

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Third Amendment to the All NEMO Intraday Operational Agreement (ANIDOA)

ATTACHMENT 1

Consolidated version of ANIDOA with Third Amendment provisions – main body

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Attachment 1 Consolidated version of ANIDOA – main body

All NEMOs Intraday Operational Agreement (ANIDOA)

Between:

1. **BSP Energy Exchange LL C (“BSP”)** a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at the district court of Ljubljana under registration n° 3327124000 and VAT n° SI37748661;
2. **Bursa Romana de Marfuri S.A. (“BRM”)** a company organised and existing under the laws of Romania, having its corporate seat at Buzesti Street 82-94, Etaj 7, 1° District, 011017 Bucharest, Romania, and registered with the Romanian Trade Registry under the number J40/19450/1992 and VAT n° RO1562694
3. **CROATIAN POWER EXCHANGE Ltd. (“CROPEX”)**, a company incorporated under the laws of Republic of Croatia, having its registered office at Slavonska avenija 6/A, 10000 Zagreb, Croatia, registered in the commercial register at the commercial court of Zagreb under number 080914267 and VAT n° HR14645347149;
4. **EirGrid plc (“EirGrid”)**, a company incorporated under the laws of Ireland, having its registered office at The Oval, 160 Shelbourne Road, Ballsbridge Dublin 4 and registered with the Company Registration Office under number 338522 and VAT n° IE6358522H;
5. **EPEX Spot SE (“EPEX”)**, a European Company (Societas Europaea) incorporated under the Laws of France, with V.A.T. number FR 10508010501, having its registered office located at 5 boulevard Montmartre, 75002 Paris – France, registered with Commercial Register in Paris under the number 508 010 501 (in the meantime also legal successor of EPEX Spot Belgium SA as a result of a merger by acquisition);
6. **Gestore dei Mercati Energetici S.p.A. (“GME”)**, a company duly organized and existing under the laws of the Italian Republic, with registered office at Viale Maresciallo Pilsudski, 122/124, 00197, Rome, Italy, registered with the Companies Register of Rome under number RM 953866, Italian tax code and VAT 06208031002;
7. **Hellenic Energy Exchange S.A. (“HenEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under the number 146698601000 (legal successor of Lagie S.A.);
8. **HUPX Hungarian Power Exchange Company Limited by Shares (“HUPX Ltd.”)**, a company incorporated under the laws of Hungary, having its registered office at 1134 Budapest, Dévai u. 26-28, Hungary, registered in the commercial register of the Budapest metropolitan court, under number 01-10-045666 and VAT. n° HU13967808;
9. **Independent Bulgarian Energy Exchange (“IBEX”)**, a company incorporated under the laws of Bulgaria, having its registered office at 16 Veslets Str., Sofia, 1000, Bulgaria, registered in the commercial register at Bulgarian registry agency under number 202880940 and VAT n° BG202880940;
10. **Nord Pool European Market Coupling Operator AS, (“Nord Pool EMCO”)**, a company organised and existing under the laws of Norway, having its registered office at Lilleakerveien 2A - 0283 Oslo, Norway, and registered with the Register of Business Enterprises in Norway under the number 984 058 098 and VAT n° NO 984 058 098 MVA,
11. **OMI, POLO ESPAÑOL, S.A. (“OMIE”)**, a company incorporated and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ªplanta, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, hoja: M-506799 and VAT n° ESA86025558;
12. **OKTE, a.s.,(,OKTE“)** a company incorporated under the laws of the Slovak Republic, with V.A.T. number SK2023089728, having its registered office at Mlynské nivy 48, 821 09 Bratislava, Slovak Republic, registered in the Commercial Register at the Municipal Court Bratislava III, Section Sa, File No. 5087/B under the number 45 687 862;

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

13. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” SA (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at Bd. Hristo Botev 16-18, sector 3, București, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
14. **OTE, a.s. (“OTE”)**, a company incorporated and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Prague, Czech Republic, and registered with the commercial register in municipal court of Prague, Section B 7260 under the number 264 63 318 and VAT n° CZ26463318; OTE’s contract number: 25/17;
15. **SONI Limited (“SONI”)**, a company incorporated under the laws of Northern Ireland, with V.A.T. number GB945676869, having its registered office at Castlereagh House, 12 Manse Road, Belfast BT6 9RT, UK and registered with the Companies House under number BT6 9RT;
16. **Towarowa Gięlda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at 12th Commercial Department of the National Court Register in Warszawa under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;
17. **ETPA Holding B.V. (“ETPA”)**, a company organised and existing under the laws of the Netherlands , having its registered office at Arlandaweg 92, 1043 EX, Amsterdam, the Netherlands, and registered with chamber of commerce trade register under the number 63457431 and VAT n° NL 8552.89.685.B01;

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

WHEREAS:

- A) On 15 July 2014, some Parties entered into the XBID Market APCA with some TSOs, in order to design, develop, and contribute together to the implementation of an European continuous implicit (and to a certain extent explicit) cross border intraday market (the “**Target Model**”);
- B) On 5 June 2014, some Parties entered into the EU XBID PX Cooperation Agreement (the “**PCA**”), with a view to determining in that agreement the main terms and conditions of their cooperation for the further design, the development, the implementation and the operation of the XBID Solution in compliance with the Target Model in particular regarding the roles and responsibilities incumbent on NEMOs in that respect and the settlement of the financial aspects thereof;
- C) In the context of implementing the XBID Market APCA and the PCA, some of the Parties have concluded with the XBID System Service Provider the XBID-MSA which sets forth the general terms and conditions under which the Parties have assigned to the XBID System Service Provider the provision of certain ICT services amongst which the development, hosting and maintenance of the XBID System to be used to implement the Target Model;
- D) In the context of implementing the XBID Market APCA and the PCA, some of the Parties have concluded with the MPLS Network Service Provider the MPLS Services Framework Agreement which sets forth the general terms and conditions under which the Parties have assigned to the MPLS Network Service Provider the provision of network communication services that allow for communication between the XBID System and each NEMO’s LTS;
- E) In the meantime, the CACM Regulation, which provides a mandatory framework for the Single Intraday Coupling (“**SIDC**”) and describes the roles and responsibilities of the NEMOs and the ID MCO Function to be jointly performed by the NEMOs, entered into force in August 2015;
- F) Certain of the Parties (BSP, CROPEX, EirGrid, EPEX (also as legal successor of APX Commodities and APX Power BV), EPEX Belgium, EXAA, GME, HUPX, IBEX, LAGIE, Nord Pool EMCO, OKTE, OMIE, OPCOM, OTE, SONI, TGE) have entered into the Interim NEMO Cooperation Agreement dated 3 March 2016 (hereinafter the “**INCA**”), as further amended, with the aim of facilitating the necessary cooperation between designated NEMOs with respect to the performance of all common tasks that need to be performed in connection with the CACM Regulation; the Parties entered into the All NEMO Cooperation Agreement, as later amended, (hereafter the “**ANCA**”) which shall establish the enduring solution for cooperation among NEMOs and shall supersede the INCA;
- G) Pursuant to the CACM Regulation, the Parties established the MCO Plan, setting forth how the NEMOs shall jointly set up and perform the ID MCO Function as described in the CACM Regulation, including the contractual structure for this cooperation between the NEMOs. The MCO Plan has been approved by all NRAs on 26 June 2017 and endorses the proposal of the Parties regarding the joint set up and performance of the ID MCO Function and adopts the XBID Solution as the ID MCO Function;
- H) The SIDC requires also contracts to be concluded between the NEMOs and TSOs involved in SIDC. The Parties have entered into the Intraday Operations Agreement, as later amended, (the “**IDOA**”) with all the TSOs participating in the SIDC, regulating their cooperation in respect of the operation and further development of the SIDC;
- I) According to the MCO Plan an intraday operational agreement setting forth the terms of their cooperation for the ID MCO Function, is to be signed by all NEMOs designated for operating the SIDC (even if such NEMO is not yet an Operational NEMO). Therefore, on 12 June 2018, the Parties entered into the All NEMO ID Cooperation Agreement (the “**Agreement**”), taking into account article 7 of the CACM Regulation and the MCO Plan, the main terms and conditions of their cooperation in respect of the ID MCO Function for the SIDC and in particular the terms and conditions under which the Parties will:
- design, further develop and maintain, test, and request changes to the Identical NEMO Components (including selection of common service providers);
 - manage, and operate the ID MCO Function on a daily basis;
 - connect their LTS to the XBID System;
 - act towards the XBID System Service Provider and the TSOs;
 - participate in the bodies established by the Agreement; and
 - manage cost reporting;

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- J) The ID NEMO Cooperation shall be strictly limited to what is necessary to perform the ID MCO Function, as required by article 7(4) of the CACM Regulation. Therefore apart from what is strictly necessary to coordinate their matching of orders via the XBID System, each Party shall keep its full independency and self-determination for its own business;
- K) The Agreement entered into force on the 12th of June 2018 and is the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to that agreement. The PCA shall be terminated as of such entry into force of the Agreement (without prejudice to the application and the survival of certain clauses between the Parties that have signed the PCA and the right to claim under that agreement).
- L) On the 12th of June 2018, the Parties together with the TSOs subject to the CACM implementation have entered into the **IDOA** to set forth i) the main principles of their cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- M) On the 28th March 2019, pursuant to the MCO Plan, the Parties together with other NEMOs (i.e. the NEMOs which qualify as designated NEMOs with respect to SDAC) have entered into the All NEMO Day Ahead Operational Agreement (as later amended) (hereinafter “**ANDOA**”) to set forth i) the main principles of NEMOs’ cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SDAC shall be implemented, performed and operated among NEMOs
- N) Also on the 28th of March 2019, the Parties together with the TSOs subject to the CACM implementation have entered into the Day Ahead Operational Agreement (as later amended) (hereinafter “**DAOA**”) to set forth i) the main principles of their cooperation in respect of SDAC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
- O) On the 15th December 2019, EXAA has exited the ANIDOA pursuant to Article 32.1.1 (Voluntary Exit).
- P) On the 18th December 2018, the Parties have entered into the first amendment to the ANIDOA in order to introduce new Article 11.4.3 and certain updates to Annexes 1, 3, 5, 9, 10, 11 of ANIDOA.
- Q) On the 14th January 2022, the Parties have entered into a second amendment to ANIDOA - consistently with the related amendments to ANCA, ANDOA, IDOA and DAOA - in order to implement a joint governance set-up of the SIDC and SDAC market coupling cooperation aiming at increasing the efficiency and synergies of NEMOs’ and TSOs’ CACM implementation. In particular, such new joint governance set-up consists of:
- i) new rules for decision making reflecting the already applied practice of pre-alignment of TSOs’ and NEMOs’ respective positions, and
 - ii) the establishment, via the amendment of the relevant provisions of IDOA and DAOA, of the Market Coupling Steering Committee (“**MCSC**”), a new governing body of the SIDC and SDAC market coupling cooperation.
- R) On the 24th January 2019, ACER Decision n° 01/2019 on the Methodology for pricing intraday cross-zonal capacity entered into force. Such decision establishes that the pricing mechanism for cross-zonal capacity in the intraday timeframe shall be based on intraday auctions, which shall be part of the SIDC.
- S) OTE, EPEX SPOT, GME, OMIE, Nord Pool EMCO, TGE and OPCOM have entered into a cooperation for the implementation of a single European day-ahead price coupling of power regions which includes the development, testing and maintenance of the relevant co-owned assets. The PCR cooperation is governed by the PCR Co-ownership Agreement (as defined in Annex 1 to this Agreement). Euphemia (as defined in Annex 1 to this Agreement) and PMB (as defined in Annex 1 to this Agreement), which are used for the operations of SIDC/IDA, are part of the co-owned assets governed by such agreement.
- T) On the 12th of June 2024, the Parties have entered into a third amendment to ANIDOA – consistently with the related amendment to IDOA – in order to set forth the principles of design, development, implementation and operations of SIDC/IDA.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- U) For information purposes only, TGE hereby declares that it has the status of a large enterprise, as defined in Article 4 (6) of the Polish Act on counteracting excessive delays in commercial transactions (Dz.U. [Journal of Laws] from 2020, item 935, 1086, as amended). This status is also defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ EU L 187, 26 June 2014, as amended).

