

IDA-CIP Services Contract

BETWEEN

ON THE ONE HAND

- 1) BSP Energy Exchange LL C ("**BSP**") a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with VAT n° SI37748661, having its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at the District Court of Ljubljana under registration n° 3327124000;
- 2) 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 the Commercial Court in Zagreb under number 080914267;
- 3) 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;
- 4) 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 the Commercial Register in Paris under the number 508 010 501;
- 5) ETPA Holding B.V. ("**ETPA**") a company organised and existing under the laws of the Netherlands, with VAT number NL 8552.89.685.B01, having its registered address at Arlandaweg 92, 1043 EX, Amsterdam, and registered with the chamber of commerce trade register under the number 63457431;
- 6) 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;
- 7) HELLENIC ENERGY EXCHANGE S.A. ("**HEEx**"), 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.);

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- 8) 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;
- 9) 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;
- 10) 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;
- 11) OMI-Polo Español, S. A ("**OMIE**"), a company incorporated and existing under the laws of Spain, with V.A.T. number A86025558, having its registered office at Alfonso XI nº 6, 28014 Madrid, Spain, and registered with the Commercial Register in Madrid under Section 8, Sheet: M-506799;
- 12) OKTE, a.s., ("**OKTE**") a company incorporated under the laws of the Slovak republic, VAT nº SK2023089728, having its registered office at Mlynské nivy 48, 821 09 Bratislava, registered with the District Court Bratislava I, Section Sa, File No. 5087/B under the number 45 687 862 and;
- 13) 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;
- 14) 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, contract number: ████████;
- 15) 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;
- 16) Towarowa Gielda Energii S.A. ("**TGE**"), a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland, registered in the 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;

hereafter collectively referred to as the “**Clients**”,

AND ON THE OTHER HAND

Unicorn Systems a.s., a joint stock company incorporated under the laws of Czech Republic (Akciova Spolecnost), VAT number CZ699004029, having its registered office located at V Kapslovně 2767/2, Prague 3, 130 00, Czech republic, registered with the Czech Commercial Register in Municipal Court in Prague, Section B 4579 under ID number 25110853,

hereafter referred to as “**Provider**”,

All hereinafter referred to, also, individually as a “**Party**” and collectively as the “**Parties**”.

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WHEREAS:

- (a) The Clients are cooperating with TSOs in the context of the development and operation of a Single Intraday Market Coupling (SIDC) in compliance with the Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (“**CACM Regulation**”).
- (b) The Clients and the TSOs have to supplement, in compliance with the applicable legal and regulatory framework, the SIDC with an Intraday Auction mechanism (“**IDA**”) with a view to implementing an intraday cross-zonal capacity pricing mechanism.
- (c) The Clients wish to engage a service provider to develop, deliver and maintain the information and communication technology (ICT) tool required for interfacing the different systems communicating in the context of the envisaged IDAs.
- (d) Following the submission of an offer and given that this offer was retained as globally the best proposal received by the Clients, the Parties signed a Letter of Intent which entered into force on 17 January 2022 (“**LOI**”) under which Provider committed to making available an “**IDA CIP Solution**”, as described in Schedule 1 to the LOI consisting of the provision of the following services (collectively the “**Services**”):
- i) the design, development and implementation of a Central Interface Point (“**CIP**”) - supporting tool for intraday auctions (the “**IDA CIP Tool**”);
 - ii) the related maintenance and support services;
 - iii) the transfer of related IP and where applicable (Standard Software) the granting of the licenses;
 - iv) the related hosting activities; and
 - v) the related framework for future development.
- (e) The LOI was entered into since due to the envisaged timeline for the design, development and implementation of the IDA CIP Tool, it was vital that the analytical works would start as soon as possible and hence before the entering into force of the Contract.
- (f) Under the LOI, the Parties agreed to detail further in a contract still to be agreed and signed by the Parties, the terms and conditions under which Provider shall provide the Services to the Clients, as well as the detailed Services descriptions. The awarding of the assignment to provide the Clients with the IDA CIP Solution to Provider was made subject to the negotiations between Parties effectively leading to the Contract.
- (g) After having discussed and negotiated the terms and conditions of their cooperation, the Parties hereby wish to enter into this agreement setting forth the terms and conditions

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under which the Provider shall provide the Services to the Clients (the **Contract**).

(h) For information purposes only, TGE hereby declares that it has the status of a large enterprise, as defined in Article 4 (6) of the Polish Act on counteracting excessive delays in commercial transactions (Dz.U. [Journal of Laws] from 2020, item 935, 1086, as amended). This status is also defined in Commission Regulation (EU) n° 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).

THEREFORE, PARTIES AGREE AS FOLLOWS:

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Article 1. Subject of the Contract and structure

1.1 This Contract sets forth the terms and conditions under which the Provider shall provide the Services.

1.2 This Contract fully replaces the LOI as of its Effective Date and the Services provided under the LOI shall be governed solely by the terms of this Contract as of its Effective Date.

1.3 The Contract is composed of:

i) The main text of the Contract

ii) The following Annexes:

Annex 1: Technical Descriptions

Annex 2: Specific Terms Development Works

Annex 3: Specific Terms MH Services

Annex 4: Remuneration

Annex 5: Contact Information

Annex 6: Proof of insurance

Annex 7: GDPR – Controller information

Annex 8: Accession Form

Annex 9: Change Request

Annex 10: Communication tools and governance organisation

Annex 11: Definition List

Annex 12: Additional functionalities

1.4 If and to the extent that there is any inconsistency or conflict between the main text of the Contract and any of the Annexes, the main text of the Contract shall prevail.

1.5 No other terms and conditions, including any standard, general or pre-printed terms and conditions either on the front or back of any invoice or otherwise made available or referred to by any Party shall apply to the provision of the Services under this Contract, unless explicitly otherwise agreed in writing by the Parties.

Article 2. Definitions and interpretation

2.1 Unless explicitly otherwise defined in this Contract, capitalised terms shall have the meaning set forth in **Annex 11 (Definition List)**.

2.2 In this Contract:

- i) Words importing a singular number include the plural and vice versa where the context requires;
- ii) Words importing one gender include the other gender where the context requires;
- iii) The insertion of headings is for convenience only and does not affect the interpretation of the Contract;
- iv) References to Article or Annex numbers are references to the provisions and annexes in the Contract so numbered;
- v) References to statutory provisions shall be construed as references to those provisions as replaced, amended, or re-enacted from time to time (whether before or after the date of this Contract) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions; and
- vi) References to “including” and “include(s)” shall be deemed to mean respectively “including without limitation” and “include(s) without limitation”.

Article 3. Performance

3.1 General

3.1.1 Provider shall perform the Services under the Contract at its premises or, if required, on site at the premises of the Clients.

3.1.2 Neither Provider’s employees nor any other person appointed by Provider to provide the Services, may be considered from any point of view whatsoever as an employee of the Clients.

3.1.3 The employees used by Provider to provide the Services shall remain under its exclusive authority and supervision. Possible instructions or directives formulated by representatives of the Clients to Provider’s representatives or personnel shall not be considered as an interference in Provider’s employers’ authority vis-à-vis its personnel.

3.1.4 As employer, Provider shall be solely responsible for any payment and any procedure, formality and/or obligation of a fiscal, social security (in its broadest sense) or other nature, including obtaining, if necessary, any permission to work in the country of the premises of a Client in good and proper form and for the term of the present Contract, for any

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person who, in one way or another, would be led to intervene or to provide Services on behalf of Provider within the context of the execution of the Contract. In this regard, any member of staff of Provider shall in all respects remain a member of staff of Provider and Provider shall be responsible for the payment of wages, social contributions, employer's contributions, fiscal retentions, insurance premiums and all other legal or extra-legal obligations to which Provider is bound and/or has agreed with its members of staff. No Remuneration shall be paid by or be due from a Client directly to the members of staff of Provider or any person or third party appointed by Provider to provide the Services.

3.1.5 In the event the Clients require the compliance of the Services with specific legal regulations, the Client shall inform Provider thereof. Otherwise, the Provider shall, in the performance of the Services, take into account the requirements of generally binding legal regulations. The Clients may request changes to the Services following changes to the applicable legal framework subject to a Change Request.

3.1.6 Provider undertakes and warrants:

- i) that the Services a) will meet all the terms and conditions set forth in the main text of this Contract and in its Annexes (in particular in respect of the Service description and the Service Levels), of which content Provider acknowledges having perfect knowledge and understanding as well as any other specific specifications and/or requirements agreed between the Parties in the course of this Contract, and b) comply with the laws, decrees, regulations, good practice and current professional standards applicable for these types of Services; and
- ii) to provide all the Services within the deadlines specified in this Contract and to use reasonable efforts to respect any deadlines in connection with the Services imposed in the future by any applicable regulation or competent authority as the case may be; and
- iii) to use for the execution and provision of the Services suitable materials and/or equipment, trained and competent staff with appropriate experience since Provider disposes of all the knowledge, experience, competencies as well as of the financial, human and technical resources necessary for the satisfactory performance of the Services in accordance with the Contract; and
- iv) to work in accordance with the quality standards generally applicable to these types of Services as well as those specifically referred to in the Contract as the case may be; and
- v) to perform its obligations under this Contract with a view of ensuring the good implementation of the Contract; and
- vi) that at the time of entering into this Contract and during the performance of this Contract, it has all necessary licenses and rights to enter into the Contract and to perform hereunder; and

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- vii) to dedicate all resources necessary or appropriate to ensure the delivery of the Services in accordance with the Contract and to ensure availability of sufficient capacity of its resources; and
- viii) to use its Best Efforts in performing its obligations except in the event the obligation qualifies as a result obligation in which case Provider commits to achieve the described result; and
- ix) that at the time of entering into the Contract and at the time when the Services are performed, it shall fulfil all the legal obligations relating to its activities as then in force; and
- x) not to cooperate in the context of the performance of this Contract with companies, partnerships or other entities which are established or have a controlling stakeholder established in any country under a trade ban or embargo with which a Client should comply with according to its applicable law (including EU law) (such as e.g., the trade ban existing at the time of drafting the Contract in respect of the Russian Federation, Belarus or North Korea).

3.2 Service Levels and Service Credits

3.2.1 [REDACTED]

3.2.2 [REDACTED]

3.2.3 [REDACTED]

3.3 Subcontracting

3.3.1 Provider shall be entitled to use subcontractors to perform part of the Services under the Contract subject to the prior written consent of the Clients thereto and provided that the subcontractor is bound by and complies with confidentiality obligations under terms at least equivalent to the terms set forth in this Contract. To this aim, Provider shall inform the Clients, prior to any subcontracting, of the name and expertise of such subcontractor and the part of the Services Provider intends to subcontract.

