# Annex 1 to the First Amendment to the Single Day-Ahead Coupling Operations Agreement ("DAOA"):

# Consolidated version of the main body of the Single Day-Ahead Coupling Operations Agreement with the First DAOA Amendment provisions

# Single Day-Ahead Coupling Operations Agreement

# ("DAOA")

**between**

**the Transmission System Operators**

**and**

**the NEMOs**

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## Single Day-Ahead Coupling Operations Agreement

This Single Day-ahead Coupling Operations Agreement ("Agreement" or "DAOA") dated as of 14th February 2019 is entered into by and between:

On the one hand:

AFFÄRSVERKET SVENSKA KRAFTNÄT ("**SVENSKA KRAFTNÄT**"), a Swedish state utility, with V.A.T. number SE202100428401, having its registered office at Svenska kraftnät, P.O. Box 1200, SE-172 24 Sundbyberg, Sweden, registered under number 202100-4284;

AMPRION GmbH ("**AMPRION**"), a company incorporated under the laws of Germany, with V.A.T. number DE813761356, having its registered office at Robert-Schuman-Straße 7, D-44263 Dortmund, Germany, registered in the commercial register at the Amtsgericht Dortmund under number HRB 15940;

AS "Augstsprieguma tīkls" ("**AST**"), a company incorporated and validly existing under the laws of the Republic of Latvia, with V.A.T. number LV40003575567, having its registered office at Darzciema Street 86, Riga, LV-1073, Latvia, and registered with the Commercial Register of the Republic of Latvia with the registration number 40003575567;

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

ČEPS, a.s. ("**ČEPS**"), a company incorporated under the laws of Czech Republic, with V.A.T. number CZ25702556, having its registered office at Elektrárenská 774/2, 101 52 Praha 10, Czech Republic, and incorporated in the Commercial Register kept by the Municipal Court in Prague, Section B, Entry 5597, with the Company Identification No. 25702556;

CREOS Luxembourg S.A. ("**CREOS**"), a company incorporated under the laws of Luxembourg, with V.A.T. number LU10320554, having its registered office at 59-61, rue de Bouillon in L-1248 Luxembourg, registered in the commercial register at Luxembourg under number B. 4513;

Croatian Transmission System Operator Ltd. ("**HOPS**"), a company incorporated under the laws of Croatia, with V.A.T. number 13148821633, having its registered office at Kupska 4, 10 000 Zagreb, Croatia, registered

in the commercial register at Commercial Court in Zagreb under number 080517105;

EIRGRID plc ("**EIRGRID**"), a company incorporated under the laws of the Republic of Ireland, with V.A.T. number IE6358522H, having its registered office at the Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Ireland, registered in the under the number 338522;

ELECTRICITY SYSTEM OPERATOR EAD ("**ESO**"), a company incorporated under the laws of BULGARIA, in the form of an EAD (sole-owner joint stock company), having its registered office at 201, Tsar Boris III Blvd., 1618 Sofia, Bulgaria, registered with the General Commercial Register under the number 175201304, with VAT identification number BG 175201304;

ELERING AS ("**Elering**"), a company incorporated under the laws of Estonia, with V.A.T. number EE100889639, having its registered office at Kadaka tee, 42, 12915 Tallinn, Estonia, registered in the commercial register at Estonia under number 11022625;

ELES, Ltd., Electricity Transmission System Operator ("**ELES**"), a company incorporated under the laws of Slovenia, with V.A.T. number SI20874731, having its registered office at Hajdrihova, Ulica 2, 1000 Ljubljana, Slovenia, registered at the District Court of Ljubljana under entry number 1-09227-00 and registration number 5427223000;

ELIA TRANSMISSION BELGIUM SA/NV ("**ELIA**"), a company incorporated under the laws of Belgium, with V.A.T. number BE731.852.231, having its registered office at Boulevard de l'Empereur, 20, 1000 Brussels, Belgium, registered in the commercial register at Brussels under number 0731.852.231 (legal successor of ELIA SYSTEM OPERATOR SA/NV);

Energinet Systemansvar A/S ("**ENERGINET**"), a company incorporated under the laws of Denmark, with V.A.T. number 39314959, having its registered office at Tonne Kjærsvej 65, 7000 Fredericia, registered in the commercial register at Commercial Register in the Danish Business Authority under number 39314959;

FINGRID OYJ ("**FINGRID**"), a company incorporated and existing under the laws of Finland, with V.A.T. number FI10728943, having its registered office at Läkkisepäntie 21, P.O.Box 530, FI-00101 Helsinki, with Commercial Register in Helsinki no 1072894-3;

Independent Power Transmission Operator S.A. ("**ADMIE**" or "**IPTO**"), a company incorporated under the laws of Greece, registered in the General Commercial Registry under number 4001001000, the head offices of which

are located at 89 Dyrrachiou & Kifisou Str. 10443, Athens – Greece, with EU Community VAT identification number: EL 099877486;

LITGRID AB ("**Litgrid**"), a limited liability company, incorporated under the laws of the Republic of Lithuania, with V.A.T number LT 100005748413, having its registered offices at Karlo Gustavo Emilio Manerheimo st. 8, 05131 Vilnius, Lithuania, having the registration number 302564383 in the Register of Legal Entities;

MAVIR Hungarian Independent Transmission Operator Company Ltd. ("**MAVIR**"), a company incorporated under the laws of Hungary, with V.A.T. number HU12550753, having its registered office at 1031 Budapest, Anikó u. 4., Hungary, registered in the commercial register at the Hungarian Company Registry Court of Budapest-Capital Regional Court under number 01-10-044470;

National Power Grid Company Transelectrica S.A. ("**Transelectrica**"), a company incorporated under the laws of Romania, with V.A.T. number RO13328043, having its registered office at 33 General Gheorghe Magheru Blvd., 1st District, Bucharest, registered in the commercial register at the Bucharest Trade Registry under number J40/8060/2000;

Polskie Sieci Elektroenergetyczne S.A. ("**PSE**"), a company incorporated under the laws of Poland, with V.A.T. number PL5262748966, having its registered office at Warszawska 165, 05- 520 Konstancin-Jeziorna, Poland, registered in the commercial register at District Court for the Capital City of Warsaw, 14th Commercial Department of the National Court Register under number KRS 0000197596 and the share capital of 9.605.473.000,00 PLN paid in full amount;

Red Eléctrica de España, S.A.U. ("**REE**") a company incorporated under the laws of Spain, with V.A.T. number ESA85309219, having its registered office at Paseo Conde de los Gaitanes, 177, La Moraleja, 28109 Alcobendas (Madrid), Spain, registered in the Commercial Register at Madrid under Sheet M-452031, Section 8, Page 195, Volume 25097;

REN – Rede Eléctrica Nacional, S.A. ("**REN**"), a company incorporated under the laws of Portugal, with V.A.T. number PT507866673, having its registered office at Avenida dos Estados Unidos da América, 55, 1749-061 Lisboa - Portugal, registered in the commercial register at Lisbon under number 507 866 673;

RTE Réseau de Transport d'Electricité ("**RTE**"), a company incorporated under the laws of France, with V.A.T. number FR19444619258, having its registered office at Immeuble WINDOW – 7C Place du Dôme - 92 073 PARIS

LA DEFENSE Cedex, France, registered in the commercial register at Nanterre under number 444 619 258;

Slovenská elektrizačná prenosová sústava, a.s. ("**SEPS**") with its registered office at Mlynské nivy 59/A, 824 84 Bratislava, Slovak Republic, incorporated in the Commercial Register kept by the District Court in Bratislava I, Section Sa, Entry 2906/B, with Company Identification No. 35829141;

SONI Limited ("**SONI**"), a company incorporated in Northern Ireland, with V.A.T. number GB945676869, having its registered office at 12 Manse Road, Belfast, Co Antrim, BT6 9RT. SONI with registered number NI38715;

STATNETT SF ("**STATNETT**"), a state owned enterprise (statsforetak), incorporated under the laws of Norway, with V.A.T. number NO962986633, having its registered office at Nydalen Allé 33, P.O. Box 4904 Nydalen, 0423 Oslo, Norway, with registration no. 962 986 633;

TENNET TSO B.V. ("**TenneT**"), a company incorporated under the laws of the Netherlands, with V.A.T. number NL815310456B01, having its registered office at Arnhem, Utrechtseweg 310, P.O. Box 718, 6800 AS, the Netherlands, registered in the commercial register of the Chamber of Commerce under number 09155985;

TENNET TSO GmbH ("**TTG**"), a company incorporated under the laws of Germany, with V.A.T. number DE815073514, having its registered office at Bernecker Str. 70, 95448 Bayreuth, Germany, registered in the commercial register at Bayreuth under number HRB 4923;

TERNA - Rete Elettrica Nazionale S.p.A. ("**TERNA**"), a company incorporated under the laws of Italy, with tax code and V.A.T. number 05779661007, registered at the Rome Register of Companies, with registered office at Viale Egidio Galbani 70 - 00156 Roma, Italy;

TRANSNET BW GmbH ("**TransnetBW**"), a limited liability company (GmbH) incorporated under the laws of Germany, with V.A.T. number DE191008872, having its registered office at PariserPlatz, Osloer Str. 15-17, 70173 Stuttgart, Germany, registered with the commercial register of Stuttgart under number HRB 740510;

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

individually referred to as "**TSO**" and/or collectively referred to as "**TSOs**"

And, on the other hand:

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 District Court of Ljubljana under registration n° 3327124000 and VAT n° SI37748661;

CROATIAN POWER EXCHANGE Ltd. (”**CROPEX**”), a company incorporated under the laws of Republic of Croatia, with V.A.T. number HR14645347149, having its registered office at Slavonska avenija 6/A, 10000 Zagreb, Croatia, registered in the commercial register at Commercial Court in Zagreb under number 080914267;

EIRGRID plc (“**EIRGRID**”), a company incorporated under the laws of the Republic of Ireland, with V.A.T. number IE6358522H, having its registered office at the Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Ireland, registered in the under the number 338522;

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

EXAA Abwicklungsstelle für Energieprodukte AG (“**EXAA**”), a company incorporated under the laws of Austria, with V.A.T. ATU52153208, having its registered office at Palais Liechtenstein, Alserbachstrasse 14-16, A-1090 Vienna, registered in the commercial register at Handelsgericht Wien under number FN 210730y;

Gestore dei Mercati Energetici S.p.A. (“**GME**”), a company incorporated under the laws of Italy, with V.A.T. number IT 06208031002, having its registered office at Viale Maresciallo Pilsudski, 122/124, 00197 Rome, registered with Companies Register of Rome under the number RM 953866 under Italian tax code;

HELLENIC ENERGY EXCHANGE S.A. (“**HEnEx S.A.**”), a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000;