NOW THEREFORE, the Parties agree as follows:

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

TABLE OF CONTENTS

ARTICLE 1. DEFINITIONS	9
ARTICLE 2. CONTRACTUAL DOCUMENTS AND PRECEDENCE.....	9
ARTICLE 3. PURPOSE OF THE AGREEMENT.....	10
ARTICLE 4. THE ID NEMO COOPERATION.....	10
ARTICLE 5. GENERAL PRINCIPLES.....	11
ARTICLE 6. DELEGATION OF OBLIGATIONS BY A PARTY.....	12
ARTICLE 7. ROLES AND RESPONSIBILITIES.....	12
ARTICLE 8. GOVERNANCE.....	13
ARTICLE 9. INTELLECTUAL PROPERTY RIGHTS - RIGHT OF USE.....	16
ARTICLE 10. REQUIREMENTS.....	20
ARTICLE 11. IDENTICAL NEMO COMPONENTS.....	21
ARTICLE 12. CHANGE REQUEST.....	23
ARTICLE 13. TSOS REQUIREMENTS FOR THE XBID SYSTEM.....	24
ARTICLE 14. CONTRACTUAL MODEL OF SERVICES TO BE CONTRACTED IN THE CONTEXT OF THE ID NEMO COOPERATION.....	25
ARTICLE 15. SPECIFIC PROVISIONS REGARDING THE RELATION WITH THE XBID SYSTEM SERVICE PROVIDER.....	29
ARTICLE 16. TRADED PRODUCTS.....	30
ARTICLE 17. GO-LIVE & TECHNICAL READINESS.....	30
ARTICLE 18. DAY TO DAY OPERATION OF THE ID MCO FUNCTION.....	30
ARTICLE 19. COMMUNICATION	39
ARTICLE 20. SPECIFIC RULES GOVERNING RELATIONSHIP WITH TSOS.....	40
ARTICLE 21. INFORMATION EXCHANGE.....	40
ARTICLE 22. CONSULTATION.....	41
ARTICLE 23. IMPLEMENTATION OF THE XBID SOLUTION.....	41
ARTICLE 24. CLEARING AND SETTLEMENT ARRANGEMENTS.....	41
ARTICLE 25. OBSERVER STATUS.....	42
ARTICLE 26. ACCESSION.....	42
ARTICLE 27. FINANCIAL PROVISIONS.....	43
ARTICLE 28. ELABORATION OF FURTHER TERMS, CONDITIONS AND MODALITIES.....	44
ARTICLE 29. MONITORING OF THE IMPLEMENTATION OF SIDC AND REVIEW OF THE OPERATION OF SIDC.....	44
ARTICLE 30. CONFIDENTIALITY.....	45
ARTICLE 31. LIABILITY AND FORCE MAJEURE.....	47
ARTICLE 32. ENTRY INTO FORCE – TERM.....	54
ARTICLE 33. VOLUNTARY EXIT, FORCED EXIT AND SUSPENSION	54
ARTICLE 34. NOMINATED CONTACT PERSON.....	57
ARTICLE 35. AMENDMENT.....	57
ARTICLE 36. GOVERNING LAW.....	58
ARTICLE 37. DISPUTE RESOLUTION AND JURISDICTION.....	58
ARTICLE 38. MISCELLANEOUS	60

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 39. GENERAL DATA PROTECTION.....45

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 1. Definitions

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

ARTICLE 2. Contractual documents and precedence

2.1 The documents constituting the Agreement are:

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

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

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

2.4 In the event of a discrepancy between the Agreement on the one hand and the ANCA on the other hand, the NEMO Committee together with all Parties (as the case may be) shall meet to resolve such discrepancy amicably and in good faith within 10 Business Days. In the event that the NEMO Committee and all Parties are not able to resolve the outstanding issue, the provisions of Article 37 (Dispute resolution and jurisdiction) shall apply.

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

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

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

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

ARTICLE 3. Purpose of the Agreement

The purpose of the Agreement is to set forth the main terms and conditions of the ID NEMO Cooperation between the Parties, taking into account article 7 of the CACM Regulation and any other relevant Applicable Law.

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

ARTICLE 4. The ID NEMO Cooperation

- 4.1** For the purpose of the ID NEMO Cooperation the Parties undertake to cooperate in accordance with the terms of the Agreement, the CACM Regulation and any other relevant Applicable Law.

In this respect, each Party commits to:

- i) jointly ensure the development, testing, and maintenance of the Identical NEMO Components;
- ii) jointly manage and operate the ID MCO Function and SIDC/IDA;
- iii) jointly manage the relationship with the TSOs under the IDOA and the relationship with the service providers that are jointly contracted or that provide services to the benefit of all Parties;
- iv) connect its LTS with the XBID System so as to allow its Global Products to be matched via the XBID System;
- v) ensure that the ID NEMO Cooperation is limited to what is necessary to perform the ID MCO Function and SIDC/IDA;
- vi) ensure that the performance of the ID MCO Function and SIDC/IDA shall be based on the principle of non-discrimination and ensure that no NEMO receives unjustified economic advantages deriving from its role in the ID MCO Function and SIDC/IDA;
- vii) cooperate to design, develop, test, implement and maintain (consistently with article 8.1.1. n. iv) the SIDC/IDA Assets without prejudice to the ownership right upon Euphemia and PMB as per the PCR Co-ownership Agreement. The Parties, by entering into this Agreement, accept that the SIDC/IDA Assets listed in Annex 2 (Identical NEMO Components), as updated from time to time, shall be used for the performance of SIDC/IDA Operations; and
- viii) have in place the Individual NEMO Components needed to ensure the proper performance of ID MCO Function and SIDC/IDA.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 5. General Principles

5.1 Best Efforts obligation

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

5.2 No joint and several obligations

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

5.3 Good faith cooperation and non-discriminatory treatment

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

5.4 Accession on non-discriminatory terms

The Agreement is open to the accession by any Third Party designated as a NEMO in accordance with the provisions of Article 26 (Accession). The accession by any Third Party to the Agreement shall be on non-discriminatory terms and shall be managed by the then current Parties to the Agreement in accordance with the provisions of Article 26 (Accession).

5.5 ID NEMO Cooperation

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

5.5.2 Each Party is individually responsible for ensuring that its participation in the ID NEMO Cooperation is compliant with Applicable Law (in particular but not limited to Applicable Law relating to public procurement and competition). To the extent that a Party violates Applicable Law by entering into the Agreement or by performing its obligations under the Agreement or by exercising its rights under the Agreement, it shall hold harmless in accordance with Article 31.3 the other Parties and indemnify them for any direct damage or loss incurred as a result of a Third Party claim (including claims of Competent Authorities).

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

5.5.4 Any NEMO wishing to participate in the SIDC must be a Party to the Agreement.

5.6 Evaluation of the ID NEMO Cooperation

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

5.7 State of the art performance

5.7.1 Each Party shall perform its obligations under the Agreement:

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

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

5.8 Competition compliance

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

ARTICLE 6. Delegation of obligations by a Party

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

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

ARTICLE 7. Roles and responsibilities

7.1 General principle

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

7.2 NEMOs joint roles and responsibilities

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- i) performing the actions, tasks or obligations imposed on NEMOs jointly by the CACM Regulation, the MCO Plan or other approved Methodologies;
- ii) performing the actions, tasks or obligations attributed to the NEMOs jointly in the IDOA;
- iii) performing the actions, tasks or obligations attributed to the NEMOs jointly in the Agreement (including the Annexes);
- iv) the following actions in respect of NEMOs' requirements for the XBID Solution provided in accordance with the CACM Regulation, the MCO Plan, the approved Methodologies or deriving from the IDOA and as agreed upon from time to time in compliance with the NEMO Change Control Procedure: design of the requirements; validating and testing them according to Article 12.5; monitoring and correct implementation of the requirements;
- v) determination of the terms and conditions with service providers that are jointly contracted or that provide services to the benefit of all Parties;;
- vi) acceptance and testing procedures by the NEMOs of new elements and/or modifications of the:
 - a. XBID System as defined and subject to the terms of the XBID-MSA, except as regards testing by the TSOs as mentioned in article 6.5. of the IDOA
 - b. SIDC/IDA System;
- vii) ensure that the above tasks are performed on their behalf in case of joint delegation of such tasks.

7.3 Individual NEMO responsibilities

Without prejudice to the general principle under Article 7.1., at least the following shall be a NEMO's individual responsibility: the operation of its LTS, its business processes, agreements with implicit (market) participants, the performance of its tasks for the SIDC/IDA Operations pursuant to Article 18.1.2, individual reporting to NRAs and/or stakeholders on specific issues and any actions, tasks or obligations imposed on a NEMO individually by the Agreement, the CACM Regulation and any other relevant Applicable Law.

ARTICLE 8. Governance

8.1. NEMO ID SC

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

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

- i) approval of the relevant rules and procedures, other than the NEMO relevant proposals for the Methodologies listed in article 9, paragraph 6 of the CACM Regulation, for the operation of the SIDC;
- ii) preparation of proposals for investment, budget and planning for the further development of the ID MCO Function and SIDC/IDAs, to be submitted to and approved by the NEMO Committee;
- iii) management of the NEMO Change Control Procedure and its impact assessment and overseeing the implementation of Changes;
- iv) maintenance and day-to-day operation of the ID MCO Function and SIDC/IDAs according to the rules and procedures agreed by the Operational NEMOs. With respect to SIDC/IDAs, maintenance of Euphemia and PMB shall be managed by PCR Co-owners pursuant to Article 9.3.2.2 and 14.3;
- v) real-time application of the procedures in ID MCO Function and SIDC/IDAs Operations;

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- vi) analysis of incidents incurred in the ID MCO Function and SIDC/IDAs Operations; and
- vii) provide the necessary support for analysis and testing related to further development of the ID MCO Function and SIDC/IDAs for any decision to be taken by the Operational NEMOs.
- viii) NEMO Vote decisions on matters which concern solely the scope of the IDOA. For the avoidance of any doubt, NEMO Vote decisions on all Joint Matters shall be decided by the NEMO Committee.

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

Without prejudice to the principle of unanimity, any actions of the NEMO ID SC needed in order to fulfil the tasks mentioned under Article Chyba! Nenalezen zdroj odkazů., Chyba! Nenalezen zdroj odkazů. to Chyba! Nenalezen zdroj odkazů. shall be taken according to the NEMO Operational Procedures.