The consent of the Clients shall not be unreasonably delayed or withheld and shall not be necessary in case the subcontractor is a company that is part of Providers' corporate group, in which case however Provider shall notify the Clients of the use of the subcontractor.

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3.3.2 Provider warrants that the performance by the subcontractor of the subcontracted part of the Services shall at all times be in accordance with the terms and conditions of the Contract.

3.3.3 Provider shall provide the Clients at its written request with proof that the subcontractor has undertaken the requested confidentiality obligations.

3.3.4 Provider shall at all times remain fully responsible and liable towards the Clients for the performance of the subcontracted part of the Services in accordance with the Contract and the fulfilment of its obligations under the Contract.

3.4 Information exchange and assistance

3.4.1 Provider acknowledges and understands the scope and the complexity of the Services to be provided and the circumstances of the SIDC, and acknowledges having received the necessary information to perform the Services.

3.4.2 Provider shall, at any time it requires further information or assistance from the Clients, specify to the Clients the information or assistance it requires in as much detail as possible and indicate the purpose for which it requires the information or assistance.

3.4.3 The Clients shall, following a request for information of Provider, undertake all reasonable efforts to provide Provider with the information and assistance that may reasonably be required of the Clients in order to support Provider in the efficient and effective performance of its obligations under the Contract.

3.4.4 The Clients shall undertake reasonable efforts to ensure that the information they provide as aforementioned is complete and correct.

3.4.5 Provider shall inform the Clients as soon as reasonably possible or practical on possible improvements that could be undertaken to improve the efficiency and the quality of the Services.

3.4.6 Provider is entitled to have direct contact with each Client and shall get in contact with them as soon as necessary for the proper execution of the Services. Each Client shall also be entitled to have direct contact with the Provider for the proper execution of the Services. Provider shall seek to ensure equal treatment of the Clients in accordance with [Article 3.6](#).

3.5 Third party substitution

3.5.1 In the event of non-performance or delayed or defective performance by Provider, despite being notified by the Clients in writing thereof and, in non-urgent matters, being provided reasonable additional time for rectification, the Clients shall be entitled, without any court intervention, to request a third-party service provider to substitute Provider in the provision of the Services until Provider has resumed performance in compliance with the Contract. The additional costs caused by such substitution shall be borne by Provider

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in the event the non-performance, delayed or defective performance is attributable to Provider.

3.6 Equal Treatment

3.6.1 Provider acknowledges and understands the importance of ensuring an equal treatment of the Clients and of maintaining a level playing field between them.

In this context, for any Service provided by Provider under the Contract:

- i) Provider is subject to a duty of loyalty to each Client; the following behaviours are examples of disloyal behaviour:
 - a) Service provision within the scope of this Contract towards one Client is prioritized over the Service provision towards the other Clients, unless this is compliant with the planning agreed by all the Clients; or
 - b) Provider provides more Services within the scope of this Contract to one Client compared to the others for the same remuneration;
- ii) Provider shall treat all Clients in a fair, transparent and non-discriminatory manner; and
- iii) Provider shall provide the Services in the interest of all Clients and in the interest of the SIDC Cooperation and shall refrain from any different or preferential treatment of one or more Clients unless this is compliant with the planning or if instructed by the Clients and provided this is compliant with mandatory local law and mandatory regulations on telecommunication services.

3.6.2 Provider shall put in place the necessary measures to prevent disclosure by it of information related to a Client to the other Clients except where such disclosure has been agreed between the concerned Clients. Services provided in compliance with the Contract, or instructions given to Provider jointly by all the Clients or by one or more Clients or a representative other than a Client, in name and on behalf of all Clients (subject to previous notification by all Clients), are to be considered consistent with the interest of all Clients and of the SIDC Cooperation.

3.6.3 Provider undertakes to put in place the necessary measures (e.g. “Chinese walls”) to prevent conflicts of interests between its own interests and those of one or more Clients and between the interests of one or more Clients and of the SIDC Cooperation.

3.6.4 In the event Provider is, during the provision of the Services, confronted with a conflict

- i) between its own interests and those of one or more Clients; or
- ii) between the interests of one or more Clients and of the SIDC Cooperation,

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Provider shall promptly inform all Clients thereof and request the Clients to decide upon the manner in which the conflict shall be handled.

3.7 Service management, governance and communication tools

3.7.1 To ensure the good and timely performance of the Contract, Parties shall regularly set up meetings in which the Service provision and possible issues are discussed. Such meetings shall take place within the governance groups referred to in **Annex 10 (Communication tools and governance organisation)**.

3.7.2 The Clients undertake to inform Provider of any circumstance that may hinder or threaten the execution of the Services as they have been agreed to by the Parties.

3.7.3 The Clients shall make the necessary resources available so as to ensure the proper collaboration between Clients and Provider.

3.7.4 Provider shall appoint a Project Manager, an Account Manager, a Functional Manager and a Test Manager to ensure the good and swift management of the Services. They shall perform the tasks set forth in in **Annex 10 (Communication tools and governance organisation)**.

3.7.5 Parties shall use the communication tools set forth in **Annex 10 (Communication tools and governance organisation)**.

3.7.6 The Clients may appoint one or several special points of contact (SPOC(s)) for the communications with Provider.

3.8 Reporting

3.8.1 Provider shall provide the Clients with the reports as mentioned in **Annex 2 (Specific Terms Development Works)** or **Annex 3 (Specific Terms MH Services)**.

Article 4. Remuneration, Indexation, Travel Costs, Payment Conditions

4.1 For the proper execution by Provider of its commitments under the Contract, the Clients shall pay to Provider the remuneration for the Services set forth in **Annex 4 (Remuneration)** (hereafter the “**Remuneration**”), subject to the following provisions below.

4.2 All taxes, levies, deductions, duties and/or other fees, excluding VAT, either directly or indirectly, relating to the Services provided within the context of the Contract and all costs and disbursements incurred by Provider in connection with the performance of the Contract and/or the provision of the Services, shall be deemed included in and covered by the Remuneration except as indicated hereafter.

4.3 Travel and accommodation costs may be invoiced separately by Provider at cost to the Clients provided that:

- i) written evidence is provided of the incurrence of such cost;

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- ii) such travel and accommodation costs have been incurred outside the Czech Republic for meetings in connection with the performance of the Contract; and
- iii) the costs have been incurred on request of the Clients and are approved by them prior to the expenditure thereof.

In this respect, the Parties agree to the following guidelines regarding travel costs:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.4 Any price adaptations are expressly excluded except as provided in Article 4.13.

4.5 The Remuneration and costs shall be paid by the Clients according to the following terms and conditions:

- i) Provider shall issue separate invoices for each Client and invoice each Client an equal share of the Remuneration.
- ii) Each invoice shall include:
 - a) the VAT number of the relevant Client;
 - b) the imputation codes communicated by the relevant Client;
 - c) the indication of the performed Services.
- iii) Any Remuneration to paid under the Contract for any recurrent Service shall be paid every three (3) months, starting from the Effective Date, for the preceding three (3) months 18.1.1. Provider shall send to the Clients its breakdown of the invoicing amounts at the latest on the first f(1st) Business Day of the month following the period to which the invoice relates, as well as the detailed timesheets for the Services to which the breakdown relates. Provider accepts that obtaining approval from the Clients regarding recovery of the amounts invoiced by Provider is a prerequisite for the invoice to be issued. For any invoicing related to MH Services, Provider shall send a document providing a short description of the rendered MH Services and in particular the Clients to whom/for the benefit of whom these Services have been provided.

For the Development Works or the MH Services for which a specific payment schedule applies in accordance with **Annex 4 (Remuneration)**, the Remuneration shall be paid in accordance with such payment schedule. In these cases,

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the aforementioned rules regarding the provision of a breakdown of the invoicing amounts and timesheets equally apply, it being understood that the breakdown of the invoicing amounts may be sent as soon as the agreed payment term lapses.

- iv) The breakdown of the invoicing amounts and the invoice shall take into account the applicable Service Credits related to the Services that are the subject of the invoices, as described in **Annex 3 (Specific Terms MH Services)**.
 - v) The Clients shall inform Provider of their approval of the breakdown of the invoicing amounts and related detailed timesheets or of their refusal due to remarks on the breakdown of the invoicing amounts and related detailed timesheets in writing (including e-mail) within five (5) Business Days from the date of receipt of the breakdown of the invoicing amounts. Provider shall issue its invoice taking into account the remarks made (if any), unless they are not justified. In the latter case, Provider shall notify the Clients promptly with indication for which reason it considers the remarks not justified. The Clients and Provider shall endeavour to find an agreement within five (5) Business Days from the receipt of such notification of the Provider, in respect of the disputed remarks. In the event an agreement is reached and confirmed in writing (including e-mail) by all Parties within this period of five (5) Business Days, Provider shall issue its invoice taking into account such agreement. In case no agreement is reached and confirmed in writing by all Parties within this period of five (5) Business Days, Article 23 shall apply. Provider shall notify the Clients promptly in case of any issue in respect of invoicing and payment.
 - vi) Breakdown of the invoicing amounts, the detailed time sheets and invoices shall be sent to the Clients by e-mail to the e-mail contacts set forth in **Annex 5 (Contact Information)**.
 - vii) The Parties agree that the due payment date of invoices is thirty (30) calendar days from the delivery of the invoice to the Clients if duly compliant with EU VAT regulation in force. Payments due on a day other than a Business Day shall be made on the first following Business Day. Payments shall be made by wire transfer to the bank account indicated by Provider on the invoice.
- 4.6** The absence of any of the abovementioned or statutory references shall render the invoice null and void. In this case the Clients reserve the right to return the invoice to Provider, such returning being equivalent to disputing it.
- 4.7** In the event of a dispute regarding the payment of an invoice or of a credit note, any amount due shall be paid within thirty (30) days of the date of the agreement reached on the dispute or of the judicial decision by which the dispute is definitively settled between the Parties.
- 4.8** Payment by the Clients of an invoice, wholly or in part, shall not be considered as an acceptance or validation of the provided Services.

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- 4.9** Any remedy for non-payment that the Provider may have, shall only be invoked against the Client that is not paying the invoice and shall not affect the provision of the Services towards the other Clients. Provider shall in no event invoke the exception of non-performance ("*exceptio non ad impleti contractus*") in order to suspend the performance of its obligations towards any of the Clients (including the Client that is not paying). This specific provision is motivated by the essential nature of the Services provided for the SIDC requiring continuity of Services and by the joint benefit of the Services for the Clients.
- 4.10** An invoice is considered paid on the date on which the relevant sum is credited to the Provider's account.
- 4.11** Should a Client be in delay with the payment of an invoice, [REDACTED].
- 4.12** Provider acknowledges that the costs incurred by the Clients in the context of this Contract are part of a cost recovery mechanism between the Clients and the TSOs, which is subject to scrutiny of the competent regulators and that the Clients and the TSOs might be subject to specific reporting, accounting or tax requirements. Provider accepts to provide a Client or a TSO at its first request any document required by applicable legislation or requested by any competent authority in this context (such as certificate of residence or beneficial owner statement in the required written form).