HUPX Hungarian Power Exchange Company Limited by Shares (”**HUPX**”), a company incorporated under the laws of Hungary, with V.A.T. number HU13967808, having its registered office at 1134 Budapest, Dévai u. 26-

28, Hungary, registered in the commercial register at Budapest Metropolitan Court, under number 01-10-045666;

Independent Bulgarian Energy Exchange ("**IBEX**"), a company incorporated under the laws of Bulgaria, with V.A.T. number BG202880940, having its registered office at 138, Vasil Levski, Blvd., 1527 Sofia, Bulgaria, registered in the commercial register at Bulgarian Registry Agency under number 202880940;

Nasdaq Oslo ASA ("**NASDAQ**"), a company organised and existing under the laws of Norway, having its registered office at Karenslyst Alle, 0279, Oslo, 0213, Norway, and registered with Brønnøysundregistrene under the number 965 662 952 and VAT n°NO965 662 952MVA;

Nord Pool European Market Coupling Operator AS ("**Nord Pool EMCO**"), a company incorporated under the laws of Norway, with V.A.T. number NO 984 058 098 MVA, having its registered office at at Lilleakerveien 2 A, 0283 Oslo, Norway, registered in the Register of Business Enterprises under number 984 058 098;

OKTE, a.s. ("**OKTE**"), a company incorporated under the laws of the Slovak Republic, with V.A.T. number SK2023089728, having its registered office at Mlynské nivy 48, 821 09 Bratislava, Slovak Republic, registered with the Commercial register at District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862;

OMI-Polo Español, S. A ("**OMIE**"), a company incorporated and existing under the laws of Spain, with V.A.T. number A86025558, registered office at Alfonso XI nº 6, 28014 Madrid, Spain, and registered with the Commercial Register in Madrid under Section 8, Sheet: M-506799;

Operatorul Pietei de Energie Electrica si de Gaze Naturale "OPCOM" S.A. ("**OPCOM**"), a company incorporated and existing under the laws of Romania, with V.A.T. number RO13278352, having its registered office at 16-18 Bd. Hristo Botev, 3rd District, Bucharest, PC. 030236, Romania, and registered with the Bucharest Trade Register Office under the number J40/7542/2000;

OTE, a.s. ("**OTE**"), a company incorporated and existing under the laws of the Czech Republic, with V.A.T. number CZ26463318 having its registered office at Sokolovská 192/79, 186 00 Prague, Czech Republic, and registered with the Commercial Register in Municipal Court in Prague, Section B 7260 under the number 264 63 318, OTE's contract number: [redacted];

SONI Limited ("**SONI**"), a company incorporated in Northern Ireland, with V.A.T. number GB945676869, having its registered office at 12 Manse Road, Belfast, Co Antrim, BT6 9RT. SONI with registered number NI38715;

Towarowa Giełda Energii S.A. ("**TGE**"), a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland, registered in the commercial register at National Court Register under number 0000030144, held by the District Court for the Capital City of Warszawa, 12th Commercial Department of the National Court Register, and the share capital of 14.500.000,00 PLN paid in full amount;

Individually referred to as "**NEMO**" and/or collectively referred to as "**NEMOs**";

TSO(s) and NEMO(s) being referred to as "**Party**" individually and/or "**Parties**" collectively;

## PREAMBLE

**WHEREAS**

A. Within the framework of the energy strategy of the European Commission to create a single electricity market throughout the EU and adjacent regions, also enacted in the Regulation (EC) 714/2009, several day-ahead market initiatives were launched. The NWE Parties (except National Grid, Creos, BritNed and APX UK) concluded on 8 November 2010 the Interim Solution Agreement ("**ISA**") to implement an interim solution for day-ahead price coupling between the CWE Region and the Nordic-Baltic Region via EMCC in the form of an interim tight volume coupling ("**ITVC**"). The launch of ITVC occurred on 9 November 2010 simultaneously with the launch of CWE price coupling.

B. According to Recital M and article 1.4 of the ISA, the ISA signatories committed to implement, as soon as reasonably possible, an enduring day ahead price coupling solution covering at least the CWE Region and the Nordic-Baltic Region.

C. The NWE Parties cooperated in implementing such solution via a price coupling using the PCR Solution ("**NWE Price Coupling**"). The terms and conditions for this cooperation on the design and implementation of such solution were established in the NWE All Parties Cooperation Agreement (Design and Implementation) ("**NWE APCA**") made between all the NWE Parties (except BritNed and APX UK), dated 12 June 2012. Subsequently, the NWE Parties entered into the NWE Day-Ahead Operations Agreement ("**NWE DAOA**") which took effect on 04 February 2014, setting forth the main terms and conditions under which the Parties cooperated to operate the NWE Price Coupling.

D. In parallel, the SWE Parties cooperated to implement SWE Price Coupling using the PCR Solution and have entered into a SWE Day-Ahead Operational Agreement ("**SWE DAOA**"), which entered into force on 04 February 2014, setting forth the main terms and conditions under which the SWE Parties will cooperate in operating the SWE Price Coupling.

E. The European national regulatory authorities ("**NRAs**") and the Agency for the Cooperation of Energy Regulators ("**ACER**") have published a Cross-regional Roadmap for the implementation of a single day ahead European price coupling. The Roadmap foresees the implementation of the Multiregional Price Coupling, with a parallel/sequential process of further integration leading to the achievement of the European price coupling.

F. EPEX, EMCO, GME, HEnEx, OMIE, OPCOM, OTE and TGE are cooperating to develop, implement and operate a coordinated matching function commonly agreed between European power exchanges based on a decentralised coordinated calculation of Market Coupling Results with common matching algorithmic software (EUPHEMIA) taking into account the available Cross-Zonal Capacities and optional Allocation Constraints ("**PCR Solution**"). In this context, they have signed the PCR Co-ownership Agreement and the PCR Cooperation Agreement. All NEMOs are currently finalising the ANDOA which will replace the PCR Cooperation Agreement.

G. The NWE Parties and SWE Parties entered into a DAOA dated 22 April 2014, replacing the NWE DAOA and setting forth the main terms and conditions under which these Parties cooperated to operate the MRC Price Coupling. Such

agreement was replaced and extended on 30 January 2015 to, amongst other, include IBWT Parties. This constituted (including a further amendment with retroactive entry into force date of 04 February 2016), until the present Agreement, the operational agreement for MRC (the "**MRC DAOA**").

H. 4MMC Parties entered into the Master Agreement on 4M Market Coupling on 19 November 2014 (the "**Master Agreement on 4M Market Coupling**") replacing the agreement between OTE, OKTE, HUPX Ltd., ČEPS, SEPS, and MAVIR setting forth the main terms and conditions under which these Parties cooperated to operate the 3M Market Coupling (CZ-SK-HU Market Coupling) as in operation from 11 September 2012.

I. In the meantime, CACM entered into force in August 2015. The relevant and already applicable CACM provisions were taken into account by the Parties while drafting the Agreement.

J. On 28 March 2019, the initial signed version of Agreement has entered into force. At such time, it was agreed to start with separate coupling of the MRC and 4MMC areas. As of June 17th, 2021, the separate coupling of the MRC and 4MMC areas was merged into one single coupling area.

K. Since the original signing of the Agreement, several new Parties have adhered to it (ElecLink, NGIFA2, Nasdaq) and several Parties exited the Agreement (ElecLink, NGIFA2, NGIC, Nemo Link, BritNed).

L. The Agreement was amended for the first time (hereafter the "**First DAOA Amendment**") to implement the following:

i) a joint governance mechanism together with the signatories of the IDOA for the market coupling cooperation under SIDC and SDAC with a view to increasing efficiency and synergies and consisting of:

- the governance for both SIDC and SDAC being conducted by one body, the MCSC, competent pursuant to this Agreement and IDOA to take decisions concerning all topics (operations, adaptations and development, etc.) related to SIDC and SDAC (meaning (i) topics concerning both timeframes, (ii) topics concerning SIDC only and (iii) topics concerning SDAC only); and
- new rules for decision making reflecting the already applied practice of pre-alignment of TSOs' and NEMOs' respective positions

(such joint governance mechanism being hereunder referred to as the "**Joint Governance**", as further detailed in Article 12).

ii) the further alignment of both the Agreement and the IDOA in order to implement the Joint Governance;

iii) the coupling of MRC and 4MMC as referred to in Whereas J)

M. For information purposes only, TGE & PSE hereby declare that they respectively have 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).

**IN CONSIDERATION OF THE ABOVE, THE PARTIES HEREBY AGREE, UNDER THE TERMS AND CONDITIONS OF THIS AGREEMENT, AS FOLLOWS:**

## Article 1–Purpose and scope of the Agreement, structure and generalities

1.1 The Agreement sets forth the rights and obligations of the Parties in connection with the implementation of the Single Day-Ahead Coupling ("**SDAC**"), including the common operation and further development thereof (hereafter also referred to as the "**Cooperation**"). As the SDAC is an implementation of CACM, it requires cooperation of all TSOs and all NEMOs at European level within the scope of CACM.

1.2 A distinction shall be made between Parties which are in operation, being those benefiting from the DA MCO Function to match bids or allocate capacity implicitly ("**Operational Parties**") and Parties which are not in operations, being those who do not benefit from the DA MCO Function to match bids or allocate capacity implicitly ("**Non-Operational Parties**").Any NEMO from a Bidding Area where there is temporarily no capacity implicitly allocated on any of its borders, being an Non-Operational Party in the SDAC, having applied the relevant parts of

Annex 3 and having informed the MCSC of its willingness to enter into operations can become, subject to a decision of the MCSC (which decision shall not be unreasonably delayed or withheld), "**Full Member with No Capacity**" (or "**FMNC**"), which status shall be considered as a sub-category under Operational Parties, and grant it the same rights and obligations as any other Operational Party to this Agreement, with the exception that the FMNC will, in deviation to Article 12, have no voting rights on Operational Decisions or Regional Operational Decisions not affecting it. A FMNC can request to be granted all of the rights and obligations as any other Operational Party to this Agreement by fulfilling the conditions set forth in Article 13. The FMNC are listed in Annex 10.

1.3 The Agreement is composed of its main body and its Annexes listed below (which may be subdivided):

- Annex 1: Definition list
- Annex 2: SDAC Operational Procedures
- Annex 3: SDAC Change Control Procedure
- Annex 4: Rules of Internal Order (RIO)
- Annex 5: Parties' contact and invoicing details
- Annex 6: Cost sharing, monitoring and settlement
- Annex 7: Technical Readiness Definition
- Annex 8: Simulation Facility Service
- Annex 9: Accession Form
- Annex 10: List of Parties and their status
- Annex 11: Controller Information Clause
- Annex 12 : Algorithm Monitoring Procedure

1.4 Should differences and/or contradictions exist between the main body and any of the Annexes, the terms and conditions of the main body shall prevail.