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

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

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

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

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

- i) **“Common Decisions”** shall refer to any decision in the context of the Agreement with the exception of Operational Decisions. With respect to Common Decisions all Parties shall be considered as Voting Members; or
- ii) **“Operational Decisions”** shall refer to decisions or actions taken in the day to day operation of the SIDC/IDCT and/or SIDC/IDA, needed for the well-functioning of the operations and/or having an impact on such operations. As regards Operational Decisions, only Operational NEMOs with respect to SIDC/IDCT and/or SIDC/IDA shall be considered as Voting Members. The following decisions and activities, shall e.g. but without limitation, be considered as Operational Decisions:
 - a) any decision related to the application, interpretation or adaptation of the NEMO Operational Procedures;
 - b) any decision related to the resolution of incidents;
 - c) any decision related to the SIDC NEMOs-Only Common Costs of operating the SIDC, unless non-operational NEMOs are to share in such costs in which case it will be a Common Decision; and
 - d) any decision related to change requests towards the jointly contracted service providers or under the NEMO Change Control Procedure or the IDOA Change Control Procedure which are necessary to ensure the continuity of operations (to the exclusion of change requests that are related to further developments, i.e. do not relate to maintenance in the context of operations, which shall be considered a Common Decision).

In addition to the foregoing, any Party that, pursuant to any provision of the Agreement is not entitled to vote, shall not be a Voting Member for the matters for which its vote is excluded such as in the cases mentioned in Article 14.5.2 n. xiv (Decisions on services provided by NEMOs), Article 0 (Forced Exit), Article 33.3.3(Suspension) and Article 33.4.5 (rights during exit or suspension). In particular, it is understood that if a

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Party is an Operational NEMO only for SIDC/IDCT or SIDC/IDA, such Party shall be a Voting Member only with respect to the SIDC session (SIDC/IDCT and/or SIDC/IDA) for which such Party is an Operational NEMO.

- 8.1.5.** The NEMO ID SC may from time to time decide to create or dissolve subcommittees, working groups or task forces for the purpose of carrying out its tasks mentioned in Article 8.1.1. In such event, the NEMO ID SC shall determine the purpose, composition, as well as the organisational and governance arrangements for such task force or working group, taking into account where relevant Annex 9 (Rules of Internal Order (RIO)). It is understood that any working group dealing with SIDC/IDAs shall coordinate on SIDC/IDAs topics with the relevant working groups set under ANDOA upon a NEMO ID SC approval if the SIDC/IDA topic under discussion has a potential impact on the Single Day Ahead Coupling.

At least the subcommittee NEMO OPSCOM shall be effective at the latest as of the date of Initial Go-Live of SIDC/IDCT.

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

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

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

- 8.2.1.** In the event that a decision of the Operational NEMOs made pursuant to Article 8.1.4, ii) has or is likely to have a material adverse effect on the interests of one or more non-operational NEMO(s), the affected non-operational NEMO(s) shall be entitled to raise its/their concerns in respect of such decision to the NEMO ID SC. In such event the affected non-operational NEMO(s) shall submit a written notice to the NEMO ID SC within five (5) Business Days from the date on which the Operational NEMOs' decision was made available to the non-operational NEMO(s), together with an explanation of the alleged material adverse effect. In case of more than one affected non-operational NEMO, the notice can be done jointly.
- 8.2.2.** Operational NEMOs shall have the obligation to consider in good faith the concerns raised by the affected non-operational NEMOs pursuant to Article 8.2.1. In deviation of Annex 9 (Rules of Internal Order (RIO)), the NEMO ID SC must meet within four (4) Business Days from the date of receipt of the written notice to resolve the objection against the escalated decision. Any decision in the matter shall be made unanimously among all Operational NEMOs in the NEMO ID SC and the non-operational NEMO(s) in the NEMO ID SC who submitted the notice pursuant to Article 8.2.1. Should the NEMO ID SC not solve the escalated decision in such meeting, the escalated decision shall be subject to the Articles from Article 37.3 to Article 37.11. The disputed decision can only be suspended until the Dispute is solved if the NEMO ID SC unanimously agrees to suspend the decision. Decisions in respect of incident resolution can never be suspended. The foregoing is without prejudice to the not affected non-operational NEMOs' right to attend the NEMO ID SC meetings.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

i) [REDACTED]

ii) [REDACTED]
[REDACTED]

ARTICLE 9. Intellectual Property Rights - Right of use

9.1. General

9.1.1. Each Party (or subset of Parties) shall remain the exclusive owner of its own Intellectual Property Rights including the Intellectual Property Rights co-owned pursuant the PCR Co-ownership Agreement.

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

9.1.3. Except for the purpose of publishing data as allowed under this Article 9 (Intellectual Property Rights – Right of use), Article 30(Confidentiality) shall apply to the developments made and data used or exchanged pursuant to this Article 9 (Intellectual Property Rights – Right of use).

9.2. Developments by the Parties

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

9.2.2. With respect to Euphemia and PMB, developments made under the Agreement and the Intellectual Property Rights on such developments shall be owned by the PCR Co-owners.

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

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

9.3. Assets for SIDC/IDCT and SIDC/IDA

9.3.1. SIDC/IDCT: Identical NEMO Components

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

9.3.1.2 [REDACTED]
[REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

[REDACTED]

[REDACTED]

[REDACTED]

9.3.1.3 Article 9.3.1.1 implies that any act in respect of Identical NEMO Components, such as the use, commercialisation, disposal, management, maintenance, further development, modification of the Identical NEMO Components or the rights (including IPR), title, interests pertaining thereto is subject to the consent of all the Parties unless otherwise provided under the Agreement or otherwise agreed in writing.

9.3.2. SIDC/IDA: assets used for SIDC/IDA Operations

9.3.2.1 Title to SIDC/IDA Assets

The rights pertaining to SIDC/IDA Assets are:

- a) with respect to Euphemia and PMB, owned by the PCR Co-owners and governed by the PCR Co-ownership Agreement. Therefore, it is understood that no Party shall gain by virtue of this Agreement any right of ownership or interest in any Intellectual Property Rights owned by the PCR Co-owners;
- b) with respect to SIDC/IDA CIP Tool, owned by all the Parties to this Agreement, subject to the terms of the SIDC/IDA CIP Services Agreement.

9.3.2.2 PCR Co-owners

9.3.2.2.1. All Parties acknowledge and agree that the Euphemia and PMB are made available by the PCR Co-owners “as is” without any warranty or representation, express or implied, whatsoever, including but not limited to warranty of non-infringement of third-party rights, warranties of merchantability and fitness for any particular purpose, in particular in respect of the correct functioning or the absence of defects or errors. For the avoidance of doubt, the foregoing is without prejudice to the obligation of the Parties to cooperate to jointly restore, in accordance with the change control procedures of both the ANIDOA and the ANDOA, any hidden defects in Euphemia and PMB possibly discovered in performing SIDC/IDA Operations.

9.3.2.2.2. As a consequence of Article 9.3.2.2.1 the PCR Co-owners have no liability towards non PCR Co-owner NEMOs with respect to:

- i) Euphemia and PMB not being fit for a particular purpose;
- ii) non-compliance of the Euphemia and PMB with local requirements;
- iii) interruption of operations caused by Euphemia and PMB;
- iv) change requests to Euphemia and PMB approved by the Parties.

9.3.2.2.3 Apart from the obligations set under this Agreement, the PCR Co-owners will keep their full independency and self-determination for their own business. In particular, the PCR Co-owners are entitled to further or differently develop Euphemia and PMB which are co-owned pursuant to the PCR Co-ownership Agreement provided that they will bear the costs of such further or different development and such further or different development has no identified impact on the functionalities of Euphemia and PMB that are necessary for SIDC/IDA Operations. Differently, in the event of an identified impact on the functionalities of Euphemia and PMB Assets that are necessary for SIDC/IDA Operations, then the relevant provisions of IDOA shall apply.

9.3.2.2.4 Maintenance of Euphemia and PMB shall be managed by the PCR Co-owners pursuant to Article 14.3.1 (Third Party Service Providers of the Euphemia and PMB). Each Party shall ensure the maintenance of the Individual NEMO Component for which it is individually responsible, if any.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

9.3.2.3 Design and Development of Euphemia and PMB

The non PCR Co-owner NEMOs shall jointly cooperate with the PCR Co-Owners in the design and development of the Euphemia and PMB in order to ensure that Euphemia and PMB are designed and developed in accordance with Annex VI (Technical Requirements) and any further requirements and specifications established by the NEMO ID SC or any other body designated by the NEMO ID SC for the purposes of SIDC/IDA design, development, implementation, or Operations. Any changes to the requirements and specifications of Euphemia and PMB provided in Annex 6 (Technical requirements) and any further requirements and specifications provided by the NEMO ID SC shall be consistent with the requirements and specifications for SIDC/IDA set under IDOA.

9.3.2.4 Title to CMM

[REDACTED]

9.4. Data

9.4.1. SIDC/IDCT data

9.4.1.1 Individual NEMO Data shall remain the exclusive property of the relevant NEMO. As a consequence thereof, the relevant NEMO shall be exclusively vested with all rights (including but not limited to Intellectual Property Rights), title and interests pertaining to such Individual NEMO Data. Any use of Individual NEMO Data by other Parties shall be either i) strictly limited to the purpose of exercising their respective rights (e.g. monitoring of the performance of the XBID System, simulations under common tool (if available and agreed according to Article 0)) or performing their respective obligations under the Agreement and the IDOA or ii) subject to prior written authorization of the concerned NEMO and the terms and conditions (if any) of such NEMO's authorization .

9.4.1.2 Cross NEMO Data are individually owned by each of the two concerned NEMOs, i.e, the two relevant NEMOs shall be individually vested with all rights (including but not limited to Intellectual Property Rights), title and interests pertaining to such Cross NEMO Data. Cross NEMO Data may be freely used (without payment or consent) by the relevant NEMOs only, acting independently for their respective business. Any use of Cross NEMO Data by other Parties shall be either i) strictly limited to the purpose of exercising their respective rights (e.g. monitoring of the performance of the XBID System, simulations with anonymized data under common tool (if available and agreed according to Article 0)) or performing their respective obligations under the Agreement and the IDOA or ii) subject to prior written authorization of both concerned NEMOs and the terms and conditions (if any) of such NEMOs' authorization.

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

9.4.2. SIDC/IDA data

9.4.2.1 All rights (including but not limited to Intellectual Property Rights), title and interests pertaining to SIDC/IDA Order Data shall remain the exclusive property of the relevant Operational NEMO.

9.4.2.2 The ownership of the SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results is governed by the following terms and conditions:

i) should there be in a given Bidding Area only one Operational NEMO, the relevant SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results shall be owned by such Operational NEMO;

ii) should there be in a given Bidding Area two or more Operational NEMOs, such Operational NEMOs shall be individually vested with all rights (including but not limited to Intellectual Property Rights), title and interests pertaining to the elements a), b) and d) of the SIDC/IDA Market Coupling Results and of SIDC/IDA Preliminary Market Coupling Results definitions. Such elements a), b) and d) of the SIDC/IDA Market Coupling

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Results and the SIDC/IDA Preliminary Market Coupling Results may be freely used (without payment or consent) by such Operational NEMOs only, acting independently for their respective business unless expressly agreed otherwise under the local arrangements (multi NEMO arrangement) or in any other relevant agreement among them. The Parties will work in good faith to clarify the ownership of the SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results in the occurrence of Partial Decoupling in Bidding Areas with two or more Operational NEMOs via an amendment to this Agreement at the first available opportunity.