If needed, the requesting Party shall provide a template for such a document and an assistance.

- 4.13** Provider may, once every calendar year (at the anniversary date of the Contract), adjust the Remuneration for the MH Services in accordance with the following indexes:
- i) for maintenance services: index of J62 (Computer programming, consultancy and related services), as published by the Czech Statistical Office for the preceding year;
 - ii) for hosting services index of J63 (Information services), as published by the Czech Statistical Office for the preceding year.

Should such adjustment of the Remuneration be requested by Provider, it applies for the twelve (12) months following that anniversary date of the Contract (no retroactive effect) taking into account the index values as published at the date of the request. The adjustment of the Remuneration shall be applied as follows:

$$\text{Adjusted Remuneration} = (\text{Remuneration} \times \text{new index}) / \text{base index}$$

it being understood that for the application of this formula the following terms have the following meaning:

Remuneration : the Remuneration due for the concerned Services (exclusive of costs and taxes).

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Base index: the index for the concerned Services as stipulated in [Article 4.13](#), as published in the Czech Statistical Office at date of entry into force of the agreement.

New index : the index for the concerned Services as stipulated in [Article 4.13](#), as published in the Czech Statistical Office at the concerned anniversary date of the Contract.

Article 5. Inspection / audits by the Clients

5.1 Inspections

5.1.1 The Clients may, at any time during the term of the Contract and with at least two (2) Business Days prior notice, request that an independent third party appointed by them performs an inspection to determine and verify that Provider's (including its subcontractor's) performance of the Services is in compliance with the Contract and, after mutual agreement between the Parties on the procedure, date, time and on the duration of the inspection, such third party shall be entitled to gain access to Provider's or its subcontractor's premises for the purpose of conducting such inspection, provided, however, that i) the inspection will be conducted during the Office Hours of Provider (or its subcontractor), ii) in a manner that does not unreasonably interfere with the normal business activities and operations of Provider (or its subcontractor) and iii) that such third party is bound by confidentiality obligations generally applicable in this respect. Such inspections shall be conducted at the expense of the Clients. If the independent third party determines that Provider significantly breached the terms of the Contract, Provider shall reimburse the cost of such inspection.

5.1.2 All information provided by Provider in the framework of the inspection, including the inspection results, shall constitute Confidential Information and is subject to [Article 14](#).

5.1.3 A third party, which can reasonably be considered a direct competitor of Provider or has a conflict of interest with Provider shall not be considered an independent third party for the purpose of this [Article 5.1](#).

5.1.4 Upon receipt of the notification of the identity of the inspector, Provider shall inform the Clients promptly and at the latest within two (2) Business Days if it wishes to challenge the selected third party with indication of the reason why it considers that the aforementioned condition is fulfilled. If the Clients do not receive any objection within said timeframe, the inspector shall be deemed accepted by Provider.

5.1.5 Provider shall not unreasonably object to the third party selected by the Clients.

5.2 Audits

5.2.1 Provider (or its subcontractors) shall cooperate in good faith with any audit the Clients may or must organize in respect of the Services and provide the Clients with any requested information or assistance as well as access to all the relevant documents in connection with this Contract (in particular the records Provider is obliged to maintain pursuant to the Contract) within the timeframes agreed upon by the Parties or within the

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mandatory timeframes (if any). Such audits shall be conducted during Office Hours and in a manner that does not unreasonably interfere with the normal business activities and operations of Provider (or its subcontractors).

- 5.2.2** The Clients shall inform Provider in writing at least ten (10) Business Days in advance (to the extent possible) of their intention to carry out an audit. The costs of such an audit shall be paid by the Clients unless the audit concludes to a significant negative evaluation of the Services performed by Provider (or its subcontractor) which is attributable to Provider (or its subcontractor) and which reasonably requires adaptation of its (or its subcontractor's) performance.
- 5.2.3** Except for audits imposed by regulators or other authorities, audits shall be organized maximum once a year.
- 5.2.4** Audits shall be performed by an independent third party appointed by the Clients, which will be bound by the confidentiality obligations generally applicable in this respect.
- 5.2.5** A third party, which can reasonably be considered a direct competitor of Provider or has a conflict of interest with Provider shall not be considered an independent third party for the purpose of this [Article 5.2](#).
- 5.2.6** Upon receipt of notification of the identity of the auditor, Provider shall inform the Clients promptly and at the latest within two (2) Business Days if it wishes to challenge the selected third party with indication of the reason why it considers that the aforementioned condition is fulfilled. If the Clients do not receive any objection within said timeframe, the auditor shall be deemed accepted by Provider.
- 5.2.7** Provider shall not unreasonably object to the third party selected by the Clients.
- 5.2.8** All information provided by Provider in the framework of the audit, including the audit results shall constitute Confidential Information and is subject to [Article 14](#).
- 5.2.9** For those matters which have received a negative evaluation in an audit (regardless of whether performed at initiative of Provider or of the Clients), the Clients and Provider shall meet without delay with a view to examining and determining the actions (if any) to be taken to remedy thereto and to improve the Services in accordance with the requirements and suggestions formulated in the audit report (if any), as well as the timing for implementation thereof and responsibility for the related cost.

Article 6. Cooperation of the Parties

- 6.1** The Parties agree to mutually cooperate and to provide to each other all information necessary for the good performance of their obligations under this Contract. The Parties

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are obliged to inform each other of all circumstances which are, or may be, important for the good performance of this Contract.

- 6.2** The Parties shall provide any required cooperation without undue delay and not later than five (5) Business Days after the submission of a written request from the other Party – unless otherwise specified between the Client(s) and the Provider in the Annexes or through an ad hoc agreement.
- 6.3** The Clients are obliged to enable access on the Clients' premises for the Provider's staff and all other employees if it is necessary for the performance of this Contract.
- 6.4** Other specific aspects of the cooperation expected and required under this Contract have been stipulated in the Annexes.
- 6.5** Whenever the Provider believes that the Clients failed to provide it with the required cooperation, it must so notify the Clients in writing.

Article 7. Other Obligations of the Provider

- 7.1** Without prejudice to Article 14, the Provider shall take all steps and measures necessary to make sure that all technical staff and all other employees of the Provider – i.e. those who will participate in the provision of the Services under this Contract – know that they are to keep confidential all facts and other information about the Clients that might be considered a 'business secret' or 'confidential information' of the Clients, with which they come into contact in the implementation of the Provider's obligations under this Contract.
- 7.2** Provider shall take all steps and measures necessary to make sure that all technical staff and all other employees of the Provider, when present and/or working at the facilities of the Clients if this is necessary to provide the Services, follow and adhere to all applicable occupational health, safety and fire protection rules and regulations applicable at the Client's facilities. The concerned Clients shall be obliged to properly and demonstrably familiarize such staff and employees of the Provider with these rules and regulations. Any compensation for occupationally-related accidents or injuries – as a result of a failure on the part of the Provider's staff to follow the above-noted rules and regulations – shall be fully borne by the Provider.
- 7.3** The Provider undertakes to inform its employees that in the provision of the Services under this Contract, they shall only be entitled to have access in those parts of the Clients' facilities, which have been specifically identified by the Clients', and which have been communicated to the Provider, if this is necessary to provide the Services.
- 7.4** All of the above-noted binding rules and regulations applicable to the employees and staff of the Provider shall similarly apply to employees and staff of any subcontractor used by Provider in the context of the Services.

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- 7.5** Other obligations of the Provider will include those which naturally and logically ensue as a result of the main text of this Contract and any related Annexes.

Article 8. Other Obligations of the Clients

- 8.1** The Clients shall allow technical and other employees and staff and subcontractors of the Provider to have access to the Clients' facilities in buildings if this is necessary to provide the Services.
- 8.2** The concerned Client(s) shall properly acquaint and instruct the technical and other employees and staff and subcontractors of the Provider with the occupational health, safety and fire protection rules and regulations applicable to working at the Clients' facilities if this is necessary to provide the Services. This obligation to acquaint and instruct shall similarly apply to the need to maintain the confidentiality of all facts and other information about the Clients that might be considered a 'business secret' or Confidential Information of the Clients.
- 8.3** Should the Clients fail to provide Provider with any necessary assistance, which they are obliged to provide under this Contract, then any related or respective deadlines and milestones shall be extended by that period of delay in which the work of Provider has been delayed due to a failure on the part of the Clients to provide Provider with the respective obliged cooperation. In such a situation, Provider shall have the right to require the Clients to reimburse Provider for any reasonable and duly evidenced expenses incurred due to the extension.

Article 9. Use and Ownership of Data and deliverables

- 9.1** It is explicitly agreed between the Parties that the documentation, Specifications, market data and any other information provided by the Clients and/or other third parties within the context of this Contract (hereafter collectively referred to as "**Data**") to Provider shall be and remain the exclusive property of the Clients and/or the concerned third party providing such Data, as the case may be, and that Provider shall not benefit from any right in their regard, except the non-exclusive and non-transferable right to use those Data solely to the extent that such use is strictly necessary for the provision of the Services.
- 9.2** All deliverables, works, preparations, creations, studies, researches, experiences, inventions or other information, including without limitation all documents, drawings, documentation, manuals, reports, schemes, software (system programs, applications, object codes, Source Codes), algorithms, technologies, business secrets, methods, inventions, findings, know-how, technical or other data, databases, statistical analyses as well as information derived directly or indirectly there from, of whatever kind, developed or made available by the Provider, as the case may be, pursuant to or in connection with the Services provided under this Contract or constituting a direct or indirect result of the

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performance by Provider of the Services (“**Developments**”), shall become the Clients’ joint property as they are developed, at no additional cost or remuneration and all Intellectual Property Rights in respect thereto shall be vested with the Clients to the fullest possible extent (including the right to further develop, use and exploit such Developments or any derivative work), and to the extent necessary, deemed immediately transferred and/or assigned to the Clients as from their development.

9.3 [Redacted]

9.4 [Redacted]

9.5 [Redacted]

i) [Redacted]

9.6 [Redacted]

Article 10. Indemnity for Intellectual Property Rights Infringements

10.1 Subject to the provisions of this Article, Provider shall indemnify and hold harmless the Clients against all claims, demands, actions, costs, expenses (including reasonable legal fees), liabilities, losses and damages arising out of or in connection with any infringement or alleged infringement (including but not limited to the defence of such infringement) of any Intellectual Property Right of any third party resulting from the possession or use by

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the Clients, their Affiliates, their Third Party Contractors or the TSOs (including their sub-contractors involved in SIDC or IDA) of the Developments.

