Annex 1 to the Third Amendment to the Intraday Operations Agreement (IDOA):

Consolidated version of the main body of the Intraday Operations Agreement with the First IDOA Amendment, Second IDOA Amendment and Third IDOA Amendment provisions

Intraday Operations Agreement

(IDOA)

Between

the Transmission System Operators

ADMIE S.A., AFFÄRSVERKET SVENSKA KRAFTNÄT, AMPRION GMBH, APG AG, AUGSTSPRIEGUMA TĪKLS AS, ČEPS, A.S., CREOS, EIRGRID PLC, ELERING AS, ELES LTD., ELIA TRANSMISSION BELGIUM SA/NV, ENERGINET, ESO EAD, FINGRID OYJ, HOPS LTD., LITGRID AB, MAVIR Ltd., PSE S.A., RED ELÉCTRICA DE ESPAÑA S.A.U., REN - REDE ELÉCTRICA NACIONAL S.A., RTE RESEAU DE TRANSPORT D'ELECTRICITE, SONI LIMITED, SLOVENSKA ELEKTRIZACNA PRENOSOVA SUSTAVA A.S., STATNETT SF, TENNET TSO B.V., TENNET TSO GMBH, TERNA, TRANSNET BW GMBH, TRANSELECTRICA S.A., 50HERTZ TRANSMISSION GMBH,

and

the NEMOs

BSP, CROPEX Ltd., EIRGRID PLC, EPEX SPOT SE, GME SPA, HEnEX S.A., HUPX LTD., IBEX, NORD POOL EUROPEAN MARKET COUPLING OPERATOR AS, OKTe a.s., OMI POLO ESPAÑOL S.A., OTE A.S., OPCOM S.A., SONI LIMITED, TGE,

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Intraday Operations Agreement

This Intraday Operations Agreement ("Agreement") dated as of 12 June 2018 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;

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;

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;

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 public limited liability company incorporated under the laws of Luxembourg, with V.A.T. number LU10320554, having its registered office at 105, rue de Strassen in L-2555 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 Ireland, with V.A.T. number IE6358522H, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4, registered with the Company Registration Office under number 338522;

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

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);

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;

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 1072894-3, 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 92073 Paris La Défense CEDEX, France, registered in the commercial register at Nanterre under number 444 619 258;

Slovenská elektrizačná prenosová sústava, a.s. (**"SEPS"**), a company incorporated under the laws of Slovakia, with V.A.T. number SK2020261342, having its registered office at Mlynske nivy 59/A 824 Bratislava, Slovak Republic, registered with the Commercial Register kept by the District Court in Bratislava I, Section Sa, Entry 2906/B under the number 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 ("Statnett");

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 limited liability company incorporated under the laws of Italy in the form of a joint stock company, with V.A.T number IT 05779661007, having its registered office at Via Egidio Galbani, 70, 00156, Roma, Italy, registered with Companies Register of Rome under the number RM 922416 under Italian tax code;

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 Ireland, with V.A.T. number IE6358522H, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4, registered with the Company Registration Office under 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, registered with Commercial Register in Paris under the number 508 010 501 (in the meantime also legal successor of EPEX Spot Belgium SA as a result of a merger by acquisition);

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**"), 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 (legal successor of Lagie S.A.);

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., Sofia, 1527, Bulgaria, registered in the commercial register at Bulgarian Registry Agency under number 202880940;

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;

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;

OKTE, a.s.,(„**OKTE**“) a company incorporated under the laws of the Slovak republic, and registered with District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862 and VAT n° SK2023089728;

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. Some of the Parties have been cooperating under the XBID Market APCA, in order to design, develop, and contribute to the implementation of an European continuous implicit (and to a certain extent explicit) cross border intraday market (the "**Target Model**");

B. Some NEMOs have been cooperating under the PCA, which sets forth the terms and conditions for their cooperation in respect of the design, development and the implementation of the Target Model;

C. The Parties acknowledge that APX Power B.V. (currently EPEX SPOT as a result of a merger), BELPEX SA (currently EPEX Belgium, as a result of a name change), EPEX, Nord Pool Spot AS (currently NORD POOL EMCO, as result of a name change), OMIE and OTE concluded on 25 May 2013 an EU XBID procurement selection procedure agreement which entered into force with retroactive effect as of 18 October 2012, in view of the selection of an experienced and competent ICT service provider for the provision of the necessary services for developing the XBID System, in compliance with the Target Model. The aforementioned NEMOs have thereto published a request for information and have established a request for offer, including requirements provided and validated by the TSOs that signed the XBID Market APCA with regards to capacity allocation, in view of receiving offers for this service provision by service providers. Upon an opinion provided by ACER on 17 June 2013, the aforementioned NEMOs selected the Service Provider, following a fully transparent selection process granting an observer status to notably all NRAs and involved TSOs, having signed a confidentiality declaration where required;

D. In the context of implementing the XBID Market APCA and the PCA, some of the NEMOs have concluded with the Service Provider the XBID-MSA which sets forth the general terms and conditions under which the NEMOs have assigned to the Service Provider the provision of certain IT services amongst which the XBID System to be used to implement the Target Model;

E. Some TSOs were closely involved in the negotiations of the XBID-MSA with the Service Provider and directly negotiated with the Service Provider the terms of the XBID-DSA ECP Services;

F. Due to the fact that the contractual relationship with the Service Provider is with the NEMOs only, some of the Parties have, with effective date March 1st, 2015, entered into the XBID B2B Agreement (as amended from time to time) to cover certain aspects of their cooperation, in particular in respect of the back to back provisions needed to be agreed upon between the NEMOs and the TSOs;

G. 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;

H. The MCO Plan, setting forth how the NEMOs shall jointly set up and perform the MCO functions as described in CACM has been approved by all NRAs on 26 June 2017;

I. Within this framework, the Parties now wish to enter into the Agreement in order to regulate their cooperation in respect of the operation and further development of the Single Intraday Coupling (SIDC), in addition to other agreements such as, between NEMOs only, (the "**NEMO Only Agreements'**), and between TSOs only, (the "**TCID**");

J. Since the original signing of the Agreement, several new Parties have adhered to it (SEPS, OKTE) and several Parties exited the Agreement (EXAA, BRITNED and NATIONAL GRID);

K. The Agreement was amended for the first time with effect as of 1 March 2019, to take into account new arrangements to which the Parties have agreed in the meantime and to correct already agreed wording (the "**First IDOA Amendment**");

L. The Agreement was amended a second time (hereafter the "**Second IDOA Amendment**") to implement the following:

   i) the changes imposed by the Algorithm Methodology as adopted by the ACER Decision No 04/2020 of 30 January 2020;

ii) a joint governance mechanism together with the signatories of the DAOA 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 DAOA 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).

iii) the further alignment of both the Agreement and the DAOA in order to implement the Joint Governance;

iv) the extension of their cooperation as described in recital I) to the development, implementation and, subsequently, as the case may be, the operation of IDAs; the cooperation described in recital I) and in this point iv) are hereafter collectively called the "**Cooperation**").

M. The Agreement was amended a third time (hereafter the "**Third IDOA Amendment**") to implement the so-called qualified majority voting mechanism (hereafter the "**QMV**"), as provided in Article 12;

N. 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 THE AGREEMENT, AS FOLLOWS:

Article 1–Purpose and scope of the Agreement

The Agreement sets forth the rights and obligations of the Parties in respect of i) the implementation of CACM with respect to the SIDC that requires the cooperation of TSOs and NEMOs at European level, including the common operation and further development of the SIDC, and ii) the development, implementation and the operation of IDAs.

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

The post-coupling processes (including rights and obligations of CCPs in that context) are outside the scope of the Agreement and are set forth in Local Arrangements.

Article 2–Definitions

Capitalized terms and expressions used in the Agreement shall have the meaning as set forth in Exhibit 1 (Definition List).

Article 3– Contractual Framework – Hierarchy

3.1 Contractual framework and structure:

3.1.1. The Agreement is composed of its main body and its Exhibits listed below (which may be subdivided):

i) Exhibit 1 – Definition List
ii) Exhibit 2 – List of exhibits and attachments to the XBID-MSA
iii) Exhibit 3 – Change Control Procedure
iv) Exhibit 4 – High Level Architecture (including High Level Business Processes)
v) Exhibit 5 – Exchange of rack space
vi) Exhibit 6 – Joint XBID Procedures
vii) Exhibit 7 – Technical Readiness
viii) Exhibit 8 – List of Parties participating in the Initial Go-Live
ix) Exhibit 9 – Non-exhaustive list of jointly owned developments
x) Exhibit 10 – Rules of Internal Order
xi) Exhibit 11 – Accession Form
xii) Exhibit 12 – Cost sharing, monitoring and settlement

xiii) Exhibit 13 – Contact List
xiv) Exhibit 14 - Principles for voluntary exit due to the exit of a Member State from the European Union / European Economic Area
xv) Exhibit 15 - XBID System Roles
xvi) Exhibit 16 – Rollback Procedure
xvii) Exhibit 17 – XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 - Nomination on behalf
xviii) Exhibit 18 - Algorithm Monitoring Procedure
xix) Exhibit 19 – Controller Information Clause
xx) Exhibit 20 - Statistical data to be used for the calculation of the voting share

3.1.2. The contractual framework applicable to the Cooperation is structured as follows:

i) The Agreement as general framework of cooperation between all the Parties in respect of the purpose set forth in Article 1;

ii) Between NEMOs only, the Nemo Only Agreements;

iii) Between TSOs only, the TCID;

iv) Local Arrangements which contribute to the operation of the SIDC by specifying or completing the general principles described in the Agreement.