9.4.2.3 The following uses of SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results are allowed without payment or consent:

- i) all SIDC/IDA NEMO Operators are entitled to receive from the PMB the SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results for their performance of SIDC/IDA Operations. It is understood that the Served NEMOs do not receive directly from PMB the SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results which are provided by their SIDC/IDA Servicing NEMO subject to the relevant service agreement;
- ii) The SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results can be individually and/or jointly used by each Operational NEMO for simulation, testing and monitoring purposes strictly in compliance with NEMO Operational Procedures;
- iii) with respect only to certain items of SIDC/IDA Market Coupling Results - whether or not such have already been lawfully published by one or more Operational NEMO (either via its website or otherwise) - namely market clearing prices, clearing volumes, with the exception of simulation data - each Operational NEMO is entitled to provide a Third Party (excluding TSOs) with any one or more of such items provided that the relevant Operational NEMO shall always:
 - a. clearly mention the source of such data items;
 - b. provide a disclaimer safeguarding the owner of such data items in case data were wrongly used/transmitted;
 - c. the provision of such items of SIDC/IDA Market Coupling Results has no commercial purpose, i.e. no direct or indirect remuneration is paid by the Third Party which is provided with such items.

It is understood that:

- Any use described under items i), ii) iii) above shall by no means enable any identification of market participants.
- Any other usage different from the ones described under Article 9.4.2.2 ii) and Article 9.4.2.3 from i) to iii) shall be subject to prior written authorization of the owner of such SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results (e.g. in local arrangements or in any other relevant agreement as the case may be)
- any provision or usage of SIDC/IDA Market Coupling Results by TSOs is governed by IDOA and it is not subject to this Article 9.4.2.3.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

9.4.2.4. If a Party ascertains that its SIDC/IDA Individual Input Data, the SIDC/IDA Results, the SIDC/IDA Preliminary Market Coupling Results and the SIDC/IDA Market Coupling Results enables the identification of its market participants, such Party shall promptly notify the other Parties. In such event all Parties in possession of such SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results shall:

- i) return to the notifying Party all documents (including copies) and other material (whether in written or other form e.g. computer disks) in its possession, custody or control that bear or incorporate any part of such SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results; and
- ii) destroy all documents and other material in its possession, custody or control which bear or incorporate any part of such SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results (except that a copy may be kept, if necessary, for recordkeeping purposes). Parties in possession of such SIDC/IDA Individual Input Data, SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results shall certify such destruction upon request.

9.4.3. Data reporting

With respect to SIDC/IDCT, the Operational NEMOs shall, when fulfilling their reporting obligations under REMIT, take into account section IV of Annex 6 (Technical requirements).

ARTICLE 10. Requirements

10.1. Requirements of the XBID Solution

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

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

10.1.2 Each Party is responsible for its Individual NEMO Components and without prejudice to Article 12 each Party shall individually ensure that Individual NEMO Components involved in the XBID Solution enable the operation of the SIDC.

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

10.2. Requirements of the SIDC/IDA System

10.2.1 All SIDC/IDA Assets, to be developed, implemented and/or used for or in the context of SIDC/IDA System and the IT Operation of such SIDC/IDA Assets shall comply at least with the following requirements:

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- ii) any requirements set forth in any of the agreements with the Third Parties Service Providers or otherwise agreed with the relevant Third Party Service Provider;
- iii) the requirements agreed by NEMOs and TSOs pursuant to the IDOA (as long as not conflicting with any of the agreements with the Third Parties Service Providers) ;
- iv) the requirements set forth in the Agreement (and in particular Annex 2 (Identical NEMO Components), Annex 6 (Technical requirements) and the NEMO Operational Procedures) and any other requirements as agreed upon in writing by all the Parties (if any).

10.1.2 Each Party is responsible for its Individual NEMO Components and, without prejudice to Article 12, each Party shall individually ensure that Individual NEMO Components involved in the SIDC/IDA System enable the operation of the SIDC/IDA.

10.1.3 Parties shall comply with the High Level Architecture of the SIDC/IDA System attached as exhibit 4 to the IDOA (as updated from time to time).

ARTICLE 11. Identical NEMO Components

11.1. General principles

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

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

- i) the Parties must be entitled to jointly use such Identical NEMO Component for the implementation and operation of the SIDC to the fullest extent possible under Applicable Law and relevant agreements. Licenses granted, as the case may be, by a service provider, to the Parties shall always be jointly granted to all Parties, to ensure a non-discriminatory treatment between the Parties in accordance with the principles set forth in Article 9 (Intellectual Property Rights – Right of use);
- ii) any changes to the Identical NEMO Components are governed by Article 12;
- iii) any rights (including IPR) granted by a service provider to the Parties shall be made subject to adequate proof by the service provider of the existence and scope of the rights granted (e.g. via due diligence of relevant documents); and
- iv) if one or several Parties are (co-)owner(s) of a technology or application that is part of Identical NEMO Components, such Parties shall assure that all the other Parties will have the possibility to be granted an equal share in such rights.

11.2. XBID System

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

11.2.2.

[REDACTED]

[REDACTED]

[REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

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

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

11.2.3. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

11.2.4. Each Party shall comply with any specific requirements imposed by the XBID System Service Provider in respect of access to and security of the XBID System.

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

11.2.6. [REDACTED]
[REDACTED]

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

[REDACTED]
[REDACTED]
[REDACTED]

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

11.2.7.2 [REDACTED]

11.2.8. Communication network and rack space

11.2.8.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11.2.8.2 [REDACTED]

11.2.8.3 The Parties shall comply with the technical requirements regarding the communication network, as taken up in section I of the Annex 6 (Technical requirements).

11.2.8.3 SIDC/IDCT servicing

[REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

[REDACTED]

[REDACTED]

11.2.8.4 SIDC/IDA servicing

[REDACTED]

11.3. Management, maintenance and future changes to Identical NEMO Components

11.3.1. General

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

11.3.2. List of Identical NEMO Components

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

11.3.2.2. A Party may request the adaptation of Annex 2 (Identical NEMO Components), provided that such request is motivated by changes in technical, economical or other aspects compared to the initial list which result in making an Individual NEMO Component an Identical NEMO Component or conversely which result in making an Identical NEMO Component an Individual NEMO Component. The adaptation of Annex 2 (Identical NEMO Components) is subject to NEMO ID SC decision pursuant to Article 35.1.

ARTICLE 12. Change Request

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

12.1. Any changes or enhancements to the Identical NEMO Components and Individual NEMO Components that are governed by the IDOA Change Control Procedure, are subject to the IDOA Change Control Procedure. For any decision to be taken by the NEMOs under the IDOA Change Control Procedure, Article 20.2 shall apply.

12.2.

[REDACTED]

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

12.4. The results of changes to the Identical NEMO Components in compliance with the applicable change control procedure shall automatically be considered an Identical NEMO Component except to the extent the Parties decide otherwise in accordance with Article 11.3.2.2.

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

12.6. Changes to the SIDC/IDA Assets and Individual NEMO Components used for SIDC/IDA Operations

12.6.1. Any request for changes for SIDC/IDA by a Party or a subset of the Parties to any of the SIDC/IDA Assets and Individual NEMO Components used for SIDC/IDA Operations shall be compliant with the following principles:

- i) in case of changes to SIDC/IDA CIP Tool, the IDOA change control procedure solely applies;
- ii) in case of changes to Euphemia and/or PMB, the relevant provisions of IDOA shall apply. Following the final approval of the request for change to Euphemia and PMB by the Parties consistently with the relevant provisions of IDOA, the PCR Co-owners shall request the relevant Third Party Service Provider to implement the approved change.
- iii) in case of changes to Individual NEMO Components, the IDOA change control procedure applies to the extent that such change has an impact on the SIDC/IDA Operations;

12.6.2. Any request for change for SDAC by a Party or a subset of the Parties to Euphemia and/or PMB or Individual NEMO Components used for SIDC/IDA must comply with the relevant provision of IDOA in case such request for change may have an impact on SIDC/IDA Operations.

12.6.3 The foregoing is without prejudice to the obligation of the Parties to use at all times the same version of the SIDC/IDA Assets for SIDC/IDA Operations.

ARTICLE 13. TSOs requirements for the XBID System

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

ARTICLE 14. Contractual model of services to be contracted in the context of the ID NEMO Cooperation

14.1. Services related to Identical NEMO Components

14.1.1. Unless differently decided by the NEMO ID SC pursuant to Article 14.5.4, any assignment by the Parties to a Party or a Third Party to perform services regarding Identical NEMO Component in the context of the

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

development, testing, implementation and IT Operation, shall be under a multilateral services (level) agreement to be entered into by all Parties together with the relevant Third Party Service Provider or any other service provider selected pursuant to Article 14.5.1 and comprising any provision requested by any Party if required to comply with its Applicable Law or, if such service provider refuses the inclusion of such provision in the multilateral service (level) agreement, under a contractual structure to be agreed upon by the Parties.

- 14.1.2.** The content of the service (level) agreement referred to under Article 14.1.1 shall be agreed upon jointly by all the Parties and shall encompass the common and standard clauses for such type of service amongst which clauses in respect of, inter alia, service description, auditability of costs, fee indexation or adaptation, termination, change management, performance management (including service levels), liability and penalties for non-performance as well as the points mentioned under Article 14.5.2.
- 14.1.3.** The compliance of the service (level) agreement with any Applicable Law is the duty of the Party(ies) that contract the concerned services (if applicable).
- 14.1.4.** Principles set forth in this Article 14.1 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

14.2. Services related to specific Individual NEMO Components

- 14.2.1.** A Party may contract the development of specific functionalities of a LTS connected to the XBID System and developed by the XBID System Service Provider provided that:
- i) the XBID System Service Provider has undertaken appropriate commitments to ensure that:
 - A) the granting of rights by the XBID System Service Provider shall in no way prevent the other NEMOs to be granted at least the same rights in the specific functionalities; and
 - B) NEMOs who have procured or wish to procure a trading system connected to the XBID System and developed by the XBID System Service Provider are treated in a fair and non-discriminatory manner by the XBID System Service Provider in respect of the costs charged for and the terms and modalities applicable to any granted rights; and
 - ii) the possibility is guaranteed towards other Parties to convert upon agreement of all Parties such rights into a joint license or joint ownership.
- 14.2.2.** The compliance of the service agreement with any Applicable Law is the duty of the Party(ies) that contract the concerned services (if applicable).
- 14.2.3.** Principles set forth in this Article 14.2 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

14.3. Services related to Euphemia and PMB

14.3.1 Third Party Service Providers of the Euphemia and PMB

14.3.1.1 For the purposes of the SIDC/IDA, the PCR Co-owners undertake to procure and manage the development and maintenance of Euphemia and PMB in accordance with the relevant provisions of IDOA and of this Agreement. In particular, the PCR Co-owners shall:

- a. manage the implementation with Third Party Service Providers of Euphemia and PMB of change requests agreed consistently with the relevant provisions of IDOA and of this Agreement
- b. pay the Third Party Service Providers of Euphemia and PMB consistently with the provisions of Annex 3 (Financial modalities / budget / invoicing modalities).

14.3.1.2 The non PCR Co-owner NEMOs accept the Third Party Service Providers of Euphemia and PMB for the purposes of the SIDC/IDA and acknowledge that there are contracts in place between them and the PCR Co-owners at the time of the entering into force of this Agreement.

