Northern Ireland, with V.A.T. number GB945676869, having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, UK and registered with the Companies House under number BT6 9RT;
15. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at 12th Commercial Department of the National Court Register in Warszawa under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

hereafter each individually referred to as a “Party” and collectively as the “Parties”.

**WHEREAS:**

- A) On the 15th of August 2015, the CACM Regulation entered into force. CACM Regulation provides a mandatory framework for the SDAC and SIDC describing the roles and responsibilities of the NEMOs and tasks to be jointly performed by the NEMOs.
- B) On the 12th of June 2018, pursuant to the MCO Plan, the Parties together with EXAA Abwicklungsstelle für Energieprodukte AG (“EXAA”) – designated NEMO in Austria and Germany, incorporated under the laws of Austria, , registered in the commercial register at Handelsgericht Wien under number FN 210730y and V.A.T. ATU52153208 – have entered into the All NEMO Intraday Operational Agreement (hereinafter “**ANIDOA**”). The ANIDOA sets forth i) the main principles of NEMOs’ cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs.
- C) Also on the 12<sup>th</sup> of June 2018, the Parties together with the TSOs subject to the CACM implementation have entered into the Intra Day Operational Agreement (hereinafter “**IDOA**”) to set forth i) the main principles of their cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- D) On the 28 March 2019, pursuant to the MCO Plan, the Parties together with other NEMOs (i.e. the NEMOs which qualify as designated NEMOs with respect to SDAC) have entered into the All NEMO Day Ahead Operational Agreement (hereinafter “**ANDOA**”) to set forth i) the main principles of NEMOs’ cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SDAC shall be implemented, performed and operated among NEMOs.
- E) Also on the 28<sup>th</sup> of March 2019, the Parties together with the TSOs subject to the CACM implementation have entered into the Day Ahead Operational Agreement (hereinafter “**DAOA**”) to set forth i) the main principles of their cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- F) On the 15<sup>th</sup> December 2019, EXAA has exited the ANIDOA pursuant to art 32.1.1 (Voluntary Exit).
- G) On the 18<sup>th</sup> December 2018, the Parties have entered into the first amendment to the ANIDOA in order to introduce new Article 11.4.3 and certain updates to Annexes 1, 3, 5, 9, 10, 11 of ANIDOA.

- H) The Parties now wish to enter into this second amendment to ANIDOA (the “**Second Amendment**”) - consistently with the related amendments to ANCA, ANDOA, IDOA and DAOA - in order to implement a joint governance set-up of the SIDC and SDAC market coupling cooperation aiming at increasing the efficiency and synergies of NEMOs’ and TSOs’ CACM implementation. In particular, such new joint governance set-up consists of:
- i) new rules for decision making reflecting the already applied practice of pre-alignment of TSOs’ and NEMOs’ respective positions, and
  - ii) the establishment, via the amendment of the relevant provisions of IDOA and DAOA, of the Market Coupling Steering Committee (“**MCSC**”), a new governing body of the SIDC and SDAC market coupling cooperation.

**NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:**

**1 OBJECT OF THE AGREEMENT**

With the signature of this Second Amendment the Parties amend the ANIDOA, as set forth under Article 2 and Article 3 below.

**2 AMENDMENTS TO THE MAIN BODY OF THE ANIDOA**

- 2.1** Except as expressly set out in this Second Amendment, the ANIDOA remains unamended and in full force and effect.
- 2.2** Parties agree to delete Whereas K) in its entirety and replace it with the following:  
*The Agreement entered into force on the 12<sup>th</sup> of June 2018 and is the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to that agreement. The PCA shall be terminated as of such entry into force of the Agreement (without prejudice to the application and the survival of certain clauses between the Parties that have signed the PCA and the right to claim under that agreement).*
- 2.3** Parties agree to supplement the Whereas section with the following:  
“
- L) *On the 12<sup>th</sup> of June 2018, the Parties together with the TSOs subject to the CACM implementation have entered into the IDOA to set forth i) the main principles of their cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.*
- M) *On the 28<sup>th</sup> March 2019, pursuant to the MCO Plan, the Parties together with the other NEMOs have entered into the All NEMO Day Ahead Operational Agreement (hereinafter*

*“ANDOA”) to set forth i) the main principles of NEMOs’ cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SDAC shall be implemented, performed and operated among NEMOs.*

- N) *Also on the 28<sup>th</sup> of March 2019, the Parties together with the TSOs subject to the CACM implementation have entered into the Day Ahead Operational Agreement (hereinafter “DAOA”) to set forth i) the main principles of their cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.*
- O) *On the 15<sup>th</sup> December 2019, EXAA has exited the ANIDOA pursuant to Article 32.1.1 (Voluntary Exit).*
- P) *On the 18<sup>th</sup> December 2018, the Parties have entered into the first amendment to the ANIDOA in order to introduce new Article 11.4.3 and certain updates to Annexes 1, 3, 5, 9, 10, 11 of ANIDOA.*
- Q) *On the 14<sup>th</sup> January 2022, the Parties have entered into a second amendment to ANIDOA - consistently with the related amendments to ANCA, ANDOA, IDOA and DAOA - in order to implement a joint governance set-up of the SIDC and SDAC market coupling cooperation aiming at increasing the efficiency and synergies of NEMOs’ and TSOs’ CACM implementation. In particular, such new joint governance set-up consists of:*
- i) new rules for decision making reflecting the already applied practice of pre-alignment of TSOs’ and NEMOs’ respective positions, and*
  - ii) the establishment, via the amendment of the relevant provisions of IDOA and DAOA, of the Market Coupling Steering Committee (“MCSC”), a new governing body of the SIDC and SDAC market coupling cooperation.*
- R) *For information purposes only, TGE hereby declares that it has the status of a large enterprise, as defined in Article 4 (6) of the Polish Act on counteracting excessive delays in commercial transactions (Dz.U. [Journal of Laws] from 2020, item 935, 1086, as amended). This status is also defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ EU L 187, 26 June 2014, as amended).*

- 2.4** The Parties agree to amend Article 2.1 by inserting the item (I) as an additional Annex in the list of Annexes as follows:

*“(I) Annex 12 (Controllers’ Information – personal data protection)”*

**2.5** The Parties agree to delete Article 8.1.1 in its entirety and replace it with the following:

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

*In particular, the NEMO ID SC has the power to take decisions in respect of matters that arise within the scope of this Agreement such as, without limitation, with respect to:*

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

**2.6** The Parties agree to delete paragraph (i) of Article 29.3 in its entirety and replace it with the following :

*“*

- i) the Disclosing Party can demonstrate by written evidence that all Parties have agreed to such disclosure and that such information is not otherwise subject to any confidentiality obligation owed to any Third Party. The Parties agree that the exchange of information between the Parties and ANDOA parties in the*

*context of Article 8.1.1 viii) of this Agreement is always considered as permitted disclosure;*

2.7 The Parties agree to Parties agree to amend Article 30.1.4 by inserting an additional paragraph v) as follows

v) *in the cases governed by Article 38.6 (General Data Protection)."*

2.8 The Parties agree to add as Article 31.4 the following provision:

*"The Parties are aware of the fact that OTE, a.s., irrespective of the applicable law of this Agreement, has a national legal obligation within the meaning of Section 2 (1) of Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, publishing and for the registry of contracts according to which the entry into force of this Agreement is subject to prior publication of this Agreement in the national contract registry."*

2.9 The Parties agree to add as Article 38 the following provision:

**Article 38. General Data Protection**

**38.1** *In the context of the Agreement, the Personal Data that shall be processed are contact and other personal information of Parties' representatives or personnel or personnel of service. Such Personal Data includes, name, professional email address, professional phone number and photographic pictures. No Personal Data of market participants or any other person shall be processed in the context of this Agreement.*

**38.2 Purpose of the processing and storage**

38.2.1 *With respect to the processing of Personal Data referred to under Article 38.1 the Parties agree that:*

- i) *it shall be carried out purely by virtue of the data subject's representation of/service to a Party in the context of the performance of the Agreement. Any Personal Data shall only be processed for the limited purpose of the performance of the Agreement.*
- ii) *the legal grounds for processing the contact and other personal information of Party representatives is based on the legitimate interest of the Parties, namely to perform*

*through their employees, service providers or representatives, the contractual rights and obligations under the Agreement.*

*38.2.2 Personal Data shall be stored so long as it is relevant, that is related to persons representing/working for a Party, otherwise it shall be immediately erased. All Parties shall ensure erasing Personal Data that is no longer necessary as well as accuracy of the Processed Data.*

### **38.3 Joint Data Controller**

*The Parties qualify as joint data controller in relation to the processing of Personal Data referred to in Article 38.1 to the extent such Personal Data are jointly stored by all Parties or by a third party on behalf of all Parties.*

### **38.4 General distribution of responsibilities**

*38.4.1 Each Party shall, at all times, comply with its respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed under this Agreement.*

*38.4.2 The NEMO ID SC will designate a specific point of contact ("GDPR SPOC") for carrying-out data subjects' rights requests, it being understood that the data subjects can nonetheless exercise their rights under the GDPR vis-à-vis each Party as an individual data controller.*

*38.4.3 Each Party is individually responsible for:*

- a) notifying the required GDPR processing information under article 13 and 14 of the GDPR to data subjects appointed or acting as representative, personnel or service provider on such Party's behalf or at such Party's request in the performance of the Agreement, whose Personal Data is being*



*processed, so that they are aware of the data processing carried out in the framework of the Agreement;*

- b) ensuring the respect for data subjects rights as per articles 15 to 22 of the GDPR. If a Party receives a request, a complaint or inquiry from a data subject regarding the processing of its Personal Data, the GDPR SPOC shall be informed thereof and be requested to honor or implement the request in accordance with the GDPR;*
- c) implementing internally the appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is performed in accordance with applicable Data Protection Legislation;*
- d) complying with the requirement for records of processing activities in article 30 of the GDPR. For the avoidance of doubt, each Party agrees to keep an entry regarding the processing carried out in the context of the joint controllership in their respective registers to be kept in accordance with article 30 of the GDPR;*
- e) complying with articles 33 and 34 of the GDPR on notification of a Personal Data breach to the supervisory authority and/or to the concerned data subject(s). The concerned Party/ies shall inform the GDPR SPOC, so that they can inform all other Parties thereof.*

*However, if the reason for the breach is not immediately attributable to one of the data controllers, and the breach is attributable to the provider of the common (online) storage place referred to in Article 37.9 or any processor jointly chosen by the Parties, the GDPR SPOC is responsible for managing a Personal Data breach and notifying the Personal Data breach to the supervisory authority and/or to the data subjects.*

*38.4.4 The GDPR SPOC is responsible for:*

- a) verifying that data subjects whose Personal Data is being processed are notified of the required GDPR processing information under articles 13 and 14 of the GDPR, so that they are aware of the data processing being carried out in the framework of ANIDOA;*
- b) ensuring compliance by the Parties with all data subjects' rights as per articles 15 to 22 of the GDPR. If a Party receives a request, a complaint or an inquiry from a data subject regarding the processing of its Personal Data, the GDPR SPOC shall be informed thereof and be required to respond to such request, complaint or inquiry in accordance with the GDPR;*
- c) implementing the appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is performed in accordance with GDPR;*
- d) complying with the requirement for records of processing activities applicable in article 30 of the GDPR. For the avoidance of doubt, the GDPR SPOC shall be required to keep an entry regarding the processing carried out in the context of the joint controllership in a register maintained in accordance with article 30 of the GDPR;*
- e) complying with articles 33 and 34 of the GDPR in notifying the supervisory authority and/or to the concerned data subject(s) of a Personal Data breach;*
- f) complying with such further applicable national legal provisions, if any, as may be indicated by the Parties to the GDPR SPOC from time to time.*

**38.5 Use of data processors and sub-processors**

*The Parties shall mutually agree upon the use and the appointment of any data processors of Personal Data they are joint controllers for. This is without prejudice to each Party's right to continue to use processors for their independent processing*

*activities and any processors related to their respective IT systems. Each Party is liable for respecting its Data Protection obligations in this respect.*

**38.6 Security**

*Parties represent and warrant that they ensure the security of Personal Data processing in accordance with article 32 of the GDPR.*

**38.7 Liability with regards to this Article 38**

*38.7.1 The Parties shall be individually liable towards each other with regard to any Data Protection Legislation violation related to their individual responsibilities according to Article 38.4.*

*38.7.2 The Parties shall be jointly and severally liable towards data subjects with regard to any Data Protection Legislation violation occurring in relation to data processing for which they are joint controllers according to Article 38.3 and in respect of the choice of commonly agreed processors.*

*38.7.3 To the extent a third-party claim or damage in relation to a violation of Data Protection Legislation is caused by one or more Party(ies)'(s) violation of Data Protection Legislation, such defaulting Party(ies) shall indemnify the other Parties in accordance with article 82 of the GDPR. Such defaulting Party(ies) shall also indemnify the other Parties for fines imposed on them in relation to Data Protection Legislation violations caused by the defaulting Party(ies) in relation to joint data processing. In the event a fine is imposed for violation of Data Protection Legislation concerning the joint processing of Personal Data and such violation is attributable to all Parties or to the GDPR SPOC, the fine shall be equally shared between the Parties, without prejudice to any possible indemnification which may be requested from the GDPR SPOC. In these cases, the liability caps and caps on hold harmless set forth in Article 30 do not apply.*

**38.8 Right to provide individual controller information**

*38.8.1 Each Party has the right to provide individual controller information in Annex 12 (Controllers' Information – personal data protection).*

*38.8.2 Parties agree that Annex 12 creates no obligation for the other Parties apart from informing their relevant personnel and representatives involved in the performance*

*of the Agreement of the existence of such Annex 12 (Controllers' Information– personal data protection)*

### 3 AMENDMENTS TO THE ANNEXES OF THE ANIDOA

3.1 The Parties agree to add a new Annex 12 (Controllers' Information– personal data protection). Annex 12 is attached hereto as Attachment 1.

3.2 The Parties agree to supplement Annex 1 with the following definitions:

<b>ANDOA</b>	<i>shall have the meaning set forth in recital M);</i>
<b>DAOA</b>	<i>shall have the meaning set forth in recital N);</i>
<b>Data Protection Legislation</b>	<i>means the GDPR and all other relevant national and European laws and regulations concerning data protection, electronic communications and privacy;</i>
<b>General Data Protection Regulation or GDPR</b>	<i>means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);</i>
<b>GDPR SPOC</b>	<i>shall have the meaning set forth in Article 38.4.2;</i>
<b>Joint Matter(s)</b>	<i>means any topic and/or issue that falls within the scope of both DAOA and IDOA.</i>
<b>Market Coupling Steering Committee/MCSC</b>	<i>means the governing body of the cooperation among NEMOs and TSOs as described in the IDOA</i>
<b>NEMO Vote</b>	<i>means the collective vote that NEMOs submit for the purposes of MCSC decisions under the IDOA</i>
<b>Personal Data</b>	<i>means any information qualified as personal data pursuant to article 4(1) of GDPR;</i>
<b>SDAC</b>	<i>means "single day ahead coupling" as defined in the CACM Regulation</i>
<b>TSO Vote</b>	<i>means the collective vote that TSOs submit for the purposes of MCSC decisions under the IDOA</i>

3.3 Parties agree to supplement section 1.3 of Annex 9 (RIO) with the following:

*With respect to NEMO Vote described under Article 8.1.1 viii) of the main body, the Secretary of the NEMO ID SC sends to the NEMO Committee the NEMO Vote for the MCSC pre-aligned decision making process (i.e. decisions on the MCSC agenda subject to pre-alignment) and, as the case may be, guidance on possible compromise which NEMOs could achieve in case such NEMO Vote would not match with the relevant TSO Vote. It is understood that the NEMO Committee will inform of NEMO Vote the relevant bodies of the IDOA cooperation, according to the relevant provisions of ANCA.*

*Should NEMO Vote and TSO Vote not match and should it not be possible to achieve any compromise MCSC decision consistent with NEMO ID SC guidance, the Chairman of the NEMO Committee will inform the Secretary of the NEMO ID SC in order to set up a new alignment of NEMO ID SC. It is understood that NEMO ID SC guidance to achieve a compromise MCSC decision may be updated or provided by the NEMO ID SC during the MCSC meeting such as during the interruptions/breaks of the MCSC meeting.”*

#### **4 MISCELLANEOUS**

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

4.2 Changes to this Second Amendment can only be made in writing, signed by all Parties.

4.3 In the event of any ambiguity or inconsistency between the main body of this Second Amendment and its Attachments, the main body of the Second Amendment shall prevail over the Attachments. The Parties agree that Attachment 2 (consolidated version of the ANIDOA as amended by Second Amendment) is hereby attached only for illustrative purposes and shall have no binding effect.

4.4 For the avoidance of doubt, this Second Amendment is governed and shall be construed in accordance with Belgian law, to the exclusion of the provisions of conflict of laws thereof. In case of dispute between the Parties, arising out of or in relation with this Amendment Agreement, the dispute procedure set forth in Article 36 of the ANIDOA shall apply.

#### **5 ENTRY INTO FORCE**

5.1 This Second Amendment shall enter into force on the 14<sup>th</sup> January 2022 retroactively as the case may be, provided that all Parties have signed it by sending a scan of the signed signatory page of the Agreement to a third coordinating party assigned by the Parties. The third coordinating party will collect all copies of the received signed signatory pages and provide a copy of the main text of the Agreement with the copies of the signed signatory pages to the Parties.

5.2 For evidence reasons:

Second Amendment to the All NEMO Intraday Operational Agreement (ANIDOA)  
Confidential

i) each Party shall also provide the third coordinating party with fifteen (15) original signed signatory pages (one per Party) of the Agreement. The third coordinating Party will collect all copies of the original signed signatory pages, compile them with the main text of the Agreement and provide each of the Parties one (1) original of the main text of the Agreement with the original signed signatory pages, which constitutes valid proof of the main text of the Agreement. The foregoing will not impact the date of entry into force of the Agreement; and

ii) [REDACTED]

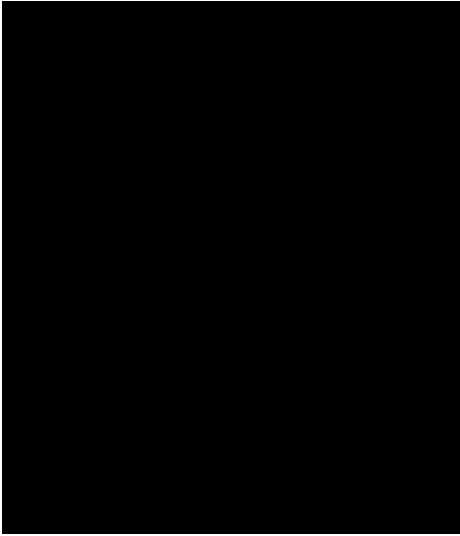
5.3 This Second Amendment is entered into for the duration of the ANIDOA. For the avoidance of any doubt, should the ANIDOA be earlier terminated, this Second Amendment shall be terminated accordingly.