3.1.3. 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 SIDC mechanism.

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

i) to the extent that purely operational matters as referred to in Exhibit 6 (Joint XBID Procedures) 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.

The Parties hereby expressly confirm that Local Arrangements (such as BRP Contracts or other local contracts or regulations) specifying rights and obligations in respect to post-coupling processes such as nominations and nominations on behalf do not fall under the matters referred to in this Article 3.1.3 so that compliance of these Local Arrangements with the Agreement is not required.

3.1.4. If the Parties involved in Local Arrangements notice that any of these arrangements are not in line with the terms and conditions of the Agreement as regards the matters referred to in Article 3.1.3, 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 the Agreement, and provide a proposal of reasonable solution. MCSC will decide on the matter in accordance with Article 12.

3.1.5. Considering that the XBID-MSA is already entered into and taking into account Article 4.3.2.1, including that any change of the Service Provider has to be approved by the TSOs, the Parties agree that the XBID-MSA and the Agreement need to be aligned and that in case of non-alignment or in case of future changes, MCSC shall assess how to ensure alignment between both agreements.

3.1.6. Exhibit 17 (XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 - Nomination on behalf) is attached to the Agreement only *pro memory* as a non-binding document that may (but does not need to) serve as basis for drafting the related provisions in the Local Arrangements and without prejudice to the fact that nomination processes relating to post-coupling processes fall outside the

scope of the Agreement. This Exhibit 17 (XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 - Nomination on behalf) being attached to the Agreement does not (and is not intended) to create any obligation or legal precedent to use the documents contained therein as basis for the Local Arrangements or does not create any agreement of the Parties as to the content of the relevant provisions to be taken up in the Local Arrangements for the subject matter contained in this Exhibit 17 (XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 - Nomination on behalf).

Changes to Exhibit 17 (XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 - Nomination on behalf) are subject to the Change Control Procedure.

3.2 Hierarchy:

3.2.1. The Agreement, including its Exhibits, shall at all times be in compliance with CACM, and with the terms, conditions, plans and methodologies developed and approved by the NRAs under CACM, that shall all prevail over the Agreement. In case of non-compliance, Article 24.2 shall apply (it being understood that the application of Article 24.2.3 does not prevent Parties from proposing changes to the terms, conditions, plans and methodologies under CACM).

3.2.2. Should differences and/or contradictions exist between the main body of the Agreement and any of the Exhibits, the terms and conditions of the main body shall prevail, unless expressly stated otherwise.

Article 4 –Principles of Cooperation

4.1 General

4.1.1. The Parties shall cooperate in good faith in accordance with the terms and conditions of the 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 the Agreement shall be Best Efforts obligations, unless explicitly otherwise specified in writing in the Agreement. The fact that some Articles specifically refer to Best Efforts (in order to mirror wording from the XBID-MSA) does not preclude the application of this principle (nor does it prejudice Article 4.1.3).

4.1.3. Where obligations and/or actions incumbent on TSOs derive from the XBID-MSA, such obligations shall have the nature as deriving from the XBID-MSA. This means that, if an action incumbent on TSOs is a result obligation in the XBID-MSA, it is also a result obligation for the TSOs under the Agreement and that if, an action incumbent on TSOs is a best efforts obligation in the XBID-MSA, it is also a Best Efforts obligation for the TSOs under the Agreement.

4.1.4. It is furthermore clarified that the following are result obligations:

i) any hold harmless and indemnification obligations under the Agreement;

ii) the NEMOs' obligations under Article 5.3.2.2, 8) and 22.7.5 to litigate following instruction by the TSOs, with the exception of the outcome of any litigation introduced by NEMOs against the Service Provider;

4.1.5. Given that the success of the SIDC 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 of the Agreement, especially in case of unexpected difficulty.

Each Party shall, to the extent possible, minimise the impact of local issues on the SIDC.

4.1.6. 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 Cooperation, according to which all Parties should 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).

4.1.7. 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.

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

4.2 Performance of the Parties

Each Party shall:

i) perform its obligations under the Agreement according to the requirements of the Agreement, all applicable Legal Provisions, any specifications and requirements decided upon by the MCSC, good practice and current professional standards, applicable for these types 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 the Agreement;

iii) perform its obligations under the Agreement in the best interest of all Parties in order to achieve a well-functioning SIDC;

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

v) have the knowledge, experience and human and technical competences necessary for the satisfactory performance of its obligations under the Agreement.

4.3 Subcontracting

4.3.1. General principles

4.3.1.1. A Party can only subcontract or delegate any of its obligations set forth in the Agreement to a third party provided the conditions of article 81 CACM are complied with *mutatis mutandis*.

4.3.1.2. Any Party subcontracting or delegating any of its obligations set forth in the Agreement to a third party shall remain fully responsible and liable towards the other Parties, in accordance with the Agreement and article 81 CACM, for the fulfilment of its obligations under the Agreement and CACM and shall ensure that each such subcontractor or third party complies with the obligations of the sub-contracting or delegating Party under the Agreement. Any hold harmless obligation of a Party under the Agreement applies also in respect of the acts or omissions of its subcontractors or of the third parties.

4.3.1.3. In addition to the foregoing, to the extent the subcontracting or delegation concerns one of the essential activities in this Article 4.3.1.3, the Party subcontracting its performance shall inform the other Parties in writing of the identity of the subcontractor or third party, the scope of the subcontracting or delegation and of any practical implications of the subcontracting or delegation, unless such subcontracting or delegation has already been agreed at the date of entry into force of the Agreement as set forth in Article 19. Exhibit 3 (Change Control Procedure) applies should subcontracting or delegation lead to Changes.

For the purpose of this Article any activity falling under the scope of the Joint XBID Procedures is considered an essential activity (e.g. CMM central administrator, which is at date of entry into force of the Agreement subcontracted to the Joint Allocation Office (JAO)).

4.3.1.4. A Party may grant subcontractors or third parties to whom tasks are subcontracted or delegated, access to the XBID Solution for the

performance of the subcontracted or delegated tasks, provided such access is compliant with the XBID-MSA (and in particular the terms of the XBID-DSA License).

In such case:

i) any obligation incumbent on a Party in relation to the subcontracted or delegated task (e.g. the Service Provider's requirements, security measures, obligations in respect of malicious code, measures for incident prevention) shall apply also to the subcontractor or the third party to whom tasks are subcontracted or delegated and such Party remains liable for compliance with these obligations by the subcontractor's or third party to whom tasks are subcontracted or delegated;

ii) Parties shall take appropriate measures to avoid sub-subcontracting or sub-delegation of essential activities as described in Article 4.3.1.3.; and

iii) Use of data by the subcontractor or by the third party is limited to what is required for it to perform the tasks subcontracted or delegated to it, and to what is allowed under Article 11. Any other use is not allowed unless explicitly agreed in writing. The relevant Party shall ensure that any use of Personal Data by its subcontractor shall be compliant with GDPR.

A Party may, in the context of subcontracting or a delegation of its obligations, grant any third party to whom the performance of its obligations is subcontracted or delegated, also the power to represent it (including but not limited to representation in the context of decision making pursuant to Article 12 or in the context of communications between Parties), provided that the other Parties are specifically informed in writing prior to the entry into force of any such power of representation.

In addition to Article 4.3.1.2, the Party granting such a power of representation shall be bound by, and be liable for, any (legal) act, omission or decision taken by such third party in name and on behalf of

that Party (including, for the avoidance of doubt, any wrongful (legal) act, omission or decision taken by the third party representing that Party).

For the avoidance of doubt, this Article 4.3.1.4 does not apply to the Service Provider since it has access to the XBID System due to the nature of the services it provide under the XBID MSA.

4.3.2. Service Provider

4.3.2.1. Any change of the Service Provider shall require the prior approval of the TSOs.

The TSOs acknowledge the content of the XBID-MSA, its exhibits and attachments listed in Exhibit 2 (List of exhibits and attachments to the XBID-MSA).

Furthermore, TSOs acknowledge that, since some of them negotiated directly with the Service Provider the terms of the XBID-DSA ECP Services (although the agreement is signed by the NEMOs), all TSOs using the ECP Services take full responsibility for the content of the XBID-DSA ECP Services (e.g. for unsuitability or incompleteness of the XBID-DSA ECP Services).

4.3.2.2. In respect of change requests initiated by TSOs only related to changes which need to be implemented in the XBID-MSA, and that have been accepted in accordance with Exhibit 3 (Change Control Procedure), the MCSC shall on a case-by-case basis decide which of the following options shall apply:

i) the NEMOs shall negotiate those changes with the Service Provider on behalf of the TSOs, against a remuneration to be paid by the TSOs (amount to be determined by the MCSC);

ii) those changes are negotiated directly by the TSOs with the Service Provider and under their responsibility, subject to Article 4.3.2.3 applying *mutatis mutandis*; or

iii) those changes are negotiated jointly by the TSOs and the NEMOs.