14.3.1.3 In the event of negotiations with the Third Party Service Providers of Euphemia and PMB concerning SIDC/IDAs, such as negotiations on change requests, the PCR Co-owners shall regularly inform the non PCR Co-owner NEMOs on the status of such negotiations, to the extent non PCR Co-owner NEMOs have access to the agreements in

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

force with the Third Party Service Providers of Euphemia and PMB according to the terms and conditions set under the PCR Co-ownership Agreement.

14.3.1.4 The NEMO ID SC shall unanimously approve all instructions to Third Party Service Providers of Euphemia and PMB to the extent needed for ensuring the proper performance of SIDC/IDA Operations such as:

- a. any binding or material decision;
- b. any decision with an impact on the SIDC/IDA planning;
- c. any decision with an impact on this Agreement's budget;
- d. change request to services provided by Third Party Service Providers of the Euphemia and PMB;
- e. amendments to the agreements with the Third Party Service Providers of Euphemia and PMB, or to conclude any agreement in relation thereto.

14.3.1.5 Following a successful claim of a Third Party Service Provider of Euphemia and/or PMB directly related to the provision of services for Euphemia and/or PMB in the context of their usage for SIDC/IDAs, non PCR Co-owner NEMOs shall share on equal basis with the PCR Co-owners (with all Parties bearing the same share) any indemnification that the PCR Co-owners are due to pay to such Third Party Service Provider of Euphemia and/or PMB - including any related procedural costs (including attorney's fees and internal costs) borne by the PCR Co-owners, provided that such claim:

- a. is a direct consequence of instructions approved by the NEMO ID SC and /or the steering committee established under IDOA; and
- b. does not derive from i) a breach of contract with the Third Party Service Provider of Euphemia and/or PMB which qualifies as fraud or intentional misconduct or gross misconduct or gross negligence committed by the PCR Co-owners or ii) a breach of the Agreement by the PCR Co-owners.

14.3.1.6 In the event of indemnifications paid by the Third Party Service Provider of Euphemia and/or PMB directly related to the provision of services for Euphemia and/or PMB in the context of their usage for SIDC/IDAs, such indemnification shall be shared among the affected non PCR Co-owner NEMOs and the PCR Co-owners proportionally to the amount of the effective individual damage. In such event, non PCR Co-owners shall share on equal basis with the PCR Co-owners (with all Parties bearing the same share) any related procedural costs (including attorney's fees and internal costs) which the PCR Co-owners would not be able to recover from the Third Party Service Provider.

14.3.1.7 Should a non PCR Co-owner NEMO suffer a direct damage from any act or omission of a Third Party Service Provider of Euphemia and/or PMB directly related to the provision of services for the SIDC/IDAs, such non PCR Co-owner NEMO is entitled to request the PCR Co-owners to lodge a claim against the Third Party Service Provider of Euphemia and/or PMB. Following such request, the relevant PCR Co-Owner shall then lodge the claim against the concerned Third Party Service Provider of Euphemia and/or PMB it being understood that:

- i) only the relevant PCR SPOC shall lead the claim although fully cooperating with the concerned non PCR Co-owner NEMO in any response and defense as reasonably required;
- ii) the relevant PCR SPOC shall not enter into any settlement without the prior consent of the concerned non PCR Co-owner NEMO, such consent not to be unreasonably withheld or delayed;
- iii) the concerned non PCR Co-owner NEMO waives any right to claim compensation for damages from the PCR Co-owners in case no or partial indemnification is paid by the concerned Third Party Service Provider of Euphemia and/or PMB;
- iv) the concerned non PCR Co-owner NEMO shall indemnify the relevant PCR SPOC for any related procedural costs (including attorney's fees and internal costs) which the latter would not be able to recover from the Third Party Service Provider of Euphemia and/or PMB.

For the avoidance of any doubt, the liability and compensation limitations set forth in this Agreement and in the agreement in force with the Third Party Service Provider of Euphemia and/or PMB are in no way affected by this provision.

14.3.1.8 Should any Third Party set a successful claim based on the breach of procurement law that is not applicable to the PCR Co-owners, the non PCR Co-owner NEMO(s) to whom such procurement law is applicable shall reimburse the PCR Co-owners for any indemnification paid to such Third Party.

14.4. Any other service in respect of the ID NEMO Cooperation

14.4.1. Services other than the services referred to under Articles 14.1 and 14.2 in the context of the execution of the Agreement will be contracted individually or jointly by all or a subset of the Parties, it being understood that the

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

access to and use of these services as well as the costs, rights and obligations related to these services is limited to the Parties benefitting directly or indirectly from such services.

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

14.4.3. Principles set forth in this Article 14.4 shall also be applicable to any acquisition of rights, including Intellectual Property Rights, and title to any interests in assets, goods or materials, including documentation and Confidential Information.

14.5. Service Providers

14.5.1. Without prejudice to Article 5.5.2, in the event that the Parties or a subset of the Parties decide to select a service provider for the provision of works or services in the context of the ID NEMO Cooperation, (i.e. works or services referred to under Articles 14.1, 14.2 and 14.3), the following principles shall apply:

i) the service provider shall be selected according to one of the procedures described in Annex 5 (Procurement procedure). It is understood that the NEMO ID SC is entitled to approve unanimously deviations from the procedures set in Annex 5 (Procurement procedure). Any procurement procedure for the provision of works or services in the context of the ID NEMO Cooperation shall be consistent with the principles of equal treatment, objectiveness of the selection criteria, transparency, economic efficiency, efficacy and timeliness, taking in consideration:

- a) the principle of proportionality in respect of the overall value and the urgency related to events not due to Parties' conduct, of the contract; and
- b) the uniqueness of the services to be provided by a service provider due to its particular and specific technical skills, if applicable.

Should the NEMO ID SC disagree on the procurement procedure to be applied, or how the procedure shall be applied, Article 37(Dispute resolution and jurisdiction) shall be triggered.

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

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

- i) the service provider may only act upon instructions given jointly by all the contracting Parties or by the SPOC appointed by the Parties or a subset thereof (as the case may be); conversely all communications of the service provider shall be addressed to all the contracting Parties or to the SPOC appointed by the Parties (as the case may be);
- ii) the possibility for the relevant Parties to request additional services and changes subject to agreement on the related fees, if any, and resources availability such as (but not limited to) in the event the changes are required by Applicable Law or by Competent Authorities;
- iii) subcontracting by a service provider of certain parts of the services is allowed subject to prior written consent of all the relevant Parties;
- iv) the obligation for the service provider to inform the Parties as soon as reasonably possible or practical on possible improvements that could be undertaken to improve the efficiency and the quality of the services;
- v) the obligation for the service provider to provide the Parties with all information and assistance necessary to explain the functioning of the services towards any Competent Authority, the TSOs or the Market Participants, if required;
- vi) the service provider shall be subject to a duty of loyalty to each Party and of fair, non-discriminatory and equal treatment of all Parties. The foregoing implies that the agreement with the service provider

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

shall foresee an obligation for the service provider 1) to provide the services in the interest of all Parties and in the interest of the ID NEMO Cooperation, 2) to refrain from any preferential treatment of one or more contracting Parties and 3) to maintain a level playing field between all Parties. The agreement with the service provider shall foresee that in the event the service provider is confronted during the provision of the services with a conflict between a) the interests of the service provider and those of one or more Parties of the ID NEMO Cooperation or b) between the interests of one or more Parties and of the ID NEMO Cooperation, the service provider shall promptly inform all Parties thereof and request the Parties to decide upon the manner in which the conflict shall be handled;

- vii) the obligation for the service provider to put in place the necessary measures (e.g. “Chinese walls”) to prevent conflicts of interests and disclosure of information;
- viii) the principles in respect of delivery and delays in delivery;
- ix) the possibility to terminate the agreement in the event of termination of the ID NEMO Cooperation or if the IDOA is terminated and in as many other cases as reasonably possible, without any court intervention and without any specific termination compensation being due;
- x) the possibility for a Party to terminate its participation to the service agreement in the event of termination of its participation to the Agreement subject to payment of its share of the agreed costs;
- xi) the exclusion of the joint and several liability of the Parties towards the service provider;
- xii) the possibility for each Party to initiate individual legal proceedings against the service provider;
- xiii) the decision to fully terminate an agreement with a service provider shall always be a unanimous decision of all Parties except in the case mentioned under xiv);
- xiv) in the event the Parties enter into a service agreement with a NEMO/service provider, the NEMO/service provider shall be allowed to be heard in the NEMO ID SC in respect of all decisions related to the services it procures. Such NEMO/service provider shall not be entitled to vote in the NEMO ID SC in respect of such decisions and in particular those that concern or are related to the compliance of its performance as NEMO/service provider with the concluded service agreement;
- xv) in relation with the service provider, the necessary provisions to comply with Article 14.2.2.

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

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

14.5.4. The Parties may, by way of a NEMO ID SC decision, deviate from the principles set out in Articles 14.1.1, 14.2.1 and 14.4.1 for the services that shall be contracted jointly under a multilateral services agreement.

The Parties shall in such case:

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

ARTICLE 15. Specific provisions regarding the relation with the XBID System Service Provider

15.1. [REDACTED]

15.2. [REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

[REDACTED]

15.3.

[REDACTED]

ARTICLE 16. Traded products

16.1. Global Products

Only Global Products can be traded via the XBID System.

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

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

16.2. SIDC/IDA Products

Only SIDC/IDA Products can be traded via the SIDC/IDA Assets.

In respect of SIDC/IDA Products, NEMOs shall comply with the relevant provisions of the CACM Regulation and the applicable Methodologies.

Changes to the SIDC/IDA Products shall be subject to the IDOA Change Control Procedure and/or NEMO Change Control Procedure (Annex 11 to this Agreement).

ARTICLE 17. Go-Live & Technical readiness

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

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

17.3. In order to participate in SIDC/IDAs Operations, each Party shall perform the testing and simulations of the SIDC/IDA System set under the IDOA.

ARTICLE 18. Day to day operation

18.1 Day to day operation of the ID MCO Function

18.1.1 General principle

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- 18.1.1.2 Detailed local procedures may be defined in the Local Arrangements, if need be, between the relevant subset of Parties. These local procedures shall comply with the principles set forth in Article 2.5.
- 18.1.1.3 The Parties shall comply with the technical requirements regarding the day to day operation of the ID MCO Function, as set forth in section III of the Annex 6 (Technical requirements).

18.1.2 Operational roles

18.1.2.1 Admin roles

In respect of administration of the SOB and the Shipping Module (SM), the following tasks are distinguished, as further described in the NEMO Operational Procedures:

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

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

In case of errors or irregularities the other NEMOs shall as soon as possible inform the relevant NEMOs in order to perform the relevant actions.

Each Operational NEMO shall nominate a SOB NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures and Annex 8 (NEMO Central Admin services).

Each Operational NEMO shall nominate a SM NEMO Admin (either a person of its own company or of another Operational NEMO) in accordance with the NEMO Operational Procedures,. The NEMO Central Admin services shall be governed by Annex 8 (NEMO Central Admin services).

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

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

18.1.2.2 IC SPOC Role

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

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

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

18.1.2.3 MPLS Network Service Provider SPOC

In respect of the network communication services for connection between the XBID System and the LTS of the NEMOs provided by the MPLS Network Service Provider, all Operational NEMOs agree to appoint a MPLS Network Service Provider SPOC for the services described in Annex 7 (NEMO Operational procedures). The NEMO providing the IC SPOC Services shall act as MPLS Network Service Provider SPOC.

18.1.3 Process in case of an incident during operations

18.1.3.1 In case of an incident during operations the Parties shall follow the relevant operational procedures of IDOA and the NEMO Operational Procedures, .