5.4 The Parties are aware of the fact that OTE, a.s., irrespective of the applicable law of this Second Amendment, has a national legal obligation within the meaning of Section 2 (1) of Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, publishing and for the registry of contracts according to which the entry into force of this Second Amendment is subject to prior publication of this Second Amendment (with confidential parts blackened out) in the National Contract Registry of the Czech Republic..

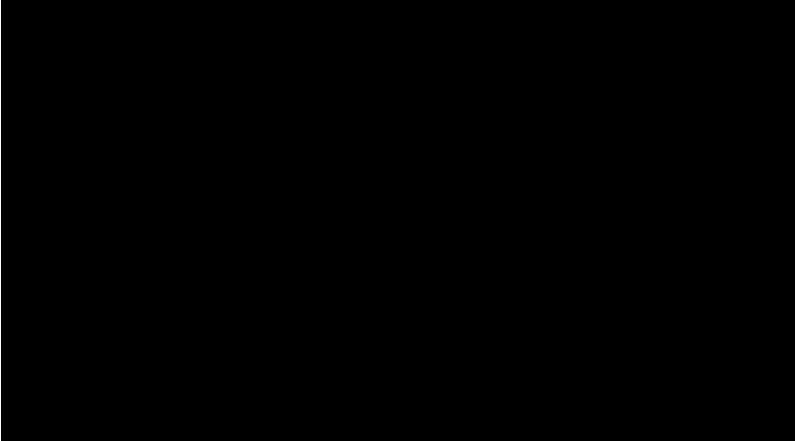
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IN WITNESS WHEREOF.

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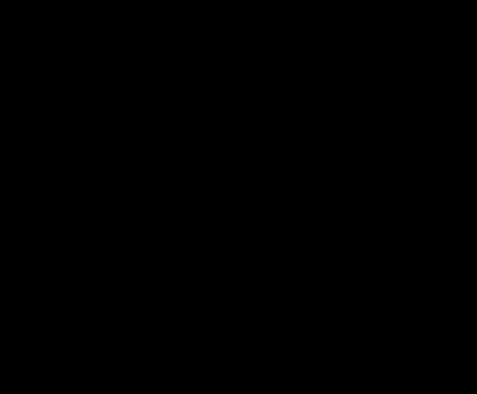


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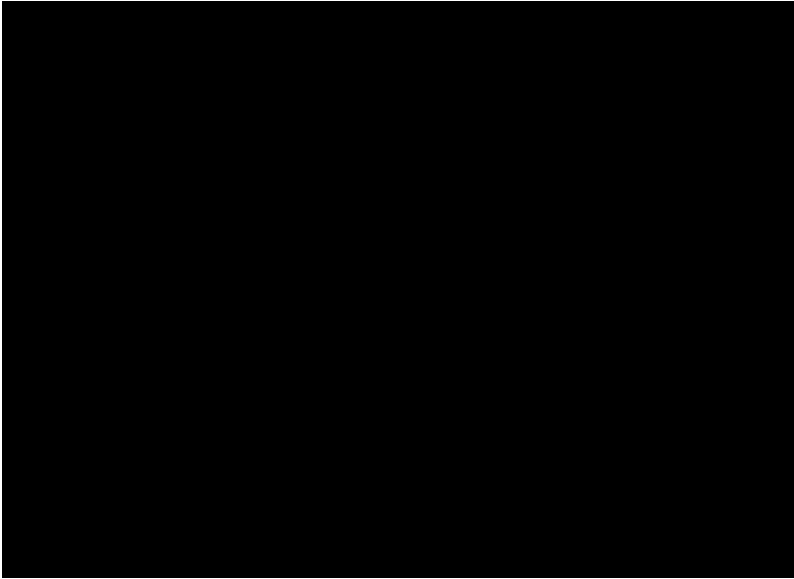




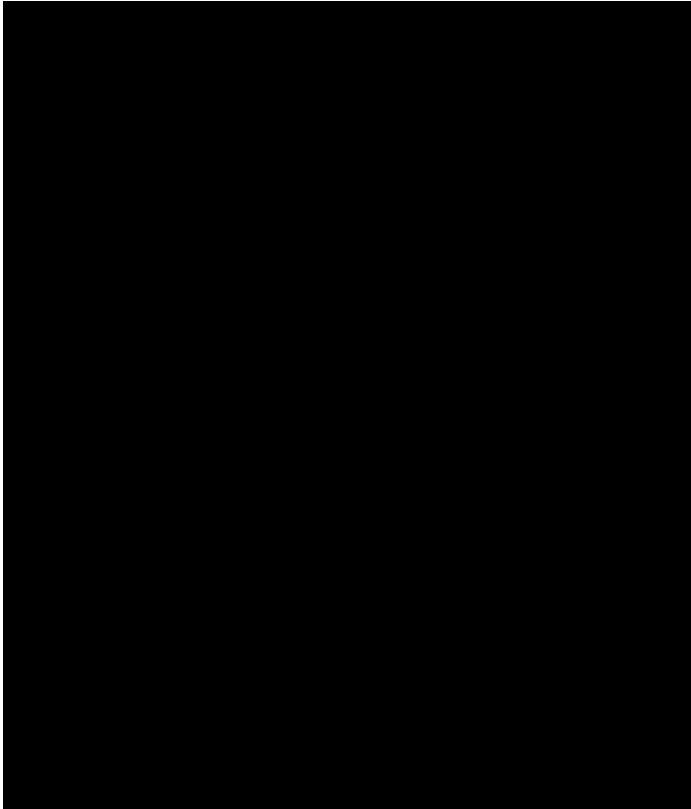
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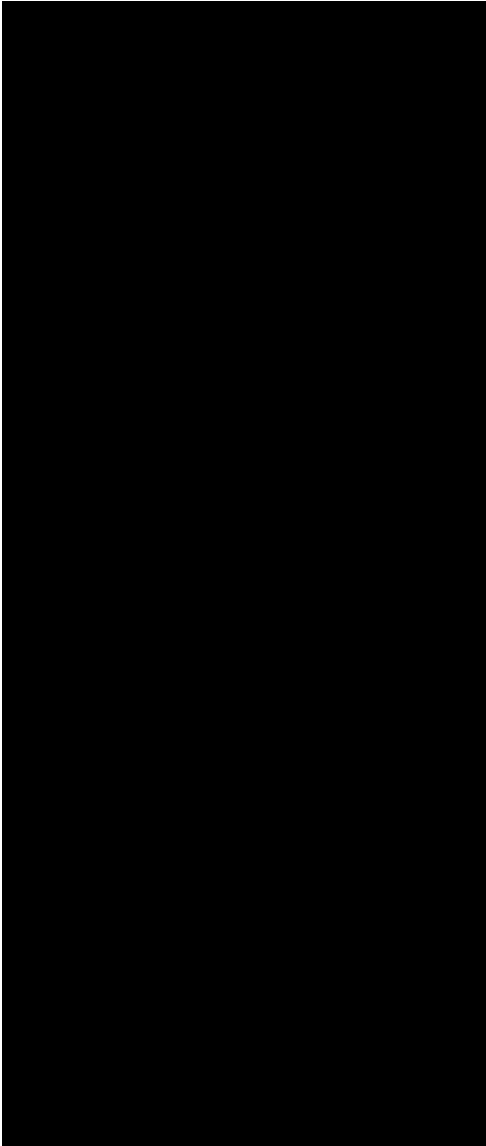
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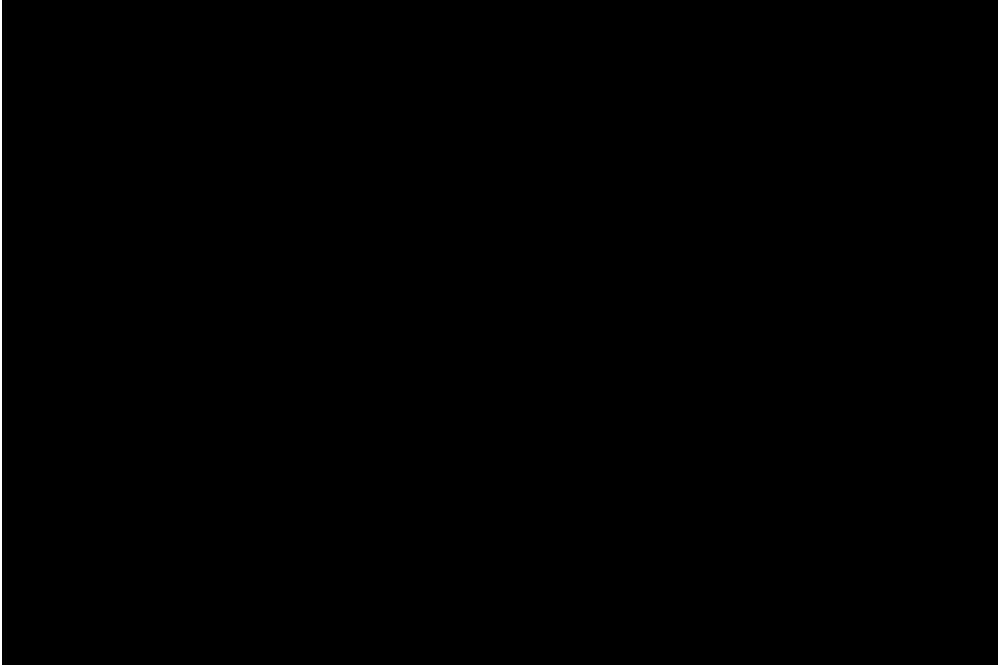
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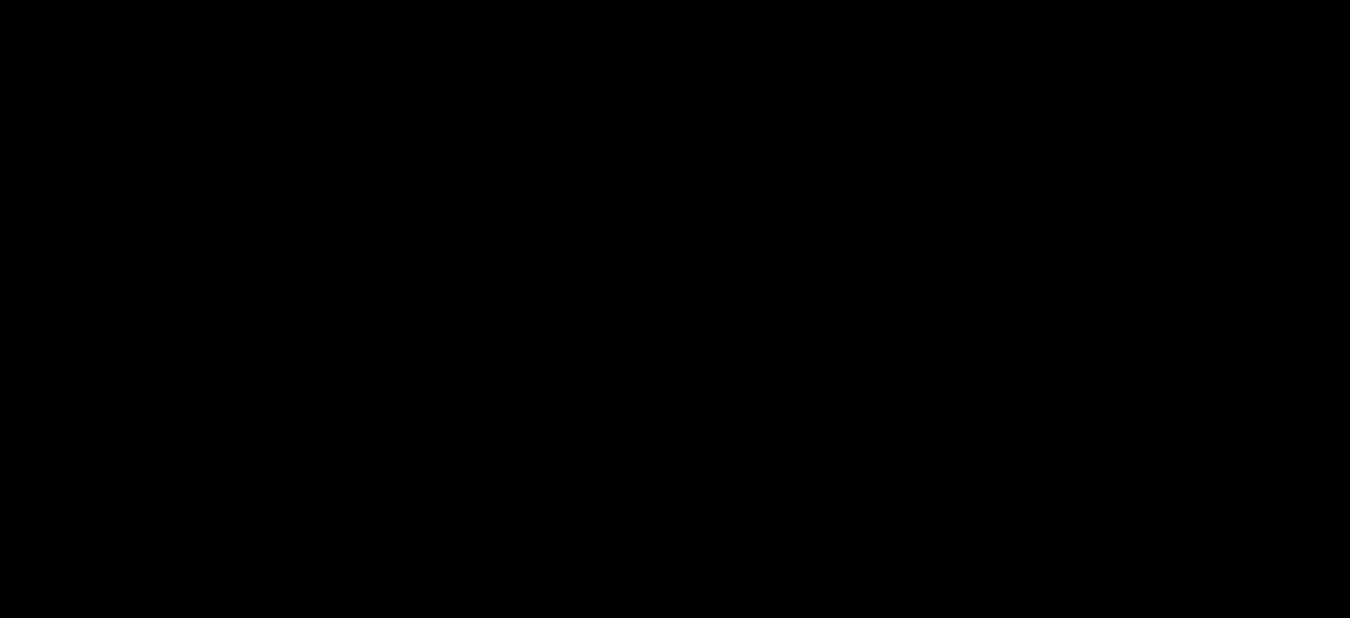
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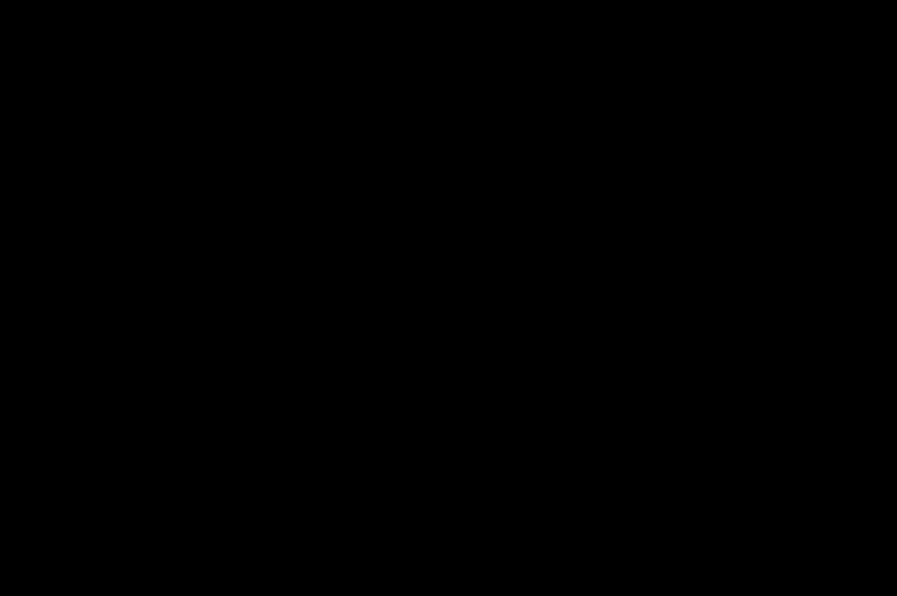
**SIGNATORY PAGE - HUPX**



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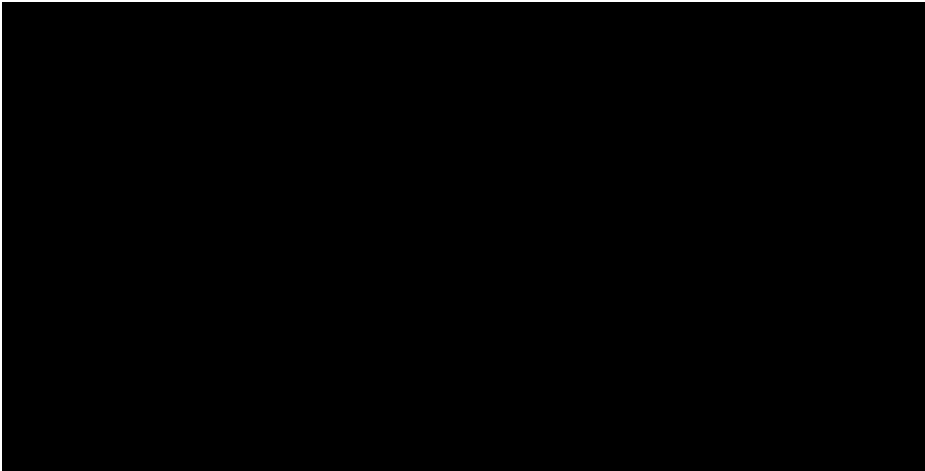


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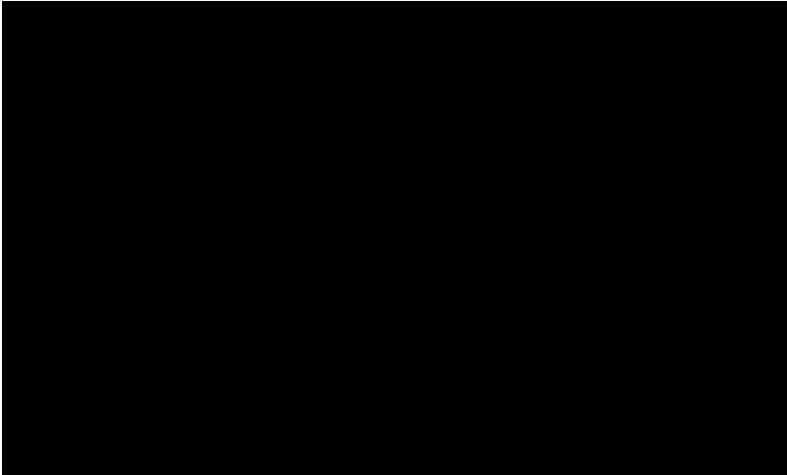