4.3.2.3. The NEMOs undertake to inform the TSOs as soon as possible in case of any proposed amendment(s) of the XBID-MSA, its exhibits and/or its attachments. The TSOs shall within a reasonable time react by stating if these amendments have, in the TSOs' opinion, an impact on the TSOs or not. If so, these amendment(s) must receive prior feedback from the TSOs and must be approved in advance by the TSOs' members of the MCSC and such approval will be noted in the meeting minutes of the MCSC. All reaction, approval and feedback under this Article 4.3.2.3 shall however not be unreasonably withheld, conditioned or delayed, and shall be provided within time frames that are compatible with the negotiation process agreed upon with the Service Provider. For the avoidance of doubt, any delay in reaction, feedback or approval required from the TSOs is subject to Article 4.3.2.4, ii).

4.3.2.4. With respect to article 9.5.1 of the XBID-MSA:

i) the NEMOs shall ensure that the TSOs are duly and timely informed of any deliverables and tasks (and the timing of such deliverables and tasks) the TSOs have to provide or perform in connection with the XBID-MSA and its exhibits, unless (i) the TSOs were already aware of the tasks and deliverables and their timings based on Article 4.3.2.1 or (ii) if information was already provided to the TSOs through a dedicated channel with a dedicated procedure or (iii) if the TSOs are already informed as a result of their participation in the discussions with the Service Provider, because they were directly involved in the discussion or had the chance to participate thereto.

The NEMOs will ensure that all minutes received from or exchanged with the Service Provider are sent to the TSOs without undue delay.

The TSOs shall request any clarification or further information necessary for them to comply with Article 4.3.2.4, ii);

ii) the TSOs shall ensure that they duly and timely provide such deliverables and perform such tasks. Should this not be the case,

the TSOs shall support the related costs, and contribute in collaboration with the NEMOs to the minimisation of any delays and communication of such delays to external stakeholders such as the NRAs.

4.3.2.5. TSOs are entitled to participate in the meetings of the governance bodies set up with the Service Provider under the XBID-MSA to the extent such participation is provided for by the XBID-MSA and in accordance with the XBID-MSA.

4.3.3. IDAs

Parties are committed to cooperate for the design, development and implementation of the IDAs as agreed by the Parties, and to share the related costs in accordance with Exhibit 12 (Cost sharing, monitoring and settlement). It is understood that before starting the operation of IDAs, the Parties will amend the Agreement to the extent necessary.

Article 5– Architecture, systems and access

5.1 XBID System development

5.1.1. At the time of entry into force of the Agreement, the TSOs acknowledge and agree, in respect of the XBID System in place at that time, that:

i) the TSOs have jointly established and provided the requirements for the XBID System, in particular as regards capacity allocation (e.g. for the CMM and the Shipping Module), and have jointly established with the NEMOs the joint requirements for the XBID System;

ii) the XBID System has been developed and is made available by the Service Provider under the terms of the XBID-MSA;

iii) the TSOs are responsible for testing that the XBID System meets their requirements and the joint requirements (the joint requirements being tested together with the NEMOs) and that they have had the opportunity of testing the XBID System;

iv) the XBID System is compliant with such TSOs' and joint requirements;

v) the XBID System is made available "as is" without any warranty or representation, express or implied, whatsoever, including but not limited to warranty of non-infringement of third party rights, warranties of merchantability and fitness for a particular purpose, in particular in respect of the correct functioning or the absence of defects or errors. The foregoing is without prejudice to the warranties granted by the Service Provider under the XBID-MSA, it being understood that any claim in that respect shall be pursued in accordance with the process set forth in Article 22.7.5.

For future developments or changes, the above acknowledgement shall be deemed repeated by the decision of the MCSC in which the TSOs have indicated to accept the future developments or changes.

[redacted]

5.1.3. The Parties agree that the XBID Solution is to be developed, implemented and maintained in accordance with the high level architecture as set forth in Exhibit 4 (High Level Architecture XBID Solution (including High Level Business Processes)).

Future adaptations or developments of the XBID Solution are subject to Exhibit 3 (Change Control Procedure). To the extent such adaptations or developments concern the XBID System they are also subject to the XBID-MSA.

5.2 Access to and use of the XBID System by TSOs (and Explicit Participants where relevant) and TSOs functionalities

5.2.1. TSOs shall comply with any specific requirements imposed by the Service Provider as set forth in the XBID-MSA for users directly

connected to the XBID System, such as e.g. requirements regarding use, data transmission or security. The Concerned TSOs shall also use their Best Efforts to ensure that any Explicit Participant complies with such requirements.

5.2.2. Each TSO shall make its Best Efforts to ensure that its own IT system or software which connects to the XBID System via any environment provided under the XBID-DSA Hosting does not contain any malicious code or any program parts that could damage such environments of the Service Provider. The Concerned TSOs shall also use their Best Efforts to ensure that any Explicit Participant ensures that its own IT system or software which connects to the XBID System via any environment provided under the XBID-DSA Hosting does not contain any malicious code or any program parts that could damage such environments of the Service Provider.

5.2.3. The TSOs shall, at the request of the NEMOs, grant them an access to the CMM, it being understood that TSOs shall ensure such access shall be a read-only access (without any possibility to modify any of the information, nor to use it for reserving capacity).

Any further change with respect to such access shall be subject to Exhibit 3 (Change Control Procedure).

5.2.4. The TSOs will have direct access (and not via the NEMOs) to the helpdesk of the Service Provider under conditions set forth in the XBID-MSA and as regulated in the procedures between the NEMOs and the TSOs established in compliance with the XBID-MSA.

5.2.5. Each Concerned TSO shall take measures to prevent incidents in, or damage to the XBID System coming from access and usage of the XBID System by Explicit Participants.

5.2.6. The Concerned TSOs shall at first request of the NEMOs provide them with evidence that the Concerned TSOs have complied with their obligations in respect of the Explicit Participants as set forth in this Article 5.2.

5.2.7. The TSOs shall ensure that the NEMOs are able to comply with any of their obligations under the XBID-MSA that require cooperation with or intervention of the TSOs or of third parties for which the TSOs are responsible for (e.g. their service providers) or of Explicit Participants.

5.3. **Shipping Module**

5.3.1. According to its functional concept, the Shipping Module offers the following options for managing the shipping on interconnectors between Delivery Areas within one Market Area or between Market Areas within one Bidding Zone:

(A) preferred shipper per CCP/NEMO and per Shipping Agent; or

(B) assigned shipper arrangement (single/dual/directional).

Unless differently agreed according to the following paragraph, alternative (A) (preferred shipper) shall be applied on interconnectors between Delivery Areas within one Market Area or between Market Areas within one Bidding Zone, despite the available flexibility of the implemented solution.

The assigned shipper arrangement can only be applied if it has unanimously been agreed upon between all relevant parties (NEMOs/CCPs/TSOs) inside the Market Area or inside the Market Areas within one Bidding Zone, unless required otherwise by the relevant NRAs.

5.3.2. The following rules shall apply only to the Parties which are operational at the time the incident occurs.

5.3.2.1. With respect to late or incomplete delivery of, or incorrect, Shipping Module files:

[redacted]

[redacted]

iii) [redacted]

5.3.2.2. In the cases of Article 5.3.2.1, the Parties shall comply with the following procedure (to ensure an equal treatment of NEMOs and TSOs despite the fact that the contractual relation with the Service Provider is only between the Service Provider and NEMOs) in respect of claims to be initiated against the Service Provider:

[redacted]

[redacted]

[redacted]

5.3.2.3. All decisions to be taken jointly by the Operational Parties on the basis of this Article 5.3.2 are Operational Decisions in the sense of Article 12.7, ii), c).

5.4. **Exchange of Rack Space**

The Parties shall comply with the provisions on the exchange of rack space as set forth in Exhibit 5 (Exchange of rack space).

5.5. **Algorithm Monitoring**

The Parties shall comply with the provisions on algorithm monitoring as set forth in Exhibit 18 (Algorithm Monitoring Procedure).

Article 6–Roles and responsibilities

6.1 General principle

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

6.2 Joint NEMOs and TSOs roles and responsibilities

6.2.1. The following shall be considered as joint NEMOs and TSOs roles and responsibilities:

i) Performing the actions, tasks or obligations imposed on NEMOs and TSOs jointly by CACM including terms and conditions or methodologies adopted pursuant to CACM;

ii) Performing the actions, tasks or obligations attributed to the NEMOs and TSOs jointly in the Agreement (including the Exhibits); and

iii) To jointly monitor and validate robustness, consistency and overall functioning of the XBID System.

6.3 NEMOs joint roles and responsibilities

6.3.1. The following shall be considered as NEMOs joint roles and responsibilities:

i) Performing the actions, tasks or obligations imposed on NEMOs jointly by CACM and by terms and conditions or methodologies adopted pursuant to CACM;

ii) Performing the actions, tasks or obligations attributed to the NEMOs jointly in the Agreement (including the Exhibits);

iii) The following actions in respect of NEMOs' requirements for the XBID Solution provided in accordance with CACM or deriving from the XBID Market APCA and as agreed upon from time to time in compliance with the Change Control Procedure: design of the requirements, validating and testing them and monitoring correct implementation of the requirements;

iv) Submitting to and, if agreed, negotiating with the Service Provider, any TSOs only change request regarding the XBID System, as further set forth in Article 4.3.2.2; and

v) Acceptance and testing procedure by the NEMOs of new elements of the XBID System as defined and subject to the terms of the XBID-MSA, except as regards testing by the TSOs as mentioned in Article 6.5.1.