- 10.2** The Clients shall promptly notify Provider in writing of any claim under this Article.
- 10.3** Provider shall have control over the defence and settlement of such claim and overall negotiations in relation to such claim (on reasonable consultation with the Clients).
- 10.4** The Clients shall, at Provider's cost, provide all such documents, information and assistance and do all such acts and things as Provider may reasonably require assisting it in relation to such claim.
- 10.5** The Clients shall make no admission as to liability without Provider's written consent.
- 10.6** If, in the Clients' opinion, the Developments are or are likely to become the subject of a claim by a third party under this Article, or if the same is found to be infringing by a court of competent jurisdiction, Provider shall, without prejudice to the application of Article 10.1, either procure for the Clients the right to continue using the same, or to replace or modify the same so that it becomes non-infringing.
- 10.7** If a court of competent jurisdiction grants any third party an injunction, whether final or interim, the direct or indirect result of which is to restrain the possession or use by the Clients of the Developments or any part of it, then Provider shall, without prejudice to the application of Article 10.1, either procure for the Clients the right to continue using the same or replace or modify the same so that it becomes non-infringing.
- 10.8** Notwithstanding Article 10.1, if within fourteen (14) Business Days as of receipt of a notice from the Clients pursuant to Article 10.2, Provider fails to take action to defend any such notified claim or allegation, the Clients may take control of the defence of such claim without prejudice to the indemnity set out in this Article.

Article 11. Change Requests

- 11.1** Provider or the Clients may request changes to the Services in accordance with the terms of the relevant Annex, by submitting a Change Request using the Change Request Document provided in **Annex 9 (Change Request)**.
- 11.2** If in accordance with the terms of the relevant Annex, the Clients or Provider propose a change to the Services, the Clients or Provider shall agree on the modalities and the terms of the change and describe in sufficient detail in the Change Request Document such a proposed change, the reasons for the proposed change (if proposed by Provider), any related (hardware or other computer system) related requirements, the cost (price) and time required for the implementation of the proposed change and any other related required changes to the concerned service description or changes that might impact the implementation of Contract.

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- 11.3** Provider shall respond to Change Requests of the Clients within seven (7) Business Days.
- 11.4** Parties shall discuss and negotiate in good faith the terms of the Change Request with the competent governance group as indicated in **Annex 10 (Communication tools and governance organisation)**.
- 11.5** Any agreement reached in respect of the Change Request shall be reflected in the Change Request Document to be signed by all Parties, which may be adapted for that purpose and shall contain the agreed description of the proposed change(s), of the anticipated impact on deadlines, of the milestones and of the Remuneration due.
- 11.6** Change Request Documents that have been signed by duly authorised representatives of each Party shall automatically be considered part of the Contract.
- 11.7** In the event the changes are required due to changes in the regulatory framework, Provider shall use its Best Efforts to allow the Clients to be compliant with the requirements and within the deadlines of such regulatory framework.

Article 12. Communication

- 12.1** All notices and communications shall be addressed to the contact details indicated in **Annex 5 (Contact Information)**.
- 12.2** Notices and communications shall be sent in writing (including by e-mail) and in the English language. With respect to the nature of the particular communication delivery method used, a notice shall be deemed delivered as follows:
- i) by hand, courier or messenger: upon acknowledgement of receipt of delivery by the addressee;
 - ii) by registered mail: on the date of a receipt signature or confirmation that the communication could not be delivered – or, as otherwise agreed between the Parties;
 - iii) via email: on receipt of a confirmation of email delivery to the addressee.
- 12.3** The Parties agree to immediately inform each other about any changes in the data provided in the head of this Contract or in other contact details as mentioned in **Annex 5 (Contact Information)**. Any change in those data is binding on the other Parties as of 9:00 a.m. of the Business Day following the day on which a notice of a change in data is delivered to the other Parties, unless the notice sets out a later time.
- 12.4** In the event that a Party receives illegible or incomplete documents, it undertakes to immediately inform the Party that has sent the documents of that fact and, until it receives a reply (which such other Party is obliged to send without delay), it shall not take any action on the basis of such documents. The Party to which such a document was

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delivered is not liable for any damage potentially incurred by the notifying Party because of non-performance or delayed performance of such action.

Article 13. Records

- 13.1** Without prejudice to Article 14.7, Provider shall maintain records that are complete and accurate in all material respect to substantiate the performance by it of all its obligations hereunder and Provider shall retain such records for a period of three (3) years or such later date as may be required under applicable law or as the Parties may agree. On the Clients' first motivated written request, Provider shall provide the Clients with a copy of all or part of the records as indicated by the Clients or with a soft copy of such records in an accessible format.
- 13.2** Any records that are required to be maintained under this Article shall preferably be in computerized or other electronic form (on a permanent support such as cd-rom), but may be on paper.
- 13.3** Any Client shall be entitled to use the records referred to in this Article, provided Article 9 and Article 14 are complied with.

Article 14. Confidentiality

- 14.1** The Parties are obliged to ensure the secrecy of any Confidential Information they receive or learn of. The Party(ies) disclosing Confidential Information hereafter referred as the "**Disclosing Party**" and the Party(ies) receiving Confidential Information hereinafter referred to as the "**Recipient**" it being understood that this Article 14 only governs confidentiality between the Clients and the Provider in the context of this Contract and that confidentiality between the Clients, also related to this Contract is governed by their co-operation agreements.

Provider hereby confirms that it has been informed personally and specifically about and it has understood the specific provisions with regard to confidentiality to which the Clients are subject as market operators, in particular with respect to market data.

- 14.2** Parties undertake to maintain strictly confidential any Confidential Information and not to divulge it, in whatever form that may be, except as provided below. .
- 14.3** For the purpose of the Contract any information, whether or not expressly marked as confidential, exchanged between the Clients and Provider in respect of the Services and/or the Contract as well as the content of this Contract are to be considered as confidential information ("**Confidential Information**"), to the exception of information which is:
- i) already in the public domain at the time it is divulged, it being understood that the foregoing only applies to the extent Recipient proves to the satisfaction of the

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Disclosing Parties that the information was already in the public domain at the time of divulcation;

- ii) already known to Recipient at the time it is divulged and not having been previously obtained either directly or indirectly from the Disclosing Party, it being understood that the foregoing only applies to the extent Recipient proves to the satisfaction of the Disclosing Party that the information was already known to it at the time of divulcation;
- iii) after having been divulged, it becomes accessible to Recipient following a lawful communication by a third party without breaching any obligation of confidentiality (explicit or implied) to the extent Recipient proves to the satisfaction of the Disclosing Party that the information was lawfully communicated by such third party.

14.4 Provider shall make no reference either to the Contract or to the Services performed within its context or even to the relationship with the Clients, in any publication or presentation of a technical, commercial or other nature, without the prior explicit written agreement of the Clients. Provider is however allowed to refer to the Clients as one of its clients and to mention in brief the scope of the Contract. For the avoidance of doubt, the Clients shall be entitled to provide any report delivered by Provider to their clients, Third Party Contractors or any other third party or to make it public, provided that reference is made to Provider. Provider shall be informed thereof beforehand and be entitled to indicate in a motivated writing that such report contains sensitive information and may not be communicated. In such event, the Parties shall in good faith determine how such report can be communicated without disclosing such sensitive information.

14.5 The Parties shall ensure that the confidentiality obligations are also complied with by their employees and representatives and the subcontractors if Confidential Information is communicated to them. Any breach of the confidentiality undertakings under this Article by members of staff of Provider and/or by a subcontractor of Provider, shall be considered as being a material breach on the part of Provider which is not capable of being remedied. Provider shall be liable for such representatives, members of staff and/or such subcontractor for any loss and damage (including indirect loss) resulting from a breach by such representative, member of staff or subcontractor of this Article.

14.6 The confidentiality obligations under this Article last for the duration of this Contract and for a subsequent period of five (5) years after the termination of this Contract.

14.7 Immediately upon receiving the written request of the Disclosing Party, Recipient shall return any and all Confidential Information to the Disclosing Party, and shall, to the extent possible, at first written request of the Disclosing Party destroy all not returned Confidential Information and prove such destruction to the respective Disclosing Party with the exception of those documents which Recipient is obligated to keep pursuant to generally binding legal regulations. To the extent the computer back-up procedures of Recipient create copies of the Confidential Information, Recipient may retain those copies for the period it normally archives backed-up computer records (in any event no longer than required by generally binding legal obligations), such copies remaining subject to the provisions of the Contract until they are destroyed.

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14.8 The Recipient shall be entitled to disclose Confidential Information:

- i) to public authorities (e.g. ACER national regulators, EC), when required by law or by competent administrative or other authorities, provided that i) such authorities have a legally justified need to know such information and ii) that confidentiality of the information is adequately ensured;
- ii) if the Party who is concerned by the Confidential Information or who provided it, has given prior written consent to such a release of information; or,
- iii) if the information is or has been disclosed to persons who are in an employment relationship or other type of employment or similar type of relationship to a company, which is linked to the Party and falls within the definitions of a unified type of management (corporate group), and is involved in the performance of this Contract and thus bound by the Contract's confidentiality provisions to the same extent as the Parties;
- iv) to the TSOs or NEMOs acceding the SIDC Cooperation, service providers of the NEMOs (on a need to know basis) provided i) commercially sensitive information not to be exchanged between competitors is blackened out as the case may be and ii) this person is bound by confidentiality provisions under terms at least equivalent to the terms set forth in this Contract.

In the event that a Recipient is required in accordance with this Article to disclose any Confidential Information, it shall first give immediate written notice of such requirement to the Disclosing Party, unless prohibited to do so by legal regulations, to allow it, if possible, to intervene in the proceedings or to take all possible measures to protect its interests in the matter, and shall provide Confidential Information only to the extent strictly necessary.

14.9 Provider acknowledges that the Clients may be subject by law to the obligation to publish the Contract or may be requested by ACER or the competent authorities to make the content of the Contract publicly available, e.g. via websites that publish information on the SIDC Cooperation. Provider agrees to the publication of the Contract in those circumstances, provided that commercially sensitive information is blackened out. Parties shall in that case mutually agree on the version of the Contract that can be published.

14.10 In the event of breach of obligations under this Article, the Party harmed by such disclosure is entitled to claim against the Party that breached the given contractual obligation compensation for damage incurred by such breach.