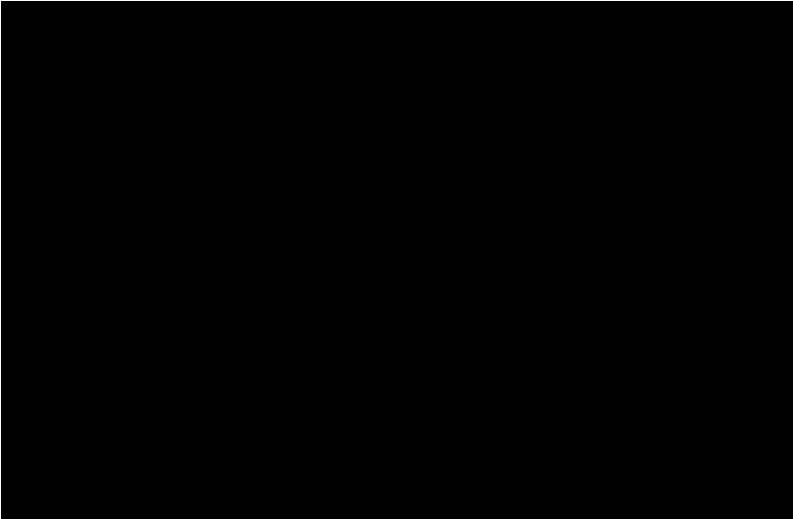
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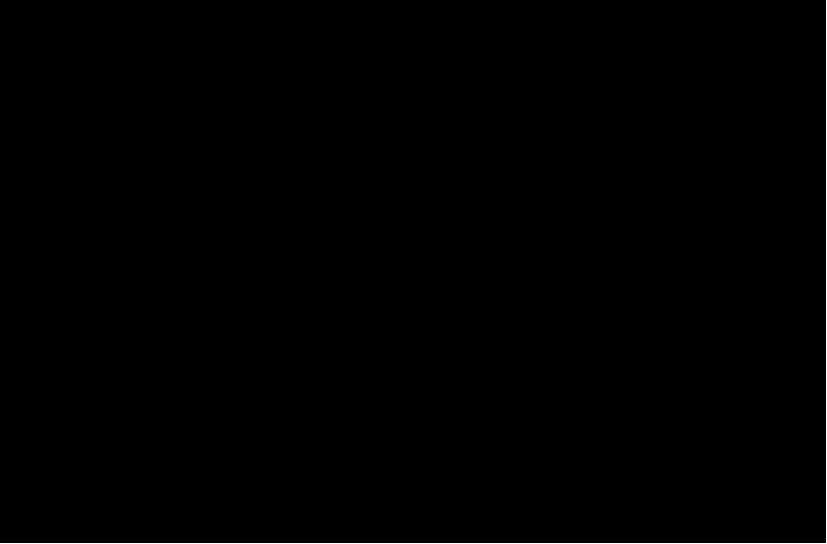
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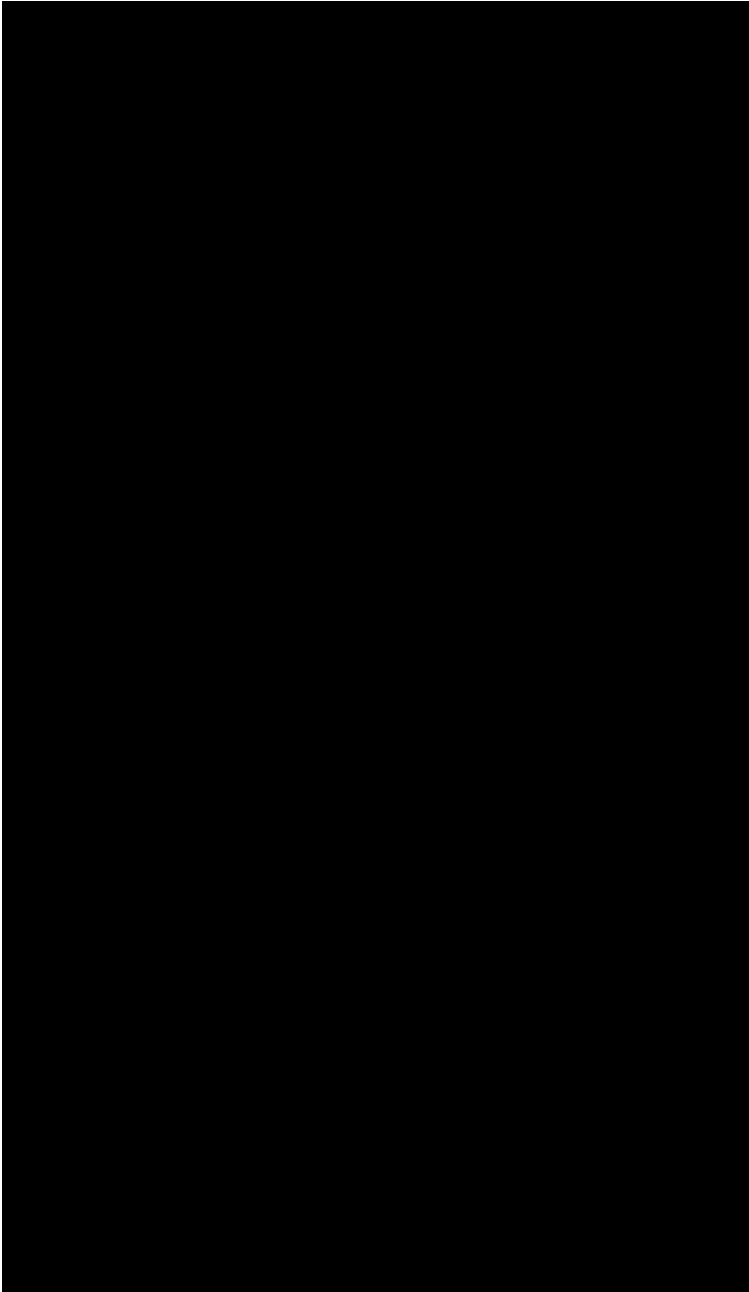
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Confidential

List of Attachments:

Attachment 1

Annex 12 (Controllers' Information– personal data protection)

Attachment 2

Consolidated version of the ANIDOA as amended by Second Amendment

## **ATTACHMENT 1**

### **Annex 12**

#### **General Data Protection**

##### **Section 1. Purpose of this Annex**

**Pursuant to Article 38 of the ANIDOA this Annex contains individual Party information concerning the processing of Personal Data by such Party.**

##### **Section 2. Information clause of TGE for persons authorised to represent the entity and persons indicated as business contacts**

Information concerning the processing of personal data by Towarowa Giełda Energii S.A. in connection with the requirements of Articles 13 and 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)(hereinafter "GDPR").

The controller of the data of the persons authorized to represent the entity and the persons indicated as business contacts is Towarowa Giełda Energii S.A. (TGE), ul. Książęca 4, 00-498 Warszawa, phone: +48 22 341 99 12, [tge@tge.pl](mailto:tge@tge.pl).

The controller has appointed a personal data protection officer, who can be contacted at:

[daneosobowe@tge.pl](mailto:daneosobowe@tge.pl).

The scope of personal data to be processed by TGE includes the name and surname, business e-mail address, business telephone number and position, and in case of persons authorized to represent the entity – the name, surname, position and data contained in the current excerpt from the relevant register, or the data contained in the power of attorney.

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The personal data of persons authorised to represent the entity and the data of persons indicated as business contacts will be processed by TGE according to Article 6(1)(f) GDPR, i.e. on the basis of a legitimate interest of the controller which is to verify the correct representation of the entity in connection with a declaration of will being made, exchanging communication in connection with the conclusion or performance of a contract, maintaining and developing business relations, or asserting, pursuing or defend oneself against possible claims. The recipients of the data may include entities engaged in the processing of personal data on behalf of TGE in connection with the services provided to TGE, e.g. consulting and IT services.

Every person has the right to request access to, rectification, erasure, restriction of processing and the transfer of his or her personal data. Every person has the right to object to the processing of personal data to the extent that the processing of personal takes place on the basis of a legitimate interest of the Controller. Every person has the right to lodge a complaint against the processing of his/her data with the President of the Personal Data Protection Office.

The indication of persons authorised to represent the entity is required as a condition to the execution of the contract. The provision of the data of persons indicated as business contacts is voluntary but a failure to provide such data will impede communication and contact with the counterparty in connection with the contract.

Any inquiries or requests related to the processing of personal data by TGE should be sent to the following e-mail address: [daneosobowe@tge.pl](mailto:daneosobowe@tge.pl).



**ATTACHMENT 2**

**All NEMOs Intraday Operational Agreement (ANIDOA)**

Between:

1. **BSP Energy Exchange LL C (“BSP”)** a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at the district court of Ljubljana under registration n° 3327124000 and VAT n° SI37748661;
2. **CROATIAN POWER EXCHANGE Ltd. (“CROPEX”)**, a company incorporated under the laws of Republic of Croatia, having its registered office at Slavonska avenija 6/A, 10000 Zagreb, Croatia, registered in the commercial register at the commercial court of Zagreb under number 080914267 and VAT n° HR14645347149;
3. **EirGrid plc (“EirGrid”)**, a company incorporated under the laws of Ireland, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4 and registered with the Company Registration Office under number 338522 and VAT n° IE6358522H;
4. **EPEX Spot Belgium SA (“EPEX Belgium”)**, a company incorporated under the laws of Belgium, having its registered offices at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium and registered in the commercial register of Brussels, under number 0874978602 and with VAT n° BE0874978602;
5. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, F-75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501
6. **Gestore dei Mercati Energetici S.p.A. (“GME”)**, a company duly organized and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122/124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002;
7. **HUPX Hungarian Power Exchange Company Limited by Shares (“HUPX Ltd.”)**, a company incorporated under the laws of Hungary, having its registered office at 1134 Budapest, Dévai u. 26-28, Hungary, registered in the commercial register of the Budapest metropolitan court, under number 01-10-045666 and VAT. n° HU13967808;
8. **Independent Bulgarian Energy Exchange (“IBEX”)**, a company incorporated under the laws of Bulgaria, having its registered office at 16 Veslets Str., Sofia, 1000, Bulgaria, registered in the commercial register at Bulgarian registry agency under number 202880940 and VAT n° BG202880940;
9. **Nord Pool European Market Coupling Operator AS, (“Nord Pool EMCO”)**, a company organised and existing under the laws of Norway, having its registered office at Lilleakerveien 2A - 0283 Oslo, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° NO 984 058 098 MVA,
10. **OMI, POLO ESPAÑOL, S.A. (“OMIE”)**, a company incorporated and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, hoja: M-506799 and VAT n° ESA86025558;
11. **Operator of Electricity Market S.A. (“LAGIE”)**, a company incorporated under the laws of Greece, having its registered office at 72 Kastoros Street, 18545 Piraeus, Greece, registered in the commercial register at general commercial registry under number 044658007000 and V.A.T. n° 099936480;

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12. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at Bd. Hristo Botev 16-18, sector 3, București, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
13. **OTE, a.s. (“OTE”)**, a company incorporated and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague, Czech Republic, and registered with the commercial register in municipal court of Prague, Section B 7260 under the number 264 63 318 and VAT n° CZ26463318; OTE’s contract number: [REDACTED];
14. **SONI Limited (“SONI”)**, a company incorporated under the laws of Northern Ireland, with V.A.T. number GB945676869, having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, UK and registered with the Companies House under number BT6 9RT;
15. **Towarowa Gielda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at 12th Commercial Department of the National Court Register in Warszawa under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

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

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**WHEREAS:**

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

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

- J) The ID NEMO Cooperation shall be strictly limited to what is necessary to perform the ID MCO Function, as required by article 7(4) of the CACM Regulation. Therefore apart from what is strictly necessary to coordinate their matching of orders via the XBID System, each Party shall keep its full independency and self-determination for its own business;
- K) The Agreement entered into force on the 12th of June 2018 and is the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to that agreement. The PCA shall be terminated as of such entry into force of the Agreement (without prejudice to the application and the survival of certain clauses between the Parties that have signed the PCA and the right to claim under that agreement).
- L) On the 12th of June 2018, the Parties together with the TSOs subject to the CACM implementation have entered into the **IDOA** to set forth i) the main principles of their cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- M) On the 28th March 2019, pursuant to the MCO Plan, the Parties together with other NEMOs (i.e. the NEMOs which qualify as designated NEMOs with respect to SDAC) have entered into the All NEMO Day Ahead Operational Agreement (hereinafter “**ANDOA**”) to set forth i) the main principles of NEMOs’ cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SDAC shall be implemented, performed and operated among NEMOs
- N) Also on the 28th of March 2019, the Parties together with the TSOs subject to the CACM implementation have entered into the Day Ahead Operational Agreement (hereinafter “**DAOA**”) to set forth i) the main principles of their cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- O) On the 15th December 2019, EXAA has exited the ANIDOA pursuant to Article 32.1.1 (Voluntary Exit).
- P) On the 18th December 2018, the Parties have entered into the first amendment to the ANIDOA in order to introduce new Article 11.4.3 and certain updates to Annexes 1, 3, 5, 9, 10, 11 of ANIDOA.
- Q) On the 14<sup>th</sup> January 2022, the Parties have entered into a second amendment to ANIDOA - consistently with the related amendments to ANCA, ANDOA, IDOA and DAOA - in order to implement a joint governance set-up of the SIDC and SDAC market coupling cooperation aiming at increasing the efficiency and synergies of NEMOs’ and TSOs’ CACM implementation. In particular, such new joint governance set-up consists of:
- i) new rules for decision making reflecting the already applied practice of pre-alignment of TSOs’ and NEMOs’ respective positions, and
  - ii) the establishment, via the amendment of the relevant provisions of IDOA and DAOA, of the Market Coupling Steering Committee (“**MCSC**”), a new governing body of the SIDC and SDAC market coupling cooperation.
- R) For information purposes only, TGE hereby declares that it has the status of a large enterprise, as defined in Article 4 (6) of the Polish Act on counteracting excessive delays in commercial transactions (Dz.U. [Journal of Laws] from 2020, item 935, 1086, as amended). This status is also defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ EU L 187, 26 June 2014, as amended).

**NOW THEREFORE, the Parties agree as follows:**

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**ARTICLE 1. Definitions**

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

**ARTICLE 2. Contractual documents and precedence**

**2.1** The documents constituting the Agreement are:

- i) The main text of the Agreement; and
- ii) The following Annexes attached to the Agreement:
  - (a) Annex 1 (Definition list)
  - (b) Annex 2 (Identical NEMO Components)
  - (c) Annex 3 (Financial modalities / budget / invoicing modalities)
  - (d) Annex 4 (Contact and invoicing details)
  - (e) Annex 5 (Procurement procedure)
  - (f) Annex 6 (Technical requirements)
  - (g) Annex 7 (NEMO Operational Procedures)
  - (h) Annex 8 (NEMO Central Admin services)
  - (i) Annex 9 (Rules of Internal Order (RIO))
  - (j) Annex 10 (Accession Declaration form)
  - (k) Annex 11 (NEMO Change Control Procedure)
  - (l) Annex 12 (Controllers' Information – personal data protection)

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

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

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

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

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

- i) to the extent that purely operational matters as referred to in the NEMO Operational Procedures are concerned; and

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- ii) to the extent necessary for the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement). For the avoidance of doubt, the foregoing implies e.g. that compliance is not required in respect of those provisions in the Local Arrangements (or part of them) that concern purely regional or local issues.

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

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

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

### **ARTICLE 3. Purpose of the Agreement**

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

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

### **ARTICLE 4. The ID NEMO Cooperation**

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

In this respect, each Party commits to:

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



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## **ARTICLE 5. General Principles**

### **5.1 Best Efforts obligation**

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

### **5.2 No joint and several obligations**

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

### **5.3 Good faith cooperation and non-discriminatory treatment**

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

### **5.4 Accession on non-discriminatory terms**

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

### **5.5 ID NEMO Cooperation**

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

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

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

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

### **5.6 Evaluation of the ID NEMO Cooperation**

**5.6.1** The Parties agree to subject the performance of the Agreement to a yearly evaluation by the NEMO ID SC or an ad hoc evaluation by the NEMO ID SC at written request of one or more Parties, with a view to examine possible improvements to the ID NEMO Cooperation. In particular, the Parties agree to verify the feasibility, consistently with Applicable Law, of alternative modalities for the participation to the ID NEMO Cooperation, such as the use of bilateral service provision agreements by which a Party delegates in compliance with Applicable Law some of its tasks in the context of the ID NEMO Cooperation.

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

**5.7 State of the art performance**

**5.7.1** Each Party shall perform its obligations under the Agreement:

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

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

**5.8 Competition compliance**

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

**ARTICLE 6. Delegation of obligations by a Party**

**6.1.** Each Party shall be entitled to delegate all or part only of the performance of any of its obligations under the Agreement provided that such delegation is made in compliance with the requirements of article 81 of the CACM Regulation which applies *mutatis mutandis*.

**6.2.** A Party delegating all or part only of the performance of any of its obligations under the Agreement shall at all times ensure that the performance of such obligation by the delegate is in accordance with the terms and conditions of the Agreement and of the CACM Regulation. A Party delegating all or part only of the performance of any obligation under the Agreement shall at all times remain fully responsible and liable towards the other Parties for the performance of the delegated tasks in accordance with the Agreement and the fulfilment of its obligations under the Agreement and under the CACM Regulation.

**ARTICLE 7. Roles and responsibilities**

**7.1 General principle**

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

### 7.2 NEMOs joint roles and responsibilities

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

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

### 7.3 Individual NEMO responsibilities

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

## ARTICLE 8. Governance

### 8.1. NEMO ID SC

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

In particular, the NEMO ID SC has the power to take decisions in respect of matters that arise within the scope of this Agreement such as, without limitation, with respect to:

- i) approval of the relevant rules and procedures, other than the NEMO relevant proposals for the Methodologies listed in article 9, paragraph 6 of the CACM Regulation, for the operation of the SIDC;
- ii) preparation of proposals for investment, budget and planning for the further development of the ID MCO Function, to be submitted to and approved by the NEMO Committee;

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- iii) management of the NEMO Change Control Procedure and its impact assessment and overseeing the implementation of Changes;
- iv) maintenance and day-to-day operation of the ID MCO Function according to the rules and procedures agreed by the Operational NEMOs;
- v) real-time application of the procedures in ID MCO Function operation;
- vi) analysis of incidents incurred in the ID MCO Function operation; and
- vii) provide the necessary support for analysis and testing related to further development of the ID MCO Function for any decision to be taken by the Operational NEMOs.
- viii) NEMO Vote decisions on matters which concern solely the scope of the IDOA. For the avoidance of any doubt, NEMO Vote decisions on all Joint Matters shall be decided by the NEMO Committee.

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

Without prejudice to the principle of unanimity, any actions of the NEMO ID SC needed in order to fulfil the tasks mentioned under Article 0, iv) to vii) shall be taken according to the NEMO Operational Procedures.

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

**8.1.3.** In order to perform the tasks mentioned in Article 0, the NEMO ID SC shall be comprised of the appointed representatives of each of the Parties, it being understood and agreed that each Party's appointed representative shall be vested with all necessary powers and authority to take binding decisions within the competence of the NEMO ID SC on behalf of the Party which they represent.

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

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

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

- i) **“Common Decisions”** shall refer to any decision in the context of the Agreement with the exception of Operational Decisions. With respect to Common Decisions all Parties shall be considered as Voting Members; or
- ii) **“Operational Decisions”** shall refer to decisions or actions taken in the day to day operation of the SIDC, needed for the well-functioning of the operations and/or having an impact on such operations. As regards Operational Decisions, only Operational NEMOs shall be considered as Voting Members. The following decisions and activities, shall e.g. but without limitation, be considered as Operational Decisions:
  - a) any decision related to the application, interpretation or adaptation of the NEMO Operational Procedures;
  - b) any decision related to the resolution of incidents;

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- c) any decision related to the SIDC NEMOs-Only Common Costs of operating the SIDC, unless non-operational NEMOs are to share in such costs in which case it will be a Common Decision; and
- d) any decision related to change requests towards the jointly contracted service providers or under the NEMO Change Control Procedure or the IDOA Change Control Procedure which are necessary to ensure the continuity of operations (to the exclusion of change requests that are related to further developments, i.e. do not relate to maintenance in the context of operations, which shall be considered a Common Decision).

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

- 8.1.5.** The NEMO ID SC may from time to time decide to create or dissolve subcommittees, working groups or task forces for the purpose of carrying out its tasks mentioned in Article 0. In such event, the NEMO ID SC shall determine the purpose, composition, as well as the organisational and governance arrangements for such task force or working group, taking into account where relevant Annex 9 (Rules of Internal Order (RIO)).