## Article 2–Definitions

The definitions used in this Agreement are set forth in Annex 1 or if relevant in the glossary set forth in Annex 2.

## Article 3–Contractual Framework

3.1 The contractual framework is structured as follows:

- The DAOA as general framework of cooperation between all the Parties in respect of the purposes set forth in Article 1;
- Between NEMOs only, the Nemo Only Agreements;
- Between TSOs only, the TSO Only Agreements;
- Local Arrangements which contribute to the operation of the SDAC by specifying or completing the general principles described in the Agreement.

3.2 The Parties shall ensure that all necessary Local Arrangements to further implement and elaborate the general framework set forth by the Agreement are in place, with the aim to have an efficient SDAC.

3.3 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 SDAC or have impact on the SDAC - 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 Annex 2 are concerned; and

ii) to the extent necessary for the purpose of and in the scope of the Agreement as set forth in Article 1. 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 it) that concern purely regional or local issues.

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

3.4 If the Parties involved in Local Arrangements notice that any of these arrangements is not in line with the terms and conditions of this Agreement as regards the matters referred to in Article 3.4, these Parties shall without delay notify in writing the MCSC thereof stipulating the reasons for not being able to ensure that Local Arrangements are in line with this Agreement. Following such notification, the MCSC shall try to find the best reasonable solution with the least adverse consequences to the SDAC.

## Article 4–Principles of Cooperation

### 4.1 General

4.1.1. The Parties shall cooperate in accordance with the terms and conditions of this Agreement, with the overall aim to facilitate the integration of the European electricity markets and the implementation of the purpose of the Agreement as set forth in Article 1.

4.1.2. Obligations of the Parties under this Agreement shall be Best Efforts obligations.

4.1.3. Given that the success of the SDAC depends on the well-functioning of the different TSOs' and NEMOs' components on interactions between these components and on interactions between the Parties, the Parties shall cooperate actively in this respect with a view to realising the purposes as set forth above, especially in case of unexpected difficulty.

4.1.4. The Parties shall exercise their rights and obligations in good faith and shall adopt a fair and loyal treatment towards each other, bearing in mind the multilateral spirit of the SDAC, according to

which all Parties shall be treated in a non-discriminatory manner. In this respect, it is understood that any decision regarding the implementation of the Agreement shall be taken giving due consideration to any applicable Legal Provision (including, but not limited to, provisions regarding procurement of goods and/or services).

4.1.5. The Parties shall allocate their tasks in the most efficient manner, taking into account the core roles of the TSOs on the one hand, and of the NEMOs on the other hand, as set forth in CACM.

4.1.6. Each Party will exercise due care and attention with respect to competition law compliance for the entire duration of the Agreement.

4.1.7. The DA MCO Function Assets of the NEMOs are operated in compliance with CACM, the MCO Plan and related methodologies and on the basis of the principle of subsidiarity and decentralization, meaning that it aims at delivering a coordinated price coupling matching mechanism while respecting, the independence, autonomy and self-determination of any NEMO and the differing regulatory situations of each Member State and individual NEMO.

4.1.8. The TSOs undertake to take into account the legitimate interests of NEMOs in their capacity as responsible operators with obligations to provide fair, efficient and orderly markets including but not limited to objective assessment of the impact of new products/ modifications, including new TSO requirements consistently with the algorithm methodology and the change control procedure of the algorithm in accordance with CACM.

## 4.2 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 CACM, more specifically costs shall be reasonable, efficient and proportionate.

4.3 **Performance of the Parties**

Each Party shall:

i) perform its obligations under this DAOA according to the requirements of this DAOA, all applicable laws and regulations, any specifications and requirements decided upon by the MCSC, good practice and current professional standards, applicable for these type of obligations;

ii) use, where appropriate, suitable technology, materials and/or equipment including necessary backups and contingency plans and trained and competent staff for the execution of its obligations under this DAOA;

iii) perform its obligations under this DAOA in the best interest of all Parties to achieve a well-functioning SDAC;

iv) have the necessary license and authorisations to enter into this Agreement; and

v) have the knowledge, experience and human and technical competence necessary for the satisfactory performance of its obligations under this DAOA.

4.4 **Subcontracting or delegation**

4.4.1. A Party can only subcontract or delegate any of its obligations set forth in the Agreement, provided the conditions of article 81 CACM are complied with.

4.4.2. Any Party subcontracting or delegating any of its obligations set forth in this DAOA, shall remain fully responsible and liable towards the other Parties, in accordance with this DAOA, for the fulfilment of its obligations under this DAOA and shall ensure that each such subcontractor or delegate complies with the obligations of the sub-contracting or delegating Party under this DAOA. The relevant Party

shall ensure that any use of Personal Data by its subcontractor shall be compliant with GDPR.

4.4.3. To the extent the subcontracting or delegating concerns one of the essential activities in this Article 4.4.3 (a) and (b) the Party subcontracting or delegating its performance shall inform the other Parties in writing of the identity of the subcontractor or delegate, the scope of the subcontracting or delegation and of any practical implications of the subcontracting or delegation, unless such information has already been provided to the other Parties at the date of entry into force of this Agreement as set forth in Article 21. For the purpose of this Article, the following activities are deemed to constitute essential activities:

(a) operating the DA MCO Function and

(b) operating the TSO systems involved in pre- or post-coupling.

## Article 5–Responsibilities

5.1 Roles and responsibilities of the TSOs on the one hand and NEMOs on the other hand, shall be compliant with those set forth in CACM.

5.2 NEMOs shall develop, maintain and operate or procure the operation of the DA MCO Function in accordance with CACM, the MCO Plan and applicable methodologies. The NEMOs will be responsible for the implementation of change requests and R&D for the Algorithm in accordance with the decisions of the MCSC under the DAOA and the provisions of Article 5.5.

5.3 Each NEMO is responsible for operating locally, or procuring the local operation of, the DA MCO Function, and for its own systems, business processes, trading regulations and agreements with market participants concerned by or involved in the SDAC as well as its own systems or mechanisms needed for settlement and clearing.

5.4 Each TSO is responsible for its own systems and business processes concerned by or involved in the SDAC.

5.5 TSOs and NEMOs shall jointly organize and agree, via the MCSC, on change requests and on the R&D for the Algorithm and approve jointly the related budgets.

## Article 6–Daily Operations

6.1 Provisions relating to operations of the SDAC, such as but not limited to this Article 6, only apply to Operational Parties. A list of Operational Parties (and of other categories of Parties) is set forth in Annex 10.

6.2 The Operational Parties shall comply with the SDAC operational procedures set forth in Annex 2 (as updated pursuant to Article 1.5, it being understood that gate closure time will be harmonized at 12:00 CET).

6.3 Without prejudice to Articles 3.4 to 3.6, detailed local procedures shall be defined in the Local Arrangements.

6.4 In order to become the Operational Party, the relevant Non-Operational Party shall comply with the provisions set forth in Annex 7.

## Article 7–Firmness

TSOs shall ensure that capacities are firm as stipulated in article 70 and 72 of CACM and any other applicable regulation as the case may be.

## Article 8–Harmonization of maximum and minimum clearing prices

Harmonization of maximum and minimum clearing prices shall be handled in accordance with relevant regulation, such as articles 7 and 41 of CACM and the methodology proposed by the NEMOs and approved by the NRAs or ACER if applicable pursuant to article 41 of CACM. NEMOs can change the maximum and minimum clearing prices subject to Annex 3. NEMOs shall assess the need to change the maximum and minimum clearing prices and provide feedback regarding this to the TSOs.

## Article 9–Change Control Procedure & Algorithm Monitoring Procedure

The Parties shall comply with the SDAC Change Control Procedure set forth in Annex 3.

The Parties shall comply with the provisions on algorithm monitoring as set forth in Annex 12.

## Article 10–Simulation Facility Services

The terms and conditions of the Simulation Facility Services are described in Annex 8.

## Article 11–Data Ownership and Intellectual Property Rights

### 11.1 General

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

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

11.1.3. Except for the purpose of publishing data as allowed under this Article 11, Article 20 shall apply to the developments made and data used or exchanged pursuant to this Article 11.

### 11.2 Developments

11.2.1. No works, documentation or information shall be developed jointly by the Parties in the framework of the SDAC other than (i) the

Agreement including its Annexes or (ii) works, documentation or information the MCSC has decided to develop jointly. Works, documentation and information developed jointly by the Parties shall be jointly owned by all Parties.

11.2.2. The Parties acknowledge that the regional procedures which are not part of this Agreement are owned by a subset of the Parties and not by all the Parties to this Agreement. In respect of these regional procedures, Parties agree that the owners of these regional procedures shall have sole discretion with respect to the disclosure of these regional procedures and are not required to obtain prior approval from the other Parties which are not the owners for the disclosure of these regional procedures.

11.2.3. Rights with respect to the DA MCO Function Asset are governed by the MCO Plan and the PCR Co-ownership Agreement.

11.3 **Data**

11.3.1. Exchange market data, i.e. aggregated data relating to the orders submitted to a NEMO's trading system, the supply and demand curves, anonymous block order lists, the market clearing price and market clearing volume and related indices, and also Historical Data shall remain the exclusive property of the NEMOs concerned.

11.3.2. Data generated by the TSOs in respect of available Cross-Zonal Capacities (and optional Allocation Constraints) remain the exclusive property of the relevant TSOs.

11.3.3. The NEMOs grant the TSOs an unrestricted free right to use and exploit, publish and provide to any third person NEMO data relating to available Cross-Zonal Capacities coming out of the DA MCO Function (net positions, shadow prices or any flows). Given the potentially sensitive nature of these data, NEMOs acknowledge and agree that they shall not use or exploit such data for external purposes nor shall they publish this data, nor will they provide this data to any third person without the prior authorization of all

concerned TSOs, such consent not to be unreasonably withheld, conditioned or delayed, and such authorisation not to be required in case such publication is already part of existing practice and/or agreement.

The concerned NEMO grants to the TSOs a free right to use the Market Coupling Results limited to internal purposes, and any other use according to Local Arrangements agreed by the relevant Parties, such agreement not to be unreasonably withheld, conditioned or delayed by the concerned NEMO.

This agreement does not affect any current usage of this market price data by TSOs (e.g. for settlement, imbalance pricing, settlement of long term capacities (PTR/FTR), publishing and other TSOs' legal and regulatory obligations), it being understood that by current usage is meant the usage at 22 April 2014, in each respective Region.

11.4 Subject to terms agreed in the PCR Co-ownership Agreement, the DA MCO Function Assets Co-owners shall grant for free each TSO, on its request, a license in respect of the DA Price Coupling Algorithm under agreed terms and conditions. Such license will provide for disclosure of the Confidential Information, under strict conditions of confidentiality and such information may only be used for TSO internal purposes, which shall include but not be limited to further developments. In granting this license, DA MCO Function Assets Co-owners may however charge the TSOs for reasonable and documented support.