6.4 Individual NEMOs' responsibilities

Without prejudice to the general principle under Article 6.1, at least the following shall be a NEMO's individual responsibility: the operation of its LTS, its business processes, agreements with implicit (market) participants, individual reporting to NRAs and/or stakeholders on specific issues, and any actions, tasks or obligations imposed on a NEMO individually by CACM or the Agreement.

6.5 TSOs' joint roles and responsibilities

6.5.1. The following shall be considered as TSOs joint roles and responsibilities:

i) Actions, tasks or obligations imposed on the TSOs jointly by CACM and by the terms and conditions or methodologies adopted pursuant to CACM;

ii) Performing the actions, tasks or obligations attributed to the TSOs jointly in the Agreement (including the Exhibits);

iii) The following actions in respect of the TSOs' requirements for the XBID Solution provided in accordance with CACM or deriving from the XBID Market APCA and as agreed upon from time to time in compliance with the Change Control Procedure: design of the requirements, validating and testing the requirements, and monitoring correct implementation of the requirements;

iv) All actions and tasks related to the communication systems developed for / by the TSOs, including those of the XBID System and third party software used by TSOs (e.g. ECP Software);

v) Acceptance and testing procedure by the TSOs of new elements of the XBID System, subject to the terms of the agreements with service providers;

vi) The proposal by the Concerned TSOs to NRAs/relevant authority (and defending towards NRAs/relevant authority without the need to go as far as introducing legal proceedings) of rules for allowing access for Explicit Participants which are consistent with the relevant provisions of the Agreement, also with regard to non-discrimination between Explicit Participants and implicit participants; and

vii) Identification of Concerned TSOs who, in case of a damage caused by the Explicit Participants, offer access to the XBID System for Explicit Participants as further set forth in Article 22.8.2.

6.6 Individual TSOs' responsibilities

Without prejudice to the general principle under Article 6.1., at least the following shall be TSOs' individual responsibility: its access to the XBID System; the systems and business processes concerned by or involved in the SIDC; its activities of/arrangements with its Explicit Participants; and any actions, tasks or obligations imposed on a TSO individually by CACM or the Agreement.

Article 7–Operations

7.1 General Principles

7.1.1. Article 7 only applies for Operational Parties.

7.1.2. The Operational Parties shall operate the SIDC in accordance with Exhibit 6 (Joint XBID Procedures).

7.1.3. NEMOs only procedures attached to the ANIDOA, and TSOs only procedures attached to the TCID, may apply to the operation of the SIDC for the NEMOs or TSOs that are party to such agreements. The change control procedure of the ANIDOA and TCID, which will respectively govern changes to these procedures, shall take into account Exhibit 3

(Change Control Procedure). Any change with respect to these operational procedures shall be notified to the other subset of Parties during the impact analysis step.

7.1.4. Detailed local procedures may be defined in the Local Arrangements, if need be, between the relevant subset of Parties. These local procedures shall comply with the principles set forth in Article 3.1.3.

7.1.5. MCSC can decide to rollback in accordance with the Rollback Procedure as set forth in Exhibit 16 (Rollback Procedure).

7.2 Incidents

7.2.1. In addition to the procedure(s) to be followed in case of an incident according to Exhibit 6 (Joint XBID Procedures), the following principles apply.

[redacted]

7.3 IC SPOC

7.3.1. The Operational Parties appoint, in accordance with Annex 1 to Exhibit 15 (IC SPOC Services), an IC SPOC for the performance of the tasks attributed to the IC SPOC described in the Incident Management

Procedure. The provision of these IC SPOC Services is governed by this Annex 1 to Exhibit 15 (IC SPOC Services).

7.4 List of XBID System roles and user types

7.4.1. Exhibit 15 (XBID System Roles) sets forth the list of XBID System roles and user types and provides an overview of:

i) the different roles that are distinguished in relation to the XBID System;

ii) who/which Parties can be assigned these roles; and

iii) who/which Parties can request a new user or a change in the user settings.

This list is valid for the Initial Go-Live and as such will be a living document which will be governed and kept up to date by the OPSCOM.

Article 8– Go-Live / technical readiness

8.1 Go-live may be done concurrently or in successive steps through LIPs, even without common interconnectors, subject to the provisions of this Article 8.

8.2 Go-live is subject to:

i) compliance with the requirements regarding technical readiness for Go-Live as mentioned in Exhibit 7 (Technical Readiness) as amended from time to time, *e.g.* to include the requirements of subsequent LIP(s) Go-Live;

ii) MCSC decision; and

iii) no regulatory objection being raised by the competent NRA(s).

In the event of Changes, Go-Live is subject to Exhibit 3 (Change Control Procedure) being complied with.

8.3 At the date of entry into force of the Agreement, the Parties mentioned in Exhibit 8 (List of Parties participating in Initial Go-Live) are Parties that participate in the Initial Go-Live and are therefore Operational Parties.

8.4 The process of preparation for subsequent LIP(s) Go-Live is the following:

i) the relevant Party(ies) intending to participate in a LIP Go-Live must send to the MCSC a written notice providing:

a) the targeted timeframe for the launch of the intended LIP Go-Live;
b) the state of its fulfilment of the conditions set forth in Article 8.2;
c) a duly signed declaration that all conditions of Article 8.2 will be fulfilled, respectively finalized within the targeted timeframe; and
d) the list of all necessary Changes to be made (if any) to Exhibit 6 (Joint XBID Procedures), while complying with Exhibit 3 (Change Control Procedure), which requires submitting a Request for Change. The Parties will not unreasonably object to Changes that are necessary for a LIP Go-Live.

ii) The MCSC shall agree on a planning within which the conditions of Article 8.2 and the legal requirements for the LIP Go-Live should be fulfilled. Should the MCSC fail to reach a decision on such planning, Article 25 shall apply.

iii) In accordance with the approved planning, and steps set forth in this Article 8.4, the MCSC shall approve the LIP Go-Live as soon as all the conditions of Article 8.2 are fulfilled.

If the conditions of Article 8.2 are fulfilled, the MCSC has no reason to oppose to the LIP Go-Live.

[redacted]

8.7 A list of Operational Parties will be kept up to date by the OPSCOM.

Article 9–Firmness of capacities

TSOs shall ensure that capacities are firm as stipulated in article 71 CACM or any other applicable regulation as the case may be.

In case of force majeure or emergency situations as defined under CACM, TSOs shall comply with article 72 of CACM or any other applicable regulation as the case may be.

Article 10–Harmonization of maximum and minimum clearing prices

Harmonization of maximum and minimum clearing prices is handled in accordance with relevant regulation, such as articles 7 and 54 of CACM and the methodology proposed by the NEMOs and approved by the NRAs pursuant to article 54 of CACM. NEMOs can change the maximum and minimum clearing prices subject to Exhibit 3 (Change Control Procedure). NEMOs shall assess the need to change the maximum and minimum clearing prices after the approval of the cross-zonal intraday capacity pricing methodology and provide feedback regarding this towards the TSOs.

Article 11–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 18 shall apply to the developments made and data used or exchanged pursuant to this Article 11.

11.2 Developments by the Parties

11.2.1. Developments made under the Agreement (including but not limited to those set forth in Exhibit 9 (Non-exhaustive list of Jointly Owned Developments) and the Intellectual Property Rights on such developments, shall be jointly owned by the Parties, unless decided otherwise by the MCSC. Each Party has the right to use Exhibit 6 (Joint XBID Procedures), Exhibit 16 (Rollback Procedure) and Exhibit 17 (XBID_JOINT_NOR_03 – Nomination and XBID_JOINT_NOR_04 – Nomination on behalf) in the context of Local Arrangements, the TCID and NEMOs Only Agreements without further prior consent of the Parties.

11.2.2. The Parties acknowledge that the ownership, right of use and disclosure of procedures other than Joint XBID Procedures or of any other data under Local Arrangements, NEMOs Only Agreements, the TCID are governed by respectively such Local Arrangements, NEMOs Only Agreements or the TCID respectively. Rights with respect to co-owned assets under the TCID or NEMOs Only Agreements are governed by the TCID respectively the NEMOs Only Agreements.

11.3 Developments by third parties

11.3.1. Parties acknowledge that the use of the XBID System is subject to the license granted by the Service Provider to the NEMOs under the XBID-DSA License. Clauses of the XBID-DSA License granting control to the

Service Provider in case of third party claims regarding IPR are an exception to the principle of TSOs' involvement regarding claim handling as set forth in Articles 22.7.1 and 22.7.5, i).

11.3.2. For the performance of their obligations under the Agreement, the NEMOs grant the TSOs a non-exclusive, non-transferable and free sub-license to use, only through the interfaces designed by the Service Provider for such use, the XBID System for the performance of such obligations, within the scope as mentioned in the XBID-DSA License (including geographical scope) and in compliance with the XBID-DSA License. The aforementioned is without prejudice to the right to subcontract as provided under Article 4.3.1.4, it being understood that if a license is required for the subcontractor it will be granted by the NEMOs in accordance with the terms of the XBID-DSA License.

Should a functionality already be implemented in the XBID System at the time of signature of the Agreement, such functionality can be used by the TSOs as long as there is a tested procedure for it and such procedure is included in Exhibit 6 (Joint XBID Procedures) or in the TCID, and also provided this use is in compliance with the XBID-DSA License.

The NEMOs grant the Explicit Participants the right to access and use the XBID System to the extent needed to participate in explicit allocation in the context of the SIDC.