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

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

- 8.1.6.** All Parties may participate in the discussions and vote for Common Decisions of the NEMO OPSCOM in the context of the Agreement. Only Operational NEMOs may vote for Operational Decisions of the NEMO OPSCOM in accordance with the NEMO Operational Procedures (it being understood that all Parties are entitled to participate in the discussions). For the avoidance of doubt, the foregoing is without prejudice to the right of each Party to submit a change request in accordance with Annex 11 (NEMO Change Control Procedure).
- 8.1.7.** No decision of the NEMO ID SC, or of any other subcommittee, working group or task force created by the NEMO ID SC, shall be binding unless such decision is approved according to the relevant voting rules as stipulated in Annex 9 (Rules of Internal Order (RIO)).
- 8.1.8.** The NEMO ID SC Secretary (as appointed from time to time in accordance with the relevant provisions of Annex 9 (Rules of Internal Order (RIO)), the PMO (where appointed) or such other person as may be nominated by the NEMO ID SC will act as vote counter.
- 8.1.9.** The NEMO ID SC shall from time to time appoint one of its members to act as chairperson in accordance with the relevant provisions of Annex 9 (Rules of Internal Order (RIO)).

**8.2. Protection of the interests of the non-operational NEMOs**

- 8.2.1.** In the event that a decision of the Operational NEMOs made pursuant to Article 8.1.4, ii) has or is likely to have a material adverse effect on the interests of one or more non-operational NEMO(s), the affected non-operational NEMO(s) shall be entitled to raise its/their concerns in respect of such decision to the NEMO ID SC. In such event the affected non-operational NEMO(s) shall submit a written notice to the NEMO ID SC within five (5) Business Days from the date on which the Operational NEMOs' decision was made available to the non-operational NEMO(s), together with an explanation of the alleged material adverse effect. In case of more than one affected non-operational NEMO, the notice can be done jointly.
- 8.2.2.** Operational NEMOs shall have the obligation to consider in good faith the concerns raised by the affected non-operational NEMOs pursuant to Article 8.2.1. In deviation of Annex 9 (Rules of Internal Order (RIO)), the NEMO ID SC must meet within four (4) Business Days from the date of receipt of the written notice to resolve the objection against the escalated decision. Any decision in the matter shall be made unanimously among all Operational NEMOs in the NEMO ID SC and the non-operational NEMO(s) in the NEMO ID SC who submitted

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the notice pursuant to Article 8.2.1. Should the NEMO ID SC not solve the escalated decision in such meeting, the escalated decision shall be subject to Article 36.3 to Article 36.7. The disputed decision can only be suspended until the Dispute is solved if the NEMO ID SC unanimously agrees to suspend the decision. Decisions in respect of incident resolution can never be suspended. The foregoing is without prejudice to the not affected non-operational NEMOs' right to attend the NEMO ID SC meetings.

8.2.3. The Parties agree that an Operational Decision will be deemed, inter alia, to have a material adverse effect on the interests of the non-operational NEMOs in the following cases:

i) [REDACTED]

ii) [REDACTED]

## ARTICLE 9. Intellectual Property Rights - Right of use

### 9.1. General

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

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

9.1.3. Except for the purpose of publishing data as allowed under this Article 9 (Intellectual Property Rights – Right of use), Article 29 (Confidentiality) shall apply to the developments made and data used or exchanged pursuant to this Article 9 (Intellectual Property Rights – Right of use).

### 9.2. Developments by the Parties

9.2.1. Developments made under the Agreement (including but not limited to those set forth in Annex 2 (Identical NEMO Components)) and the Intellectual Property Rights on such developments, shall be jointly owned by the Parties, unless decided otherwise by the NEMO ID SC. Each Party has the right to use NEMO Operational Procedures in the context of Local Arrangements without further prior consent of the Parties.

9.2.2. The Parties acknowledge that the ownership, right of use and disclosure of the Joint XBID Procedures attached to the IDOA in exhibit 6 thereof, are governed by the IDOA.

9.2.3. The Parties acknowledge that the ownership, right of use and disclosure of procedures other than Operational Procedures or of any other data under Local Arrangements, is governed by such Local Arrangements.

### 9.3. Identical NEMO Components

9.3.1. Rights (including IPR), title, interests in Identical NEMO Components and the Identical NEMO Components themselves, as developed by one or more Parties (or developed on their joint behalf), including any subsequent modification, and rights (including IPR), title, interests in Identical NEMO Components transferred to one or more Parties are automatically co-owned by all the Parties.

9.3.2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**9.3.3.** Article 9.3.1 implies that any act in respect of Identical NEMO Components, such as the use, commercialisation, disposal, management, maintenance, further development, modification of the Identical NEMO Components or the rights (including IPR), title, interests pertaining thereto is subject to the consent of all the Parties unless otherwise provided under the Agreement or otherwise agreed in writing.

#### **9.4. Data**

**9.4.1.** Individual NEMO Data shall remain the exclusive property of the relevant NEMO. As a consequence thereof, the relevant NEMO shall be exclusively vested with all rights (including but not limited to Intellectual Property Rights), title and interests pertaining to such Individual NEMO Data. Any use of Individual NEMO Data by other Parties shall be either i) strictly limited to the purpose of exercising their respective rights (e.g. monitoring of the performance of the XBID System, simulations under common tool (if available and agreed according to Article 9.4.3)) or performing their respective obligations under the Agreement and the IDOA or ii) subject to prior written authorization of the concerned NEMO and the terms and conditions (if any) of such NEMO's authorization .

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

**9.4.3.** NEMOs may agree on a common tool to be able to perform simulations with anonymized Historical Data. Such agreement shall contain the modalities of use of the tool to perform simulations and the terms and conditions in respect of publication of the results of the simulations.

### **ARTICLE 10. Requirements of the XBID Solution**

**10.1.** All Identical NEMO Components, to be developed, implemented and/or used for or in the context of the XBID Solution and the IT Operation of such Identical NEMO Components shall comply at least with the following requirements:

- i) the requirements set forth in the CACM Regulation, the MCO Plan and the applicable Methodologies;

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- ii) any requirements set forth in the XBID-MSA or otherwise agreed with the XBID System Service Provider;
- iii) the requirements agreed with the TSOs in the IDOA (as long as not conflicting with the XBID-MSA);
- iv) the requirements set forth in the Agreement (and in particular Annex 2 (Identical NEMO Components), Annex 6 (Technical requirements) and the NEMO Operational Procedures) and any other requirements as agreed upon in writing by all the Parties (if any).

**10.2.** Each Party is responsible for its Individual NEMO Components and without prejudice to Article 11.5.2 each Party shall individually ensure that Individual NEMO Components involved in the XBID Solution enable the operation of the SIDC.

**10.3.** Parties shall comply with the High Level Architecture of the XBID Solution attached as exhibit 4 to the IDOA (as updated from time to time).

## **ARTICLE 11. Identical NEMO Components**

### **11.1. General principles**

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

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

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



**11.2. XBID System**

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

11.2.2. [REDACTED]

11.2.3. [REDACTED]

11.2.4. [REDACTED]

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

11.2.6. [REDACTED]

[REDACTED]

**11.3. Connection of LTS to the XBID System**

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

11.3.2. [REDACTED]

**11.4. Communication network and rack space**

11.4.1. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.4.2. [REDACTED]

11.4.3.

[REDACTED]

[REDACTED]

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

**11.5.1. General**

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

**11.5.2. Change request**

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

11.5.2.2.

[REDACTED]

11.5.2.3. In respect of Individual NEMO Components, only the Changes that require changes of the Identical NEMO Components or that impact the functionalities or the operation of the Identical NEMO Components, are subject to the NEMO Change Control Procedure.

11.5.2.4. The results of changes to the Identical NEMO Components in compliance with the applicable change control procedure shall automatically be considered an Identical NEMO Component except to the extent the Parties decide otherwise in accordance with Article 11.5.3.2.

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11.5.2.5. New developments of Identical NEMO Components shall be tested by the Parties, unless TSOs only shall, according to the IDOA, perform the testing for these developments. Non-operational NEMOs may decide not to participate in tests by the Parties, but in such case they shall be bound by any acceptance of such new developments by the other Parties.

**11.5.3. List of Identical NEMO Components**

11.5.3.1. Parties shall make and keep up to date a list of all Components (if any) that qualify as Identical NEMO Components to be attached as Annex 2 (Identical NEMO Components).

11.5.3.2. A Party may request the adaptation of Annex 2 (Identical NEMO Components), provided that such request is motivated by changes in technical, economical or other aspects compared to the initial list which result in making an Individual NEMO Component an Identical NEMO Component or conversely which results in making an Identical NEMO Component an Individual NEMO Component. The adaptation of Annex 2 (Identical NEMO Components) is subject to NEMO ID SC decision.

**ARTICLE 12. TSOs requirements for the XBID System**

In respect of TSOs requirements related to Identical NEMO Components or to TSOs only Components (e.g. CMM), Parties shall jointly submit TSOs only change requests accepted under the IDOA to the XBID System Service Provider and, if agreed with the TSOs, negotiate these with the XBID System Service Provider.

**ARTICLE 13. Contractual model of services to be contracted in the context of the ID NEMO Cooperation**

**13.1. Services related to Identical NEMO Components**

13.1.1. Unless differently decided by the NEMO ID SC pursuant to Article 13.4.4, any assignment by the Parties to a Party or a Third Party to perform services regarding Identical NEMO Component in the context of the development, testing, implementation and IT Operation, shall be under a multilateral services (level) agreement to be entered into by all Parties together with the XBID System Service Provider or any other service provider selected pursuant to Article 13.4.1, and comprising any provision requested by any Party if required to comply with its Applicable Law or, if such service provider refuses the inclusion of such provision in the multilateral service (level) agreement, under a contractual structure to be agreed upon by the Parties.

13.1.2. The content of the service (level) agreement referred to under Article 13.1.1 shall be agreed upon jointly by all the Parties and shall encompass the common and standard clauses for such type of service amongst which clauses in respect of, inter alia, service description, auditability of costs, fee indexation or adaptation, termination, change management, performance management (including service levels), liability and penalties for non-performance as well as the points mentioned under Article 13.4.2.

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

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

**13.2. Services related to specific Individual NEMO Components**

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

- i) the XBID System Service Provider has undertaken appropriate commitments to ensure that:
  - a) the granting of rights by the XBID System Service Provider shall in no way prevent the other NEMOs to be granted at least the same rights in the specific functionalities; and

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- b) NEMOs who have procured or wish to procure a trading system connected to the XBID System and developed by the XBID System Service Provider are treated in a fair and non-discriminatory manner by the XBID System Service Provider in respect of the costs charged for and the terms and modalities applicable to any granted rights; and
- ii) the possibility is guaranteed towards other Parties to convert upon agreement of all Parties such rights into a joint license or joint ownership.

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

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

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

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

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

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

**13.4. Service Providers**

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

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

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

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

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

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- i) the service provider may only act upon instructions given jointly by all the contracting Parties or by the SPOC appointed by the Parties or a subset thereof (as the case may be); conversely all communications of the service provider shall be addressed to all the contracting Parties or to the SPOC appointed by the Parties (as the case may be);
- ii) the possibility for the relevant Parties to request additional services and changes subject to agreement on the related fees, if any, and resources availability such as (but not limited to) in the event the changes are required by Applicable Law or by Competent Authorities;
- iii) subcontracting by a service provider of certain parts of the services is allowed subject to prior written consent of all the relevant Parties;
- iv) the obligation for the service provider to inform the Parties as soon as reasonably possible or practical on possible improvements that could be undertaken to improve the efficiency and the quality of the services;
- v) the obligation for the service provider to provide the Parties with all information and assistance necessary to explain the functioning of the services towards any Competent Authority, the TSOs or the Market Participants, if required;
- vi) the service provider shall be subject to a duty of loyalty to each Party and of fair, non-discriminatory and equal treatment of all Parties. The foregoing implies that the agreement with the service provider shall foresee an obligation for the service provider 1) to provide the services in the interest of all Parties and in the interest of the ID NEMO Cooperation, 2) to refrain from any preferential treatment of one or more contracting Parties and 3) to maintain a level playing field between all Parties. The agreement with the service provider shall foresee that in the event the service provider is confronted during the provision of the services with a conflict between a) the interests of the service provider and those of one or more Parties of the ID NEMO Cooperation or b) between the interests of one or more Parties and of the ID NEMO Cooperation, the service provider shall promptly inform all Parties thereof and request the Parties to decide upon the manner in which the conflict shall be handled;
- vii) the obligation for the service provider to put in place the necessary measures (e.g. “Chinese walls”) to prevent conflicts of interests and disclosure of information;
- viii) the principles in respect of delivery and delays in delivery;
- ix) the possibility to terminate the agreement in the event of termination of the ID NEMO Cooperation or if the IDOA is terminated and in as many other cases as reasonably possible, without any court intervention and without any specific termination compensation being due;
- x) the possibility for a Party to terminate its participation to the service agreement in the event of termination of its participation to the Agreement subject to payment of its share of the agreed costs;
- xi) the exclusion of the joint and several liability of the Parties towards the service provider;
- xii) the possibility for each Party to initiate individual legal proceedings against the service provider;
- xiii) the decision to fully terminate an agreement with a service provider shall always be a unanimous decision of all Parties except in the case mentioned under xiv);
- xiv) in the event the Parties enter into a service agreement with a NEMO/service provider, the NEMO/service provider shall be allowed to be heard in the NEMO ID SC in respect of all decisions related to the services it procures. Such NEMO/service provider shall not be entitled to vote in the NEMO ID SC in respect of such decisions and in particular those that concern or are related to the compliance of its performance as NEMO/service provider with the concluded service agreement;
- xv) in relation with the service provider, the necessary provisions to comply with Article 13.2.2.

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

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

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

The Parties shall in such case:

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

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

**14.1.** [Redacted]

**14.2.** [Redacted]

**14.3.** [Redacted]

**ARTICLE 15. Traded products**

**15.1. Global Products**

Only Global Products can be traded via the XBID System.

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

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

**ARTICLE 16. Go-Live & Technical readiness**

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

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

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

**17.1. General principle**

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

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

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

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

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

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

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

**17.2. Operational roles**

**17.2.1. Admin roles**

In respect of administration of the SOB and the Shipping Module (SM), the following tasks are distinguished, as further described in the NEMO Operational Procedures, in particular in the document with the title "XBID\_NEMO\_OTH\_03 – XBID NEMO Admins":

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

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



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Each Operational NEMO shall nominate a SOB NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures, in particular in the document with the title “XBID\_NEMO\_OTH\_03 – XBID NEMO Admins”, and Annex 8 (NEMO Central Admin services).

Each Operational NEMO shall nominate a SM NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures, in particular in the document with the title “XBID\_NEMO\_OTH\_03 – XBID NEMO Admins”. The NEMO Central Admin services shall be governed by Annex 8 (NEMO Central Admin services).

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

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

**17.2.2. IC SPOC Role**

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

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

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

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

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

**17.2.3. MPLS Network Service Provider SPOC**

In respect of the network communication services for connection between the XBID System and the LTS of the NEMOs provided by the MPLS Network Service Provider, all Operational NEMOs agree to appoint a MPLS Network Service Provider SPOC for the services described in the document “XBID\_NEMO\_OTH\_04-MPLS Incident Management”, as taken up in Annex 7 (NEMO Operational procedures). The NEMO providing the IC SPOC Services shall act as MPLS Network Service Provider SPOC.

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**17.3. Process in case of an incident during operations**

- 17.3.1.** In case of an incident during operations the Parties shall follow the relevant operational procedures as attached to the IDOA and of NEMO Operational Procedures, and in particular the document with the title “XBID\_NEMO\_BUP\_01-Transaction\_Process”.
- 17.3.2.** In case of an incident during operations, the Parties agree that any instruction to XBID System Service Provider to stop the XBID System from running shall be subject to a unanimous decision of all affected Operational NEMOs. Any decision to restart the XBID System, as well as the decision to make it again available for operations (in case the restart and the use for operations is not at the same time (“market put on hold”)), shall be subject to a unanimous decision of all affected Operational NEMOs and each affected Operational NEMOs shall take the necessary measures to avoid that in cases where the XBID System Service Provider has restarted the XBID System but that the market is put on hold, orders are submitted to the XBID System.
- 17.3.3.** Article 7.2. IDOA also applies *mutatis mutandis* in case of incidents affecting Operational NEMOs only.

**17.4. Data reporting**

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

**ARTICLE 18. Communication**

- 18.1.** The principles under this Article 18 (Communication) shall apply to external communication in all forms relating to any subject within or related to the ID NEMO Cooperation. The Parties may deviate from this Article 18 (Communication) only if necessary to comply with Applicable Law, and/or with binding orders, requests or resolutions of a Competent Authority.
- 18.2.** The Parties shall be free to express written or oral positions or opinions about the ID NEMO Cooperation provided they do not prejudice or negatively affect the collective and/or individual interests or the reputation of the other Parties. The Parties shall not express positions or opinions in the name of one or more other Parties unless such positions or opinions have been expressly authorised in writing by the other Parties in advance.
- 18.3.** The Parties shall communicate at all times correct and accurate information. In the event a communication by a Party is inaccurate or, in the reasonable opinion of the other Parties, may be misleading, the other Parties are entitled to request such Party to correct and republish a revised communication, without prejudice to any other rights or remedies as may be available under the Agreement or Applicable Law.
- 18.4.** The Parties acknowledge the goal to present commonly agreed positions with respect to the ID NEMO Cooperation, but agree that each Party may present and discuss its own views on the ID NEMO Cooperation with regulators, ACER, TSOs and the European Commission. In doing so, the Parties may use relevant materials developed within the ID NEMO Cooperation regarding project planning, cost estimates, and descriptions/evaluations of options/issues (to the extent consistent with the confidentiality obligations under the Agreement). Such materials shall be used fairly and without distortion. The Parties shall provide to the other Parties copies of material they intend to use in this context for ACER and the European Commission at least three (3) Business Days in advance, and shall amend any references to such material where other Parties reasonably can show it may be misleading.
- 18.5.** Prior to any joint communication of the Parties regarding a commonly agreed position on any issue relating to the Agreement, the NEMO ID SC shall give its formal approval on the content of such communication. The NEMO ID SC shall decide on the appropriate communication media through which joint communications are released. Each joint communication shall bear the logo of each Party or a common NEMO logo, if available. Joint communications shall only be published after approval by the NEMO ID SC of the content of such

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communication. The NEMO ID SC shall also decide, for any joint communication, on the date and time from which each joint communication is to be effective. The following shall be subject to joint communication:

- i) the disclosure to the public of all or any part of the Agreement;
- ii) any Party's exit from, or the termination of, the Agreement; and
- iii) other events or circumstances in respect of which a joint communication is determined to be necessary by the NEMO ID SC.

**18.6.** A Party may communicate individually to Third Parties on the topics which are the subject of a joint communication as mentioned under Article 18.5 only after the NEMO ID SC's approval of the content of such individual communication.