11.5 **Data publication**

11.5.1. Without prejudice to Article 11.4:

i) The Parties are entitled individually to publish their own data linked to SDAC.

ii) The publication of other data linked to SDAC shall be dealt with in either this Agreement, Local Arrangements, NEMO

Only Agreements or TSO Only Agreements (including service agreements as the case may be).

11.5.2. Without prejudice to Article 11.3.3. and 11.5.1, each TSO agrees and undertakes, up to the receipt of the Global Final Confirmation sent by the NEMOs, that neither it, nor its officers, employees, agents delegates or subcontractors, will forward or publish any price information included in the Market Coupling Results or use such price information otherwise than for the purposes of validation of Scheduled Exchanges and/or Congestion Revenue calculations. In addition, in case of breach, the NEMOs or any individual NEMO is entitled to demand, with immediate effect, a change of the TSO's data handling processes for the purpose of result validation in such a way that the data concerned is no longer at risk. The TSOs shall not unreasonably object to such demand.

## Article 12–Governance

12.1 The Parties agree to implement a Joint Governance for SIDC and SDAC as a result of which the governance of the SIDC and SDAC shall be carried out by means of Market Coupling Steering Committee ("**MCSC**").

The MCSC is the main decision-making body of this Agreement competent to take decisions in respect of the governance of SDAC and Joint Matters. For the avoidance of any doubt, decisions on matters that relate to SIDC only shall be governed by the IDOA.

With respect to Joint Matters, in case of contradiction between the Agreement and the IDOA, the MCSC shall decide on how this contradiction shall be solved.

12.2 As far as the SDAC is concerned, the MCSC shall comprise representatives of the Parties with all necessary power and authority to take decisions binding upon their respective entity, in accordance with this Article 12 and Annex 4 (Rules of Internal Order).

The MCSC is empowered to discuss and decide on:

1/ Joint Matters;

2/ any matter related to the operation and (without prejudice to the application of Article 25) adaptations of the SDAC;

and

3/ any other matter for which it is expressly made competent pursuant to any other provision of the Agreement, in accordance with the RIO of the MCSC, as set forth in Annex 4 (Rules of Internal Order).

On an exceptional basis, governance can also be carried out by the High Level Meeting ("**HLM**") being the governance body comprising the Parties' (and, as the case may be, the signatories of the IDOA) chief executive officers or any other representative of a Party at executive level with all necessary power and authority to take decisions binding upon their respective entity concerning any aspect of the Cooperation. The HLM shall, as an escalation body and only in case of deadlock at MCSC level, deal with questions where the MCSC cannot come to a decision as provided by in this Article 12. In addition, the HLM shall perform the specific tasks attributed to it in this Agreement.

12.3 The MCSC has the authority to create sub committees or working groups, which may be granted delegated authority by the MCSC. In such event, the MCSC determines the composition and the modalities of the functioning of such subcommittee or working group. The working groups may require beside the participation of TSOs and NEMOs, also the participation of the service provider.

12.4 In the SDAC, at least the following listed subcommittees shall be effective:

- The Operations Committee (OPSCOM): The MCSC delegates powers to the OPSCOM as defined under the RIO of the OPSCOM set forth in Annex 4;
- The Incident Committee: The Incident Committee performs the tasks as defined under the RIO of the Incident Committee set forth in Annex 4.

12.5 Decisions of the HLM and of the MCSC, and of any new decision making bodies created pursuant to Article 12.3 on the subjects for which they are empowered as described in the Agreement, shall be taken unanimously, as further described below (and unless expressly agreed upon otherwise in writing by the Parties) and shall be binding on all Parties. All Voting Members from NEMOs shall collectively have one (1) vote, and all Voting Members from TSOs shall collectively have one (1) vote, as all further detailed in article II.3 of Annex 4 (Rules of Internal Order).

12.6 For the avoidance of doubt, adoption of terms and conditions or methodologies under article 9 CACM are not governed by this Article 12. However, decisions to be taken by MCSC which implement, or follow from, SDAC-related terms and conditions or methodologies under article 9 CACM fall within the scope of this Agreement.

12.7 All Voting Members shall be duly represented at all MCSC meetings.

Parties shall exercise their voting rights in the HLM and MCSC in accordance with Article 4.1.4. Except in case of non-compliance with Article 4.1.4 of the Agreement, the fact that the HLM and/or MCSC cannot make a unanimous decision cannot be considered as a breach of the contract, and therefore not be basis for any legal dispute or proceeding (litigation or arbitration)..

12.8 **Categories of decisions** :

The following categories of decisions can be adopted by the MCSC, the HLM, or of any other body created by the MCSC pursuant to Article 12.3:

i) **"Governance and Development Decisions**" which shall refer to any decision in the context of the SDAC, based on this Agreement and/or of the Joint Governance, with the exception of Operational Decisions. Such Governance and Development Decisions shall include but are not limited to: organizational decisions, approval/changes of common costs, budget, contracts, communications, requests for

change related to new features, changes/development of assets, decisions with financial impacts on the Parties.

ii) **"Operational Decisions"** which shall refer to decisions or actions taken in the day-to-day operation of the SDAC under this Agreement, needed for the well-functioning of the operations and/or having an impact on such operations. 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 Operational Procedures;
b) Resolution of incidents;
c) NEMOs-TSOs Common Costs of operating SDAC, unless Non-Operational Parties are to share such costs in which case it will be a decision concerning both Operational and Non-Operational Parties, to be treated as a Governance and Development Decision for voting purposes under Article 12.8 ;
d) Change requests towards the service providers or under the 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); and
e) Decisions related to Go-Live.

12.9 **Voting Members**:

The rules below set forth which Party shall be considered as Voting Member at a meeting of the MCSC, the HLM, or of any other body created by the MCSC pursuant to Article 12.3 :

i) With respect to Governance and Development Decisions, all Parties shall be considered as Voting Members; or

ii) As regards Operational Decisions, only Operational Parties shall be considered as Voting Members.

All Parties may participate in the discussions and vote for decisions of the OPSCOM which are not Operational Decisions. Only Operational Parties may vote for Operational Decisions of OPSCOM in accordance with Annex 2 (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 Request for Change in accordance with Annex 3.

12.9.2. Only Operational Parties may attend the Incident Committee.

12.10 **Protection of the interests of the Non-Operational Parties**

12.10.1. In the event that a decision of the Operational Parties taken pursuant to Article 12.10 ii) in application of article 3.5 of Annex 4 (Rules of Internal Order) has or is likely to have a material adverse effect on the interests of one or more Non-Operational Party(ies), the affected Non-Operational Party(ies) shall be entitled to raise its/their concerns in respect of such decision to the MCSC. In such event the affected Non-Operational Party(ies) shall submit a written notice to the MCSC within five (5) Working Days from the date on which the Operational Parties' decision was made available to the Non-Operational Party(ies), together with an explanation of the alleged material adverse effect. In case more than one Non-Operational Party is affected, the notice can be submitted jointly.

12.10.2. Operational Parties shall have the obligation to consider in good faith the concerns raised by the affected Non-Operational Party(ies) pursuant to Article 12.11.1. In deviation from Annex 4, the MCSC must meet within four (4) Working 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 Parties in the MCSC and the Non-Operational Party(ies) in the MCSC who submitted the notice pursuant to Article 12.11.1. Should the MCSC not solve the escalated decision in such

meeting, the escalated decision shall be subject to Article 26. The disputed decision can only be suspended until the Dispute is solved if the MCSC 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 Parties' right to attend the MCSC and HLM meetings.

12.10.3. The Parties agree that an Operational Decision or a Regional Operational Decision will be deemed, inter alia, to have a material adverse effect on the interests of the Non-Operational Parties in the following cases:

[redacted]

12.11 **Minutes**

Minutes shall be provided to all Parties regardless whether Voting Member or not, in accordance with the Annex 4 (Rules of Internal Order).

## Article 13–Accession

13.1 Any NEMO or TSO within the scope of application of CACM that is not a Party to the Agreement is entitled to become a Party to the Agreement through accession by signing the Accession Form included in Annex 9 without any further condition, except for the obligation for the acceding Party to:

i) pay its share of the historical costs (if any) as mentioned in Annex 9;

ii) adhere to or put in place all other agreements or arrangements required for a NEMO respectively a TSO to be able to perform its obligations under the Agreement.

13.2 Any power exchange or TSO outside the scope of application of CACM but which is established in a country member of the European Economic Area, or of the European Free Trade Association, or of the Energy Community, or in a country which has exited the European Union or the European Economic Area (e.g. such as in the case of "Brexit"), or in any other country covered by a relevant European Commission decision can become a Party to this Agreement, provided that:

- there is an intergovernmental agreement enabling such power exchange or TSO to participate to the SDAC;
- a MCSC decision allows for this accession (such decision not to be unreasonably withheld, conditioned or delayed), and
- only if:

i) the acceding Party complies with legal or regulatory requirements (e.g. an intergovernmental agreement with the EU), if any, to enter into the Agreement;

ii) the relevant NRA(s) or other competent authority(ies) (both from the perspective of the Parties and of the power exchanges or TSOs requesting the accession) approve the accession or did not object to the accession;

iii) a roadmap to join the SDAC operation on a midterm basis has been agreed by the Parties and the acceding Party;

iv) the acceding Party pays its share of the historical costs (if any) as mentioned in Annex 9; and

v) the acceding Party has adhered to or has put in place all other agreements or arrangements required for a NEMO respectively a TSO to be able to perform its obligations under the Agreement.

13.3 Such accession will be made through signing the Accession Form included in Annex 9 (Accession Form) of the Agreement.

13.4 Power exchanges or TSOs outside the scope of application of Articles 13.1 and 13.2 cannot become a Party, but can apply for an Observer status pursuant to Article 14.

13.5 The NEMO, power exchange or TSO that has acceded to the Agreement shall start as a Non-Operational Party.

## Article 14–Observer status

14.1 Any NEMO, power exchange or TSO, either within or outside the scope of application of CACM, can, upon written request to the MCSC, be granted the status of Observer for the purpose of acceding at a later stage to the Agreement, either by:

i) a MCSC decision acknowledging the Observer status in case of a NEMO or TSO within the scope of application of CACM, provided the non-disclosure agreement mentioned in Article 14.2 is signed (such non-disclosure agreement being the only condition required); or

ii) a decision of the MCSC, if the power exchange or TSO requesting the status of Observer has its registered office in a third party country outside the scope of application of CACM, in which case the MCSC can subject the status of Observer to further conditions to the extent compatible with applicable Legal Provisions or intergovernmental agreements in addition to the signing of the non-disclosure agreement mentioned in Article 14.2.

14.2 The granting of the status of Observer is subject to the signature of the Global NDA or of a confidentiality agreement with substantially similar terms and conditions as the Global NDA by the NEMO, power exchange or TSO requesting the status of Observer.