The TSOs undertake to comply with any commitment incumbent on the NEMOs in respect of the use by the TSOs of the XBID System as provided in the XBID-DSA License or in any other provision of the XBID-MSA. NEMOs shall be entitled to immediately revoke, via a duly motivated written notification, without any judicial intervention and without any compensation being due, any right of use granted to a TSO in case:

i) such TSO does not comply with any such material commitment;

ii) if the XBID-DSA License terminates or is revoked by the Service Provider; or

iii) in case the non-compliance of TSOs may lead to a revoking by the Service Provider of the license, termination of the XBID-DSA License or to NEMOs' liability towards the Service Provider.

In case a TSO does not comply with a commitment which is not material, the NEMOs shall only be entitled to revoke the right of use if the TSO has not remedied the non-compliance within fourteen (14) days as of receiving a formal notice describing the non-compliance.

11.3.3. The TSOs using the ECP acknowledge that the ECP Services are dependent on the Service Provider being granted a license to use the ECP Software via ENTSO-E.

It is not the NEMOs' responsibility to ensure that the Service Provider is granted this license and complies with it.

11.4 Data

11.4.1. Data generated by or on behalf of the relevant NEMO(s) (e.g. input data, such as data related to the orders submitted by NEMOs, as well as output data, such as the trade prices, trade volumes, net positions of individual trades, as well as derivative data from input data and output data such as related indices) shall remain the exclusive property of the relevant NEMO(s), but output data can be used by the TSOs only for:

i) the performance of their obligations under the Agreement, or under applicable Legal Provisions;

ii) if agreed under Local Agreements; or

iii) for internal simulation purposes.

11.4.2. Data generated by or on behalf of the relevant TSOs (e.g. input data, such as Cross Zonal Capacities, output data (e.g. allocated Cross-Zonal Capacities coming out of the XBID Solution (flows, Net Positions)) as well as derivative data from input data and output data) shall remain the exclusive property of the relevant TSOs, but such data can be used by the NEMOs only for:

i) the performance of their obligations under the Agreement, or under applicable Legal Provisions;

ii) if agreed under Local Agreements; or

iii) for internal simulation purposes.

However, given the potentially sensitive nature of data related to allocated Cross-Zonal Capacities coming out of the XBID Solution (flows, Net Positions), 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 or agreement.

11.4.3. The Parties may disclose to or grant access to data and a right of use to service providers to use the data referred in Articles 11.4.1 to 11.4.4 for the performance of the tasks attributed to them in the context of achieving the purpose of the Agreement.

11.4.4. For the purpose of internal simulations with NEMOs' data, only NEMOs' Historical Data that is anonymized can be used and TSOs may request the provision of this Historical Data, which shall be provided if the NEMOs have the instrument to retrieve such Historical Data and subject to terms and conditions to be agreed upon jointly. For the avoidance of doubt, the NEMOs can retrieve the TSOs' data from the XBID System for internal simulations.

The results of the simulations may be provided by the TSOs or by the NEMOs to the competent authorities, provided confidentiality is ensured and that it is ensured that the results shall not be published by such competent authorities without prior consent of the NEMOs respectively the TSOs.

The Parties may use subcontractors for the performance of internal simulations as permitted under this Article 11, in which case the use of data by such subcontractor is limited to the performance of such

simulation. The Party using a subcontractor for internal simulations remains liable for any unauthorised use.

11.4.5. NEMOs may make available to market participants data referred to in Articles 11.4.2. through their trading systems. The Agreement does not affect any current way of use of this data by NEMOs (e.g. for settlement, publishing and other NEMOs legal and regulatory obligations).

11.4.6. For the avoidance of doubt, in order to comply with Legal Provisions to publish data, the rights granted in Articles 11.4.1. and 11.4.2 include the right to publish data only to comply with such obligation and the timelines included in such obligations.

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 SIDC and Joint Matters. For the avoidance of any doubt, decisions on matters that relate to SDAC only shall be governed by the DAOA.

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

12.2 As far as the Cooperation 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 Exhibit 10 (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 24) adaptations of the SIDC and any matter related development, implementation and the operation of the IDA;

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 Exhibit 10 (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 DAOA) 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.

In the SIDC at least the two subcommittees listed below are effective at the date of GO-Live of the SIDC :

i) the Operations Committee (OPSCOM):

The MCSC delegates powers and assigns the tasks to the OPSCOM as described in Exhibit 10 (Rules of Internal Order). Decision making in the OPSCOM is subject to the related provisions of the RIO set forth in Exhibit 10 (Rules of Internal Order); and

ii) the Incident Committee:

The MCSC delegates the powers and assigns the tasks as defined in the Incident Management Procedure. Decision making in the Incident Committee is subject to the related provisions of the same Exhibit 6 (Joint XBID Procedures).

12.4 Decisions of the HLM, the MCSC, the OPSCOM, the Incident Committee and of any other body created by the MCSC pursuant to Article 12.3 entitled to take decisions, shall be binding on all Parties if taken in accordance with the provisions of this Article and in particular with the voting rules set forth in Article 12.9.

12.5 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, SIDC-related terms and conditions or methodologies under article 9 CACM fall within the scope of this Agreement.

12.6 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 4.1.6. Except in case of non-compliance with Article 4.1.6 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).

For the remainder, the decision-making process for the MCSC is described in the RIO of the MCSC, set forth in Exhibit 10 (Rules of Internal Order).

12.7 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 SIDC, 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 SIDC 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; In this respect, decision proposals submitted by OPSCOM to the MCSC shall, in principle, be classified as falling under the category of Operational Decisions;
b) Resolution of incidents;
c) NEMOs-TSOs Common Costs of operating SIDC, 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 12.7;
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.

12.8 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 in the context of the Agreement which are not Operational Decisions. Only Operational Parties may vote for Operational Decisions of OPSCOM in accordance with the Operational Procedures (it being understood that all Parties are entitled to participate in the discussions). For the avoidance of doubt, the foregoing is without prejudice to the right of each Party to submit a change request in accordance with the Change Control Procedure.

Only Operational Parties and the Parties having notified to the MCSC their intention of going live in the subsequent Lip Go-Live may attend the Incident Committee in accordance with the Joint XBID Procedures. The latter Parties are allowed to follow the discussions but without the possibility to participate in the discussion and the voting. Should it appear that the participation of the latter Parties lead to disruptions in the Incident Committee calls, their participation will be re-evaluated by MCSC.

12.9 Voting Rules

12.9.1. The rules below set forth the principle voting rules for adopting decisions of the MCSC and the HLM. These voting rules are further detailed and supplemented by Exhibit 10 (Rules of Internal Order) and Exhibit 20 (Statistical data to be used for the calculation of the voting share). OPSCOM, Incident Committee and any other body created by the MCSC

pursuant to Article 12.3 entitled to take decisions, shall always decide by unanimity without applying Articles 12.9.2. to 12.9.5.

12.9.2. When deciding by unanimity, all Voting Members from NEMOs shall collectively have one (1) vote (the "**NEMO Vote**"), and all Voting Members from TSOs shall collectively have one (1) vote (the "**TSO Vote**"), as further detailed in article II.3 of Exhibit 10 (Rules of Internal Order).

12.9.3. Operational Decisions will be adopted with unanimity of NEMO Vote and TSO Vote, in accordance with the provisions of Exhibit 10 (Rules of Internal Order.

12.9.4. Governance and Development Decisions are also subject to unanimity of NEMO Vote and TSO Vote, in accordance with the provisions of Exhibit 10 (Rules of Internal Order). If i) unanimity of NEMO Vote and TSO Vote cannot be achieved, ii) the point is discussed in the meeting and iii) a new proposal of decision is made following such discussion, then such new proposal of decision shall be again subject to unanimity of NEMO Vote and TSO Vote.

If the discussion does not lead to a new proposal of decision or if a new proposal of decision cannot be adopted by unanimity of NEMO Vote and TSO Vote, the initial decision or the new proposal of decision, as the case may be, shall be subject to QMV as follows:

i) if the following thresholds, calculated applying Exhibit 20 (Statistical data to be used for the calculation of the voting share), are cumulatively met:

   a) TSOs and NEMOs representing <u>together</u> at least 55% of all EU Member States falling under CACM, Norway and Northern Ireland (hereinafter referred to as "**Member States**") approve the proposed decision; and

   b) TSOs and NEMOs representing together Member States comprising at least 65% of the population of the Member States approve the proposed decision;

ii) if the QMV thresholds under i) are not met, the QMV shall nevertheless be deemed attained if there is no blocking minority pursuant to article II.3.5.2.2 of Exhibit 10 (Rules of Internal Order).

For the avoidance of any doubt, it is understood that :

- If the QMV thresholds set under 12.9.4 i) have been achieved the decision is considered taken (even if there is a blocking minority);
- If the QMV thresholds set under 12.9.4 i) have not been achieved and there is a blocking minority, the proposed decision is considered rejected;
- If the QMV thresholds set under 12.9.4 i) have not been achieved and there is no blocking minority, the proposed decision is considered taken.

12.9.5. For the calculation of the voting share by individual NEMO or TSO, the rules set forth in article II.3.5.2 of Exhibit 10 (Rules of Internal Order) shall apply.