### **ARTICLE 19. Specific rules governing relationship with TSOs**

**19.1.** The relationship with TSOs in respect of the SIDC is governed by the IDOA and Local Arrangements.

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

### **ARTICLE 20. Information exchange**

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

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

### **ARTICLE 21. Consultation**

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

### **ARTICLE 22. Implementation of the XBID Solution**

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

The foregoing implies that the Operational NEMO(s) on each side of an interconnector that take into account the cross border capacity in the continuous matching of the bids submitted in its (their) Market Area are competent for ensuring and commit to ensure that i) the necessary arrangements with the TSO(s) and/or the necessary

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regulation(s) to allocate intraday cross border capacity for the interconnector concerned and ii) the related cross border shipping arrangements and Clearing and Settlement Arrangements are in place as soon as possible and in any event as of the Go-Live for the Parties concerned by such Go-Live

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

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

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

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

### **ARTICLE 23. Clearing and Settlement Arrangements**

- 23.1.** Parties commit to cooperate to ensure that the Clearing and Settlement Arrangements are put into place by the concerned entities performing clearing and settlement as of Go-Live for the Parties concerned by such Go-Live.
- 23.2.** Operational NEMOs shall only Go-Live provided the relevant Clearing and Settlement Arrangements are in force.
- 23.3.** Parties shall discuss and decide on the joint requirements in respect of Clearing and Settlement Arrangements and shall ensure that any such agreed joint requirements are implemented in the Clearing and Settlement Arrangements.

### **ARTICLE 24. Observer status**

- 24.1.** Any Power Exchange, having its operations within or outside the EU, may, following a written request to the NEMO ID SC, be granted by a NEMO ID SC decision the status of Observer, for the purpose of acceding at a later stage to the Agreement, in the following cases:
- i) in the case of Power Exchange being a designated NEMO and having its operations either: (a) in a country within the EU; or (b) within a non-EU country which has a valid intergovernmental agreement in place, provided the Power Exchange accedes to the Global NDA or signs a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA (such confidentiality declaration/agreement being the only condition required);
  - ii) in the case of a Power Exchange not being a designated NEMO and having its operations in a country within the EU or within a non-EU country which has a valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) satisfactory evidence being provided to the NEMO ID SC that at least one NEMO designation application has been lodged in accordance with article 4 of the CACM Regulation (or equivalent where an intergovernmental agreement is in place); (b) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (c) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (d) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances; or

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- iii) in the case of a Power Exchange not being a designated NEMO and having its operations within a non-EU country (or countries) for which there is no valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) compatibility with Applicable Law; (b) satisfactory evidence being provided to the NEMO ID SC that the necessary intergovernmental agreements are under negotiation; and (c) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (d) satisfactory evidence being provided to the NEMO ID SC that there is an intention to physically couple the Power Exchange's markets to the existing SIDC; (e) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (f) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances.

**24.2.** Any Power Exchange granted the status of Observer in accordance with the provisions of this Article 24 (Observer status) may be granted access to such documentation and may be entitled to participate in such meetings relating to the ID NEMO Cooperation as may be decided by the NEMO ID SC. For the avoidance of doubt an Observer shall have no voting rights.

## **ARTICLE 25. Accession**

- 25.1.** The Agreement is open to accession of any legal person designated as a NEMO from time to time pursuant to the CACM Regulation and Applicable Law. It is acknowledged by the Parties that accession to the Agreement is subject to the signing of the Accession Declaration and the approval of the NEMO ID SC.
- 25.2.** A designated NEMO which intends to accede to the Agreement (the “**Applicant**”) shall address to the NEMO ID SC Secretary a written request. The NEMO ID SC Secretary shall inform such Applicant about the accession procedure and shall, provided that the Applicant has executed a confidentiality declaration substantially similar to the Global NDA, provide it with a copy of the Agreement and the specimen Accession Declaration. The Applicant shall be bound by the provisions of the Accession Declaration with effect from its signature by or on behalf of the Applicant.
- 25.3.** An entity designated as a NEMO in a non-EU country may be entitled to request to accede to the Agreement subject to:
- i) Applicable Law;
  - ii) absence of any regulatory objection on the part of the Applicant's NRA (or other Competent Authority); and
  - iii) such accession being compliant with legal or regulatory requirements (e.g. an intergovernmental agreement with the EU), if any, to enter into the Agreement.
- 25.4.** Accession to the INCA, or should the INCA be replaced by the ANCA, to the ANCA, accession to the IDOA and accession to the PMO Consultancy Contract are a precondition to become a Party to the Agreement.

## **ARTICLE 26. Financial Provisions**

### **26.1. SIDC NEMOs-Only Common Costs sharing and remuneration**

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

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

**26.2. Cost efficiency**

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

**26.3. Budget and monitoring**

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

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

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

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

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

**26.4. Invoicing**

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

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

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

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

**ARTICLE 27. Elaboration of further terms, conditions and modalities**

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

- Annex 5 (Procurement procedure).

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

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

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

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

**ARTICLE 29. Confidentiality**

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

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

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explicit prior written consent (including email) of the Disclosing Party(ies), such consent not to be unreasonably withheld or delayed.

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

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

**29.3.** A Party may disclose Confidential Information it has received if one of the following conditions are met:

- ii) the Disclosing Party can demonstrate by written evidence that all Parties have agreed to such disclosure and that such information is not otherwise subject to any confidentiality obligation owed to any Third Party. The Parties agree that the exchange of information between the Parties and ANDOA parties in the context of Article 8.1.1 viii) of this Agreement is always considered as permitted disclosure;
- iii) if it can demonstrate by written evidence that the received information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the concerned Party; or
- iv) if it can demonstrate by written evidence that the received information has come into the public domain through no fault or negligence of a Party to the Agreement.

**29.4.** Without prejudice to Article 5.3, the Agreement does not, and is not intended to, create an obligation for any Party to exchange information with other Parties which is not within the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement). Moreover, the Parties acknowledge and agree that a Disclosing Party may request a Recipient Party to enter into one of the confidentiality arrangements before disclosing any Confidential Information.



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- 29.5.** In the event that any Party becomes aware of, or reasonably suspects, that any unauthorised use or disclosure of Confidential Information by any Party has occurred or is about to occur, such Party must immediately notify the relevant Disclosing Party in writing (including, but not limited to, by email).
- 29.6.** The Parties agree that the obligations imposed by this Article 29 (Confidentiality) shall:
- i) survive the termination, for any reason whatsoever, of the Agreement for a term of five (5) years; and
  - ii) in case one or more Parties withdraws from the Agreement for any reason, survive such withdrawal with respect to such withdrawing Parties for a term of five (5) years from the date of such withdrawal.
- 29.7.** Each Party is entitled to voluntarily disclose, at its own initiative, Confidential Information to a Competent Authority provided that:
- i) such Competent Authority is informed by the Recipient Party of the confidential nature of the Confidential Information; and
  - ii) such Competent Authority is bound to respect the confidential nature of the Confidential Information in accordance with relevant national legislation or in the absence of such legislation, such Competent Authority is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of the Agreement.
- 29.8.** The Parties are aware of the fact that certain Party(ies) in Norway, Romania, Sweden, Denmark, Finland, the Czech Republic and Slovenia are subject to acts relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called “freedom of information acts”) or to the legal obligation of publishing all relevant documents named by particular national legislation (so called “act on registration of contracts”) and may therefore be forced to disclose some or all of the terms of the Agreement or other information pertaining to such Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions. Without prejudice to the foregoing provisions of this Article 29 (Confidentiality), any Party subject to such a disclosure obligation shall use its Best Efforts to ensure that no Confidential Information is disclosed during the course of complying with such obligation, including by (in consultation with the Disclosing Parties where it is reasonable for it to do so) redacting all such Confidential Information from any materials or documents (in whatever form) prior to such disclosure, so that sharing of Confidential Information is avoided.
- 29.9.** If the Recipient Party is requested to disclose all or any part of the Confidential Information pursuant to an Applicable Law or pursuant to a valid and effective order or request issued by any Competent Authority, in such case:
- i) to the extent lawful, the Recipient Party undertakes to notify each Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation prior, if possible, or in any case soon after proceeding with any disclosure, provided that such disclosure does not constitute a breach of national rules;
  - ii) each Disclosing Party shall cooperate to respond adequately, consistently and in time; and
  - iii) should such Confidential Information be intended to be published by the relevant Competent Authority, the Recipient Party shall agree with the Disclosing Party(ies) in providing a non-confidential version of such Confidential Information for this publication, under the exception of mandatory rules or court or administrative orders or information requested by administrative, regulatory or court authorities in which case the publication shall not be constrained.
- 29.10.** For the avoidance of doubt, the Parties confirm that the disclosure of Confidential Information in the circumstances foreseen under this Article 29 (Confidentiality) does not affect the confidential character of the Confidential Information so exchanged.
- 29.11.** In cases of doubt as to whether an information is Confidential Information or whether Confidential Information may be disclosed pursuant to this Article 29 (Confidentiality), confidentiality shall be maintained until written

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confirmation (including by email) has been obtained from the other Parties (or, as the case may be, by the relevant Disclosing Parties) that one of the above exclusions applies.

- 29.12.** All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party or its relevant service provider.
- 29.13.** The Agreement does not grant the Recipient Party any license rights or any other rights related to the Confidential Information and its future use, except to the extent as set out in the Agreement or unless such rights are agreed upon in a separate, written, specific and signed agreement.
- 29.14.** As of the entry into force of the Agreement, the provisions of this Article 29 (Confidentiality) shall solely govern the confidentiality obligations of the Parties that have signed the Confidentiality Declaration for the XBID EU Cooperation, it being understood that such declaration remains applicable for any confidentiality breach committed before the entry into force of the Agreement.

## **ARTICLE 30. Liability and Force Majeure**

### **30.1. General Principles**

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

**30.1.2.**

[REDACTED]

**30.1.3.**

[REDACTED]

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

- i) in the event of fraud (“*bedrog*”/“*fraude*”);
- ii) in the event of own intentional fault or misconduct (“*opzettelijke fout*”/“*faute intentionnelle*”);
- iii) in the event of delay or default in payments of any amount due under the Agreement; and
- iv) in the cases explicitly mentioned in this Article 30 (Liability and Force Majeure)
- v) in the cases governed by Article 38.6 (General Data Protection).

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

### **30.2. Liability between the Parties**

**30.2.1.** The Defaulting Party shall be liable, subject to the limitations set out below, to an Affected Party for any direct loss, damage, charges, fees, expenses or any other direct prejudice (“*rechtstreekse schade*”/ “*dommage direct*”) (the “**Loss**”) which the Affected Party(ies) suffer(s) or incur(s) as a result of any Non-Performance and provided

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that i) such Non-Performance is attributable to the Defaulting Party and ii) that such Non-Performance is not excused on the basis of Force Majeure.

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

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

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

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

i) [REDACTED]

ii) [REDACTED]

**30.2.6.** [REDACTED]

**30.2.7.** [REDACTED]

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

i) [REDACTED]

ii) [REDACTED]

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

**30.2.9.** [REDACTED]

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[REDACTED]

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

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

**30.2.12.** [REDACTED]

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

**30.3.1.** [REDACTED]

[REDACTED]

**30.3.2.** [REDACTED]

**30.3.3.** [REDACTED]

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

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

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

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

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

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

**30.3.6.** [Redacted]

**30.4. Total Cap**

**30.4.1.** [Redacted]

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

**30.5. Trade recall and cancellation**

**30.5.1.** [Redacted]

**30.5.2.** [Redacted]

i) [Redacted]

ii) [Redacted]

- [REDACTED]
- iii) 

[REDACTED]
- iv) 

[REDACTED]
- v) 

[REDACTED]

**30.6. Mitigation obligation**

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

**30.7. Subrogation**

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

**30.8. Force Majeure**

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

**30.8.2.** Any Party affected by Force Majeure, shall:

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

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- 30.8.3.** A Party affected by Force Majeure shall be excused from any delay or failure in performance, in whole or in part, of its obligations under the Agreement for so long as, and to the extent that, the performance of such obligations is affected by Force Majeure.
- 30.8.4.** A Party cannot, under any circumstances, be held responsible or held liable to pay any compensation for damage suffered, due to any delay or failure in performance, in whole or in part, of any one or more of its obligations, when such delay or failure in performance is due to a Force Majeure event.
- 30.8.5.** If Force Majeure continues for two (2) consecutive months following the notice under Article 30.8.2, i), the Party(ies) that has (have) invoked Force Majeure shall be entitled to Voluntary Exit (under the terms and conditions of Article 32.1) immediately upon notice sent in writing and provided that it demonstrates that:
- i) the event of Force Majeure invoked in the notice under Article 30.8.2, i) prevents it from performing its obligations under the Agreement which are to be considered as essential obligations under the Agreement; and
  - ii) it (they) has (have) taken all reasonable measures to remedy such Force Majeure but it is impossible to remedy the Force Majeure by such reasonable measures.

**ARTICLE 31. Entry into force – Term**

**31.1. Entry into Force**

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

For evidence reasons:

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

- ii) [REDACTED]

**31.2. Term**

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

- 31.3.** The Agreement governs the Parties' relationship as of its entry into force and shall be the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to this agreement. The PCA is terminated by the entry into force of the Agreement (without prejudice to the application of any survival clauses and the right

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to claim under that agreement and without prejudice to the mandate specified in annex XVII of the PCA, which remains in force)

- 31.4.** The Parties are aware of the fact that OTE, a.s., irrespective of the applicable law of this Agreement, has a national legal obligation within the meaning of Section 2 (1) of Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, publishing and for the registry of contracts according to which the entry into force of this Agreement is subject to prior publication of this Agreement in the national contract registry.

**ARTICLE 32. Voluntary Exit, Forced Exit and suspension**

**32.1. Voluntary Exit**

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

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

- i) in the event of Force Majeure, subject to Article 30.8.5 immediately upon the concerned notice sent in writing;
- ii) in the event of change due to regulatory reasons, in case of failure to reach an agreement with regard to the modification of the Agreement according to Article 34 (Amendment), subject to three (3) months as from the notification of the Voluntary Exit Party;
- iii) in the event of a Dispute as set forth in Article 36 (Dispute resolution and jurisdiction) and provided the conditions of Article 36.8 are met, subject to three (3) months as from the notification of the Voluntary Exit Party;
- iv) to the extent compatible with Applicable Law, in the event of bankruptcy or any other insolvency proceeding, dissolution or liquidation of such Voluntary Exit Party upon one (1) month as from the notification of the Voluntary Exit Party;
- v) in the event of an order of a Competent Authority to end the participation of a Party to the SIDC, upon one (1) month from the notification of the Voluntary Exit Party; or
- vi) in all other cases, upon six (6) months as from the notification of the Voluntary Exit Party.

**32.2. Forced Exit**

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



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decided by the NEMO ID SC. A Forced Exit Party may be compelled to exit the Agreement only in the following circumstances:

[REDACTED]

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

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

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

**32.3. Suspension of Party**

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

[REDACTED]

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

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

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

**32.4.1.** In case of any exit or suspension of a Party in accordance with the provisions of this Article 32 (Voluntary Exit, Forced Exit and suspension), the remaining Parties shall each use their respective Best Efforts to secure the continuity of the SIDC. The NEMO ID SC shall prepare a plan (the “**Exit Plan**” or “**Suspension Plan**”, as appropriate), setting forth the actions and measures to be taken to ensure continuity during the period of suspension of any Party or following a Party’s exit (as the case may be) including, but not limited to, the following:

- i) an assessment of the changes to be made to the Agreement (if any) with the aim of continuing the SIDC without the Voluntary Exit Party, Forced Exit Party or the Suspended Party;
- ii) an assessment of the costs related to such exit or suspension and the allocation thereof;

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- iii) the status of the licenses and sublicenses granted under the Agreement or granted by Third Party service providers (termination of the licenses and sublicenses at the date of exit, unless agreed otherwise in the Exit Plan);
- iv) the measures for ensuring continuity of the SIDC;
- v) the measures to ensure that the exit or suspension is conducted as smoothly as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and
- vi) the exact date on which the exit or suspension shall become effective, according to the abovementioned timescales.

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

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

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

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

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

**32.4.6.** As of the date on which the exit becomes effective as determined in the Exit Plan in accordance with Article 32.4.1, vi), any co-owned Intellectual Property Rights of the Voluntary Exit Party or Forced Exit Party (as the case may be) pertaining to joint developments (such as Identical NEMO Components) or any right of the Voluntary Exit Party or Forced Exit Party (as the case may be) to use data and systems (including the XBID System) under the Agreement and the jointly owned developments in accordance with Article 9.2.1, shall automatically terminate for such Voluntary Exit Party or Forced Exit Party (as the case may be), it being understood that any share in co-ownership rights shall automatically be retransferred in equal parts to the remaining Parties without any compensation being due.

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

**ARTICLE 33. Nominated Contact Person**

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

**ARTICLE 34. Amendment**

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

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

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

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

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

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

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

**34.4.** To the extent a Party is not affected by a change to any Applicable Law notified to it by another Party, it may refuse to make the requested amendments to the Agreement on reasonable grounds, stating its reasons for such refusal. In such case, the Affected Party(ies) shall inform its (their) Competent Authority(ies) to see if execution of/continued participation in the Agreement is still possible without making the requested amendment. If the relevant Competent Authority(ies) raise any objection to the rejection of such requested changes, the Affected Parties may apply Article 36 (Dispute resolution and jurisdiction).

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**34.5.** In the event that an amendment to the Agreement is a consequence of a change in Applicable Law of the European Union, the costs thereof shall be shared equally among the Parties.

**34.6.** In the event that an amendment to the Agreement is a consequence of a change in national Applicable Law the concerned Party(ies) shall individually bear the implementation costs of such amendment.

**ARTICLE 35. Governing law**

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

**ARTICLE 36. Dispute resolution and jurisdiction**

**36.1.** Any dispute arising under, in connection to, or in the framework of the Agreement (including, for the avoidance of doubt, related to its conclusion and its validity) between one or more Parties (“**Dispute**”) shall be subject to the provisions of this Article 36 (Dispute resolution and jurisdiction).

**36.2.** In the event of a Dispute arising between two or more Parties, such Parties (each a “**Disputing Party**”) shall first submit the Dispute to amicable settlement by referring the matter in Dispute to the NEMO ID SC.

**36.3.** A referral for amicable Dispute settlement by the NEMO ID SC (the “**Referral**”) shall be sent by email by one Disputing Party to the NEMO ID SC members in writing and shall at least contain the following information:

- i) a description of the Dispute;
- ii) the indication of the Party(ies) to whom it is addressed;
- iii) the scope of the demand(s) or claim(s) of the Disputing Party referring the Dispute to the NEMO ID SC;
- iv) the legal basis of the demand(s) or claim(s); and
- v) a proposal for settlement.

**36.4.** The NEMO ID SC shall thereafter within eight (8) days appoint a person amongst their members responsible for the amicable Dispute settlement procedure. If there is no agreement on this appointment after two (2) voting sessions, this role shall be performed by the NEMO ID SC chair. Such person shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) to be held within one (1) month as of the receipt of the Referral.