14.3 The NEMO, power exchange or TSO that has been granted the status of Observer may be granted access to certain documentation on the SDAC as decided from time to time by the MCSC and may be entitled to

participate to certain meetings as decided by the MCSC. For the avoidance of doubt an Observer has no voting rights.

## Article 15–Cost sharing, monitoring and settlement

Cost sharing, reporting, settlement and invoicing, and, as the case may be, recovery under this Agreement shall be done in accordance with CACM and the details set forth in Annex 6.

## Article 16–External communication

16.1 **Scope**

Without prejudice to (i) Article 20, (ii) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, and (iii) Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets, the principles under this Article 16 shall apply to external communication in all forms relating to any subject in the framework of this Agreement or related to SDAC.

The Parties may deviate from this Article 16 only if necessary to comply with applicable mandatory laws and regulations.

16.2 **General Principle**

The Parties shall be free to express written or oral positions or opinions about all SDAC related matters in their own name, provided that 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 Party(ies) unless they have been explicitly mandated to do so in writing.

The Parties shall communicate at all times correct and accurate information.

In the event a communication by a Party does not comply with this Article, the other Parties are entitled to request such Party to publicly correct its communication, without prejudice to any other rights or remedies under this Agreement or by law (such as but not limited to its right to claim compensation in accordance with Article 23). Upon receipt of such valid request, such Party shall forthwith correct its communication publicly in accordance with the request.

16.3 **Joint Communication**

16.3.1. The MCSC shall decide on the channel via which joint communications (i.e. communications made by or in the name of all the Parties) are made to the public and to the market participants. Each joint communication shall bear a common SDAC logo, if available. Joint communications shall only take place after approval by the MCSC of the content of the communication. The MCSC shall also agree, for any joint communication, on the date and hour at which the joint communication is effective.

16.3.2. The Parties shall communicate jointly on, at least, the following events:

- major incidents regarding the SDAC
- SDAC operation suspensions or interruptions;
- extension of SDAC to other countries or region;
- Exit of (a) Party(ies);
- termination;
- other events for which a joint communication is judged necessary by the MCSC.

16.3.3. Operational communication messages are dealt with in the relevant procedure set forth in Annex 2.

16.3.4. A Party may communicate individually to third parties on the issues which are subject to joint communication if such individual communication is urgently needed.

## Article 17–Voluntary Exit / Forced Exit / Suspension SDAC

17.1 In the Agreement, the term "**Exit**" shall mean the event in which a Party terminates on its own initiative its participation to the Agreement in accordance with Article 17.2 or the event in which the concerned Party is excluded from the participation to the Agreement in accordance with Article 17.3, and the verb "to Exit" is to be construed accordingly.

17.2 **Voluntary Exit**

17.2.1. One or more Party(ies) may exit from this Agreement (hereinafter, the "**Exiting Party**") at any time, whatever the reasons for its exit, whether legal, regulatory or any others without any court intervention and without any compensation being due for the exit, without prejudice to any outstanding payment obligations under this Agreement.

17.2.2. The Exiting Party shall notify the MCSC of its wish to exit the cooperation. The MCSC cannot refuse the Exit of the Exiting Party. The MCSC shall meet within two weeks after the notification from the Exiting Party in order to assess the Exit Plan of the Exiting Party according to Article 17.5.2. The consent of the Exiting Party shall be required with respect to the approval of the Exit Plan. In particular, the MCSC shall assess the timescales within which the Exit shall occur. Except if decided otherwise by the MCSC, with the consent of the Exiting Party, the following timescales shall apply by default:

i) in the event of Force Majeure, subject to Article 24.6;

ii) in the event of Hardship, in case of failure to reach an agreement with regard to the modification of the Agreement according to Article 25.3, subject to three (3) months as from the notification of the Exiting Party;

iii) 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 25.2, subject to three (3) months as from the notification of the Exiting Party;

iv) in the event of a Dispute as set forth in Article 26.3 & 26.4. of this Agreement, where such Dispute is not related to Article 25.2 or Article 25.3, subject to three (3) months as from the notification of the Exiting Party;

v) to the extent compatible with applicable law, in the event of bankruptcy or any other insolvency proceeding, dissolution or liquidation of such Exiting Party upon one (1) month as from the notification of the Exiting Party;

vi) in the event of an order of competent regulatory, administrative or judicial authorities to end the participation of a Party to the SDAC, upon one (1) month from the notification of the Exiting Party;

vii) in the event of exit of the Exiting Party from its relevant Local Arrangements upon three (3) months from the notification of the Exiting Party;

viii) in the event of full termination of all the Exiting Parties from their relevant Local Arrangements upon three (3) months from the notification sent by the steering committee of such region; and

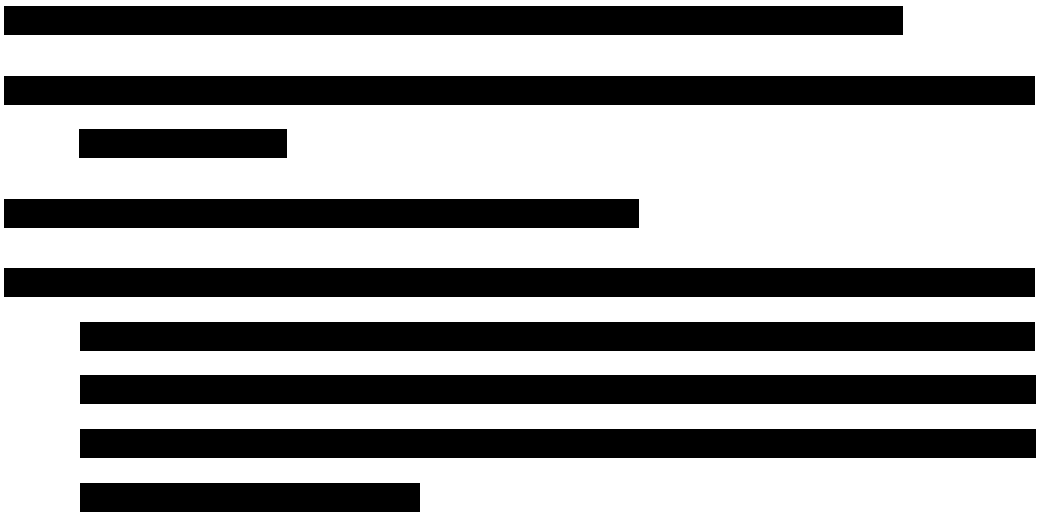
ix) in all other cases, upon twelve (12) months as from the notification of the Exiting Party.

Should any of the above terms be shortened due to an applicable Legal Provision, this shortened term shall apply.

17.3 **Forced Exit / Suspension**

Without prejudice to Article 26, a Party's rights and obligations under the Agreement may be suspended or a Party may be forced to Exit the Agreement, without any court intervention, if decided so by the MCSC

in consultation with the relevant NRAs and with an effective date and duration as decided by MCSC (it being understood that the concerned Party will be able to defend its case but not take part to the vote on its Exit or suspension) in the following circumstances:



Without prejudice to Article 26, the consequences of the suspension and any forced Exit shall be decided by the other Parties than the Party concerned by the suspension or forced Exit, in consultation with the relevant NRAs. The consequences will be laid down in the Exit Plan.

For the avoidance of doubt dispute settlement does not affect the effectiveness of the MCSC decision. However the MCSC (it being understood that the concerned Party will not take part to the decision in this respect) may decide to suspend the decision under this Article 17.3 in case of dispute settlement (Article 26).

17.4 **Exit as a consequence of its Member State exiting the EU/EEA**

In the event a Party intends to Exit the Agreement as a consequence of its Member State withdrawing from the European Union or European Economic Area (e.g. such as Brexit), the following principles shall apply:

1) the Exiting Party shall give, at least three (3) months prior notice to the MCSC of such Exit;

2) Upon receipt of such notice the exiting Party shall be released from its obligations under this Agreement as of the date the Exit becomes effective;

3) The Exiting Party shall continue to remain responsible for its share of payment obligations up to the date of Exit (meaning its share of all costs – operational and development – including costs that were invoiced prior to the date of Exit, even though the due date of such invoices might be after the date of Exit). For the avoidance of doubt, the Exiting Party shall not be responsible for any future payment obligations after such date of Exit. A final invoice shall be raised setting out such payment obligations immediately after the date of Exit and shall become payable by the Exiting Party thereafter.

4) For the avoidance of doubt, Article 17.5 shall continue to apply but the Exit Plan should in no way change the date of Exit as set out in sub paragraphs 1) and 2) above, nor impact any of the financial provisions hereunder.

17.5 **Exit Plan and Consequences of Exit**

17.5.1. In case of an Exit, the remaining Parties shall ensure as reasonably as possible the continuity of the SDAC.

17.5.2. In such case, the MCSC shall define an exit plan, setting forth the actions and measures to be taken to ensure continuity (the "**Exit Plan**"). The Exit Plan shall take into account the consequences of the Exit, including, but not limited to, the following:

- assessment of the changes to be taken, for pursuing the SDAC without the Exiting Party(ies) or, as the case may be, without the Region(s) of the Exiting Party(ies);
- assessment of cost related to such Exit and recovery thereof;
- continuity of the SDAC shall be ensured as reasonably as possible; and

- Exit shall be as smooth as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties.
- the concrete date on which the Exit shall become effective, according to the abovementioned timescales.

The Exiting Party shall, in accordance with this Exit Plan, assist the remaining Parties to enable continuity of the SDAC and to enable migration of the services it performs or the documentation/information it provides.

17.5.3. The Exiting Party shall in no event object to the solutions implemented by the remaining Parties to ensure the continuity of the SDAC, including the granting of rights on any joint asset to any new party appointed to take over the services performed by the Exiting Party.

17.5.4. Until the Exit becomes effective, the Exiting Party shall have the right to vote on all matters having financial impact on itself and/or all matters related to daily operations on the agenda of the MCSC or of other committees. For other matters, the Exiting Party shall not be entitled to vote unless the MCSC decides otherwise or unless the vote has direct consequences for the Exiting Party.

17.5.5. As of the date on which the Exit has become effective as determined in the Exit Plan in accordance with Article 17.5.2, any co-owned (Intellectual Property) (R)rights of the Exiting Party pertaining to joint developments or any right of the Exiting Party to use data and systems under the Agreement and the jointly owned developments, shall automatically terminate for such Exiting Party, 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.

17.5.6. In case of Exit, all Parties are authorized to communicate about this Exit with their NRA (and ACER as the case may be) without this constituting a breach confidentiality.

[redacted]

## Article 19–Regulatory aspects and handling of requests from competent authorities

19.1 In cases where (a) request(s) from competent authority(ies) concerning or falling in the scope of the Agreement and affecting the other Parties, is/are received by one or several Parties, the Party(ies) shall inform the other Parties of the content of such request(s).