14.11 In the event a Recipient breaches the confidentiality obligations under this Article, the Disclosing Party is entitled to a lump sum indemnification in the amount of 40.000 EUR per breach, without prejudice to its right to claim compensation for damage incurred in excess of this amount. For the purpose of this Article 14.11 it is understood that the aforementioned lump sum indemnification is the total amount that may be claimed from the relevant Clients for one and the same breach, without prejudice to the application of Article 21.

Article 15. Processing of Personal Data

15.1 The Parties declare that no data controller and data processor relationship between the Provider and Clients in the sense of Regulation (EU) 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (“**GDPR**”), arises from this Contract, and therefore, there is no personal data processing in the sense of the GDPR by Provider for the Clients.

15.2 Any personal data (names and contact details) of contact persons of the Clients or of Third Party Users that Provider shall receive in the context of the Services are processed by the Provider as a data controller on its own behalf and under its control, based on its legitimate interest, for the purposes of the preparation, conclusion, and performance of this Contract, internal record-keeping and audit, protection of legal claims, and operational needs.

In the same way any personal data (names and contact details) of contact persons of Provider that a Client shall receive in the context of the performance of the Contract are processed by such Client as a data controller on its own behalf and under its control, based on its legitimate interest, for the purposes of the preparation, conclusion, and performance of this Contract, internal record-keeping and audit, protection of legal claims, and operational needs.

15.3 Any Party that comes into contact with personal data pursuant to Article 15.2, will take such measures as to prevent unlawful or incidental disclosure or publication of the personal data to third persons.

Any disclosure of personal data (names and contact details) of contact persons of Provider to Third Party Users shall be done by the Provider on its own behalf and the Clients are not involved in such disclosure. In this respect the Provider waives any claim towards Clients and shall hold harmless any Client for and indemnify it for any claim of a data subject.

15.4 Should personal data processing in the meaning of the GDPR take place by Provider as subprocessor of the Clients, Parties shall agree in writing on the specific terms that apply to such personal data processing.

15.5 Each Party shall ensure that any personal data is provided and processed in accordance with the laws, rules and regulations that apply or govern the processing of personal data from time to time within the European Union, and in particular but not limited to the GDPR.

In particular, to the extent the operation of the IDA CIP Tool or the provision of the Services imply the processing of personal data, Provider shall take all required and appropriate measures to ensure that its systems and Services are GDPR compliant.

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15.6 Controllers' information of Provider and of certain Clients is attached in **Annex 7 (GDPR – Controller information)**.

Article 16. Liability

16.1 General provisions

16.1.1 Nothing in this Article is construed in a way to exclude or limit mandatory liability under Belgian Law such as e.g. for fraud (“bedrog”/“*fraude*”) or willfull misconduct (“*opzettelijke fout*”/“*faute intentionnelle*”) or gross negligence (“*zware fout*” / “*faute grave*”).

16.1.2 Except where explicitly otherwise provided, each Party is only liable (“*aansprakelijk*” / “*responsable*”) in the event of a breach or a non-performance (including delay of performance) of an obligation under or arising out of the Contract, committed by such Party or its subcontractors or any person acting for or on behalf of such party (“**Breach**”).

16.1.3 In no event shall the Parties be liable for consequential or indirect damages, such as loss of business or incidental damages of any kind. For the avoidance of doubt, claims the Clients would receive from third parties (such as TSOs) for damages incurred by such third parties as a result of a Breach by Provider of its commitments hereunder are not considered consequential or indirect damages.

16.1.4 Nothing in this Article shall be understood as a deviation to the application of **Chyba! Nenalezen zdroj odkazů.** For the avoidance of doubt, in the event of concurrent Breaches by two or more Clients, Provider shall only be entitled to claim from each such Client compensation of the damage (“*schade*”/“*dommage*”) incurred in proportion to such Client's contribution to the damage (i.e proportionate allocation).

16.1.5 In case of claims related to the processing of personal data of Third Party Users by the Provider acting as a data controller only Article **Chyba! Nenalezen zdroj odkazů.** applies.

16.2 Liability of the Clients

16.2.1 [REDACTED]

16.2.2 [REDACTED]

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[REDACTED]

16.2.3 Any reference in this Article to the terms Remuneration agreed includes, for the avoidance of doubt, remuneration agreed for Change Requests.

16.3 Liability of Provider

16.3.1 [REDACTED]

16.3.2 [REDACTED]

16.3.3 Any reference in this Article to the terms Remuneration agreed includes, for the avoidance of doubt, remuneration agreed in Change Request.

16.4 Hold harmless obligation for third party claims

16.4.1 Should any Breach by Provider result in a claim by a third party against the Clients (or a subset of them), Provider shall hold harmless the Clients (or the subset of them) against and indemnify them for and against any loss, liability, sanction, claim, damage or expense which they suffer subject to the limitations of the compensation obligation resulting from Provider's liability for a Breach set forth in Article 16.3.

16.4.2 The limitations of the compensation obligation resulting from Provider's liability for a Breach set forth in Article 16.3 do in any event not apply to Provider's hold harmless and indemnification obligation set forth in Article 10 for claims of third parties for infringement of intellectual property rights.

16.5 Insurance

16.5.1 Provider shall at all times hold customary insurance covering its liabilities vis-à-vis the Clients and has at date of entry into the Contract the insurance coverage set forth in **Annex 6 (Proof of Insurance)**.

16.5.2 Provider shall provide the Clients with copies of relevant insurance certificates each time the relevant insurance policy is renewed. Provider shall notify the Clients of any

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insurance policy cancellation, termination and of any adverse material change in insurance coverage within thirty (30) days after such change.

Article 17. Force Majeure

- 17.1** A Party which was prevented from performing its obligations in consequence of a *Force Majeure* shall not be liable for any damages arising from this fact.
- 17.2** If obstacles corresponding to Force Majeure occur, the Party who is prevented from performing its obligation due to this Force Majeure, must immediately inform in writing the other Parties of the nature, beginning, and expected end of a Force Majeure event which prevents it to perform. In such a case, the deadline for performance is extended by the duration of the Force Majeure. Provider is not obliged to pay any indemnifications and/or contractual penalties for delay or non-performance under this Contract in the event that it breached its obligations as a result of Force Majeure.
- 17.3** The obligations of a Party unable to comply with its obligations under the Contract due to Force Majeure shall be suspended for the duration of this Force Majeure. As soon as the obligations of such Party are suspended, the other Parties may also suspend the performance of their obligations towards such Party.
- 17.4** In the event the Force Majeure continues for more than sixty (60) days after notice of such Force Majeure to the other Parties, each Party is entitled to terminate the Contract with the Party affected by the Force Majeure, without court intervention and without any damages being due by any of the Clients to Provider or by Provider to the Client. In such case Remuneration paid for Services that have not been delivered shall be reimbursed.
- 17.5** In the event the Force Majeure affecting the Provider continues for more than sixty (60) days after notice of such event of Force Majeure to the Clients (except in urgent cases where such sixty days period shall not apply), the Clients shall also be entitled to appoint another third party to ensure continuity and provide the Services instead of Provider and Provider shall assist the Clients to find as soon as possible a suitable replacing third party and shall provide transition services as set forth in Article 19. For the avoidance of doubt, the right to grant a sublicense as set forth in Article **Chyba! Nenalezen zdroj odkazů.** also applies in this case in respect of the appointed Third Party Contractor.

Article 18. Entry into force, Duration of the Contract, Termination / Withdrawal

18.1 Entry into force - Term

- 18.1.1** The Contract enters into force with retroactive effect on 17 January 2022, provided that all Parties have signed it by sending a scan of the signed signatory page of the to a third coordinating party assigned by the Clients. The third coordinating party will collect all

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copies of the received signed signatory pages and provide a copy of the main text of the Contract with the copies of the signed signatory pages to the Parties.

For evidence reasons:

- i) each Party shall also provide the third coordinating party with original signed signatory pages (one per Party) of the Contract. The third coordinating party will collect all the original signed signatory pages, compile them with the main text of the Contract and provide each of the Parties one (1) original of the main text of the Contract with the original signed signatory pages, which constitutes valid proof of the main text of the Contract. The foregoing will not impact the date of entry into force of the Contract; and
- ii) expressly derogating to Article 8.20 of the New Belgian Civil Code, each Party shall receive a zipfile from the third coordinating Party bearing the label [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

and identified by the aforementioned checksum, constitutes valid proof of these documents regardless of the manner in which this zipfile has been delivered to the Parties (either via a durable medium or via email). The original signed paper versions of the main text of the Contract shall, in case of deviation or contradiction, prevail over any electronic version thereof.

18.1.2 The Contract is entered into for an initial fixed term of three (3) years it being understood that:

- i) the specific terms and conditions applicable to the Development Works as stipulated in **Annex 2 (Specific Terms Development Works)** automatically expire when all obligations under that Annex are performed;
- ii) the MH Services start at the date mentioned in **Annex 3 (Specific Terms MH Services)**.

18.2 The Contract shall after the initial fixed term of three (3) years automatically be extended for successive one (1) year terms, unless the Clients or Provider notified, at the latest three (3) months prior to the end of the then current term to the Provider respectively the Clients that the Contract shall not be renewed. In case only a subset of Clients notified that the Contract is not renewed the Contract shall only terminate for this subset of Clients. Early termination

18.2.1 The Contract may at any time be wholly or partially terminated before the expiration of the Contract by a written agreement between the Parties, through which they will recognize and resolve any outstanding issues as part of a jointly-reached settlement.

18.2.2 The Clients may, terminate, wholly or partly, the Contract by hand delivered or registered letter with acknowledgement of receipt to Provider, without any court intervention and

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without any compensation being due in the event Provider materially breaches the Contract (such as not delivering in time the Development Works). If the Breach is capable of remedy, Provider shall be entitled to a grace period of thirty (30) days to remedy the Breach in the absence of which the Clients may immediately terminate the Contract in accordance with this Article. The Contract may be terminated immediately in accordance with this Article in case of a material Breach by Provider, which is not capable of remedy (such as including but not limited to Breach of confidentiality obligations, third party Intellectual Property Rights and the warranties given under the Contract) or which is not remedied within the grace period.

18.2.3 Clients may terminate, wholly or partly, the Contract with immediate effect by hand delivered or registered letter with acknowledgement of receipt to Provider, without any court intervention and without any compensation being due:

- i) if Provider ceases its business or becomes the object of a liquidation or dissolution;
- ii) if Provider is declared bankrupt;
- iii) if Provider is the object of an appointment of a receiver, or admitted in writing its inability to pay its debts generally as they come due (to the extent compatible with applicable law); or
- iv) in the event of a significant and detrimental change in the legal status, legal structure, the activities and/or the financial situation of Provider, which reasonably leads to the conclusion that the terms and conditions of the Contract can or will, in a nearby future, no longer be satisfactorily complied with by Provider.