**36.5.** The NEMO ID SC shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable Dispute settlement procedure. The NEMO ID SC may hear and/or request opinions of experts provided that they are bound by confidentiality obligations at least equivalent to those in the Agreement. In particular, the NEMO ID SC shall:

- i) assess the facts;
- ii) assess the interests of the Parties in light of the objectives of the Agreement; and
- iii) in case of damage:
  - a) estimate the damage (and its nature and extent);
  - b) determine which Party(ies) suffered the damage;
  - c) determine which Party(ies) is(are) liable for the damage;

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- d) determine the extent and modalities of indemnification; and
- e) formulate a proposal for settlement.

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

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

**36.8.** In the event that:

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

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

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

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

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

#### **ARTICLE 37. Miscellaneous**

**37.1.** In connection with the interpretation of the Agreement:

- i) no provision of the Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision;
- ii) words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender;

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- iii) the headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation;
  - iv) any reference to any rule, enactment, statutory provision, regulation or code, Applicable Law or any subdivision or provision thereof shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced;
  - v) all references to Articles or Annexes refer to the corresponding Articles or Annexes of the Agreement as amended, supplemented or modified from time to time, unless otherwise specified; and
  - vi) any Annex referred to in the Agreement forms an integral and inseparable part of the Agreement. Any reference to the Agreement includes a reference to its Annexes and vice versa.
- 37.2.** Each Party acknowledges and agrees that the Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal business organisation of any kind and that neither Party shall have the right to bind the other without that Party's prior express written consent.
- 37.3.** Each of the Parties, unless expressly provided otherwise herein, is prohibited from assigning (including by means of merger, split-off, or transfer or contribution of universality or a branch of activity or otherwise) all or part of its rights and obligations arising from the Agreement to a Third Party without the prior written consent of the other Parties.
- 37.4.** No waiver of any term, provision or condition of the Agreement shall be effective except to the extent to which it is made in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege under the Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under the Agreement. For the avoidance of doubt, if a Party fails to perform any of its obligations hereunder, and another Party fails to enforce the provisions relating thereto, such Party's failure to enforce the Agreement shall not prevent its later enforcement.
- 37.5.** Unless otherwise stated in the NEMO Operational Procedures all notices and correspondence under the Agreement shall be in writing and may be delivered by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested to the recipient Party at the relevant postal and/or email address specified for such purposes in Annex 4 (Contact and invoicing details). Unless otherwise stated in the NEMO Operational Procedures a notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail, provided that, in either case, where delivery occurs outside Working Hours, the notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.
- 37.6.** The Parties agree that the working language for all notifications and for all matters relating to their cooperation under the Agreement shall be English, to the extent compatible with the Applicable Law.
- 37.7.** The invalidity or ineffectiveness of any Article of the Agreement shall not affect the validity of the remainder of the Agreement.
- 37.8.** In the event of the termination of the Agreement for whatever reason, the provisions which, expressly are intended to survive the termination of the Agreement are Articles 1 (Definitions), 9 (Intellectual Property rights / Rights of use), 29 (Confidentiality), 30 (Liability and Force Majeure), 35 (Governing law), 36 (Dispute resolution and jurisdiction) and 37 (Miscellaneous) (for the term indicated therein) and without prejudice to the right of a Party to settle any Dispute arising after termination out of or in connection with the Agreement in accordance with all the provisions of the Agreement.
- 37.9.** The Parties may appoint a legal or natural person (which person may be the same person as is appointed Secretary) to establish a common (online) storage location for the keeping of records of contractual documents

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(including meeting minutes and contracts with third parties) and to keep the common storage up to date (amongst others by collecting and storing all minutes).

The costs of the contract management are SIDC NEMOs-Only Common Costs and shall be shared as set forth in the the Agreement.

- 37.10.** The Agreement and the Annexes, as supplemented by decisions of the NEMO ID SC, or as the case may be, of the NEMO Committee in the performance of the Agreement, contain the entire agreement of the Parties hereto with respect to the subject matter hereof and contain everything the Parties have negotiated and agreed upon relating to the same subject matter.
- 37.11.** Each Party shall maintain records that are complete and accurate for all the relevant material regarding the performance by it of all its obligations under the Agreement and each Party shall retain such records for a period as required in accordance with Applicable Law, with a minimum of three (3) years unless otherwise required by Applicable Law. On another Party's first substantiated request, a Party shall provide the other Parties with a copy of all or part of the records as indicated by the requesting Parties, if available.
- 37.12.** The rights and remedies under the Agreement are cumulative with and not exclusive of any rights and remedies provided by law.

**ARTICLE 38. General Data Protection**

**38.1.** In the context of the Agreement, the Personal Data that shall be processed are contact and other personal information of Parties' representatives or personnel or personnel of service. Such Personal Data includes, name, professional email address, professional phone number and photographic pictures . No Personal Data of market participants or any other person shall be processed in the context of this Agreement.

**38.2 Purpose of the processing and storage**

38.2.1 With respect to the processing of Personal Data referred to under Article 38.1, the Parties agree that:

- i) it shall be carried out purely by virtue of the data subject's representation of/service to a Party in the context of the performance of the Agreement. Any Personal Data shall only be processed for the limited purpose of the performance of the Agreement.
- ii) the legal grounds for processing the contact information of Party representatives is based on the legitimate interest of the Parties, namely to perform through their employees, service providers or representatives, the contractual rights and obligations under the Agreement.

38.2.2 Personal Data shall be stored so long as it is relevant, that is related to persons representing/working for a Party, otherwise it shall be immediately erased. All Parties shall ensure erasing Personal Data that is no longer necessary as well as accuracy of the Processed Data.

**38.3 Joint Data Controller**

The Parties qualify as joint data controller in relation to the processing of Personal Data referred to in Article 38.1 to the extent such Personal Data are jointly stored by all Parties or by a third party on behalf of all Parties.

**38.4 General distribution of responsibilities**

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- 38.4.1 Each Party shall, at all times, comply with its respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed under this Agreement.
- 38.4.2 The NEMO ID SC will designate a specific point of contact (“GDPR SPOC”) for carrying-out data subjects’ rights requests, it being understood that the data subjects can nonetheless exercise their rights under the GDPR vis-à-vis each Party as an individual data controller.
- 38.4.3 Each Party is individually responsible for:
- a) notifying the required GDPR processing information under article 13 and 14 of the GDPR to data subjects appointed or acting as representative, personnel or service provider on such Party’s behalf or at such Party’s request in the performance of the Agreement, whose Personal Data is being processed, so that they are aware of the data processing carried out in the framework of the Agreement;
  - b) ensuring the respect for data subjects rights as per articles 15 to 22 of the GDPR. If a Party receives a request, a complaint or inquiry from a data subject regarding the processing of its Personal Data, the GDPR SPOC shall be informed thereof and be requested to honor or implement the request in accordance with the GDPR;
  - c) implementing internally the appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is performed in accordance with applicable Data Protection Legislation;
  - d) complying with the requirement for records of processing activities in article 30 of the GDPR. For the avoidance of doubt, each Party agrees to keep an entry regarding the processing carried out in the context of the joint controllership in their respective registers to be kept in accordance with article 30 of the GDPR;
  - e) complying with articles 33 and 34 of the GDPR on notification of a Personal Data breach to the supervisory authority and/or to the concerned data subject(s). The concerned Party/ies shall inform the GDPR SPOC, so that they can inform all other Parties thereof.

However, if the reason for the breach is not immediately attributable to one of the data controllers, and the breach is attributable to the provider of the common (online) storage place referred to in Article 37.9 or any processor jointly chosen by the Parties, the GDPR SPOC is responsible for managing a Personal Data breach and notifying the Personal Data breach to the supervisory authority and/or to the data subjects.

- 38.4.4 The GDPR SPOC is responsible for:
- a) verifying that data subjects whose Personal Data is being processed are notified of the required GDPR processing information under articles 13 and 14 of the GDPR, so that they are aware of the data processing being carried out in the framework of ANIDOA;
  - b) ensuring compliance by the Parties with all data subjects’ rights as per articles 15 to 22 of the GDPR. If a Party receives a request, a complaint or an inquiry from a data subject regarding the processing of its Personal Data, the GDPR SPOC shall be informed thereof and be required to respond to such request, complaint or inquiry in accordance with the GDPR;
  - c) implementing the appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is performed in accordance with GDPR;
  - d) complying with the requirement for records of processing activities applicable in article 30 of the GDPR. For the avoidance of doubt, the GDPR SPOC shall be required to keep an entry regarding



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the processing carried out in the context of the joint controllership in a register maintained in accordance with article 30 of the GDPR;

- e) complying with articles 33 and 34 of the GDPR in notifying the supervisory authority and/or to the concerned data subject(s) of a Personal Data breach
- f) complying with such further applicable national legal provisions, if any, as may be indicated by the Parties to the GDPR SPOC from time to time.

**38.5 Use of data processors and sub-processors**

The Parties shall mutually agree upon the recourse use and the appointment of any data processors of Personal Data they are joint controllers for. This is without prejudice to each Party's right to continue to use processors for their independent processing activities and any processors related to their respective IT systems. Each Party is liable for respecting its Data Protection obligations in this respect.

**38.6 Security**

Parties represent and warrant that they ensure the security of Personal Data processing in accordance with article 32 of the GDPR.

**38.7 Liability with regards to this Article 38**

- 38.7.1 The Parties shall be individually liable towards each other with regard to any Data Protection Legislation violation related to their individual responsibilities according to Article 38.4.
- 38.7.2 The Parties shall be jointly and severally liable towards data subjects with regard to any Data Protection Legislation violation occurring in relation to data processing for which they are joint controllers according to Article 38.3 and in respect of the choice of commonly agreed processors.
- 38.7.3 To the extent a third-party claim or damage in relation to a violation of Data Protection Legislation is caused by one or more Party(ies)'(s) violation of Data Protection Legislation, such defaulting Party(ies) shall indemnify the other Parties in accordance with article 82 of the GDPR. Such defaulting Party(ies) shall also indemnify the other Parties for fines imposed on them in relation to Data Protection Legislation violations caused by the defaulting Party(ies) in relation to joint data processing. In the event a fine is imposed for violation of Data Protection Legislation concerning the joint processing of Personal Data and such violation is attributable to all Parties or to the GDPR SPOC, the fine shall be equally shared between the Parties, without prejudice to any possible indemnification which may be requested from the GDPR SPOC. In these cases, the liability caps and caps on hold harmless set forth in Article 30 do not apply.

**38.8 Right to provide individual controller information**

- 38.8.1 Each Party has the right to provide individual controller information in Annex 12 (Controllers' Information – personal data protection).
- 38.8.2 Parties agree that Annex 12 creates no obligation for the other Parties apart from informing their relevant personnel and representatives involved in the performance of the Agreement of the existence of such Annex 12 (Controllers' Information– personal data protection).

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**All NEMO Intraday Operational Agreement (ANIDOA)**

**ANNEX 1**  
**Definition list**

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## I. Definitions

<b>Accession Declaration</b>	means a document recording the terms of accession of a new Party to this Agreement in accordance with the provisions of <u>Article 25 (Accession)</u> , substantially in the form of the pro-forma attached as <u>Annex 10 (Accession Declaration form)</u> ;
<b>Accession Fee</b>	has the meaning set forth in Section III.3.1 of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>ACER</b>	means the Agency for the Cooperation of Energy Regulators, as established in accordance with Regulation 713/2009 of the European Parliament and of the Council of 13 July 2009;
<b>Affected Party</b>	has the meaning set forth in <u>Article 30.1.1</u> ;
<b>Agreement</b>	the all NEMOs Intraday Operational Agreement, abbreviated as ANIDOA, as may be amended, supplemented or replaced from time to time;
<b>ANCA</b>	shall have the meaning set forth in recital E);
<b>ANDOA</b>	shall have the meaning set forth in recital M);
<b>Appendix</b>	means any document attached to an Annex of the Agreement;
<b>Applicable Law</b>	means, with respect to each Party, such mandatory (including public policy) laws or regulations or decisions of any Competent Authority applicable to such Party, including the approved MCO Plan, any approved terms, conditions or methodologies as implemented from time to time under such laws or regulations;
<b>Applicant</b>	has the meaning set forth in <u>Article 25.2</u> ;
<b>Best Efforts</b>	means performing an 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 (“ <i>middelenverbintenis</i> ” / “ <i>obligation de moyen</i> ”);
<b>BM WG</b>	means in the context of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> , the working group assigned under the IDOA with the budget management and budget monitoring;
<b>Business Day</b>	means any day other than a Saturday and a Sunday in which banks are open to the public for general business in the country or city of the Party that needs to perform the obligation, except if provided otherwise;
<b>Business Go-Live</b>	means the date at which Operational NEMOs start the market operation in the productive environment for the XBID System, as decided by the Operational NEMOs;
<b>CACM Regulation</b>	means Regulation 2015/1222 of the European Parliament and of the Council of 24 July 2015 establishing a guideline on capacity allocation and congestion management as may be amended, supplemented or replaced from time to time;

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<b>Calendar Quarter</b>	means one of the four quarters of a calendar year, i.e. from January to March, April to June, July to September and October to December;
<b>Capacity Management Module or CMM</b>	means the XBID module for capacity management, i.e. the system containing up-to-date information on available cross-zonal capacity for the purpose of allocating intra-day cross zonal capacity (in accordance with article 2 of the CACM Regulation);
<b>Change</b>	means any change subject to the NEMO Change Control Procedure, small or large, through which a Component subject to this NEMO Change Control Procedure becomes different;
<b>Claiming Party</b>	has the meaning set forth in Section II.6.2, c) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Clearing and Settlement Arrangement</b>	means any arrangement entered into by a Party (or by a Third Party on behalf of a Party) for clearing and settlement of the exchange of energy resulting from SIDC;
<b>Common Decision</b>	has the meaning set forth in <u>Article 8.1.4, i)</u> ;
<b>Competent Authority</b>	means ACER, any NRA or any other, national, federal, regional, state, local, or other court, arbitral tribunal, administrative agency or commission or other governmental, municipal, administrative or regulatory body, authority, agency or inspectorate with jurisdiction over any one or more Parties to this Agreement;
<b>Component</b>	means all ICT systems (software and hardware), interfaces, procedures, functional requirements and corresponding technical specifications, related documentation or information, related services, or any other element part of the XBID Solution;
<b>Confidential Information</b>	means: <ul style="list-style-type: none"><li>i) any information, whether or not marked as confidential, exchanged between any two or more Parties in the context of this Agreement in any form whatsoever (verbal, written, electronic or other), such as, but not limited to, any technical, financial, commercial, testing and/or operating data; and</li><li>ii) the content of this Agreement;</li></ul>
<b>Confidentiality Declaration for the EU XBID Cooperation</b>	means the confidentiality declaration signed by a Party that is not a party to the PCA in order to be granted access to certain documentation and information related to the EU XBID cooperation;
<b>Control</b>	means, for the purpose of the definition of “Internal Representatives”, the situation where a person: <ul style="list-style-type: none"><li>- directly or indirectly owns a fraction of the capital in another company that gives a majority of the voting rights at such company's general meetings;</li><li>- holds alone a majority of the voting rights in a company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to such company's interests;</li></ul>

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- effectively determines the decisions taken at a company's general meetings through the voting rights it holds;
- has the power to appoint or dismiss the majority of the members of company's administrative, management or supervisory structures; or
- directly or indirectly holds a fraction of the voting rights above 40% of a company and no other partner or shareholder directly or indirectly holds a fraction larger than this participation.

Two or more undertakings acting jointly are deemed to jointly Control a company when they effectively determine the decisions taken at its general meetings.

In any case, an undertaking is presumed to Control a company when it exerts a decisive influence over it. The decisive influence is defined according to the organizational, economic and legal links between both undertakings;

<b>Cross NEMO Data</b>	means, with respect to two (2) NEMOs, output data generated by the matching of orders submitted by or on behalf of those two (2) NEMOs. They include trade prices, trade volumes, net positions of individual trades. For the avoidance of doubt, input data (such as data related to the orders submitted by each NEMO) and derivative data (from input data and output data such as related indices) are Individual NEMO Data;
<b>DAOA</b>	shall have the meaning set forth in recital N);
<b>Data Protection Legislation</b>	means the GDPR and all other relevant national and European laws and regulations concerning data protection, electronic communications and privacy;
<b>Defaulting Party</b>	has the meaning set forth in <u>Article 30.1.1</u> ;
<b>Directive 2006/112/CE</b>	means the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, as published on 11 December 2006;
<b>Directive 2011/7/EU</b>	means the Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions, as published on 23 February 2011;
<b>Disclosing Party</b>	means any Party that discloses Confidential Information to another Party;
<b>Dispute</b>	has the meaning set forth in <u>Article 36.1</u> ;
<b>Disputing Parties</b>	has the meaning set forth in <u>Article 36.2</u> ;
<b>Due Date</b>	has the meaning set forth in Section II.7.2 of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Equal Treatment Charter</b>	means exhibit 6 to the XBID-MSA as amended from time to time;
<b>EU</b>	means the European union of countries and states from time to time during the continuance of this Agreement, established by the Treaty of Maastricht, with effect from 1 November 1993;
<b>Exit Plan</b>	has the meaning set forth in <u>Article 32.4.1</u> ;

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<b>Explicit Participant</b>	means person that is authorized by one or more concerned TSO(s) to request explicitly capacity through the XBID Solution on at least one interconnection to the exclusion of a NEMO offering a market place for implicit intraday trading or a person acting on behalf of a NEMO offering a market place for implicit intraday trading. At the time of entry into force of the Agreement, and without prejudice to potential future addition of other borders pursuant to NRAs decision and process set forth in the CACM Regulation, only the France-Germany border is concerned by the access of Explicit Participants;
<b>External Representative</b>	means the subcontractors, agents, lawyers, professional advisors, external consultants, insurers, financiers or any other entity appointed by a Party in relation to the ID NEMO Cooperation;
<b>Force Majeure</b>	<p>means any event or situation i) not reasonably foreseeable, ii) beyond the reasonable control of the Parties, iii) not due to a default of the Affected Party, iv) which cannot be reasonably avoided or overcome, and v) which makes it impossible for such Party to fulfil temporarily or permanently, its obligations hereunder in accordance with the terms of the Agreement. Force Majeure shall include (but shall not be limited to) the following events, except if these events could have reasonably been overcome:</p> <ul style="list-style-type: none"><li>i) an enemy act or an act of terrorism, declared or undeclared war, threat of war, blockade, revolution, riot, insurrection, civil commotion, demonstration or public disorder;</li><li>ii) sabotage or act of vandalism;</li><li>iii) natural disaster or phenomenon;</li><li>iv) fire, explosions, radioactive, chemical or other hazardous contamination;</li><li>v) a general or industry-wide strike; or</li><li>vi) faults or malfunctions of telecommunication lines (e.g. telephone lines) and Internet accesses, to the extent such faults or malfunctions are not attributable to a misconduct of the Party invoking Force Majeure and provided that such fault or malfunctions could not be avoided by such Party by taking the agreed upon fall back measures or in absence of such agreed upon measures, by taking the fall back measures that may be reasonably expected from a normal reasonable and diligent person engaged in the same line of business under the same circumstances and conditions.</li></ul> <p>Events considered force majeure for the XBID System Service Provider shall, where relevant, also be considered an event of Force Majeure;</p>
<b>Forced Exit</b>	means, with respect to any one or more Parties, the termination of such Parties' participation in the Agreement by the other Parties in accordance with <a href="#">Article 32.2</a> ;
<b>Forced Exit Party</b>	has the meaning set forth in <a href="#">Article 32.2.1</a> ;
<b>General Data Protection Regulation or GDPR:</b>	means the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);
<b>GDPR SPOC</b>	shall have the meaning set forth in <a href="#">Article 38.4.2</a> ;