19.2 A Party shall cooperate to respond adequately, consistently and promptly to a request for information another Party receives from any competent authority (administrative, judicial or other) in relation to the Agreement or to the SDAC including when such request for information relates to several Parties. In such event the relevant Party shall provide the other Party(ies) upon its/their request with the relevant information it detains subject to the application of the relevant provisions of Article 20. A Party may object to providing information or narrow down the

information to be provided to the extent the authority requesting the information has no competence over such Party.

19.3 Should a request from competent authority(ies) lead to the need to amend the Agreement, Article 25.2 shall be applicable. In case such request leads to a change as defined in Annex 3, this Annex 3 applies.

19.4 In case a Party would like to align in the MCSC on a request from (a) competent authority(ies) concerning or falling in the scope of the Agreement and affecting the other Parties, the MCSC shall, at request of such Party, discuss the point as soon as possible.

## Article 20–Confidentiality

20.1 **Confidential Information**

For the purpose of this Article, the term "**Confidential Information**" means any information whether or not marked as confidential exchanged between the Parties in the context of the SDAC in any form whatsoever (verbal, written, electronic or other), such as, but not limited to, technical, financial, commercial, testing and/or operating data as well as the content of the Agreement.

20.2 **Non-Disclosure of Confidential Information**

20.2.1. The Receiving Party(ies) shall not:

(i) disclose, convey or transfer to any third party Confidential Information in any form whatsoever without the express, prior written consent (including email) of the Disclosing Party(ies);

(ii) use the Confidential Information in any way or for any purpose other than the Permitted Purpose unless such other use is previously and specifically authorised in writing (including email) by the Disclosing Party(ies);

(iii) incorporate Confidential Information into data, documents, databases, or any other medium save to the extent necessary for the Permitted Purpose unless the Disclosing Party(ies)

gives its prior written explicit consent (including email) to this incorporation; and/or;

(iv) copy nor reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the Permitted Purpose.

20.2.2. By derogation to Article 20.2, the Receiving Party(ies) is (are) entitled to disclose Confidential Information in the following limited exceptional situations:

(i) if it demonstrates to the satisfaction of each Disclosing Party by written evidence that the information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards each Disclosing Party. The concerned Disclosing Party(ies) shall, within seven (7) Working Days, inform the Receiving Party(ies) that it may disclose the Confidential Information on the basis of this Article 20.2.2. (i). Upon expiry of this time limit, the consent of the concerned Disclosing Party(ies) to the disclosure shall be deemed as granted;

(ii) if it demonstrates to the satisfaction of each Disclosing Party by written evidence that the Confidential Information has come into the public domain through no fault or negligence of the Receiving Party(ies). The concerned Disclosing Party(ies) shall, within seven (7) Working Days, inform the Receiving Party(ie)s that it may disclose the Confidential Information on the basis of this Article 20.2.2 (ii). Upon expiry of this time limit, the consent of the concerned Disclosing Party(ies) to the disclosure shall be deemed as granted;

(iii) in the event the disclosure is required by law or by a competent authority provided that the conditions of Article 20.4 are fulfilled;

(iv) in the event of disclosure to its Internal Representative(s) and/or to its External Representative(s) provided that the following conditions are met:

(a) the Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be related to the Permitted Purpose;

(b) the Internal Representative or an External Representative is informed by the Receiving Party(ies) of the confidential nature of the Confidential Information;

(c) the Internal Representative or an External Representative is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement;

(d) the Receiving Party(ies) has sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorised use and/or disclosure of such Confidential Information by its Internal and/or External Representatives to whom Confidential Information is disclosed;

(e) the Receiving Party shall remain fully liable (subject to the liability rules further set forth in Article 20.5 of this Agreement) in case of breach by its Internal and/or External Representatives; and

(v) disclosure of Confidential Information to parties of the IDOA in the context of the Joint Governance ;

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

In the event of doubt as to the fulfilment of the conditions under which Confidential Information may be disclosed pursuant to this Article 20.2.2, Confidential Information shall not be disclosed.

Each Party may disclose data or grant access to data to third parties in compliance with Article 11, it being understood that it shall ensure that such third party complies with the confidentiality obligations under this Article 20 and remains fully liable (subject to the rules further set forth in Article 20.5) in case of breach by such third party of these confidentiality obligations.

20.2.3. The Receiving Party(ies) shall:

(i) immediately notify the Disclosing Party(ies) in writing (including e-mail) in the event of any unauthorised use or disclosure of the Confidential Information and take all reasonable steps to mitigate any harmful effects the Disclosing Party(ies) may sustain or incur as a result of such a breach of this Agreement;

(ii) at the first written request of a Disclosing Party, immediately, and in any case no later than ten (10) Working Days after receipt of the written request (including e-mail) return and/or destroy at the choice of the Receiving Party(ies) all Confidential Information received in the framework of this Agreement except in cases of Article 20.2.2 (i) to Article 20.2.2 (iii) and except that a copy may be kept:

(a) in the event of a national Legal Provision obligation incumbent on the Receiving Party(ies) to transfer its archives, including Confidential Information, to the state archives, from which it cannot deviate;

(b) if necessary to comply with mandatory record-keeping obligations (i.e. obligations set up by national law and/or EU law) incumbent on the Receiving Party(ies) from which it cannot deviate; or

(c) if the destruction of automatically generated back-up files would involve a disproportionate effort provided that the content of these back-up files is not disclosed to any person and the Receiving Party(ies) undertake(s) to destroy all back-up files in the routine deletion of back-up files.

Furthermore, the Receiving Party(ies) shall inform the Disclosing Party(s) in writing if it intends to invoke any of the exceptions listed above under (a) to (c) and demonstrate to the satisfaction of each Disclosing Party that the conditions of the relevant exception are met.

(iii) indemnify the Disclosing Party(ies) in accordance with Article 20.5 of this Agreement.

20.2.4. The Receiving Party(ies) shall take all necessary and appropriate measures and procedures to enforce and maintain the protection of Confidential Information and to prevent any disclosure of it.

20.3 **Return or destruction of Confidential Information**

20.3.1. In case of termination of this Agreement, the Receiving Party(ies) shall return the Confidential Information to the Disclosing Party(ies) or destroy it, except that a copy may be kept:

(i) in the event of a national mandatory statutory law obligation incumbent on the Receiving Party(ies) to transfer its archives, including Confidential Information, to the state archives, from which it cannot deviate;

(ii) if necessary to comply with mandatory (i.e. obligations set up by national law and/or EU law) record-keeping obligations incumbent on the Receiving Party(ies) from which it cannot deviate; or

(iii) if the destruction of automatically generated back-up files would involve a disproportionate effort provided that the content of these back-up files is not disclosed to any person

and the Receiving Party(ies) undertake(s) to destroy all back-up files in the routine deletion of back-up files.

20.3.2. In case of destruction, the Receiving Party(ies) shall confirm the destruction of the Confidential Information in writing (including emails). Furthermore, the Receiving Party(ies) shall inform the Disclosing Party(ies) in writing if it (they) intend(s) to invoke any of the exceptions listed in Article 20.3.1 (i) to (iii) and demonstrate to the satisfaction of each Disclosing Party that the conditions of the relevant exception are met.

20.4 **Disclosing to authorities under applicable laws and regulations**

20.4.1. If the Receiving Party(ies) is (are) requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or pursuant to the rules of a recognised investment exchange or if the Receiving Party(ies) consider(s) itself (themselves) to be under a legal obligation to disclose all or part of the Confidential Information it (they) may disclose Confidential Information provided that in such case the Receiving Party(ies) shall, to the extent possible and compliant with applicable Legal Provisions:

(i) immediately and in any case prior to proceeding with any disclosure, notify the Disclosing Party(ies) of the existence, terms and circumstances surrounding such request or legal obligation;

(ii) consult with the Disclosing Party(ies) on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the Disclosing Party(ies) to take such legal steps itself, and exercise its Best Efforts to agree with them on the content and form of the Confidential Information to be disclosed; and

(iii) if disclosure of such Confidential Information is required, use

its (their) Best Efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed.

20.4.2. The Parties are aware of the fact that certain Party(ies) in e.g. the Czech Republic, Denmark, Finland, Norway, Romania, Slovak Republic, Slovenia and Sweden; 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 20, 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.

20.4.3. Each Receiving Party is entitled to voluntarily disclose Confidential Information to its NRA provided that:

(i) such NRA is informed by the Receiving Party of the confidential nature of the Confidential Information and that such NRA cannot disclose it to any third party; and

(ii) the Disclosing Parties shall be informed by the Receiving Party about such disclosure; and

(iii) such Confidential Information remains within the scope of their relevant project and does not contain market data of any

other Parties, nor any draft documents.

20.5 **Liability in respect of Confidentiality**

20.5.1. The Receiving Party(ies) acknowledge(s) and agree(s) that the Disclosing Party(ies) shall have no liability with respect to the use by it of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Disclosing Party(ies) and the Receiving Party(ies), or a subset of them.

20.5.2. The Receiving Party(ies) acknowledge(s) and agree(s) that, in case of a breach by it of any of its confidentiality obligations under the Agreement, the Disclosing Party(ies) shall be entitled to cease immediately the disclosure of any further Confidential Information and the Disclosing Party(ies) shall be entitled to claim compensation from the Receiving Party(ies) for any and all direct losses, damages, charges, reasonable fees or expenses, expected and unexpected, arising out, or resulting from, such breach of the confidentiality obligations under the Agreement. A Receiving Party having breached its confidentiality obligations under the Agreement shall indemnify each Disclosing Party(ies) for proven damage incurred, it being understood however that in no event the total indemnification obligation due by it shall exceed [redacted] and that the total cap mentioned in Article 23.4 applies also for this indemnification obligation. The foregoing liability limitation does not apply in the event of gross negligence, fraud or intentional breach by the Receiving Party, in which cases the indemnification obligations shall be uncapped. In no event a Receiving Party shall be liable for consequential or indirect damages, such as loss of profit, loss of business, reputation damage or incidental damages of any kind, except in the event of gross negligence, fraud or intentional breach by the Receiving Party, in which cases the indemnification obligations shall also cover such consequential or indirect damages. If, at any point in time during a

given year, the sum of all damages exceeds the amount of the liability cap of [redacted], the compensation payable to the Party(ies) suffering damages shall be reduced pro rata.

A Party suffering a damage caused by the same damageable event, constituting a breach of the confidentiality obligations under both the Agreement and the IDOA in the context of the Joint Governance, cannot be compensated twice under both the Agreement and the IDOA (i.e., no cumulative application of the liability provisions set forth in both agreements).