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 12.8, ii) in application of article II.3.5 of Exhibit 10 (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 of

more than one affected Non-Operational Party, the notice can be done 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 12.10.1. In deviation from Exhibit 10 (Rules of Internal Order), 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 12.10.1. Should the MCSC not solve the escalated decision in such meeting, the escalated decision shall be subject to Article 25. 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 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 Exhibit 10 (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 Exhibit 11 (Accession Form) 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 Exhibit 11 (Accession Form);

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 SIDC;
- such power exchange or TSO is not from a country for which the Service Provider has validly refused to provide its services in compliance with the XBID-MSA (e.g. trade ban, embargo, political or economic sanction);
- 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 SIDC 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 Exhibit 11 (Accession Form); 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 Exhibit 11 (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) an 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 Cooperation 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, recovery

15.1 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 Exhibit 12 (Cost sharing, monitoring and recovery).

15.2 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.

Article 16–External Communication

16.1 Scope

The principles under this Article 16 shall apply to external communication in all forms relating to any subject in the framework of the Agreement or related to the SIDC. This clause is without prejudice to the permitted disclosures under Article 18 and permitted disclosures to NRAs under Article 17.

The Parties may deviate from this Article 16 only to the extent necessary to comply with applicable Legal Provisions, in particular those related to disclosure of information and the safe operation of the individual TSOs' or NEMOs' businesses.

16.2 General Principle

The Parties shall be free to express written or oral positions or opinions about all SIDC 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 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 16, the other Parties are entitled to request such Party to publicly correct its communication, without prejudice to any other rights or remedies under the Agreement or by law (such as, but not limited to, the right to claim compensation in accordance with Article 22). Upon receipt of such valid request, such Party shall forthwith correct its communication publicly in accordance with the request.

Communication on Joint XBID Procedures is subject to Article 18.2.3.

16.3 Joint Communication

The MCSC shall decide on the channel via which joint external 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 external communication shall bear the logo of each Party or a common SIDC logo, if available. Joint external communications shall only take place after approval by the MCSC of the content of the external communication. The MCSC shall also agree, for any joint external

communication, on the date and hour at which the joint external communication is effective.

The following events shall be submitted to the MCSC for decision on whether such event requires a joint external communication :

i) major incidents regarding the SIDC, such as SIDC operation suspensions or interruptions;

ii) content of the Agreement that must be disclosed to the public;

iii) extension of SIDC to other countries or region;

iv) Exit of (a) Party(ies);

v) Termination of the Agreement; and

vi) other events for which a joint communication is considered necessary by the MCSC.

Operational communication messages are dealt with in the relevant procedure set forth in Exhibit 6 (Joint XBID Procedures).

A Party may communicate individually to third parties on the issues which are subject to joint communication if such individual communication is urgently needed. In case of such individual communication such Party shall inform MCSC thereof as soon as possible.

Article 17–Regulatory aspects and handling of requests from competent authorities

17.1 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).

17.2 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 SIDC 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 18. 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.

17.3 Should a request from competent authority(ies) lead to the need to amend the Agreement, Article 24.2 shall be applicable. In case such request leads to a change as defined in Exhibit 3 (Change Control Procedure), this Exhibit 3 (Change Control Procedure) applies.

17.4 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 18–Confidentiality

18.1 Confidential Information

The term **"Confidential Information"** under the Agreement means any information, whether or not marked as confidential, exchanged between the Parties in the context of the SIDC 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.

18.2 Non-Disclosure of Confidential Information

18.2.1. The Receiving Party(ies) shall not :

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

iii) incorporate Confidential Information into data, documents, databases, or any other medium save to the extent necessary for the SIDC or as permitted under the Agreement, without the explicit prior written consent (including email) of the Disclosing Party(ies); and/or;

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

18.2.2. By derogation to Article 18.2.1, the Receiving Party(ies) is (are) entitled to disclose Confidential Information in the following limited exceptional situations:

i) if it informs the Disclosing Party(ies) beforehand of such disclosure and demonstrates to the satisfaction of each Disclosing Party before the disclosure 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(ie)s that it may disclose the Confidential Information on the basis of this Article 18.2.2. (i). Upon expiry of this time limit, the consent of the concerned Disclosing Party(ies) to the disclosure shall be deemed as granted, but the burden of proof that the information was known prior to the disclosure stays with the Receiving Party(ies);

ii) if it informs each Disclosing Party beforehand of such disclosure and demonstrates to the satisfaction of each Disclosing Party before disclosure 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 18.2.2. (ii). Upon expiry of this time limit, the consent of the concerned Disclosing

Party(ies) to the disclosure shall be deemed as granted, but the burden of proof that the information has come into the public domain through no fault nor negligence of the Receiving Party(ies) stays with the Receiving Party(ies);

iii) in the event the disclosure is required by law or by a competent authority, provided that the conditions of Article 18.4 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 the External Representative has a definite need to know such information for the execution of its assignment which must be related to the SIDC;

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 the 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 rules further set forth in Article 18.5) in case of breach by its Internal and/or External Representatives;

f) disclosure of Confidential Information to the directors,

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

v) disclosure of Confidential Information to parties of the DAOA 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 18 does not affect the confidential character of the Confidential Information so exchanged.
In the event of doubt as to the fulfillment of the conditions under which Confidential Information may be disclosed pursuant to this Article 18.2, 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 18 and remains fully liable (subject to the rules further set forth in Article 18.5) in case of breach by such third party of these confidentiality obligations.

18.2.3. By derogation to Article 18.2.1, the Parties agree that the Joint XBID Procedures may be disclosed by a Party to any third party NEMO / EEA TSOs or EEA NEMOs (including their subcontractors if these subcontractors are providing services in connection with pre- and post-coupling processes) without the explicit, prior written consent of the Parties, provided that:

i) the Disclosing Party informs the MCSC in advance about such disclosure accompanied with the specific names of such third party(ies) that will receive the Joint XBID Procedures;

ii) the Disclosing Party procures that any third party NEMO/ EEA TSOs or EEA NEMOs including their subcontractors are bound by terms of confidentiality at least as strict as those set forth in this Article 18 (such as the Global NDA); and

iii) to the extent the information concerns information that is confidential according to the XBID-MSA, the disclosure is compliant with the XBID-MSA.

18.2.4. 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 the 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 the Agreement except in cases of Article 18.2.2 (i) to Article 18.2.2 (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; and

iii) indemnify the Disclosing Party(ies) in accordance with Article 18.5.

18.2.5. 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.

18.3 Return or Destruction of Confidential Information in case of termination of the Agreement or Exit

18.3.1. In case of termination of the Agreement or Exit, 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 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;

ii) if necessary to comply with Legal Provision 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.

18.3.2. 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 18.3.1, (i) to (iii) and demonstrate to the satisfaction of each Disclosing Party that the conditions of the relevant exception are met.

18.4 Disclosure to Authorities or under Applicable Laws and Regulations

18.4.1. 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 an organised market place 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) ensure the disclosure is duly justified and is based on well-identified legal grounds;

ii) ensure the competence of the authority issuing the request to disclose the Confidential Information is based on well-identified legal grounds;

iii) the scope of the Confidential Information required to be disclosed is clearly defined;

iv) the Confidential Information required to be disclosed is necessary to comply with the request or the legal obligation;

v) the disclosure of the Confidential Information is the only means to comply with the request or the legal obligation;

vi) 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;

vii) 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;

viii) agree with the Disclosing Party(ies) on the content and form of the Confidential Information to be disclosed; and

ix) if disclosure of such Confidential Information is required, 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.

18.4.2. For the avoidance of doubt Article 18.4.1 also applies to particular national mandatory legislation existing in certain countries (e.g. Norway, Sweden, Denmark, Finland, Czech Republic, Slovenia) relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called "freedom of information acts") or to the legal obligation, if any, of publishing all relevant documents named by particular national legislation (so-called "acts on registration of contracts"). The Parties are aware of the fact that according to such acts, (some of) the Receiving Party(ies) may be obliged to disclose (some) Confidential Information, which other Parties otherwise would like to have kept confidential, or the text of the Agreement itself. Such disclosure shall always take into account the specific procedural rules for disclosure following from such acts and assure to the maximum extent possible under applicable law that information which could be considered as confidential (such as trade secret or personal information) is kept confidential, amongst others by blackening out the relevant parts of such information, in consultation

with the Disclosing Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions.

18.4.3. Each Receiving Party(ies) is entitled to disclose to its competent NRA(s), at its own initiative, Confidential Information, provided that:

i) such NRA(s) is informed by the Receiving Party(ies) of the confidential nature of the Confidential Information; and

ii) such Confidential Information does not represent opinions or contains market data of one or several other Parties.

18.5 Liability related to Confidential Information

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

18.5.2. 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 22.5 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 DAOA in the context of the Joint Governance, cannot be compensated twice under both the Agreement and the DAOA (*i.e.*, no cumulative application of the liability provisions set forth in both agreements).

18.5.3. 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 18.5.2.

18.5.4. 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 the Agreement in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.

18.5.5. The Receiving Party(ies) other than a TSO, that is not a party to the XBID-MSA, shall hold (a) NEMO(s) that is (are) a party(ies) to the XBID-MSA harmless and indemnify it (them) from and against any claim from the Service Provider resulting from an act or omission relating to a confidentiality breach by a Receiving Party, leading to a payment

obligation to the detriment of one or more NEMOs based on liability towards the Service Provider. Such obligation to hold harmless and indemnify shall not be subject to the liability limitation under Article 22, but it shall not exceed the total compensation to be paid by the respective NEMOs to the Service Provider based on the XBID-MSA.