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<b>Global NDA</b>	means the “Single DA and ID Coupling Observership and Non-Disclosure Agreement” signed by NEMOs and TSOs and which entered into force on 23 February 2016;
<b>Global Product</b>	means all Products set up in the XBID System and eligible to be matched in the XBID System;
<b>Go-Live</b>	means the start of the operation by a Party of the SIDC in accordance with exhibit 6 to the IDOA;
<b>High Level Architecture or HLA</b>	means exhibit 4 to the IDOA;
<b>Historical Costs</b>	has the meaning set forth in Section III.3.1, a) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Historical Data</b>	means data of NEMOs that are deemed historical once two (2) weeks have passed after the trading date;
<b>IC SPOC Services</b>	means the services provided in accordance with annex 1 to exhibit 15 of the IDOA;
<b>ICC</b>	means the International Chamber of Commerce, being the organisation by that name whose purpose is to establish rules for international trade and to support the interests of business in international affairs;
<b>ICT</b>	means, information and communication technology;
<b>ID MCO Function</b>	shall have the meaning set forth in section 2 point 7 of the MCO Plan; the tasks are more detailed in article 7.2 of the CACM Regulation;
<b>ID NEMO Cooperation</b>	has the meaning as set forth in recital I);
<b>Identical NEMO Components</b>	means a Component that must be identical for all Parties when operating their cross border intraday market in accordance with the XBID Solution  For the avoidance of doubt, Components listed in <u>Annex 2 (Identical NEMO Components)</u> are considered Identical NEMO Components;
<b>IDOA</b>	shall have the meaning set forth in recital H);
<b>IDOA Change Control Procedure</b>	means the change control procedure attached as exhibit 3 to the IDOA;
<b>INCA</b>	shall have the meaning set forth in recital E);
<b>Incident Committee or IC</b>	means the committee established under the IDOA, to manage incidents in accordance with the document with the title “XBID_JOINT_FAL_01 - Incident Management”, attached as exhibit 6 of the IDOA;
<b>Individual Components</b>	<b>NEMO</b> means any Component which is not an Identical NEMO Component;
<b>Individual NEMO Data</b>	means, with respect to one (1) NEMO, data generated by or on behalf of that NEMO (e.g. input data, such as data related to the orders submitted by NEMOs, as well as output data, such as the trade prices, trade volumes, net positions of individual trades, as well as derivative data from input data and output data such as related indices);

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<b>Initial Go-Live</b>	means the first Go-Live by the Parties mentioned in exhibit 8 of the IDOA;
<b>Intellectual Property Rights or IPR</b>	means any intellectual property right or other (property) right throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under Applicable Law, contract, or otherwise, and whether or not registered, registrable or perfected, including a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; c) rights in computer software and programs, source codes, or business methods; d) rights in materials; e) rights associated with trade marks, service marks, trade names, internet domain names, business names, logos, trade dress and the applications for registration and the registrations thereof; f) rights relating to the protection of trade secrets, know-how and/or other Confidential Information; g) design rights, whether registered or unregistered; and h) rights analogous to those in this definition and any and all other proprietary rights relating to intangible property;
<b>Internal Representative</b>	means the directors, members of management, officers, legal representatives and employees of a Party or of any company under the Party's Control or of any company which Controls (solely or jointly) such Party;
<b>IT Operation</b>	means the service of making available to the Parties for daily 24h operational use the Identical NEMO Components, including interfaces and server infrastructure, as well as the technical operation and management thereof and possibly also maintenance and hosting thereof;
<b>Joint Matter(s)</b>	means any topic and/or issue that falls within the scope of both DAOA and IDOA;
<b>Joint XBID Procedures</b>	means the operational procedures attached as exhibit 6 to the IDOA;
<b>Local Arrangement</b>	means: a) any agreement and/or consensus of opinion, whether in writing or orally; or b) any Applicable Law, which applies to a subset of the Parties (as well as Third Parties as the case may be). For the sake of clarity, the XBID-MSA is not a Local Arrangement;
<b>Local Product</b>	all Products not set up in the XBID System and not eligible to be matched in the XBID System;
<b>Loss</b>	has the meaning set forth in <a href="#">Article 30.2.1</a> ;
<b>LTS</b>	means the local Trading Solution;
<b>Market Area</b>	shall mean a representation of a price area in the delivery grid of commodity. Market Areas can contain one or more Delivery Areas and are defined with

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		the functional assumption that transport capacity of a commodity between Market Areas is subject to congestion;
<b>Market Coupling Committee/MCSC</b>	<b>Steering</b>	means the governing body of the cooperation among NEMOs and TSOs as described in the IDOA;
<b>Market Participant</b>		means entity authorized by a Party to submit orders in a LTS connected to the XBID System;
<b>MCO Plan</b>		means the plan that sets out how NEMOs will jointly set up and perform the ID MCO Function pursuant to article 7.2 of the CACM Regulation;
<b>Methodology</b>		the terms and conditions or a methodology to be established according to the CACM Regulation, including approved proposals;
<b>Modification</b>		means a request for complex Changes, with a medium/high risk category, affecting multiple Components subject to the NEMO Change Control Procedure, or such Components which are under the responsibility of more than one Party;
<b>Monthly Report</b>		has the meaning set forth in Section II.4.5 of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>MPLS</b>		shall mean multiprotocol label switching;
<b>MPLS Network</b>	<b>Communication</b>	means the robust and secure MPLS communication network between the LTS of certain NEMOs and the XBID Solution hosted by the XBID System Service Provider;
<b>MPLS Network Provider</b>	<b>Service</b>	means the service provider providing the communication services to all NEMOs;
<b>MPLS Network Provider SPOC</b>	<b>Service</b>	means the Operational NEMO appointed in accordance with <u>Article 17.2.3</u> in order to provide the services described in the document “XBID_NEMO_OTH_04-MPLS Incident Management”, as taken up in <u>Annex 7 (NEMO Operational procedures)</u> ;
<b>MPLS Services Agreement</b>	<b>Framework</b>	means the agreement entered into by the NEMOs with the MPLS Network Service Provider;
<b>NEMO</b>		means a “nominated electricity market operator”, as defined in the CACM Regulation ;
<b>NEMO Central Admin / NCA</b>		means the person performing the role described in <u>Annex 7 (NEMO Operational Procedures)</u> , in particular in the document with the title “XBID_NEMO_OTH_03 – XBID NEMO Admins”, in respect of modification and management of data which affect all NEMOs and which are shared by all NEMOs and in case of emergency when NEMO itself cannot do the NEMO admin task on its own;
<b>NEMO Change Procedure</b>	<b>Control</b>	means the document attached as <u>Annex 11 (NEMO Change Control Procedure)</u> to the Agreement;
<b>NEMO Committee</b>		means the governance body established under the ANCA;

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<b>NEMO Coordinator</b>	means the Party that effectively performs at the same time the IC SPOC services, NEMO Central Admin services and MPLS Network Service Provider SPOC services;
<b>NEMO ID SC</b>	the steering committee as organized under the Agreement;
<b>NEMO ID SC Secretary</b>	means such person, being an employee of a NEMO, as may be appointed from time to time by the NEMOs to act as secretary to the NEMO ID SC;
<b>NEMO Operational Procedures</b>	means the procedures attached to the Agreement as <u>Annex 7 (NEMO Operational Procedures)</u> ;
<b>NEMO OPSCOM</b>	means the NEMO only operational committee, which is a committee dealing with NEMO only operational issues such as incidents and changes to Components;
<b>NEMO OPSCOM Chair</b>	means the person appointed as the chair of the NEMO OPSCOM in accordance with <u>Annex 9 (Rules of Internal Order (RIO))</u> ;
<b>NEMO OPSCOM Secretary</b>	means the person appointed as the secretary of the NEMO OPSCOM in accordance with <u>Annex 9 (Rules of Internal Order (RIO))</u> ;
<b>NEMO Vote</b>	means the collective vote that NEMOs submit for the purposes of MCSC decisions under the IDOA;
<b>Nominated Contact Person</b>	has the meaning set forth in <u>Article 33</u> ;
<b>Non-Performance</b>	has the meaning set forth in <u>Article 30.1.1</u> ;
<b>Notification</b>	means a request for i) Changes, with a very low/low risk category, affecting a small number of Components subject to the NEMO Change Control Procedure owned by one or more Parties and ii) Changes only to local items with no identified impact on common items;
<b>NRA</b>	means the relevant national regulatory authority designated at national level on the basis of article 35 of Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC or, in case of a country for which this directive does not apply, the national regulatory authority designated at national level by similar legal provisions;
<b>Observer</b>	means a person that is granted observer status in accordance with the provisions of <u>Article 24 (Observer status)</u> ;
<b>Operational Decision</b>	has the meaning set forth in <u>Article 8.1.4, ii)</u> ;
<b>Operational NEMOs</b>	shall have the meaning as set forth in the MCO Plan;
<b>Opinion</b>	has the meaning set forth in <u>Article 36.7</u> ;
<b>Party</b>	means any party to the Agreement;
<b>Paying Party</b>	has the meaning set forth in Section II.6.2, c) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>PCA</b>	means the “XBID PX Cooperation Agreement” referred to in recital B) as amended from time to time;

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<b>Permitted Purpose</b>	means, in the context of the utilization of Confidential Information by a Recipient Party, for the purposes of the Agreement as set forth in <u>Article 3 (Purpose of the Agreement)</u> and in connection with the performance of any one or more of the tasks under the Agreement;
<b>Personal Data</b>	means any information qualified as personal data pursuant to article 4(1) of GDPR;
<b>PMI</b>	means the public message interface;
<b>PMO</b>	means such person with the requisite skills and experience as the NEMO ID SC may appoint from time to time to perform such administrative tasks on behalf of the NEMO ID SC as the NEMO ID SC may determine, including those tasks allocated to the NEMO ID SC Secretary under the terms of the Agreement;
<b>PMO Consultancy Contract</b>	means the agreement between certain Parties and the PMO of 1 January 2014, as amended and extended from time to time;
<b>Power Exchange or PX</b>	means any power exchange or other market operator which operates day ahead and/or intraday electricity markets;
<b>PSP Agreement</b>	means the “EU XBID Procurement Selection Procedure Agreement” concluded on 25 May 2013 by certain Parties and which entered into force with retroactive effect as of 18 October 2012, governing the selection of an ICT service provider for the provision of the necessary services for developing the XBID System;
<b>Quarterly Account</b>	has the meaning set forth in Section II.6.2, b) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Quarterly Report</b>	has the meaning set forth in Section II.6.2, a) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Recipient Party</b>	means any Party that receives Confidential Information from another Party;
<b>Referral</b>	has the meaning set forth in <u>Article 36.3</u> ;
<b>REMIT</b>	means Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency as may be amended, supplemented or replaced from time to time;
<b>Request for Change (RFC)</b>	means the proposal containing the request for any Change subject to the NEMO Change Control Procedure;
<b>Rules of Internal Order (RIO)</b>	means the organisational rules attached to the Agreement as <u>Annex 9 (Rules of Internal Order (RIO))</u> ;
<b>SDAC</b>	means “single day ahead coupling” as defined in the CACM Regulation;
<b>Section</b>	means a section of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Serviced NEMO</b>	has the meaning set forth in <u>Article 11.4.3</u> ;
<b>Servicing Agreement</b>	has the meaning set forth in <u>Article 11.4.3</u> ;

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<b>Servicing NEMO</b>	has the meaning set forth in <u>Article 11.4.3</u> ;
<b>Sharing Key</b>	means, with respect to the sharing of NEMO Common Costs between the Parties, the sharing key, determined in compliance with the CACM Regulation and NRA guidance, as described in <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Shipping Module or SM</b>	means the module of the XBID Solution providing information from trades concluded within the SIDC. The Shipping Module receives and processes data from the SOB and the CMM, enriches and filters the data and makes it available to the defined recipients;
<b>SIDC NEMOs-Only Common Costs</b>	means the common costs according to the CACM Regulation to be shared by NEMOs only;
<b>Single Intraday Coupling or SIDC</b>	means “single intraday coupling” as defined in the CACM Regulation;
<b>SM NEMO Admin or SM NA</b>	means the person which is responsible for the role described in <u>Annex 7 (NEMO Operational Procedures)</u> , in particular in the document with the title “XBID_NEMO_OTH_03 – XBID NEMO Admins”;
<b>SOB</b>	means the shared order book module. It contains the base functionality for continuous trading, like order entry, order management and order matching;
<b>SOB NEMO Admin / SOB NA</b>	means the person which is responsible for modification and management of data which does not affect all NEMOs and which are not shared by all NEMOs, but are relevant to just one or a subset of NEMOs;
<b>Socialising Parties</b>	has the meaning set forth in Section II.7.4 of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>SPOC</b>	means the special point of contact;
<b>Standard Daily Rate</b>	has the meaning set forth in Section III.3.1, b) of <u>Annex 3 (Financial modalities / budget / invoicing modalities)</u> ;
<b>Suspended Party</b>	has the meaning set forth in <u>Article 32.3.1</u> ;
<b>Suspension Plan</b>	has the meaning set forth in <u>Article 32.4.1</u> ;
<b>Target Model</b>	shall have the meaning set forth in recital A);
<b>Third Party</b>	means any person that is not a Party to the Agreement;
<b>Trade Recall Performance</b>	<b>Non-</b> has the meaning set forth in <u>Article 30.5.2</u> ;
<b>Trading Solution</b>	means the complementary solution to the XBID Solution, that is used by a NEMO to collect, consolidate and anonymize trading data between the XBID Solution and the NEMO’s Market Participants. There is no direct communication between a Market Participant and the XBID Solution. The Trading Solution(s) of the NEMO(s) communicate(s) with the XBID Solution only by means of the TS Client;
<b>TS Client</b>	means the integrated AMPQ client software part of the NEMOs’ LTS, used to connect to the XBID API via the dedicated MPLS network;

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<b>TSO</b>	means a transmission system operator;
<b>TSO Vote</b>	means the collective vote that TSOs submit for the purposes of MCSC decisions under the IDOA;
<b>Voluntary Exit</b>	means, with respect to any one or more Parties, the termination of such Parties' participation in the Agreement on such Parties' own initiative in accordance with <u>Article 32.1</u> ;
<b>Voluntary Exit Party</b>	has the meaning set forth in <u>Article 32.1.1</u> ;
<b>Voting Member</b>	means the Party that in accordance with <u>Article 8.1.4</u> is entitled to vote on the concerned decision;
<b>Working Hour</b>	means the hours of a Business Day in which the Party that receives a notice in the context of the Agreement is open for business;
<b>XBID</b>	means cross border intraday;
<b>XBID Coordinator</b>	means the Party that effectively performs at the same time the IC SPOC services, NEMO Central Admin services and MPLS Network Service Provider SPOC services;
<b>XBID Market APCA</b>	means the "XBID Market All Party Cooperation Agreement", entered into by certain TSOs and certain Parties on July 15 <sup>th</sup> 2014, as amended by the first amendment to the XBID Market APCA on July 1 <sup>st</sup> 2015 and by the adherence and second amendment to the XBID Market APCA on December 1 <sup>st</sup> 2015;
<b>XBID Solution</b>	means the overall solution, including amongst others the high level architecture and system set-up, general specifications, systems (hardware and software) and algorithms, terms and procedures, required for the ID NEMO Cooperation as described in the High Level Architecture ;
<b>XBID System</b>	means the software and ICT applications (incl. hardware if any), as well as all relevant documentation pertaining thereto, developed by the XBID System Service Provider based on the requirements provided by certain Parties and TSOs, which is to be used for the performance of the SIDC to interact with amongst others the LTS and TSOs' Systems;
<b>XBID System Service Provider</b>	means the service provider that has supplied the XBID System and provides maintenance and hosting services for it, at the date of signature of the Agreement Deutsche Börse AG, an Aktiengesellschaft (AG) organised and existing under the laws of Germany, having its registered office at Mergenthalerallee 61, 65760 Eschborn, Germany, and registered in the Commercial Register Handelsregister HRB under Nr. 32232 and VAT DE 114151950;
<b>XBID-DSA License</b>	means the agreement under which the XBID System Service Provider has granted to certain Parties a license for the use of the XBID Solution as attached as exhibit 3 to the XBID-MSA;
<b>XBID-MSA</b>	means the "Master Services Agreement for the XBID System", including all annexes, originally signed on 8 June 2015 between, on the one hand, EPEX SPOT, EPEX SPOT Belgium, Nord Pool, OMIE and GME, and on the other hand, the XBID System Service Provider, as further amended from time to time.

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## II. Technical terms

<b>API</b>	means application programming interface - a message interface which allows external applications to exchange data (like instructions, trade information, error messages) with a software system;
<b>Available Transfer Capacities (ATC)</b>	means the constraints to be respected during capacity allocation to maintain the transmission system within operational security limits and have not been translated into cross-zonal capacity or that are needed to increase the efficiency of capacity allocation (in accordance with article 2 of the CACM Regulation);
<b>Change Administrator</b>	means the person in charge to coordinate the NEMO Change Control Procedure;
<b>CMM Admin</b>	means a capacities management module user role with administration rights;
<b>ComTrader</b>	means a front-end, designed for use with the XBID SOB trading architecture. Only admin users have access into ComTrader for XBID SOB;
<b>Cross Border Trading</b>	means trading of a commodity between two Market Areas;
<b>Delivery Area</b>	means a representation of an area in the delivery grid of a commodity which is managed by one TSO. It is a coherent part of the interconnected transmission system, including interconnectors, with connected demand facilities, or power generating modules, if any. When entering orders, a Delivery Area must be specified from which a bought commodity is received, or to which a sold commodity is delivered;
<b>GUI</b>	means graphical user interface;
<b>Incident Management</b>	means the IDOA procedure described in the document with title "XBID_JOINT_FAL_01 Incident Management", as part of exhibit 6 of the IDOA;
<b>Instrument</b>	means the smallest independent tradable entity defined through a Product;
<b>Internal Communication</b>	means messages which define the communication flow between XBID NEMOs towards the predefined contacts of the distribution list;
<b>Operators</b>	means operator, working for individual NEMO, operating the XBID System;
<b>Product</b>	means the basic framework used to generate Instruments within the Trading Module;
<b>Reference Data</b>	means the generally static data which is required by the Trading Module and Capacity Management Module to setup the platform and can be updated via the Reference Data GUIs;
<b>SM Core</b>	see XBID-Core;



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<b>SM WebGUI</b>	means the user interface of the Shipping Module. In the WebGUI the admin can do all activity related to the SM, like Reference Data management or viewing the file transfer;
<b>SOB Core</b>	see XBID-Core
<b>SOB WebGUI</b>	means the user interface of the SOB. In the WebGUI the admin can do all activity related to the SOB, like Reference Data management or market operation tasks;
<b>Super Admin</b>	means a user with rights in the system to create new admin users;
<b>Trading Module</b>	means the trading module of the XBID System;
<b>XBID Core</b>	means the central component of the XBID System. It processes all management requests like order entries, allocation requests, capacity publication requests and it is the only module that updates the XBID-Core database;
<b>XBID Operator</b>	means the operator, working for an individual NEMO, operating the XBID System;
<b>XBID OPSCOM</b>	means the IDOA operational committee, which is a committee dealing with IDOA operational issues such as incidents and changes to Components;
<b>XBID-API SOB PMI</b>	serves as single point of communication between the LTS and the XBID System;
<b>XBID-API SOB PMI Exchange User</b>	means a user role in the SOB of the XBID System which is used to connect LTS to the SOB.