20.5.3. The Receiving Party(ies) shall hold the Disclosing Party(ies) harmless and indemnify it (them) against any third party claim, directly and exclusively related to a proven breach by a Receiving Party of its confidentiality obligations under the Agreement, subject to the liability limitations as set forth in Article 20.5.2.

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

20.5.5. Exchange of Confidential Information does not affect ownership of rights, title and interest in and to the Confidential Information, which shall be retained by the Disclosing Party(ies).

20.5.6. This Agreement shall not be construed as granting the Receiving Party(ies) any license right or any other right related to the Confidential Information provided by the Disclosing Party(ies) and its future use, except to the extent as set out in this Agreement, or unless such is agreed upon in a separate, written, specific and signed agreement.

## Article 21–Entry into force

21.1 The Agreement entered into force on 28 March 2019. Any amendment which requires a written signature of all Parties through an amendment agreement as mentioned in Article 25.1, shall enter into force at the date mentioned in the respective amendment agreement, provided the amendment agreement has been signed by all Parties.

21.2 Parties agree that the Agreement can be validly proven by:

i) As regards the main text of the Agreement: the original initial version of the Agreement or original of any formal amendment signed by all Parties

ii) As regards the Exhibits and Annexes attached to the initial Agreement : [redacted];

iii) [redacted].

[redacted]

The original signed paper versions of the main text of the Agreement (or in case of formal amendment, of the amendment agreement) shall, in case of deviation or contradiction, prevail over any electronic version thereof.

21.3 This Agreement is concluded for an indefinite period of time.

## Article 22–Termination

This Agreement may be terminated at any time by written agreement of all Parties, without any court intervention and without any compensation being due (to the exception of payment of remaining payment obligations under this Agreement). In case of termination, the MCSC shall decide on the implementation of the termination. In doing so, it shall duly inform the market participants and the competent regulatory authorities. To the extent required by applicable law, termination shall not take effect until all relevant regulatory authorizations have been obtained.

## Article 23–Liability

### 23.1 Generalities - No joint and several liability

23.1.1. With respect to Operational Liability, if NEMO Only Agreements, TSO Only Agreements or Local Arrangements provide operational procedures and liability provisions related to a specific obligation thereof, only such provision shall apply in case of a breach of such specific obligation [redacted].

23.1.2. Except otherwise stipulated in this Agreement (e.g. Article 28), each Party is liable for its own commitments only and Parties shall not

bear joint and several liability ("geen hoofdelijkheid/pas de solidarité").

23.1.3. This principle shall also be applicable in case of commitments jointly undertaken by the Parties or a subset of them, it being understood however and for the avoidance of doubt, that in such circumstances:

(a) a proven breach of a jointly undertaken commitment, irrespective of any division of tasks between the Parties jointly undertaking the commitment, constitutes a breach by each of the Parties jointly undertaking that commitment; and

(b) any indemnification due as a result of such claim(s), shall be divided in equal parts between the Parties having jointly undertaken the concerned joint commitment and each of such Parties shall only be held to pay such part to the claiming Party(ies). No single Party can be held to pay the whole amount for the other Parties having jointly undertaken the concerned commitment and it is up to the Parties having jointly undertaken the concerned commitment to organise recovery between them, by way of NEMO Only Agreements and TSO Only Agreements respectively, or Local Arrangements, as the case may be.

23.1.4. A Party suffering a damage caused by the same damageable event, constituting i) a breach (whether by act or omission) of an obligation under both the Agreement and the IDOA or ii) a breach of an extra-contractual duty (whether by act or omission) arising in the context of the Agreement and of the IDOA, cannot be compensated twice under both the Agreement and the IDOA (i.e., no cumulative application of the liability clauses set forth in both agreements).

## 23.2 Liability between the Parties

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

23.2.2. For the avoidance of doubt, to the extent that no obligation under Annex 2 has been breached, decoupling shall not be considered as a breach of the present Agreement. Parties acknowledge that fall-back procedures have been designed by the Parties and shall apply in case of decoupling and are considered a satisfactory solution by the Parties in case of decoupling.

23.2.3. Except in the event of fraud or intentional breach, the indemnification obligations of each Defaulting Party shall at all times be limited to an amount of [redacted] per calendar year for any negligence and default, and [redacted] per calendar year in the event of gross negligence and gross default, irrespective of the number of breaches and the number of Parties suffering damage, provided always that a Defaulting Party's liability under this clause shall in no case exceed [redacted] per calendar year.

23.2.4. Except in the event of fraud or intentional breach, the Parties shall not be held liable for any indirect, immaterial, incidental or consequential damages.

23.2.5. If the sum of all damages exceeds the amount of the liability limitation in Article 23.2.3, the compensation payable to the Party(ies) suffering damages shall be reduced pro rata.

23.3 **Third party claims**

23.3.1. In case a Party receives a claim for damages suffered by a third party and resulting directly from the act or omission of any other Defaulting Party, it shall:

i. notify promptly the other Party(ies) in writing of any such claim or of any matters in respect of which such third party claim may apply and keep them informed of the proceedings; and

ii. fully cooperate with the Defaulting Party in such response and defense as reasonably required.

[redacted]

[redacted]

[redacted]

[redacted]

23.3.5. When the third party claim is not based on a contract but on tort (extra-contractual liability), 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 right of defense of the Defaulting Party shall be duly observed.

23.3.6. When the third party claim is not based on a contract but on tort (extra-contractual liability), the defendant Party shall not approve any proposed settlement without the agreement of the Defaulting Party. This agreement shall not be unreasonably withheld, conditioned or delayed.

## 23.4 Total Cap

[redacted]

## 23.5 Mitigation Obligation

The Defaulting Party(ies) and the Party(ies) suffering damage shall mitigate damage occurring, in particular, but not limited to, damage towards market participants.

23.6 **Subrogation**

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

## Article 24–Force Majeure

24.1 Without prejudice to article 72 of CACM, no Party shall be liable for delay or failure in fulfilling its obligations under this Agreement or non-compliance with this Agreement if the delay, failure or non-compliance result(s) from Force Majeure.

24.2 Upon occurrence of Force Majeure, the Party(ies) seeking protection under this clause shall notify the other Parties in writing as soon as possible. The notice shall contain a description of the event constituting Force Majeure, of the obligations that the notifying party can no longer perform, of the steps it is taking to overcome the effects of the Force Majeure event and of the probable duration of this event of Force Majeure.

24.3 The obligations of the Party(ies) affected by Force Majeure shall be suspended for the period during which the Force Majeure lasts.

24.4 The Party(ies) invoking Force Majeure shall take all measures which may reasonably be required to resume the performance of its (their) obligations under this Agreement as quickly as practicably possible.

24.5 The Parties shall, if necessary, jointly examine the measures to be taken to limit the effect of Force Majeure.

24.6 If Force Majeure continues for two (2) consecutive months following the notice under Article 24.2, the Party(ies) that has invoked Force Majeure shall be entitled to exit from this Agreement (under the terms and conditions of Article 17) immediately upon notice to be notified in writing and provided that it demonstrates that:

(a) the event of Force Majeure invoked in the notice under Article 24.2 prevents the performance by it of its obligations under this Agreement which are to be considered as essential obligations under this Agreement; and

(b) it(they) has(have) taken all reasonable measures to remedy such Force Majeure but it is impossible to remedy it by such reasonable measures.

## Article 25–Agreement modifications

### 25.1 General principles

The amendment or modification of the following is subject to the written signature of all Parties through a formal amendment agreement in order to be effective and binding:

i) The main body of the Agreement;

ii) Annex 1;

iii) Annex 4 except as concerns its Appendix 1, as mentioned hereafter;

iv) Annex 8 (without prejudice to the below regarding amendments to its Exhibits).

The MCSC is entitled, subject to a MCSC decision in compliance with Article 12 and subject as the case may be to Annex 3 (Change Control Procedure) to amend or modify any other Annex and Exhibits to Annex 8, and the timelines in Appendix 1 of the Annex 4 (Rules of Internal Order). In addition, subject to compliance with Annex 3 (Change Control Procedure), the bodies mentioned to do so in such Annex 3 (Change Control Procedure) are entitled to change the documents mentioned in this Annex 3 (Change Control Procedure) to the exclusion of Annex 3 (Change Control Procedure) itself.

The MCSC is entitled to create new Annexes subject to a MCSC decision in compliance with Article 12 and subject as the case may be to Annex 3. The MCSC shall thereafter be entitled to change such Annex subject to the same modalities, except if expressly otherwise provided in this Annex that it can only be amended through a formal amendment agreement.

Annex 5 and Annex 11 (Controller Information Clause) may be amended or modified by way of written notification by the concerned Party to the MCSC (via the MCSC Secretary).

If a decision of the MCSC or HLM, taken according to Article 12 by Voting Members only, leads to an amendment of the Agreement subject to written signature, the Parties that were not a Voting Member are not entitled to block the amendment of the Agreement if it has not objected to such change in accordance with Article 12.10.

25.2 **Amendment due to Legal Provisions**

25.2.1. In the event an amendment of this Agreement is required pursuant to a Legal Provision (including changes thereof), the Parties to which such Legal Provision apply, shall assess and identify the impact of such Legal Provision on this Agreement and notify the other Parties to this Agreement as soon as reasonably possible. In this notification, it shall be set forth which Article of this Agreement is or will be affected by such Legal Provision and the reason(s) and background as to why an amendment of this Agreement is required.

25.2.2. The Parties performing the impact assessment as referred to in Article 25.2.1 shall make a proposal to the other Parties for the alternative wording in order to comply with such Legal Provision, which alternative wording shall, as far as reasonably possible, preserve the initial contractual equilibrium and economic effect of the Agreement. If such Parties cannot agree on the proposal for the alternative wording, the notification as stipulated in Article 25.2.1 shall be sent to the other Parties without such proposal.

25.2.3. Notwithstanding the obligations of the Parties under this Article, all Parties shall take all steps reasonably required to mitigate the effect of such Legal Provision.

25.2.4. Following the notification as referred to in Article 25.2.1 of this Agreement, the MCSC shall discuss and seek to agree in the next MCSC meeting the amendments necessary in order to comply with the principles set forth in Article 25.2.2.

25.2.5. In the event the MCSC cannot reach an agreement on the amendment of this Agreement within 20 Working Days or such other longer period as the MCSC may decide in order to comply with the Legal Provision, the subject matter will be considered as a Dispute and shall be settled in accordance with Article 26 of this Agreement.

25.3 **Amendment due to Hardship**

25.3.1. In the event an amendment of this Agreement is required on the basis of Hardship, the Parties affected by such Hardship shall notify the other Parties to this Agreement as soon as reasonably possible. In this notification, it shall be set forth which Article of this Agreement needs to be amended in order to avoid or cancel the Hardship and the reason(s) and background as to why an amendment of this Agreement is required.

25.3.2. The following shall not be considered as Hardship:

- adaptation due to introduction of requirements under CACM; and
- amendments pursuant to Article 25.2 of this Agreement.