18.1.3.2 In case of an incident during operations, the Parties agree that any instruction to XBID System Service Provider to stop the XBID System from running shall be subject to a unanimous decision of all affected Operational NEMOs. Any decision to restart the XBID System, as well as the decision to make it again available for operations (in case the restart and the use for operations is not at the same time (“market put on hold”)), shall be subject to a unanimous decision of all affected Operational NEMOs and each affected Operational NEMOs shall take the necessary measures to avoid that in cases where the XBID System Service Provider has restarted the XBID System but that the market is put on hold, orders are submitted to the XBID System.

18.1.3.3 Article 7.2. IDOA also applies *mutatis mutandis* in case of incidents affecting Operational NEMOs only.

18.2 Day to day operation of the SIDC/IDA

18.2.1 Principles

18.2.1.1 Coupling

Any Operational NEMO is entitled to participate in SIDC/IDA Operations directly (as SIDC/IDA Operator) or indirectly (as SIDC/IDA Serviced NEMO), following the:

- i) compliance with the specific requirements set for the safety and reliability of operations established in Annex 7 (NEMO Operational Procedures); and
- ii) successful completion of the testing and simulations of the SIDC/IDA System set under the IDOA;
- iii) It is understood that, in respect of SIDC/IDA Serviced NEMO, the above conditions shall be complied with by its respective SIDC/IDA Servicing NEMO;
- iv) each Operational NEMO is responsible for the SIDC/IDA Results, SIDC/IDA Preliminary Market Coupling Results and SIDC/IDA Market Coupling Results in respect of its SIDC/IDA Individual Input Data, since each Operational NEMO has the opportunity, directly or via delegation through its SIDC/IDA Servicing NEMO, to validate its SIDC/IDA Results. The delegation and the operational details that shall apply between a SIDC/IDA Serviced NEMO and its SIDC/IDA Servicing NEMO shall be established under the relevant bilateral service agreement.
- v) It is understood, that the SIDC/IDA Operational Date of a Party shall be fixed only once its compliance with all the requirements set under the Agreement is verified by the competent bodies, consistently with the relevant NEMO Operational Procedures and in compliance with the operational procedures of the IDOA.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

18.2.1.2 Each Daily Observer has the right to receive information on the SIDC/IDA Operations during its performance (e.g. via emails and/or silent participation in the SIDC/IDA Session Calls), but without any right to directly intervene (i.e. speak) within the SIDC/IDA Session Calls, except in case of an Incident in which case the affected Daily Observer is entitled to directly intervene (i.e. speak) in accordance with the operational procedures of IDOA.

18.2.1.3 In order to perform SIDC/IDA Operations:

- i) one SIDC/IDA Coordinator and one SIDC/IDA Backup Coordinator shall be appointed in accordance with the provisions of this Article and Annex 7(NEMO Operational Procedures);
- ii) the SIDC/IDA Coordinator, the SIDC/IDA Backup Coordinator and the SIDC/IDA NEMO Operators shall install and operate a version of SIDC/IDA System accepted by all the SIDC/IDA NEMO Operators (i.e. certified version);
- iii) there will be no direct communication between a SIDC/IDA Serviced NEMO and SIDC/IDA NEMO Operators during the performance of SIDC/IDA Operations, other than through its SIDC/IDA Servicing NEMO. The SIDC/IDA Serviced NEMO delegates at least its responsibility for real-time operational processes to the SIDC/IDA Servicing NEMO;

18.2.1.4 The SIDC/IDA Operations shall on a daily basis be simultaneously performed by the SIDC/IDA Coordinator, the SIDC/IDA Backup Coordinator and by the SIDC/IDA NEMO Operators entitled to take over the SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator role in accordance with the provisions of this Article, Annex 6 (Technical requirements) and Annex 7 (NEMO Operational Procedures). The SIDC/IDA NEMO Operators have the right to perform in shadow mode SIDC/IDA Operations as defined in the NEMO Operational Procedures.

18.2.1.5 In order to perform SIDC/IDA Operations, each Operator shall send to the PMB, using standard formats, its SIDC/IDA Individual Input Data (including the SIDC/IDA Individual Input Data of its SIDC/IDA Serviced NEMO(s)), on a daily basis in accordance with the provisions of the NEMO Operational Procedures. In respect of its SIDC/IDA Individual Input Data, each SIDC/IDA NEMO Operator is responsible only for the data submitted on its trading platform and the trading platform of its SIDC/IDA Serviced NEMO, as the case may be.

18.2.1.6 Taking into account the information provided pursuant to Article 18.2.1.5, the SIDC/IDA Coordinator, the SIDC/IDA Backup Coordinator, and the SIDC/IDA NEMO Operators entitled to take over the SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator role shall calculate on a daily basis the SIDC/IDA Results by operating the SIDC/IDA System in accordance with the NEMO Operational Procedures. The SIDC/IDA Results produced by the SIDC/IDA System, as calculated by the SIDC/IDA Coordinator, shall be used for the validation process of the SIDC/IDA Preliminary Market Coupling Results and the SIDC/IDA Market Coupling Results. Each SIDC/IDA NEMO Operator is entitled to accept or reject the SIDC/IDA Results calculated by the SIDC/IDA Coordinator on the basis of the calculations concerning its SIDC/IDA Individual Input Data (including the SIDC/IDA Individual Input Data of its SIDC/IDA Serviced NEMO(s)), in accordance with the provisions of the NEMO Operational Procedures. The agreed reasons for rejecting the SIDC/IDA Result calculated by of the SIDC/IDA Coordinator may be only the following:

- a. Portfolio allocation checks not successfully performed;
- b. Core requirements not fulfilled (e.g.: flows greater than the limit);
- c. Any other reason accepted by the NEMO ID SC as reason for rejecting the SIDC/IDA Results.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

The Operator rejecting the SIDC/IDA Results calculated by the SIDC/IDA Coordinator shall motivate the rejection by indicating one of the above reasons.

18.2.1.7 In the event of an SIDC/IDA Incident, the SIDC/IDA Coordinator, the SIDC/IDA Backup Coordinator and SIDC/IDA NEMO Operator(s) shall participate in a conference call convened by the SIDC/IDA Coordinator (the “SIDC/IDA Incident Committee”) pursuant to the operational procedures of IDOA. It is understood that the management of SIDC/IDA Incident is out of the scope of this Agreement and governed by IDOA.

18.2.1.8 Any SIDC/IDA Incident shall be referred to the first following meeting of the OPSCOM, or the NEMO ID SC as the case may be, with a view to evaluating if and what measures need to be taken to prevent such Incident in the future.

18.2.1.9 During SIDC/IDA Operations, the SIDC/IDA Coordinator, the SIDC/IDA Backup Coordinator and the SIDC/IDA NEMO Operator(s) undertake(s) to perform the tasks set forth in Articles 18.2.7 and 18.2.8 and 18.2.9.

In the event the SIDC/IDA Coordinator fails to perform the Coordinator role as described in Article 18.2.7, the SIDC/IDA Backup Coordinator, as indicated in the SIDC/IDA Operational Calendar, shall take over the SIDC/IDA Coordinator role.

18.2.1.10 The SIDC/IDA Coordinator, SIDC/IDA the Backup Coordinator and SIDC/IDA NEMO Operator(s) i) can have access at the same time to the required information to assess due performance of SIDC/IDA Operations and have the possibility to intervene to ensure due performance of SIDC/IDA Operations, and ii) have the possibility to run in shadow mode in real time Euphemia and iii) have the right to Partially Decouple or request Cancellation under the conditions set forth in 18.2.2 and 18.2.3.

18.2.1.11 It is understood that in case of failure of an Operator, SIDC/IDA Operations will continue applying the relevant procedure set in the NEMO Operational Procedures.

18.2.2 Partial Decoupling

18.2.2.1 Provided that:

- i) each Operational NEMO – it being understood that any decision taken in this respect by a SIDC/IDA Serviced NEMO is communicated to the SIDC/IDA NEMO Operators by its SIDC/IDA Servicing NEMO - has the right to Partially Decouple as a last resort solution pursuant to Article 18.2.9.3 and
- ii) Partial Decoupling is provided by the NEMO Operational Procedures in case of inability of an Operational NEMO to provide SIDC/IDA Individual Input Data,
- iii) fall-backs are provided by the NEMO Operational Procedures;

Partial Decoupling undertaken in compliance with the NEMO Operational Procedures shall not constitute a default or a contractual breach by the Parties.

18.2.2.2 An Operational NEMO which becomes aware of a default of its central counter party shall, acting in good faith, give due consideration to whether in all the circumstances and given the possible adverse effects on the overall market it should Partially Decouple from one or more areas of the SIDC/IDA market according to the NEMO Operational Procedures and until the circumstances impacting its central counterparty have been resolved.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

18.2.3 Cancellation

Cancellation is governed by IDOA. For the avoidance of any doubt, the Parties agree that:

- i) Cancellation undertaken in compliance with the operational procedures of IDOA shall not constitute a default or a contractual breach by the Parties under this Agreement;
- ii) NEMOs are not entitled to claim against each other under this Agreement in case Cancellation is undertaken in breach of the operational procedures of IDOA.

18.2.4 SIDC/IDA Suspension

SIDC/IDA Suspension is governed by IDOA only. For the avoidance of any doubt, the Parties agree that:

- i) SIDC/IDA Suspension undertaken in compliance with the operational procedures of IDOA shall not constitute a default or a contractual breach by the Parties under this Agreement;
- ii) NEMOs are not entitled to claim against each other under this Agreement in case SIDC/IDA Suspension is undertaken in breach of the operational procedures of IDOA.

18.2.5 As a consequence of art. 18.2.2., 18.2.3 and 18.2.4, to the extent possible under the Applicable Law, each Party hereby commits:

- i) to provide in either one or more of the following options:
 - a. its Market Rules; or
 - b. in any unilateral act enforceable towards a Third Party related to the performance of the SIDC/IDA Operations;
or
 - c. in any legal/regulatory provision enforceable towards a Third Party related to the performance of the SIDC/IDA Operations; or
 - d. in any agreements entered into with a Third Party – such as, but not limited to, a market participant, a TSO - related to the performance of the SIDC/IDA Operations,

that it is entitled to implement Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension and that Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension is an agreed solution in case of SIDC/IDA Incident adopted by the relevant Market Rules consistently with the relevant Methodologies, it being understood that, as consequence, Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension does not lead in itself to any indemnification obligation towards such Third Parties for damages incurred by such Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension. Additionally, no Party may provide that SIDC/IDA Operations are conducted under an obligation of result.

- iii) consistently with Article 31.3.3 (Third Party claims) to provide their Best Efforts to defend themselves and the other Party(ies) according to the abovementioned principle in case of a contractual or extra-contractual Third Party claim;

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- iv) without prejudice to Article 19 (Communication) as regards communication to Third Parties, not to express any opinion in contradiction with the abovementioned principle.
- v) pursuant to Article 31.2.13 (Waivers) not to claim from the other Operational NEMOs any damage arising from Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension.

18.2.6 To the extent permitted under Applicable Law, the Parties will adopt all reasonable measures to prevent Partial Decoupling and/or Cancellation and/or SIDC/IDA Suspension from being considered by any Third Party - such as a market participant or TSO – as a default or a breach of this Agreement.