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**All NEMO Intraday Operational Agreement (ANIDOA)**

**ANNEX 9**

**Rules of Internal Order (RIO)**

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## **I. General**

These Rules of Internal Order (the “**RIO**”) set forth the decision-making process rules of the NEMO ID SC and the NEMO OPSCOM as referred to in Article 8 (Governance) of the Agreement.

All capitalised terms not expressly defined herein shall have the meanings attributed to them in Annex 1 (Definition List).

## **II. RIO for NEMO ID SC**

### **2. Composition of the NEMO ID SC**

#### **2.1. Representatives**

Each Party is entitled to nominate one or several representatives to the NEMO ID SC, but shall, regardless of the number of the nominated representatives, always have one (1) vote. The representative(s) of each Party in the NEMO ID SC is/are designated in writing (including by e-mail). The list of such representatives, including their contact details, is held by the NEMO ID SC Secretary. A Party may change its nominated representative(s) in the NEMO ID SC by providing the new contact details to the NEMO ID SC Secretary.

Only representatives from Voting Members are entitled to vote in the NEMO ID SC in accordance with Article 8 (Governance) of the Agreement, it being understood that all representatives are entitled to participate in the discussions.

Each Party is, with respect to each meeting of the NEMO ID SC, duly represented either:

- i) by the nominated representative(s) (as designated by it in the conditions described above); or
- ii) if a nominated representative cannot attend a meeting of the NEMO ID SC, by any other person duly mandated and empowered to take decisions binding upon its company on all items of the agenda for the meeting of the NEMO ID SC.

If a Party is unable to attend a NEMO ID SC meeting either by its nominated representative or by any other mandated person of this Party, such Party may mandate the NEMO ID SC representative of another Party to represent it.

In case of replacement, the concerned Party informs the NEMO ID SC Secretary in writing before the NEMO ID SC meeting that it cannot attend, with indication of the name of the person representing the Party on its behalf. In case of replacement by another Party, the concerned Party provides the NEMO ID SC Secretary with the power of attorney given to the other Party.

One representative may represent more than one Party, provided it is duly mandated to do so.

#### **2.2. Chair**

The meetings of the NEMO ID SC shall be chaired by one (1) representative elected by the NEMOs. The chairship of the meetings of the NEMO ID SC shall, unless otherwise agreed amongst the NEMOs, be rotating on a yearly basis.

The chair may, in exceptional circumstances which prevent him/her to exercise his/her functions at a meeting of the NEMO ID SC, delegate such task to a representative of the NEMOs.

The chair shall not have voting rights and shall not be considered a representative unless there is no voting representative from the chair’s Party attending the meeting for exceptional reasons. In such situation, the chair is entitled to duly represent its Party in any voting of the NEMO ID SC.

The chair shall always act in a neutral manner, representing the general interest of the Committee, except for the voting for its Party in accordance with the preceding paragraph.

#### **2.3. NEMO ID SC Secretary**

The NEMO ID SC Secretary is yearly chosen by decision of the NEMO ID SC upon proposal of the Parties. The NEMO ID SC Secretary shall not be from the same Party as the chair. Alternatively, the function of the secretary of the NEMO ID SC can be assigned to a Third Party, provided that the compliance with confidentiality requirements of article 13 of the CACM Regulation and the Agreement are duly assured under a written agreement.

The NEMO ID SC Secretary has no voting rights and can never (including in extraordinary circumstances) be mandated to vote for any Party.

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The NEMO ID SC Secretary assists the NEMO ID SC, amongst others by:

- i) Drafting the agenda, preparing session files and notices of the NEMO ID SC meetings and distributing them on behalf of the chair;
- ii) Preparing the attendance list of the NEMO ID SC meetings;
- iii) Verifying before each NEMO ID SC meeting that the representatives attending the NEMO ID SC meetings have been either listed on the list of nominated representatives or has been notified as replacement. In the event of representation by another Party, the NEMO ID SC Secretary collects the power of attorney given by the Party not attending;
- iv) Prepare the minutes of the NEMO ID SC meeting;
- v) Ensuring the drafting and circulation of the minutes of the NEMO ID SC meeting; and
- vi) Keep record in a common (online) storage place of the minutes and supporting documents of the NEMO ID SC meeting or coordinate with the person responsible for record keeping in accordance with Article 37.9 of the Agreement.

The costs of the NEMO ID SC Secretary are SIDC NEMOs-Only Common Costs and shall be shared as set forth in Article 26 (Financial Provisions) of the Agreement.

With respect to NEMO Vote described under Article 8.1.1 viii) of the main body, the Secretary of the NEMO ID SC sends to the NEMO Committee the NEMO Vote for the MCSC pre-aligned decision making process, i.e. decisions on the MCSC agenda subject to pre-alignment and, as the case may be, the guidance on possible compromise which NEMOs could achieve in case such NEMO Vote would not match with the relevant TSO Vote. It is understood that the NEMO Committee will inform of NEMO Vote the relevant bodies of the IDOA cooperation, according to the relevant provisions of ANCA.

Should NEMO Vote and TSO Vote not match and should it not be possible to achieve any compromise MCSC decision consistent with NEMO ID SC guidance, the Chairman of the NEMO Committee will inform the Secretary of the NEMO ID SC in order to set up a new alignment of NEMO ID SC. It is understood that NEMO ID SC guidance to achieve a compromise MCSC decision may be updated or provided by the NEMO ID SC during the MCSC meeting such as during the interruptions/breaks of the MCSC meeting.

### **3. NEMO ID SC meetings**

The NEMO ID SC shall, unless otherwise agreed, meet at least on a monthly basis. The chair may decide to convene NEMO ID SC meetings more often, or to cancel a scheduled NEMO ID SC meeting, provided such meeting is not necessary given the absence of matters to be discussed.

Any Party may at any time request a NEMO ID SC meeting by addressing a written request to the NEMO ID SC Secretary and the chair. The request shall include the matters to be put on the agenda, and the reason why a NEMO ID SC meeting is required. The chair shall decide on whether the request requires an additional NEMO ID SC meeting or whether the point can be addressed in the first following regular NEMO ID SC meeting.

The notices for a NEMO ID SC meeting are notified by the NEMO ID SC Secretary in writing to the members of the NEMO ID SC at least ten (10) Business Days before such NEMO ID SC meeting. The notices contain the date, place and time of the NEMO ID SC meeting. The agenda and any supporting documentation to the points on the agenda is sent at least five (5) Business Days before the NEMO ID SC meeting.

A Party may propose to add issues on the agenda of a NEMO ID SC meeting, and these proposals are taken into account provided they have been received by the NEMO ID SC Secretary at the latest three (3) Business Days before such NEMO ID SC meeting.

Urgent matters may be added to the agenda of the NEMO ID SC meeting, if agreed by all Voting Members during that NEMO ID SC meeting.

The NEMO ID SC may hold ad hoc NEMO ID SC meetings for urgent matters at any time. To the extent possible, a reasonable notice period will be applied.

A member of the NEMO ID SC who attends the NEMO ID SC meeting or is represented in it, is considered as having received due notice.

Unless decided otherwise by the NEMO ID SC, the NEMO ID SC Secretary shall be in charge of the practical organisation of the NEMO ID SC meetings.

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The meeting costs (hosting, organisation, etc.) are SIDC NEMOs-Only Common Costs and shall be shared as set forth in the Agreement, it being understood that the travel costs of each Party's representative are borne by the Party(ies) he/she is representing.

The NEMO ID SC may meet either physically or by remote meeting devices (such as e.g. conference call, video call, written procedure, etc.) and the NEMO ID SC Secretary organising the NEMO ID SC meeting shall foresee the technical equipment that would allow remote access.

### **4. Decision-making rules within the NEMO ID SC**

#### **4.1. Quorum and decision making**

The NEMO ID SC shall be quorate when at least 2/3 of all NEMOs that are Voting Members on a particular decision are represented according to the principles set forth in section I.1.1 of these RIO. Should such quorum not be met at any given NEMO ID SC meeting, the deliberation and decision-making process on the points which were on the agenda of such NEMO ID SC meeting shall be made either in an ad hoc NEMO ID SC meeting to be convened shortly thereafter (the same quorum being applicable), or via a unanimous written consent of all its Voting Members, to be sent by e-mail.

Articles 8.1.2 and 8.1.4 of the Agreement apply for the voting.

#### **4.2. Unexpected items**

The NEMO ID SC may only decide on the topics of the agenda circulated by the NEMO ID SC Secretary in accordance with these RIO.

Unexpected issues may be decided at the NEMO ID SC meeting during which the unexpected issue(s) arose or at another NEMO ID SC meeting or via another approval process as agreed upon.

However, in case urgent decisions are concerned, decisions on unexpected issue(s) can also be taken at an ad-hoc NEMO ID SC conference call which takes place at the latest ten (10) Business Days following the NEMO ID SC meeting during which the unexpected issue(s) arose. For clarity reasons, such an ad-hoc NEMO ID SC conference call is subject to the general rules on quorum and decision making. By the time of this ad-hoc NEMO ID SC conference call, the representatives of the Voting Members in the NEMO ID SC must have sought the necessary power and authority to decide on the unexpected issue(s).

#### **4.3. Exceptional circumstances**

In case a Voting Member, due to justifiable exceptional circumstances, cannot be present or represented at a NEMO ID SC meeting, then decision(s) can however be taken by the other NEMO ID SC members attending, subject to the possibility, for the Voting Member who did not attend, to challenge such decision(s) in writing to the NEMO ID SC Secretary within ten (10) Business Days (two (2) in case of urgent decisions) after the distribution of the draft minutes in accordance with these RIO. Absent such written challenge, the decision(s) is/are deemed final and binding.

In case a Voting Member challenges such decision(s), the challenged decision(s) is/are put on the agenda of the next regular NEMO ID SC meeting (or at an ad hoc NEMO ID SC meeting in case of urgent decisions, which shall then take place ten (10) Business Days at the latest following the challenging of the urgent decision(s)). The Voting Member who challenged the decision(s) shall attend this next NEMO ID SC meeting. In its absence, the decision(s) is/are deemed final and binding as of the closing of the NEMO ID SC meeting.

### **5. Recording of NEMO ID SC decisions**

The decision(s) of the NEMO ID SC are recorded by the NEMO ID SC Secretary in written minutes.

The draft minutes (including decisions) are circulated by the NEMO ID SC Secretary to the members of the NEMO ID SC, within a maximum of three (3) Business Days of the meeting concerned.

Members of the NEMO ID SC may comment on the draft minutes within ten (10) Business Days after sending of the decisions in accordance with these RIO (it being understood that the decisions themselves cannot be challenged and are binding as of the meeting during which they are taken, except in the case specified in section II.3.3). Unless agreed otherwise at the NEMO ID SC meeting, the minutes are approved at the next NEMO ID SC meeting.

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The comments on the minutes received in the abovementioned deadlines are in principle discussed via e-mail, until a final agreement is reached on the text of the minutes. Adapted minutes are considered approved when all Voting Members have given their consent by mail or if all open comments have been closed and no further comments are provided within ten (10) Business Days from the last comment.

The final minutes shall be circulated by the NEMO ID SC Secretary to all Parties, by two (2) Business Days of their approval.

The final minutes shall be stored in the common (online) storage place as set forth in Article 37.9 of the Agreement.

### **III. RIO for NEMO OPSCOM**

#### **1. Tasks and roles**

##### **General delegation by the NEMO ID SC**

The NEMO OPSCOM shall have the following powers and tasks:

- i) elaboration of advice and recommendations to the NEMO ID SC on the design and operation of the SIDC;
- ii) performance of all acts in relation to the monitoring of the daily operations of the SIDC and ensuring the well-functioning and continuity of it;
- iii) performance of the tasks appointed to it in the NEMO Change Control Procedure;
- iv) organization and coordination of testing activities in the context of the NEMO Change Control Procedure;
- v) organization and coordination of training activities;
- vi) discussion and evaluation of any incident or perform mutatis mutandis the tasks of the ad hoc XBID OPSCOM as described under the IDOA when NEMO only incidents are concerned; and
- vii) recommendation of operational improvements based on experience.

In addition it performs any specific task delegated expressly to it by the NEMO ID SC.

In any event, should a decision (or several accumulated decisions) of NEMO OPSCOM have financial impact in excess of an amount to be decided upon by the NEMO ID SC, it shall be subject to validation at NEMO ID SC level.

#### **2. Reporting and external communication**

The NEMO OPSCOM periodically reports to the NEMO ID SC.

In addition, it provides input for the periodic regulatory reports:

- i) NEMO OPSCOM operational reports;
- ii) Operational indicators; and
- iii) Events – overview.

#### **3. Organization and functioning rules**

##### **NEMO OPSCOM composition and functioning**

In the NEMO OPSCOM, the following participants are distinguished:

- i) Representatives of the Parties;
- ii) Chair (no voting rights);
- iii) NEMO OPSCOM Secretary (no voting rights); and
- iv) Invited participants.

Each Party is entitled to nominate one or several representatives to the NEMO OPSCOM but shall, regardless of the number of the nominated representatives, always have one (1) vote. The representative(s) of each Party in the NEMO OPSCOM is/are designated in writing. The list of such representatives, including their contact details, are held by the NEMO OPSCOM Secretary. A Party may change its nominated representative(s) in the NEMO OPSCOM by providing the new contact details to the NEMO OPSCOM Secretary.

Only representatives from Operational NEMOs are entitled to vote in the NEMO OPSCOM for Operational Decisions in accordance with Article 8.1.4 of the Agreement, it being understood that all representatives are entitled to participate in the discussions on such decisions.

Each Party is, with respect to each meeting of the NEMO OPSCOM, duly represented either:

- i) by the nominated representative(s) (as designated by it in the conditions described above); or

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- ii) if a nominated representative cannot attend a meeting of the NEMO OPSCOM, by any other person duly mandated and empowered to take decisions binding upon its company on all items of the agenda.

If a Party is unable to attend an NEMO OPSCOM meeting either by its nominated representative or by any other person of this Party, such Party may mandate the NEMO OPSCOM representative of another Party to represent it.

In case of replacement, the concerned Party informs the NEMO OPSCOM Secretary in writing before the NEMO OPSCOM meeting that it cannot attend this NEMO OPSCOM meeting, with indication of the name of the person representing the Party on its behalf. In case of replacement by another Party, the concerned Party provides the NEMO OPSCOM Secretary with the power of attorney given to the other Party.

One representative may represent more than one Party provided it is duly mandated to do so.

In order to ensure a continuous optimal coordination, the NEMO OPSCOM normally meets every fortnight and at least once a month, unless agreed otherwise by the NEMO OPSCOM. The NEMO OPSCOM calls and meetings are limited to business days (i.e., for the purpose of this section of the RIO regarding the NEMO OPSCOM, Monday till Friday, irrespective of national public holidays) and office hours (i.e. 08:30 till 17:00 CET), unless otherwise unanimously agreed. The NEMO OPSCOM may meet either physically or by distant meeting devices (such as e.g. conference call, video call, written procedure, etc.). Any cancellation of a NEMO OPSCOM meeting is made by unanimous consent in writing with a minimum of two (2) Business Days notice. Any member of the NEMO OPSCOM may request an extraordinary NEMO OPSCOM meeting.

In addition to the planned meetings, there might be a need for ad hoc NEMO OPSCOM calls to handle escalations from the Incident Committee. These ad hoc calls are to be organized as soon as possible after the escalation, preferably the same day and no later than the next Business Day.

The NEMO OPSCOM Chair and NEMO OPSCOM Secretary shall prepare and circulate an agenda for each NEMO OPSCOM meeting. The agenda shall contain at least incidents and changes. Furthermore, it may include items such as the organization of testing and training activities.

Each Party commits to be present or represented at an NEMO OPSCOM meeting. In case (a) Party(ies) unwilfully does/do not attend an NEMO OPSCOM meeting, they are expected to arrange representation or to subscribe to the NEMO OPSCOM decisions, while the deemed acceptance principle is applied for them, *i.e.* in case the not represented party objects to a decision, they should indicate this within two (2) Business Days after distribution of the minutes.

The representatives of the Parties in the NEMO OPSCOM elect an NEMO OPSCOM Chair and an NEMO OPSCOM Secretary from among its members or from a designated external party during their first meeting. Both appointments will in principle occur on a six-monthly basis. In order to avoid the loss of historical knowledge, the following scheme is provided as guidance:

- i) one (1) month before the Business Go-Live first NEMO OPSCOM meeting, where both the NEMO OPSCOM Chair and the NEMO OPSCOM Secretary are appointed:
  - a) NEMO OPSCOM Chair for six (6) months;
  - b) NEMO OPSCOM Secretary for eight (8) months;
  
- ii) After this, the NEMO OPSCOM Chair and NEMO OPSCOM Secretary will be appointed for periods of six (6) months.

The costs of the NEMO OPSCOM Secretary are SIDC NEMOs-Only Common Costs and shall be shared as set forth in Article 26 (Financial Provisions) of the Agreement.

Decision making is unanimous by the Voting Members present or represented, and entitled to vote. In case of disagreement, the issue is escalated to the NEMO ID SC.

The decisions of the NEMO OPSCOM are recorded in minutes, which are circulated to the members of the NEMO OPSCOM as soon as possible and in any event within five (5) Business Days after the NEMO OPSCOM meeting. Final approval of the minutes, by consensus, is sought at the next NEMO OPSCOM meeting. In case of disagreement on the minutes, the issue is escalated to the NEMO ID SC. Final minutes shall be stored in the common (online) storage place referred to in Article 37.9.

The NEMO OPSCOM reports regularly on its activities to the NEMO ID SC.

The NEMO OPSCOM is entitled to establish working groups to consider particular issues within its competencies.

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**The remaining Annexes are provided in the Zipfile referred to in Art. 5.2 ii) of the main body to  
this Second Amendment**