25.3.3. The Parties which are affected by such Hardship shall make a proposal to the other Parties for the alternative wording in order to avoid or cancel the Hardship, which alternative wording shall, as far as reasonably possible, preserve the initial contractual equilibrium and economic effect of the Agreement. If such Parties cannot agree on the proposal for the alternative wording, the notification as

stipulated in Article 25.3.1 of this Agreement shall be sent to the other Parties without such proposal.

25.3.4. Notwithstanding the obligations of the Parties under this Article, all Parties shall take all steps reasonably required to mitigate the effect of such Hardship.

25.3.5. Following the notification as referred to in Article 25.3.1 of this Agreement, the MCSC shall discuss and seek to agree in the next MCSC meeting the amendments necessary in order to comply with the principles set forth in Article 25.3.3.

25.3.6. In the event the MCSC cannot reach an agreement on the amendment of this Agreement within 20 Working Days or such other longer period as the MCSC may decide in order to avoid or cancel the Hardship, the subject matter will be considered as a Dispute and shall be settled in accordance with Article 26 of this Agreement.

## Article 26–Dispute resolution

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

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

26.3 A referral for amicable dispute settlement by the HLM (the "**Referral**") shall be sent in writing by the claiming Party to all HLM members and shall at least contain the following information:

i) A description of the Dispute;

ii) The indication of the Party(ies) to whom it is addressed;

iii) The scope of the demand(s) or claim(s) of the Party referring the Dispute to the HLM;

iv) The legal basis of the demand(s) or claim(s); and

v) A proposal for settlement.

26.4 The HLM shall then appoint within five (5) Working Days amongst its members a person responsible for the amicable dispute settlement procedure. This person shall invite the Disputing Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) to be held within one (1) month of the date of the receipt of the Referral.

26.5 The HLM shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable dispute settlement procedure. The HLM may hear and/or request opinions of experts provided they are bound by confidentiality obligations at least equivalent to those in the Agreement.

In particular, the HLM shall:

i) assess the facts;

ii) assess the interests of the Disputing Parties in light of the objectives of the Agreement;

iii) in case of damage:

a) estimate the damage (and its nature and extent);

b) determine which Party(ies) suffered the damage;

c) assess which Party(ies) is (are) liable for the damage;

d) determine the extent and modalities of indemnification;

and

iv) formulate a proposal for settlement.

26.6 In the event that the HLM fails to achieve an amicable settlement within one (1) month or within a longer term if agreed by all Disputing Parties as of the receipt of the Referral, the Disputing Parties shall be notified thereof by the person responsible for the amicable dispute settlement

procedure (the "**HLM Failure Notice**"). The Disputing Party(ies) may submit its/their Dispute to:

i) the NRAs after agreement by MCSC, should the Dispute directly concern a regulatory issue such as the implementation of a regulatory Legal Provision. To the extent the Parties would receive a non-binding opinion from the NRAs ("the **NRA Opinion**"), the Disputing Parties shall endeavor to achieve an amicable settlement based on such NRA Opinion;

ii) ACER for a non-binding opinion (the "**ACER Opinion**") subject to an MCSC decision, should the Dispute directly concern a regulatory issue such as the implementation of a regulatory Legal Provision. Upon receipt of the ACER Opinion, the Disputing Parties shall endeavor to achieve an amicable settlement based on the ACER Opinion; or

iii) mediation under the ICC mediation rules, for any Dispute not referable or referred to NRAs or ACER pursuant to i) or ii) above or for any non-regulatory issue.

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

26.7 Any amicable settlement reached pursuant to Articles 26.2 to 26.6 shall be effective and binding upon the Disputing Parties, provided it is laid

down into a written settlement contract, signed by the Disputing Parties and the other Parties impacted by the amicable settlement (if any).

26.8 The Dispute shall be finally settled by arbitration under the ICC rules of arbitration should:

i) the Disputing Parties decide not to submit the Dispute to the NRAs, ACER or mediation;

ii) the Disputing Parties do not achieve a settlement based on the NRA Opinion or ACER Opinion within one (1) month of its receipt;

iii) the NRAs or ACER deny their competence to provide an opinion within a timeframe of one (1) month of their receipt thereto;

iv) after six (6) months after having initiated steps as set forth in Article 26.6, i) or ii) no opinion be received from the NRAs or ACER in the same timeframe; or

v) the Disputing Parties do not achieve a settlement through mediation within two (2) months from the appointment of the mediator.

26.9 The arbitral tribunal shall have three (3) arbitrators, regardless of the number of Parties involved and shall be appointed by the ICC court of arbitration. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the information and communication technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations.

The place of arbitration shall be Brussels, Belgium and all procedures and the arbitration award shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.

26.10 The Parties support, and shall, as the case may be, facilitate and take all steps necessary to allow joinder and/or consolidation of ICC arbitrations deriving from the Agreement and other related agreements,

where the Disputes are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.

Parties agree that claims related to Joint Matters may be determined together in a single arbitration to the extent permitted under the ICC rules.

26.11 Nothing in this Article 26 shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts of Brussels, Belgium. The application of a Party to a judicial authority for such measures or for the implementation of any interim or conservatory measures ordered by the arbitration tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitration tribunal. Any order or provision issued by the judicial authority must be notified without delay to the arbitrators.

26.12 For the purposes hereof, the Parties elect domicile at the addresses set forth on the identification description of the Parties at the beginning of the Agreement, or at a different address as may be designated by written notice.

## Article 27–Miscellaneous

27.1 **Contract management**

27.1.1. The Parties shall appoint an entity / person (which can be the same as the MCSC Secretary) to establish a common (online) storage place for keeping records of contractual documents (including meeting minutes and contracts with third parties) and to keep the common storage up to date (amongst others by collecting and storing all minutes, and any amended version of Annexes, or new Annexes as the case may be, pursuant to Article 25.1).

27.1.2. The costs of the contract management are Common Costs and shall be shared as set forth in the Agreement.

## 27.2 Notices

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

27.2.2. By derogations to Article 27.2.1, notices in case of urgent situation may be delivered by phone, it being understood that such notice shall be re-confirmed in writing as soon as possible.

27.2.3. Service of notices shall be deemed effective:

(a) by fax: at the time/date the transmission is received by (legible) receipt. The burden of proving the receipt shall be on the sender (regular fax transmission report issued by the dispatching fax machine);

(b) by email: at the time/date when the email sent by the sender is indicated as delivered to the recipient or when the recipient acknowledges the receipt of it.

(c) by registered letter or courier: at the time/date when the mail sent by the sender is delivered as evidenced by the receipt.

27.2.4. In case notice is received on a Working Day after 5 PM CET or on a day which is not a Working Day, the notice is deemed given and effective at 9 AM CET on the first following Working Day.

## 27.3 Severability

Without prejudice to Article 25.2, in case one or more provisions of this Agreement is/are declared invalid, illegal or unenforceable under any applicable law or public policy, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected and they shall remain in full force and effect as long as the economic or legal substance of this Agreement is not affected.

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

27.4 **Non waiver**

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

27.5 **Language of the agreement**

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

27.6 **Governing law**

The Agreement, its conclusion, performance and interpretation, including the issue of its valid conclusion (legal capacity excluded) shall be governed and construed in all respects in accordance with the laws of Belgium, to the exclusion of conflict of law provisions.

27.7 **Assignment and legal succession**

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

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

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

27.7.4. In the event a change of control of a Party occurs, this Party shall, as soon as reasonably possible (taking into account the confidential

and sensitive nature of such transactions), notify in writing the other Parties of it.

27.8 **Interpretation**

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

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

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

27.8.4. All references to Articles or Annexes refer to the corresponding Articles or Annexes of this Agreement as amended, supplemented or modified from time to time, in accordance with Article 25 unless otherwise specified.

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

27.9 **Specific rule applying to OTE**

27.9.1. OTE has a national legal obligation within the meaning of Section 2 (1) of the Czech Act No. 340/2015 Coll., on special conditions for the entry into force of certain contracts, the contract publishing and on the National Contract Registry of the Czech Republic according to which this Agreement shall only come into force in relation to the rights and obligations of OTE subject to its prior publication of the Agreement in the National Contract Registry of the Czech Republic. All Parties hereby acknowledge this formality for OTE and

accept that the validity of this Agreement for OTE is subject to the abovementioned publication (it being understood that the validity between the other Parties remains unaffected by this condition). OTE commits to comply with this formality without delay and to inform all Parties, without any delay, of the fulfilment thereof.

27.9.2. No Confidential Information shall be disclosed during the course of complying with such obligation, including by redacting all such Confidential Information from any materials or documents.

## Article 28 General Data Protection

### 28.1 Personal Data and description of processing

28.1.1. In the context of the Agreement, only Personal Data consisting of contact information of Party representatives or members of personnel or personnel of service providers, such as, name, professional email address, professional phone number shall be processed. No personal data of market participants or any other party shall be processed in the context of the Agreement.

28.1.2. Any processing is 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.

28.1.3. The Parties agree that 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.

28.1.4. Personal Data shall be stored so long as it is actual, that is related to persons representing/working for a Party, thereafter it shall be immediately erased. Each Party shall notify any change of personnel whose Personal Data is processed and all Parties shall ensure erasing

Personal Data that is no longer necessary as well as accuracy of the Processed Data.

28.2 **Joint Data Controller**

The Parties qualify as joint data controller in relation to the processing of Personal Data via the common (online) storage place referred to in Article 27.1, where the contractual documents as well as contact information lists with regard to Party representatives, personnel and service providers are stored.

28.3 **General distribution of responsibilities**

28.3.1. All Parties shall, at all times, comply with their respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed under this Agreement.

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

28.3.3. 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 27.1 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.

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

28.4.1. The Parties shall mutually agree upon the recourse to any data processors regarding Personal Data they are co-controllers for. The Parties shall mutually agree on the use of any processor regarding Personal Data for which they are joint controller.

28.4.2. 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 Legislation obligations in this respect.

28.5 **Security**

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

28.6 **Liability**

28.6.1. The Parties shall be individually liable with regard to any Data Protection Legislation violations related to their individual responsibilities according to Article 28.3.1.

28.6.2. The Parties shall be jointly and severally liable towards data subjects with regard to any Data Protection Legislation violations occasioned in relation to data processing for which they are joint controllers and the choice of commonly agreed processors.

28.6.3. 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.

In these cases, the liability caps and caps on hold harmless set forth in Article 23 do not apply.

28.7 **Right to provide individual controller information**

28.7.1. Each Party has the right to provide individual controller information in Annex 11 (Controller Information Clause) .

28.7.2. Parties agree that apart from informing their relevant personnel and representatives involved in the performance of the Agreement of the existence of Annex 11 (Controller Information Clause), this Annex creates no obligation for the other Parties.