18.2.4 Clients may terminate, wholly or partly, the Contract by hand delivered or registered letter with acknowledgment of receipt to Provider, without any motivation and without any court intervention or compensation being due, subject to a three (3) months prior written notice.

18.2.5 In case the participation of a Client to the SIDC Cooperation is terminated (for whatever reason), the Contract shall automatically terminate towards that Client at the date of the termination of its participation to the SIDC Cooperation. Such Client shall notify the Provider and the other Clients thereof by hand delivered or registered letter with acknowledgement of receipt. In that case the Contract shall be continued with the remaining Clients.

18.2.6 Provider may unilaterally (and as the case may be partly) terminate the Contract by hand delivered or registered letter with acknowledgement of receipt to the Clients, without any court intervention and without any compensation being due:

- i) in case of lack of payment by one or more Client(s) of non-disputed Remuneration for a period of more than two (2) successive months and subject to a notice period of thirty (30) days such written notice being sent to the Client(s) that is (are) in delay and in copy to all other Clients. Provider may only rely on this right if it is complying

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with its obligations under the Contract and the termination shall only apply towards the Client(s) that is (are) not paying (partial termination); or

- ii) without giving a reason subject to a six (6) months prior written notice.

18.3 Consequences of termination

18.3.1 On the termination or expiry of the Contract for whatever reason, Provider shall deliver to the Clients all work-in-progress as at the date of termination or expiry including all Developments and all partially completed Developments. Provider shall grant to the Clients all rights and provide all assistance (including to the Third Party Contractors and TSOs (including their subcontractors involved in SIDC or IDA) as it is necessary to enable the Clients, their Third Party Contractors and TSOs (including their subcontractors involved in SIDC or IDA) to use such Developments according to this Contract. Such assistance and cooperation shall be performed by Provider during a period of one (1) year, unless otherwise agreed by Provider and the Clients. Such assistance and cooperation shall be remunerated according to the standard scale of charges set forth in **Annex 4 (Remuneration)**, except in the case where the termination is caused by a Breach of the Contract with Provider as defaulting Party in which case no Remuneration whatsoever shall be due to Provider and Article 16 shall apply accordingly.

18.3.2 Termination or expiry of the Contract shall not affect any accrued rights or obligations of the Parties.

18.3.3 Any termination of the Contract shall be without prejudice to any other rights and remedies the non-defaulting Party may have against the defaulting Party, including any claim for (additional) damages or reimbursement of paid Remuneration.

18.3.4 The Parties expressly agree that upon the termination of this Contract, they will not return to one another the performances already rendered (i.e. the services provided and the amounts already paid as Remuneration). The Clients are obligated to pay to the Provider the agreed Remuneration for all Services that have been properly performed until the date on which termination of this Contract comes into effect. Any Remuneration paid for Services that are not properly performed shall be restituted.

Article 19. Continuity

19.1.1 Provider acknowledges that continuity of the Services is of the essence for the Clients and that Clients are entitled to ensure performance (including by a third party) in case Provider does not perform its Services despite being warned by the Clients in writing and being provided, unless in urgent cases, a thirty (30) days period for rectification. In case such non-performance qualifies as a Breach of the Contract by Provider the costs of this third party can be recovered from Provider.

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19.1.2 If the Contract is completely or partially terminated (for whatever reason) or if the Clients appoint a third party to ensure continuity of the Services pursuant to Article 19.1.1, Provider shall supply the Clients, at their request, with:

- i) the Services for a maximum period of nine (9) months so as to ensure continuity of the Services, it being understood that the Services shall be provided and remunerated in accordance with the Contract except that during such period no Change Requests may be requested by the Clients; and
- ii) the necessary support and training to guarantee the continuity of the Services during a period of nine (9) months needed for the Clients to supply or organize, by themselves or by another service provider, in a satisfactory manner the same services as the Services supplied by Provider under the Contract.

19.1.3 Provider agrees to cooperate fully to operate the transition of the Services to the third party indicated by the Clients as new service provider, including transferring any and all documentation or information essential for the operation of the Services hereunder and for guaranteeing the continuity of these Services. To the extent necessary for such third party to be able to provide the Services after termination of this Contract, Provider shall provide a non-exclusive license to the to the third party indicated by the Clients as new provider of Services instead of Provider, to use Provider's Standard Software (including Enelane), but only to the extent strictly necessary for providing Services.

19.1.4 Upon a request for support and training to guarantee the continuity of the Services Parties shall meet and agree on a continuity plan.

19.1.5 Provider's assistance and cooperation specified in this Article 19 including support and training for continuity of the Services pursuant to Article 19.1.2 ii) shall be remunerated according to the standard scale of charges set forth in **Annex 4 (Remuneration)** except in the case where the termination of the Contract, resulting in such continuity request, is caused by a Breach of the Contract with Provider as defaulting Party in which case no Remuneration whatsoever shall be due to Provider and **Article Chyba! Nenalezen zdroj odkazů.** shall apply accordingly.

Article 20. Accession

20.1 The Contract is open to accession by any Acceding NEMO that accedes to the SIDC Cooperation.

The accession shall be effected by the Acceding NEMO wishing to accede by signing the accession form as provided in **Annex 8 (Accession Form)**. Upon signature of such accession form, the Contract shall become effective vis-à-vis the NEMO wishing to

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accede, and the Acceding NEMO shall be treated as a new Client under the Contract, with the same rights and obligations of the existing Clients.

- 20.2** The Remuneration to be paid to Provider for the provided Services is not dependent on the number of NEMOs receiving the Services.
- 20.3** Any Acceding NEMO shall thus be entitled to the Services (and obliged to participate in the payment of the Remuneration) as soon as such Acceding NEMO has acceded in accordance with this Article 20.

Article 21. No Joint and Several Liability

- 21.1** Rights granted to the Clients by this Contract are granted to each Client individually. Any rights granted to a Client shall be subject to and exercised in accordance with the terms of this Contract.
- 21.2** Each obligation incumbent upon the Clients provided by this Contract binds each Client individually. Thus, each Client is liable for its own commitment only and the Clients shall, in no event, bear any joint and several liability ("*geen hoofdelijkheid*" / "*pas de solidarité*").

Article 22. Applicable law, Language, Resolution of Disputes

- 22.1** This Contract, and the rights and obligations arising out of this Contract or in connection with it, shall be governed by the laws of the Belgium (including for the avoidance of doubt the new Belgian Civil Code), to the exception of the United Nations Convention on Contracts for the International Sale of Goods and the Belgian conflict of law rules.
- 22.2** Notwithstanding any translations that may be made, whether signed or not, the sole applicable language for questions of interpretation or application of this Contract is English, it being understood that legal concepts shall be considered as civil law concepts (not as Common law concepts).

Article 23. Dispute resolution

23.1 Escalation procedure

- 23.1.1** In case of a dispute between the Parties, arising out of or in relation with this Contract, the relevant representative of the Parties (as indicated by them at the time of application of this Article), undertake to seriously and in good faith pursue to achieve a reasonable and fair amicable settlement amongst each other within fifteen (15) Business Days or within any other agreed timeframe between the Parties, after a Party has notified the other of the existence of a dispute.

23.1.2 The relevant representative of the Parties shall respectively:

- i) assess the facts;
- ii) in case of damage:
 - o estimate the damage (and its nature and extent);
 - o determine which Party(ies) suffered the damage;
 - o determine which Party(ies) is(are) liable for the damage; and
- iii) determine the extent and modalities of indemnification;
- iv) assess the interests of the Parties pursuant to the Contract; and
- v) formulate a proposal for settlement or solution.

23.1.3 Any amicable settlement reached shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract signed by the Parties participating in the concerned amicable settlement.

23.2 Amicable Dispute Resolution

23.2.1 In a second instance, should the relevant representatives of the Parties not reach an amicable settlement as described under Article 23.1.3 above within the period or within any other agreed timeframe between the Parties, the dispute will be submitted by the most diligent Party for settlement to their respective chief executive officers and/or chairman of the board or any person so appointed that will commit to trying to find an agreement within fifteen (15) Business Days or within any other agreed timeframe between the Parties, as of the notification of the dispute.

23.2.2 In a third instance, in the event that the Parties fail to achieve an amicable settlement within fifteen (15) Business Days or within any other agreed timeframe between the Parties as of the receipt of the request for amicable dispute resolution described above, the most diligent Party shall submit the dispute to mediation by an external independent duly certified mediator under the ICC mediation rules.

Such external mediator must (i) be committed to the European Code of Conduct for Mediators and (ii) have experience in the electricity and/or the Information and Communication Technologies sector. The Parties will pay the mediator fees and expenses in an equal proportion, unless otherwise agreed.

The Parties shall be informed of and invited to participate to the mediation to ensure that any amicable settlement is compliant with this Contract.

23.2.3 Any amicable settlement reached pursuant to this Article shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract, signed by the Parties participating in the concerned amicable settlement.

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- 23.2.4** In case of failure of within one (1) month of i) the mediation procedure or ii) the appointment of mediator, the dispute shall be finally settled by the Courts in Brussels (ruling in French language) .
- 23.2.5** In the event of a dispute, Provider shall during the amicable settlement procedure not withhold nor suspend the performance of its obligations under the Contract (waiver of the "*exceptio non adimpleti contractus*"). In addition Provider's right to terminate or invoke termination of the contract shall be suspended for the duration of the amicable settlement procedure.
- 23.2.6** Nothing in this Article 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 (ruling in French language).

Article 24. Miscellaneous

- 24.1** In order to specify further obligations and rights which are not specifically covered by this Contract and shall not fall within the scope of this Contract, the Parties can enter into other contracts or agreements.
- 24.2** Unless explicitly agreed otherwise in the Contract, neither Party may assign, sub-license, sub-contract, mortgage or otherwise transfer or dispose of the Contract or any of its rights or obligations under it (including, without limitation, for facilities management or outsourcing purposes) without the prior written consent of the other Parties, such consent not to be unreasonably withheld or delayed. The foregoing does not apply to any sub-license granted by the NEMOs in the context of Article 9.
- Each of the Clients may assign or transfer the Contract in whole or in part without recourse to Provider (i) to any of their Affiliates; or (ii) to any of the other Clients; or (iii) to any other third party acquiring the whole or a part of such Client's assets. Such Client shall notify Provider of the name and address of any such assignee or transferee.
- 24.3** Except for Change Requests, this Contract may only be modified through a written agreement of the Parties, which shall be in the form of ascendingly numbered amendments to this Contract, which have been signed by the authorised representatives of the Parties. Without prejudice to the foregoing, the **Annex 7 (GDPR – Controllers' information)** may be modified via written notification by the concerned Party to the other Parties.
- 24.4** If any provision of this Contract is or should become invalid or unenforceable, this shall not affect the validity or enforceability of the remaining provisions of this Contract. The Parties hereby agree to – without undue delay – replace such an invalid or unenforceable provision with a new valid and enforceable one, with a meaning and purpose as close as possible to the provision being replaced, taking into account the purpose of the Contract.
- 24.5** Parties agree to exclude the application of the rules regarding hardship as set forth in Book 5 of the new Belgian Civil Code.