For TSOs the provisions of Article 22.7.1. shall apply in this respect.

Article 19–Entry into force, duration and proof of the Agreement

19.1 The Agreement entered into force on 12 June 2018. Any amendment which requires a written signature of all Parties through an amendment agreement as mentioned in Article 21.1, shall enter into force at the date mentioned in the respective amendment agreement, provided the amendment agreement has been signed by all Parties.

19.2 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 : the electronic versions of the documents in the zipfile bearing the label "Intraday Operations Agreement with Exhibits" and identified with the [redacted]

[redacted]

19.3 The Agreement governs the Parties' relationship as of its entry into force. Any previous relationship is governed by the XBID Market APCA and the XBID B2B Agreement for the signatories to those agreements. The XBID Market APCA and the XBID B2B Agreement are terminated by the entry into force of the Agreement (without prejudice to any survival clauses and the right to claim under those agreements).

19.4 The Agreement is concluded for an indefinite period of time.

Article 20– Voluntary Exit / Forced Exit / Suspension

20.1 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 20.2 or the event in which the concerned Party is excluded from the participation to the Agreement in accordance with Article 20.3, and the verb "to Exit" is to be construed accordingly.

20.2 Voluntary Exit

20.2.1. One or more Party(ies) may, subject to compliance with the conditions set forth in this Article 20, Exit (hereinafter, the "**Exiting Party**") at any time, whatever the reasons for its Exit, without any court intervention and without any compensation being due for the Exit, without prejudice to any outstanding payment obligations under the Agreement and

committed payment obligations towards third parties, until the first next termination possibility towards such third party, which shall remain due unless agreed otherwise in the Exit Plan.

20.2.2. The Exiting Party shall notify the MCSC of its intention to Exit. The MCSC shall meet within two (2) weeks after the notification from the Exiting Party in order to launch the preparation of the Exit Plan of the Exiting Party according to Article 20.5.2. 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, or except if provided otherwise by (a) Legal Provision(s) or regulatory order, the following timescales for the effectiveness of the termination shall apply by default:

i) in the event of Force Majeure, subject to Article 23.6;

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 24.3, 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 24.2, 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 25.3 and 25.4. of the Agreement (where such Dispute is not related to Article 24.2 or Article 24.3), 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

SIDC, upon one (1) month from the notification of the Exiting Party; or

vii) in all other cases, upon six (6) months as from the notification of the Exiting Party.

20.3 Forced Exit / Suspension

Without prejudice to Article 25, 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 :

[redacted]

Without prejudice to Article 25, 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 Article 20.3 in case of dispute settlement (Article 25).

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

In case a Party would Exit the Agreement as a consequence of its Member State exiting the European Union or the European Economic Area (e.g. such as Brexit), then the principles set forth in Exhibit 14 (Principles for voluntary exit due to the exit of a Member State from the European Union or the European Economic Area) shall apply.

20.5 Exit Plan and Consequences of Exit

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

20.5.2. In such case, the MCSC shall prepare an Exit Plan, setting forth the actions and measures to be taken to ensure continuity. The MCSC will propose the Exit Plan to the Exiting Party for its consent. If the Exiting Party does not consent to the Exit Plan, the Parties are considered in Dispute. If the Exiting Party has expressed its consent to the Exit Plan, it will be submitted to the MCSC for formal approval. If the MCSC does not consent to the Exit Plan, the Parties are considered in Dispute. The Exit Plan shall set forth the consequences of the Exit, including, but not limited to, the following:

i) assessment of the changes to be made, for pursuing the SIDC without the Exiting Party(ies);

ii) assessment of the cost related to such Exit and allocation thereof;

iii) status of the licenses and sublicenses granted under the Agreement (termination of the licenses and sublicenses at the Exit Date, unless agreed otherwise in the Exit Plan);

iv) measures for ensuring continuity of the SIDC;

v) the Exit shall be as smooth as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and

vi) the exact date on which the Exit 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 SIDC and to enable migration of the services it performs or the documentation/information it provides.

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

20.5.4. Until the Exit becomes effective, the Exiting Party shall have the right to vote on all matters having financial impact on itself and (if the Exiting Party is an Operational Party) all matters related to daily operations on the agenda of the MCSC or of the sub-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.

20.5.5. As of the date on which the Exit has become effective as determined in the Exit Plan in accordance with Article 20.5.2, 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 (including the XBID System) 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.

20.5.6. In case of Exit, the Exiting Party is authorized to communicate about its Exit with its NRA (and ACER as the case may be) without this constituting a breach confidentiality.

Article 21–Termination

21.1 The 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 the Agreement).

21.2 In case of termination, the MCSC shall decide on the implementation of the termination. The Parties shall duly inform 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 22–Liability

22.1 Principles

22.1.1. The provisions of this Article 22 apply to any liability whether based on contractual liability or non-contractual liability, of a Party (the "**Defaulting Party**") towards another Party i) for any breach (whether by act or omission) of an obligation arising out of the Agreement or ii) for any breach of an extra-contractual duty (whether by act or omission) arising in the context of the Agreement (hereafter collectively "**Non-Performance**").

[redacted]

22.1.3. The liability limitations and limitations regarding hold harmless and indemnification obligations contained in this Article 22 do not apply:

(a) In the event of fraud ("*bedrog*"/"*fraude*");
(b) In the event of own intentional fault or misconduct ("*opzettelijke fout*"/"*faute intentionnelle*");
(c) In the event of delay or default in payments of any amount due under the Agreement; and
(d) In the cases explicitly mentioned hereunder.

22.1.4. 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 DAOA or ii) a breach of an extra-contractual duty (whether by act or omission) arising in the context of the

Agreement and of the DAOA, cannot be compensated twice under both the Agreement and the DAOA (i.e., no cumulative application of the liability clauses set forth in both agreements).

22.1.5. A Party receiving a claim for damages related to the Agreement shall inform the MCSC thereof in writing without undue delay and keep the MCSC informed of the proceedings.

22.2 No joint and several liability

22.2.1. Except otherwise stipulated in the Agreement (e.g. Article 27) each Party is liable for its own commitments only and Parties shall not bear joint and several liability ("*geen hoofdelijkheid / pas de solidarité*").

22.2.2. The principle under Article 22.2.1 shall also be applicable in case of commitments jointly undertaken by the Parties or a subset of them (hereinafter "**Relevant Parties**"), it being understood however and for the avoidance of doubt, that in such circumstances:

(a) an evidenced breach of a jointly undertaken commitment, irrespective of any allocation of tasks between the Relevant Parties, constitutes a breach by each of the Relevant Parties; and

(b) any indemnification due as a result of such claim(s), shall be divided in equal parts between the Relevant Parties and each of such Relevant Parties shall only be held to pay such part to the claiming Party(ies). No single Relevant Party can be held to pay the whole amount for the other Relevant Parties and it is up to the Relevant Parties to organise recourse claims between them, by way of TCID and Nemo-Only Agreement respectively, or Local Arrangements, as the case may be.

22.3 Liability between the parties

22.3.1. In case of a Non-Performance by a Defaulting Party, the affected Party shall be entitled to claim compensation from this Defaulting Party for any and all losses, damage, charges, fees or expenses, expected and unexpected, which can be considered as directly arising out of or directly

resulting from a Non-Performance only and under the terms and conditions explicitly provided below.

22.3.2. Without prejudice to Article 22.1.3, Parties shall not be liable for indirect loss or damage, including loss of profit, reputational damage, loss of business opportunity.

[redacted]

22.3.4. For the avoidance of doubt, to the extent that no obligation under the Joint XBID Procedures and Exhibit 16 (Rollback Procedure) has been breached, the application of relevant procedures (such as closing of interconnectors or markets) shall not be considered as a breach of the Agreement. Parties acknowledge that the Joint XBID Procedures and Exhibit 16 (Rollback Procedure) have been designed by the Parties and shall apply in case of closing of interconnectors or markets and are considered a satisfactory solution by the Parties in case of closing of interconnectors or markets.

22.3.5. A Party can only claim damages for simple default or negligence *("lichte fout" / "faute* légère") if the loss or damage suffered by such Party exceeds a threshold of [redacted] per incident (irrespective of the number of Defaulting Parties). If this threshold is exceeded the Parties can claim for all loss or damage up to the indemnification cap set forth in Article 22.3.6.

22.3.6. Without prejudice to Article 22.1.3, the indemnification obligations of each Defaulting Party shall at all times, irrespective of the number of breaches and the number of Parties suffering damage, be limited to:

[redacted]

[redacted]

22.3.7. If the sum of all damage per calendar year exceeds the amount of the liability limitation as set forth in Article 22.3.6, the compensation payable to the Party(ies) suffering damage shall be reduced *pro rata*.

22.4 Third Party Claims

22.4.1. The present Article 22.4 applies for any third party claim, except for those for which a specific regime is foreseen in Articles 22.6 to 22.8, unless expressly otherwise provided.

[redacted]

22.4.3. In case a Party receives a claim for damage suffered by a third party and resulting directly from the act or omission of any other Defaulting Party, it shall fully cooperate with the Defaulting Party in such response and defense as reasonably required in order to minimize or settle the said claim.

[redacted]

[redacted]

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

22.4.7. The defendant Party shall not approve any proposed settlement without the approval of the Defaulting Party. Such approval shall not be unreasonably withheld, conditioned or delayed.