18.2.7 SIDC/IDA Coordinator role

The SIDC/IDA Coordinator undertakes:

- i) to coordinate and supervise the SIDC/IDA Operations, in accordance with the NEMO Operational Procedures, by:
 - a. verifying during the timings indicated in the NEMO Operational Procedures that the SIDC/IDA System installed in its IT environment, the interfaces to the other ICT systems involved in SIDC/IDA Operations and the data exchange mechanisms and procedures are functioning according to the NEMO Operational Procedures, and to keep all SIDC/IDA NEMO Operators, Daily Observers and SIDC/IDA Service Providers informed in accordance with the NEMO Operational Procedures;
 - b. convening the SIDC/IDA Session Call;
 - c. acting as single point of contact of all Parties for all communications related to the performance of SIDC/IDA Operations;
 - d. requesting from the SIDC/IDA Backup Coordinator and any SIDC/IDA NEMO Operator the information required according to the NEMO Operational Procedures in the context of the performance of SIDC/IDA Operations and ensuring the receipt of such information;
 - e. replying to any request formulated by the SIDC/IDA Backup Coordinator or an SIDC/IDA NEMO Operator in accordance with the NEMO Operational Procedures;
- ii) to perform SIDC/IDA Operations and calculate the SIDC/IDA Results in accordance with Article 18.2 and the NEMO Operational Procedures;
- iii) to accept that a SIDC/IDA Backup Coordinator takes over its role in the cases mentioned in the NEMO Operational Procedures and to take the necessary actions, if any, to that effect;
- iv) to intervene in the event of an SIDC/IDA Incident by performing the actions indicated in the NEMO Operational Procedures;
- v) to indicate to the SIDC/IDA Backup Coordinator and SIDC/IDA NEMO Operators the actions that they must perform in accordance with the NEMO Operational Procedures, either individually or in cooperation with the SIDC/IDA Backup Coordinator, other SIDC/IDA operators (TSOs and/or NEMOs) or the SIDC/IDA Coordinator;
- vi) to convene an SIDC/IDA Incident Committee in accordance with the NEMO Operational Procedures and/or the Joint SIDC Procedures in the event of an SIDC/IDA Incident;

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- vii) to fill out and provide the SIDC/IDA Backup Coordinator and all SIDC/IDA NEMO Operators and Daily Observers with a report in accordance with the standard format attached to the NEMO Operational Procedures, summarizing the steps verified during that day SIDC/IDA session by the SIDC/IDA Coordinator according to the NEMO Operational Procedures and taking into account the daily reports to be provided by the SIDC/IDA Backup Coordinator pursuant to Article 18.2.6;
- viii) to fill out and provide the SIDC/IDA NEMO Operators and the Daily Observers with an Incident report for all SIDC/IDA Incidents, with a description of the SIDC/IDA Incident, the estimated cause and the measures taken to remedy such SIDC/IDA Incident;
- ix) to convene the SIDC/IDA Operational Calls, if foreseen by the NEMO Operational Procedures.

18.2.8 SIDC/IDA Backup Coordinator role

The SIDC/IDA Backup Coordinator undertakes:

- i) to verify that the SIDC/IDA System installed in its IT environment, the interfaces with other ICT systems involved in SIDC/IDA Operations and the data exchange mechanisms and procedures are functioning in accordance with the NEMO Operational Procedures and to inform the SIDC/IDA Coordinator of any irregularity;
- ii) to perform SIDC/IDA Operations and calculate in shadow mode the SIDC/IDA Results produced by the SIDC/IDA System, in accordance with Article 18.2.1.10 and the NEMO Operational Procedures and indicate any irregularity it may become aware of to the SIDC/IDA Coordinator;
- iii) to ensure that it is prepared to take over the SIDC/IDA Coordinator role at any moment, in accordance with the NEMO Operational Procedures and the SIDC/IDA Operational Calendar;
- iv) within the SIDC/IDA Incident Committee, in accordance with the NEMO Operational Procedures and/or the Joint SIDC Procedures, to take over the role of SIDC/IDA Coordinator in accordance with the SIDC/IDA Operational Calendar if it is indicated as first following SIDC/IDA Coordinator therein, perform the SIDC/IDA Operations and calculate the SIDC/IDA Results in accordance with Article 18.2.1.6 and the NEMO Operational Procedures ;
- v) to provide, in accordance with the NEMO Operational Procedures, the SIDC/IDA Coordinator with any information requested pursuant to the NEMO Operational Procedures;
- vi) to participate in any SIDC/IDA Session Call or SIDC/IDA Incident Committee convened by the SIDC/IDA Coordinator in accordance with the NEMO Operational Procedures and/or the Joint SIDC Procedures; in the event the SIDC/IDA Backup Coordinator will not participate in the SIDC/IDA Session Call, SIDC/IDA Operational Call or SIDC/IDA Incident Committee, the SIDC/IDA Backup Coordinator is deemed to have accepted any decision taken during such SIDC/IDA Session Call, SIDC/IDA Operational Call or SIDC/IDA Incident Committee pursuant to the NEMO Operational Procedures and/or the Joint SIDC Procedures;
- vii) to comply with any measure taken in the SIDC/IDA Session Call, SIDC/IDA Operational Call or SIDC/IDA Incident Committee pursuant to the NEMO Operational Procedures and/or the Joint SIDC Procedures.

18.2.9 SIDC/IDA NEMO Operator role

18.2.9.1. Any SIDC Operational NEMO is entitled to participate in SIDC/IDA Operations as SIDC/IDA NEMO Operator provided that such SIDC Operational NEMO:

- i) is a PCR Co-Owner or a PCR Licensee; and

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ii) satisfies specific technical requirements set in Annex 7 (NEMO Operational Procedures).

18.2.9.2. For each session of SIDC/IDA Operations, the SIDC/IDA NEMO Operator that is indicated as first following SIDC/IDA Backup Coordinator in the SIDC/IDA Operational Calendar shall take over the SIDC/IDA Coordinator role at any moment, in case both the SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator for such session are not able to perform the SIDC/IDA Operations, and calculate the SIDC/IDA Results in accordance with Article 18.2.1.6 and the NEMO Operational Procedures.

18.2.9.3. The SIDC/IDA NEMO Operator is entitled to ask the SIDC/IDA Coordinator, under the conditions set under the NEMO Operational Procedures and before sending to the SIDC/IDA Coordinator the respective SIDC/IDA Individual Input Data, to undertake SIDC/IDA Partial Decoupling, bearing in mind however, that SIDC/IDA Partial Decoupling and/or Cancellation shall only serve as a last resort solution.

18.2.9.4. Each SIDC/IDA NEMO Operator undertakes and has the right :

- i) to verify that its SIDC/IDA System, the interfaces with other ICT systems involved in SIDC/IDA Operations and the data exchange mechanisms and procedures are functioning in accordance with the NEMO Operational Procedures and to inform the SIDC/IDA Coordinator of any irregularity;
- ii) in the case it calculates in shadow mode the SIDC/IDA Results in accordance with Article 18.2.1.10 and the NEMO Operational Procedures, to indicate any irregularity it may become aware of to the SIDC/IDA Coordinator;
- iii) to ensure that its contact details set in the NEMO Operational Procedures are updated;
- iv) to provide, in accordance with the NEMO Operational Procedures, the SIDC/IDA Coordinator with any information requested pursuant to the NEMO Operational Procedures;
- v) to participate in any SIDC/IDA Session Call, SIDC/IDA Operational Call and SIDC/IDA Incident Committee convened by the SIDC/IDA Coordinator in accordance with the NEMO Operational Procedures and/or the Joint SIDC Procedures; in the event an Operator will not participate in the SIDC/IDA Session Call, SIDC/IDA Operational Call and SIDC/IDA Incident Committee, such SIDC/IDA NEMO Operator is deemed to have accepted any decision taken during that SIDC/IDA Session Call, SIDC/IDA Operational Call and SIDC/IDA Incident Committee pursuant to the NEMO Operational Procedures and/or the Joint SIDC Procedures;
- vi) to comply with any measure taken in the SIDC/IDA Session Call, SIDC/IDA Operational Call, and Incident Committee pursuant to the NEMO Operational Procedures and/or the Joint SIDC Procedures;
- vii) to run in real time Euphemia in shadow mode, and
- viii) to accept or reject the SIDC/IDA Results according to Article 18.2.1.6 in respect of its SIDC/IDA Individual Input Data and/or of any one or more of its SIDC/IDA Serviced NEMO(s), as the case may be.

18.2.10 Appointment of SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator

18.2.10.1. Any SIDC/IDA NEMO Operator is entitled to act as SIDC/IDA Coordinator and/or as SIDC/IDA Backup Coordinator on a rotating basis provided that the conditions established in the relevant NEMO Operational Procedure for acting as SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator are duly fulfilled. Nevertheless, each Party is entitled to renounce to its SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator task, upon timely request to the NEMO ID SC.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

18.2.10.2. Only one Party can act as SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator for SIDC/IDA Operations at a given time/day. In the event several Parties have requested to act as SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator, such Parties shall act as SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator on a rotating basis in accordance with Article 18.2.8.1.

18.2.10.3. The NEMO ID SC shall approve the SIDC/IDA Operational Calendar in which it is indicated which Party shall act as SIDC/IDA Coordinator or as SIDC/IDA Backup Coordinator respectively, in accordance with the NEMO Operational Procedures. Any request to act as SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator shall be addressed to the NEMO ID SC. Once the request is received by the NEMO ID SC and provided that the conditions established in the Agreement and in the NEMO Operational Procedures for acting as SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator are fulfilled, upon recommendation by the OPSCOM the NEMO ID SC shall accept the inclusion of the Party in the SIDC/IDA Operational Calendar and the NEMO ID SC or any other body designated by the NEMO ID SC shall adjust the SIDC/IDA Operational Calendar accordingly. The NEMO ID SC shall decide as of which day a new party to the Agreement shall start its performance as SIDC/IDA Coordinator.

18.2.10.4. In case of non-fulfilment of its obligations as described above, the SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator may be suspended by a decision of the NEMO ID SC which shall be taken without the vote of the Party that should be suspended from the performance of the SIDC/IDA Coordinator or SIDC/IDA Backup Coordinator role.

18.2.11 Remuneration of Coordinator and Backup Coordinator

Remuneration of SIDC/IDA Coordinator and SIDC/IDA Backup Coordinator roles is described in Annex 3 (Financial modalities / budget / invoicing modalities).

18.2.12 Publication of SIDC/IDA Market Coupling Results

18.2.12.1. Each Operational NEMO will publish its SIDC/IDA Market Coupling Results according to the NEMO Operational Procedures.

18.2.12.2. An Operational NEMO is entitled to publish SIDC/IDA Market Coupling Results of another Operational NEMO provided that the latter has expressly approved in writing such publication.

18.2.12.3. Operational NEMOs undertake, in accordance with Article 30 (Confidentiality), to ensure the transparency of the SIDC/IDA Market Coupling Results in accordance with the Applicable Law, measures and/or decisions of administrative or other public authorities, as far as within the competence of these authorities.

ARTICLE 19. Communication

19.1 The principles under this Article 19 (Communication) shall apply to external communication in all forms relating to any subject within or related to the ID NEMO Cooperation. The Parties may deviate from this Article

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

19(Communication) only if necessary to comply with Applicable Law, and/or with binding orders, requests or resolutions of a Competent Authority.