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24.6 Nothing in this Contract shall constitute or be deemed to constitute any form of legal association including without limitation, partnership, mandate, or agency between any of the Parties.

24.7 The failure of any Party to enforce or to exercise any term of the Contract does not constitute a waiver of such term and shall in no way affect that Party's right later to enforce or to exercise it.

24.8 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 Contract shall only come into force in relation to the rights and obligations of OTE subject to its prior publication of the Contract in the National Contract Registry of the Czech Republic.

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.

24.9 The Parties further do hereby declare that they have read this Contract before signing it, that it reflects their true business goals and objectives and that they have entered it of their own free will, not under duress and not under conspicuously disadvantageous conditions, which they confirm by adding their signatures below. The Parties further declare that the Contract will be signed by persons authorized to act on behalf of the Parties.

* * *

In witness thereof, and without prejudice to the procedure of sending scanned signatory pages set forth in Article 18.1.1, this Contract has been duly executed in seventeen (17) original documents by the undersigned authorised representatives.

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For: **Unicorn**

By: [Redacted]

By: [Redacted]

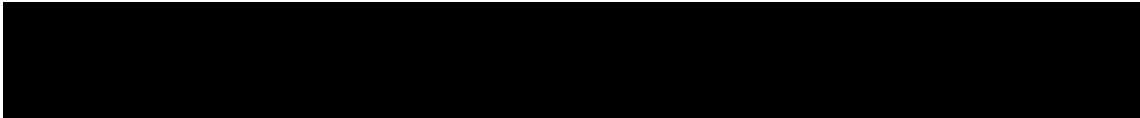
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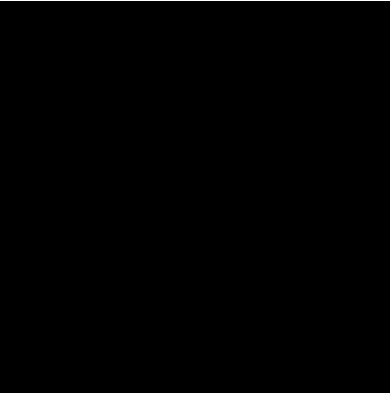
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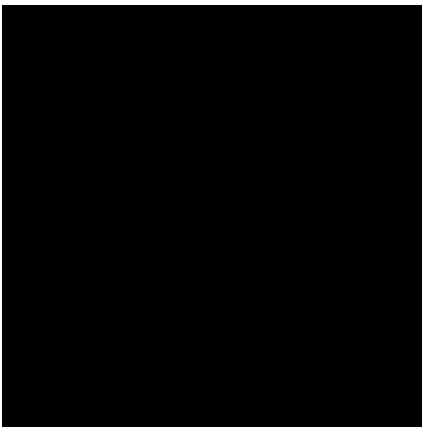
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LL C ("BSP")**