22.5 Total Cap

[redacted]

This total cap shall not apply to :

i) The cases referred to in Article 22.1.3;

ii) The specific hold harmless and indemnification obligations of TSOs for third party claims as set forth in Article 22.6 and 22.8.2, i); and

iii) The specific case of third party claims mentioned in the last sentence of Article 22.6.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

22.9 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.

22.10 Subrogation

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

Article 23–Force Majeure

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

23.2 Upon occurrence of Force Majeure, the Party(ies) seeking protection under this Article 23 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 specific 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.

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

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

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

23.6 If Force Majeure continues for two (2) consecutive months following the notice under Article 23.2, the Party(ies) that has (have) invoked Force Majeure shall be entitled to Exit (under the terms and conditions of Article 20.2) immediately upon notice sent in writing and provided that it demonstrates that:

i) the event of Force Majeure invoked in the notice under Article 23.2 prevents it from performing its obligations under the Agreement which are to be considered as essential obligations under the Agreement; and

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

Article 24–Agreement modifications

24.1 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) Exhibit 1 (Definition list);

iii) Exhibit 3 (Change Control Procedure);

iv) Exhibit 4 (High level architecture of the XBID Solution (including High Level Business Processes));

v) Exhibit 10 (Rules of Internal Order) except as concerns its Appendix 1, as mentioned hereafter; and

vi) Exhibit 14 (Principles for exit due to the exit of a Member State from the European Union / European Economic Area).

The MCSC is entitled, subject to an MCSC decision in compliance with Article 12 and subject as the case may be to Exhibit 3 (Change Control Procedure) to amend or modify :

i) any other Exhibits,
ii) Annex 1 to Exhibit 3;
iii) Appendix 1 of the Exhibit 10 (Rules of Internal Order);

Subject to compliance with Exhibit 3 (Change Control Procedure), the bodies mentioned to do so in such Exhibit 3 (Change Control Procedure) are entitled to change the documents mentioned in Annex 1 to this Exhibit 3 (Change Control Procedure) to the exclusion of Exhibit 3 (Change Control Procedure) itself.

Exhibit 13 (Contact List) and Exhibit 19 (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.

24.2 Amendment due to Legal Provisions

24.2.1. In the event an amendment of the 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 the Agreement and notify the other Parties as soon as reasonably possible. In this notification, it shall be set forth which Article

of the Agreement is or will be affected by such Legal Provision and the reason(s) and background as to why an amendment of the Agreement is required. It is understood that the Parties to which such Legal Provision applies shall, to the extent possible, take all steps reasonably required to mitigate the effect of such applicable Legal Provision.

24.2.2. The Parties performing the impact assessment as referred to in Article 24.2.1 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 24.2.1 shall be sent to the other Parties without such proposal.

24.2.3. In the event the Parties cannot reach an agreement on the amendment of the Agreement within twenty (20) Working Days or such other longer period as the MCSC may decide in order to comply with the applicable Legal Provision, the concerned Party(ies) shall inform its (their) competent regulatory authority to see if performance of the Agreement is still possible without making the necessary amendment. In case this competent regulatory authority considers that the Agreement should be amended, Article 25.6 i) or ii) shall apply, as well as the subsequent provisions set forth under Article 25, as the case may be.

24.2.4. It is understood that until the Dispute as referred to in Article 24.2.3 is finally settled, the Parties to which such Legal Provision applies are entitled to suspend (totally or partially) the performance of the concerned obligations set under the Agreement, provided that the following cumulative conditions are met:

i) such Legal Provision is already effective;

ii) the Parties to which such Legal Provision applies would suffer a certain direct damage or loss as a result of a third party claim (including claims of public, administrative or regulatory

authorities) should they not suspend the performance of their obligations set under the Agreement; and

iii) the suspension does not put operations at risk.

24.3 Amendment due to Hardship

24.3.1. In the event an amendment of the Agreement is required pursuant Hardship, the Parties affected by such Hardship shall notify the other Parties to the Agreement as soon as reasonably possible. In this notification, it shall be set forth which Article of the 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 the Agreement is required.

24.3.2. The following shall not be considered as Hardship:

i) adaptation due to the introduction of requirements under CACM; and

ii) amendments pursuant to Article 24.2.

24.3.3. 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 24.3.1 shall be sent to the other Parties without such proposal.

24.3.4. Notwithstanding the obligations of the Parties under this Article 24.3, all Parties shall take all steps reasonably required to mitigate the effects of such Hardship.

24.3.5. Following the notification as referred to in Article 24.3.1, 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 24.3.3.

24.3.6. In the event the MCSC cannot reach an agreement on the amendment of the Agreement within twenty (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 25 of the Agreement.

Article 25–Dispute resolution

25.1 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.

25.2 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.

25.3 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.

25.4 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.

25.5 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.

25.6 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.

25.7 Any amicable settlement reached pursuant to Articles 25.2 to 25.6 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).

25.8 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 25.6, 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.

25.9 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.

25.10 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.

25.11 Nothing in this Article 25 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.

25.12 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 26–Miscellaneous

26.1 Exhibits

The Exhibits to the Agreement (including any amended or new Exhibit to be set forth by the MCSC pursuant to Article 24.1) form an integral part thereof and any reference to the Agreement shall include a reference to the Exhibits.

26.2 Contract management

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).

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

26.3 No Partnership

The Agreement shall in no event be considered as a partnership or full function joint venture or other association between the Parties, nor will any Party be considered to be the agent of another Party.

26.4 Severability

If any term of the Agreement is held by a court of competent jurisdiction or an arbitral tribunal to be invalid, unenforceable or otherwise ineffective by operation of law, then the Agreement, including all of the remaining terms, will remain in full force and the Parties shall negotiate, in accordance with Article 24, in good faith

to replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to the original intentions of the Parties.

26.5 No waiver

Neither the failure of a Party at any time to enforce any of the provisions of the Agreement nor the grant at any time of any other indulgence towards any Party shall be construed as a waiver of any of the provisions or a Party's right to subsequently enforce and compel strict compliance with any provision of the Agreement.

26.6 Language of the Agreement

26.6.1. Notwithstanding any translations that may be made, whether signed or not, the sole applicable language for questions of interpretation or application of the Agreement is English.

26.6.2. The use of the English language is however without prejudice to the fact that legal concepts in the Agreement are to be understood as civil law concepts under Belgian law (and not as common law concepts).

26.7 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.

26.8 Notices

26.8.1. Unless expressly provided otherwise in the Agreement, all notices, requests, demands, or other communications under the Agreement shall be served in the English language by registered letter, courier, or by e-mail (with acknowledgement of receipt) to the appropriate Party or Parties at its/their contact address(es) mentioned under Exhibit 13 (Contact List).

26.8.2. Any change of address of a Party must be notified by any of the abovementioned means to the MCSC (via the MCSC Secretary), the new address being considered the official address for purposes of the

Agreement as from the third (3rd) Working Day following the sending of this notification. Changes in contact details of a representative of a Party or a change in the representative of a Party may be done by email to the MCSC Secretary. The MCSC Secretary shall ensure that an up to date version of Exhibit 13 (Contact List) is made available to the Parties in accordance with Article 26.2.

26.8.3. Notification shall be deemed effective at the time when the notification is indicated to the sender as delivered to the recipient and/or the recipient acknowledges the receipt thereof provided that, if the notice is received on a Working Day after 4 p.m. or on a date which is not a Working Day, the notice shall be deemed given and effective on the first following day that is a Working Day.

The foregoing does not apply for notices in the context of Operational Procedures.

26.9 Legal successors

The Agreement is binding upon the Parties and their legal successors.

26.10 Assignment

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

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

26.10.3. 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.

26.10.4. 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.

26.10.5. No assignment shall relieve any Party of responsibility for the performance of any accrued obligation that such Party then has hereunder.

26.11 Interpretation

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

26.11.2. Words denoting the singular may where the context requires include the plural and vice versa. Words denoting one gender shall include another gender.

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

26.11.4. 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.

26.11.5. All references to Articles or Exhibits refer to the corresponding Articles or Exhibits of the Agreement as amended, supplemented or modified from time to time, in accordance with Article 24 unless otherwise specified.

26.11.6. 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.

26.11.7. Any reference to "hour" or a certain timeframe means that hour or timeframe CE(S)T.

26.12 Specific rule applying to OTE

26.12.1. 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.

26.12.2. 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 27 – General Data Protection

27.1 Personal Data and description of processing

27.1.1. 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.

27.1.2. 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.

27.1.3. 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.

27.1.4. 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.

27.2 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 26.2, where the contractual documents as well as contact

information lists with regard to Party representatives, personnel and service providers are stored.

27.3 General distribution of responsibilities

27.3.1. 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.

27.3.2. 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.

27.3.3. 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 26.2 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.

27.4 Use of data processors and sub-processors

27.4.1. 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.

27.4.2. 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.

27.5 Security

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

27.6 Liability

27.6.1. The Parties shall be individually liable with regard to any Data Protection Legislation violation related to their individual responsibilities according to Article 27.3.1.

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

27.6.3. 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 22 do not apply.

27.7 Right to provide individual controller information

27.7.1. Each Party has the right to provide individual controller information in Exhibit 19 (Controller Information Clause).

27.7.2. Parties agree that apart from informing their relevant personnel and representatives involved in the performance of the Agreement of the existence of Exhibit 19 (Controller Information Clause), this Exhibit creates no obligation for the other Parties.