For: **BSP Energy Exchange
LL C ("BSP")**

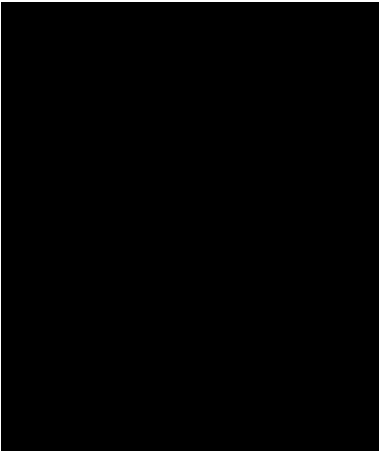
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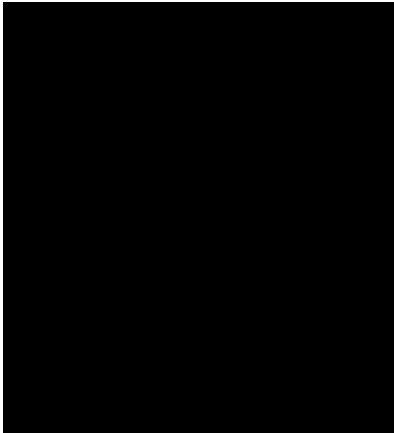
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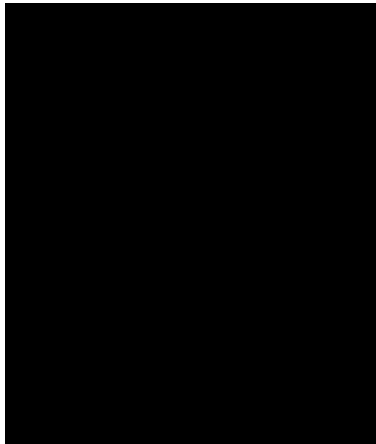
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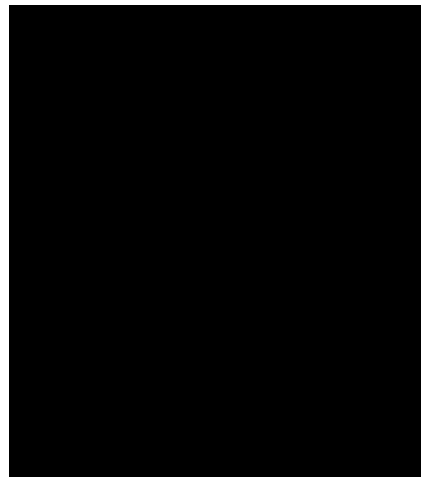
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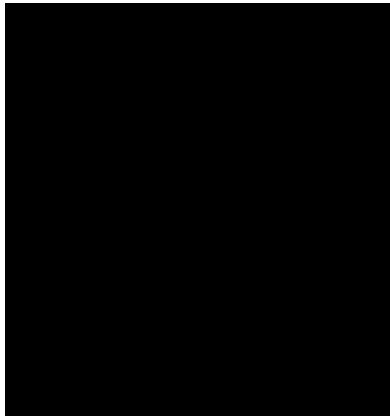
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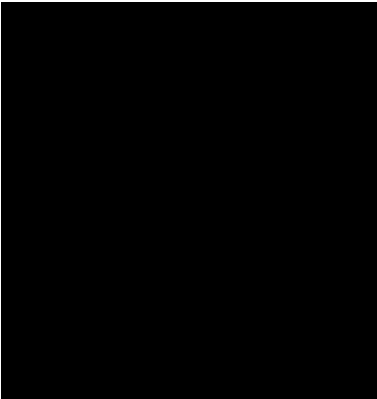
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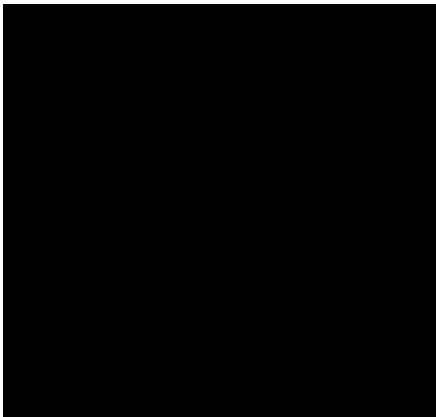
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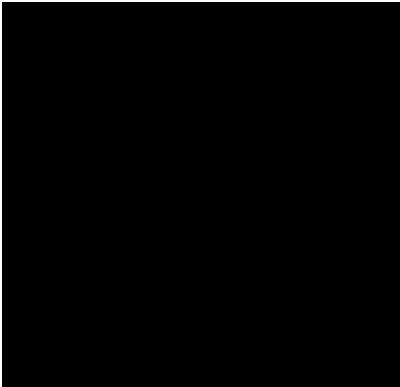
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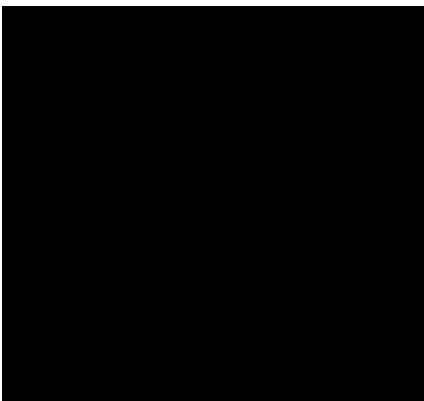
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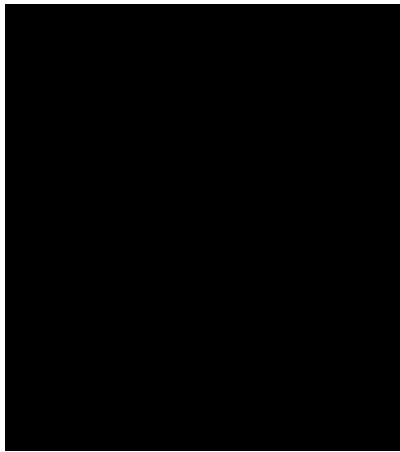
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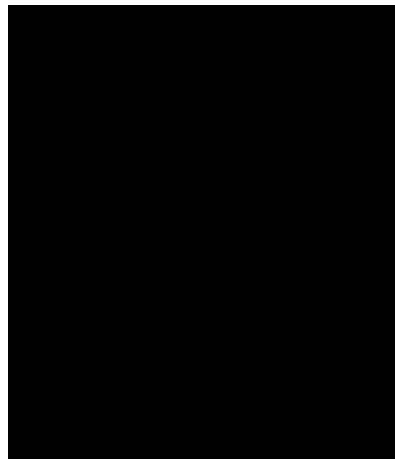
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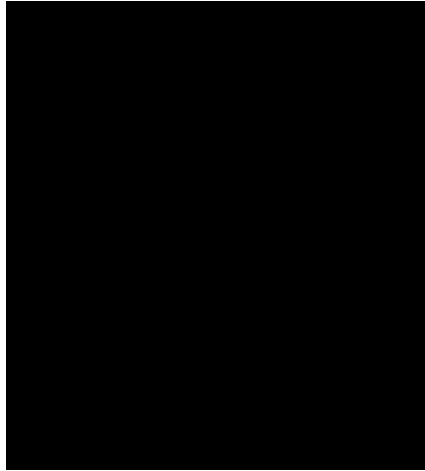
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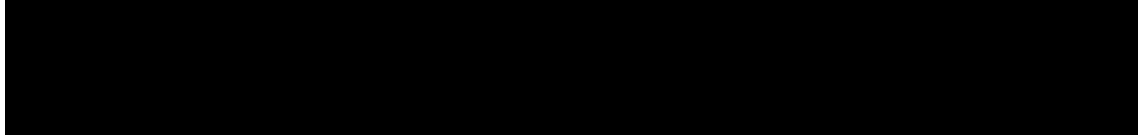
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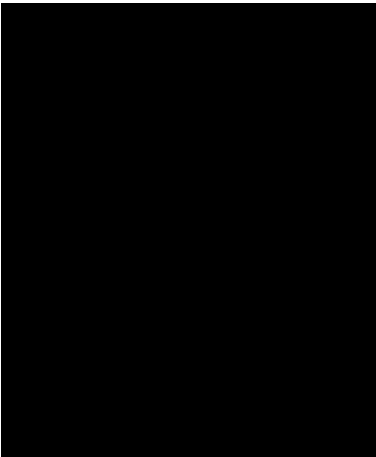
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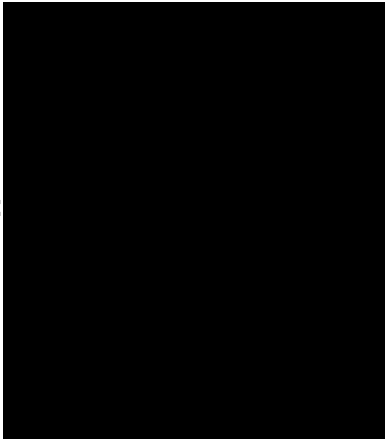
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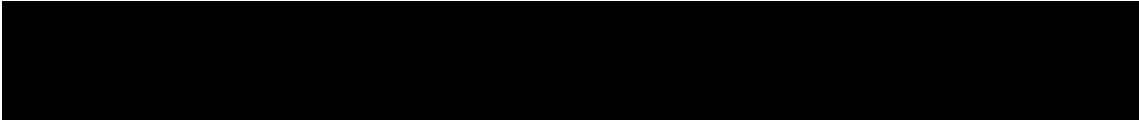
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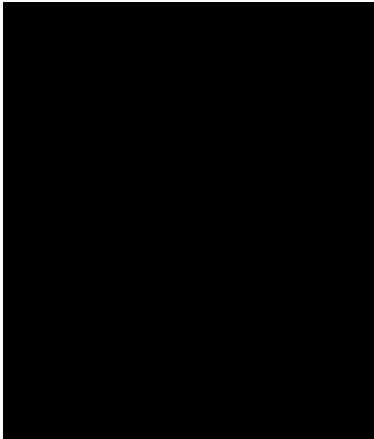
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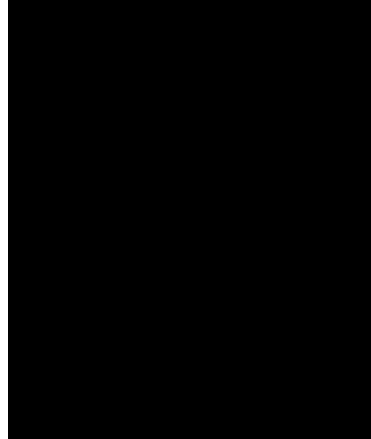
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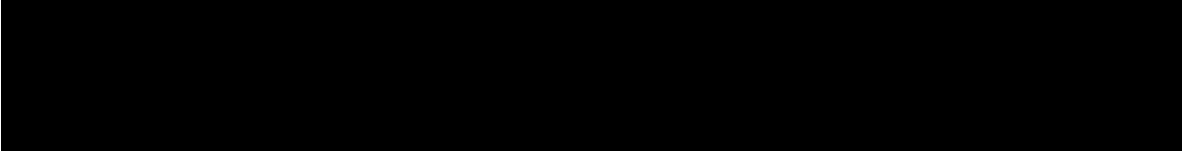
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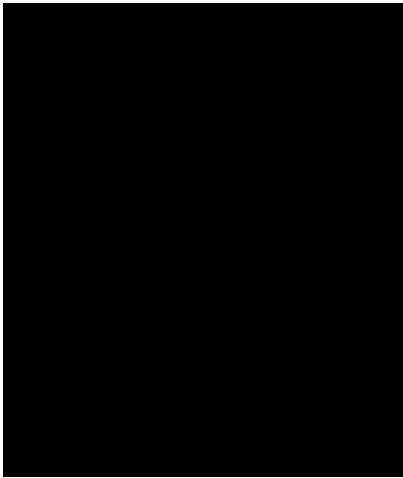
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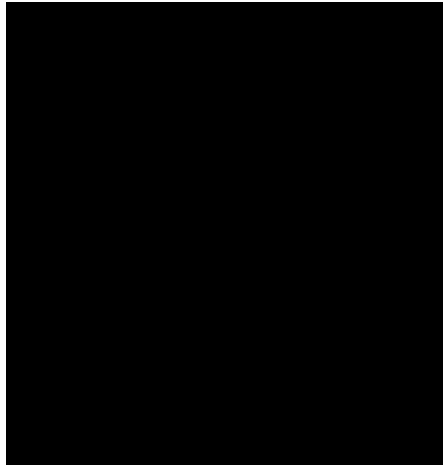
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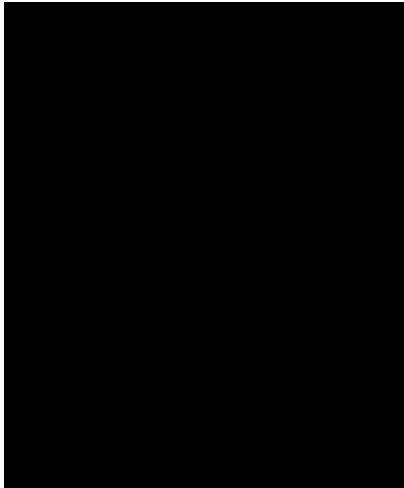
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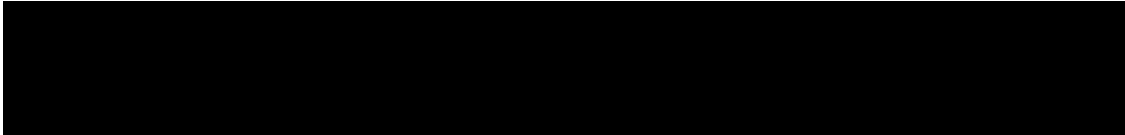
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For: **Operatorul Pietei de
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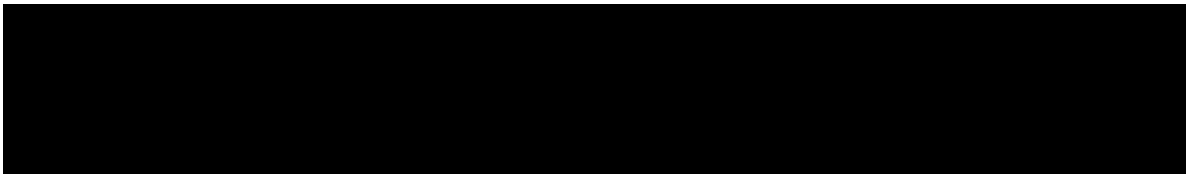
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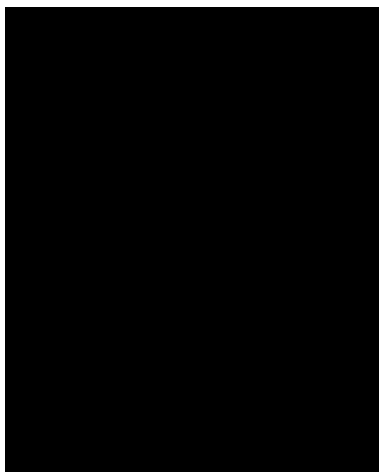
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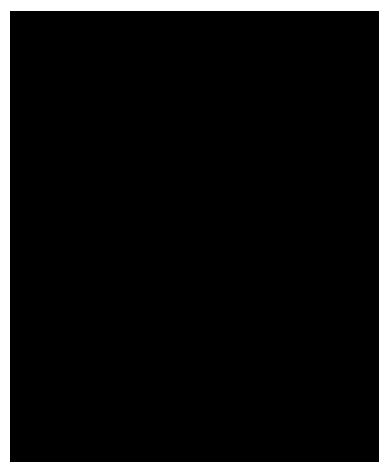
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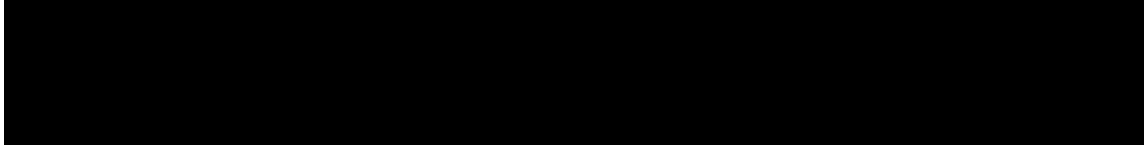
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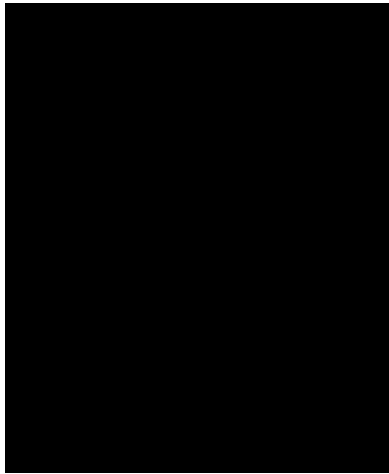
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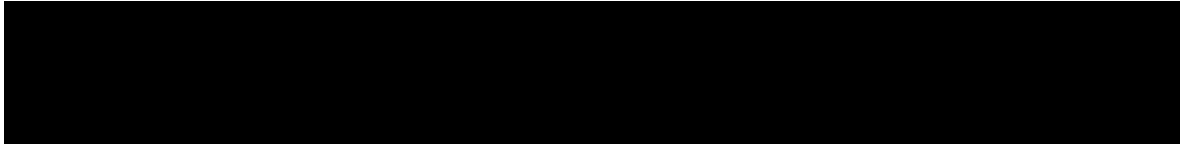
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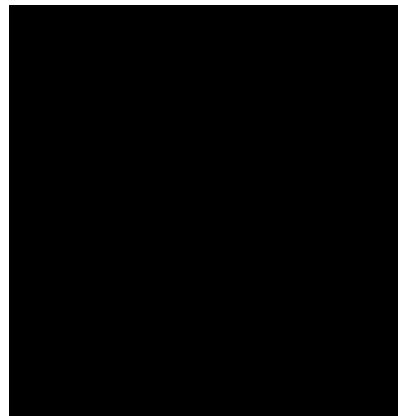
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