19.2 The Parties shall be free to express written or oral positions or opinions about the ID NEMO Cooperation provided they do not prejudice or negatively affect the collective and/or individual interests or the reputation of the other Parties. The Parties shall not express positions or opinions in the name of one or more other Parties unless such positions or opinions have been expressly authorised in writing by the other Parties in advance.

19.3 The Parties shall communicate at all times correct and accurate information. In the event a communication by a Party is inaccurate or, in the reasonable opinion of the other Parties, may be misleading, the other Parties are entitled to request such Party to correct and republish a revised communication, without prejudice to any other rights or remedies as may be available under the Agreement or Applicable Law.

19.4 The Parties acknowledge the goal to present commonly agreed positions with respect to the ID NEMO Cooperation, but agree that each Party may present and discuss its own views on the ID NEMO Cooperation with regulators, ACER, TSOs and the European Commission. In doing so, the Parties may use relevant materials developed within the ID NEMO Cooperation regarding project planning, cost estimates, and descriptions/evaluations of options/issues (to the extent consistent with the confidentiality obligations under the Agreement). Such materials shall be used fairly and without distortion. The Parties shall provide to the other Parties copies of material they intend to use in this context for ACER and the European Commission at least three (3) Business Days in advance, and shall amend any references to such material where other Parties reasonably can show it may be misleading.

19.5 Prior to any joint communication of the Parties regarding a commonly agreed position on any issue relating to the Agreement, the NEMO ID SC shall give its formal approval on the content of such communication. The NEMO ID SC shall decide on the appropriate communication media through which joint communications are released. Each joint communication shall bear the logo of each Party or a common NEMO logo, if available. Joint communications shall only be published after approval by the NEMO ID SC of the content of such communication. The NEMO ID SC shall also decide, for any joint communication, on the date and time from which each joint communication is to be effective. The following shall be subject to joint communication:

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

19.6 A Party may communicate individually to Third Parties on the topics which are the subject of a joint communication as mentioned under Article 19.5 only after the NEMO ID SC's approval of the content of such individual communication.

ARTICLE 20. Specific rules governing relationship with TSOs

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

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

ARTICLE 21. Information exchange

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

ARTICLE 22. Consultation

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

ARTICLE 23. Implementation of the XBID Solution

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

The foregoing implies that the Operational NEMO(s) on each side of an interconnector that take into account the cross border capacity in the continuous matching of the bids submitted in its (their) Market Area are competent for ensuring and commit to ensure that i) the necessary arrangements with the TSO(s) and/or the necessary regulation(s) to allocate intraday cross border capacity for the interconnector concerned and ii) the related cross border shipping arrangements and Clearing and Settlement Arrangements are in place as soon as possible and in any event as of the Go-Live for the Parties concerned by such Go-Live

23.2 The Operational NEMOs shall decide unanimously on the operational readiness of the Identical NEMO Components.

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

23.3 Without prejudice to Article 21, if any NEMO(s) is(are) ready and wish(es) to use Identical NEMO Components for operating the XBID Solution subject to successful testing for a local isolate market, it (they) may exceptionally and temporarily use Identical NEMO Components provided that the productive environment provided by the XBID System Service Provider (and only that one) is used, subject to decision of the NEMO ID SC (which shall address amongst others related cost sharing aspects) and in compliance with the IDOA Change Control Procedure and the NEMO Change Control Procedure.

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

ARTICLE 24. Clearing and Settlement Arrangements

24.1 Parties commit to cooperate to ensure that the Clearing and Settlement Arrangements are put into place by the concerned entities performing clearing and settlement as of Go-Live for the Parties concerned by such Go-Live.

24.2 Operational NEMOs shall only Go-Live provided the relevant Clearing and Settlement Arrangements are in force.

24.3 Parties shall discuss and decide on the joint requirements in respect of Clearing and Settlement Arrangements and shall ensure that any such agreed joint requirements are implemented in the Clearing and Settlement Arrangements.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 25. Observer status

25.1 Any Power Exchange, having its operations within or outside the EU, may, following a written request to the NEMO ID SC, be granted by a NEMO ID SC decision the status of Observer, for the purpose of acceding at a later stage to the Agreement, in the following cases:

- i) in the case of Power Exchange being a designated NEMO and having its operations either: (a) in a country within the EU; or (b) within a non-EU country which has a valid intergovernmental agreement in place, provided the Power Exchange accedes to the Global NDA or signs a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA (such confidentiality declaration/agreement being the only condition required);
- ii) in the case of a Power Exchange not being a designated NEMO and having its operations in a country within the EU or within a non-EU country which has a valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) satisfactory evidence being provided to the NEMO ID SC that at least one NEMO designation application has been lodged in accordance with article 4 of the CACM Regulation (or equivalent where an intergovernmental agreement is in place); (b) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (c) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (d) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances; or
- iii) in the case of a Power Exchange not being a designated NEMO and having its operations within a non-EU country (or countries) for which there is no valid intergovernmental agreement in place, the NEMO ID SC may grant the status of Observer subject to: (a) compatibility with Applicable Law; (b) satisfactory evidence being provided to the NEMO ID SC that the necessary intergovernmental agreements are under negotiation; and (c) satisfactory evidence being provided to the NEMO ID SC that the Power Exchange has the support of its NRA (or other Competent Authority) regarding the integration of the Power Exchange's markets within SIDC; (d) satisfactory evidence being provided to the NEMO ID SC that there is an intention to physically couple the Power Exchange's markets to the existing SIDC; (e) the accession to the Global NDA or the signature of a confidentiality agreement or declaration with substantially similar terms and conditions as the Global NDA; and (f) such further conditions as the NEMO ID SC may determine to be appropriate in all the circumstances.

25.2 Any Power Exchange granted the status of Observer in accordance with the provisions of this Article 25 (Observer status) may be granted access to such documentation and may be entitled to participate in such meetings relating to the ID NEMO Cooperation as may be decided by the NEMO ID SC. For the avoidance of doubt an Observer shall have no voting rights.

ARTICLE 26. Accession

26.1 The Agreement is open to accession of any legal person designated as a NEMO from time to time pursuant to the CACM Regulation and Applicable Law. It is acknowledged by the Parties that accession to the Agreement is subject to the signing of the Accession Declaration and the approval of the NEMO ID SC.

26.2 A designated NEMO which intends to accede to the Agreement (the “**Applicant**”) shall address to the NEMO ID SC Secretary a written request. The NEMO ID SC Secretary shall inform such Applicant about the accession procedure and shall, provided that the Applicant has executed a confidentiality declaration substantially similar to the Global NDA, provide it with a copy of the Agreement and the specimen Accession Declaration. The

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Applicant shall be bound by the provisions of the Accession Declaration with effect from its signature by or on behalf of the Applicant.

26.3 An entity designated as a NEMO in a non-EU country may be entitled to request to accede to the Agreement subject to:

- i) Applicable Law;
- ii) absence of any regulatory objection on the part of the Applicant's NRA (or other Competent Authority); and
- iii) such accession being compliant with legal or regulatory requirements (e.g. an intergovernmental agreement with the EU), if any, to enter into the Agreement.

26.4 Accession to the ANCA and accession to the IDOA are a precondition to become a Party to the Agreement.

ARTICLE 27. Financial Provisions

27.1 SIDC NEMOs-Only Common Costs sharing and remuneration

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

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

27.2 Cost efficiency

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

27.3 Budget and monitoring

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

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

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

27.4 Invoicing

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

27.4.2 In the event that a Party disputes all or any part of an invoice, it shall inform the invoicing Party and the NEMO ID SC as soon as possible and in any event within ten (10) Business Days of the date of the invoice of the disputed amount and the basis for disputing such invoice, together with any appropriate information supporting its position. The undisputed part of the invoiced amount shall remain payable as provided herein. Any Dispute with respect to all or any part of an invoice shall be subject to the Dispute resolution procedure set out in Article 37 (Dispute resolution and jurisdiction). Notwithstanding the existence of any Dispute relating to all or any part of an invoice, the Disputing Party shall remain for all purposes (other than payment of the contested part of such invoice pending resolution of such Dispute) subject to all its obligations under the Agreement.

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

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

ARTICLE 28. Elaboration of further terms, conditions and modalities

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

- Annex 5 (Procurement procedure).

Annex 5 (Procurement procedure) to be agreed upon by the Parties in accordance with this Article 28 (Elaboration of further terms, conditions and modalities) shall be approved by the NEMO ID SC and may be incorporated into the Agreement by an NEMO ID SC decision.

ARTICLE 29. Monitoring of the implementation of SIDC and review of the operation of SIDC

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 30. Confidentiality

30.1 In accordance with article 13 of the CACM Regulation and subject to the further provisions of this Article 30 (Confidentiality), each Party hereby undertakes to the other Parties that it shall:

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

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- 30.3 A Party may disclose Confidential Information it has received if one of the following conditions are met:
- i) the Disclosing Party can demonstrate by written evidence that all Parties have agreed to such disclosure and that such information is not otherwise subject to any confidentiality obligation owed to any Third Party. The Parties agree that the exchange of information between the Parties and ANDOA parties in the context of Article 8.1.1 viii) of this Agreement is always considered as permitted disclosure;
 - ii) if it can demonstrate by written evidence that the received information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the concerned Party; or
 - iii) if it can demonstrate by written evidence that the received information has come into the public domain through no fault or negligence of a Party to the Agreement.
- 30.4 Without prejudice to Article 5.3, the Agreement does not, and is not intended to, create an obligation for any Party to exchange information with other Parties which is not within the purpose of the Agreement as set forth in Article 3 (Purpose of the Agreement). Moreover, the Parties acknowledge and agree that a Disclosing Party may request a Recipient Party to enter into one of the confidentiality arrangements before disclosing any Confidential Information.
- 30.5 In the event that any Party becomes aware of, or reasonably suspects, that any unauthorised use or disclosure of Confidential Information by any Party has occurred or is about to occur, such Party must immediately notify the relevant Disclosing Party in writing (including, but not limited to, by email).
- 30.6 The Parties agree that the obligations imposed by this Article 30 (Confidentiality) shall:
- i) survive the termination, for any reason whatsoever, of the Agreement for a term of five (5) years; and
 - ii) in case one or more Parties withdraws from the Agreement for any reason, survive such withdrawal with respect to such withdrawing Parties for a term of five (5) years from the date of such withdrawal.
- 30.7 Each Party is entitled to voluntarily disclose, at its own initiative, Confidential Information to a Competent Authority provided that:
- i) such Competent Authority is informed by the Recipient Party of the confidential nature of the Confidential Information; and
 - ii) such Competent Authority is bound to respect the confidential nature of the Confidential Information in accordance with relevant national legislation or in the absence of such legislation, such Competent Authority is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of the Agreement.
- 30.8 The Parties are aware of the fact that certain Party(ies) in Norway, Romania, Sweden, Denmark, Finland, the Czech Republic and Slovenia are subject to acts relating to the right of access by the public, under certain conditions, to documents held by public authorities and public undertakings (so-called “freedom of information acts”) or to the legal obligation of publishing all relevant documents named by particular national legislation (so called “act on registration of contracts”) and may therefore be forced to disclose some or all of the terms of the Agreement or other information pertaining to such Party(ies). The same shall apply in case similar legal regimes exist in other jurisdictions. Without prejudice to the foregoing provisions of this Article 30(Confidentiality), any Party subject to such a disclosure obligation shall use its Best Efforts to ensure that no Confidential Information is disclosed during the course of complying with such obligation, including by (in consultation with the Disclosing Parties where it is reasonable for it to do so) redacting all such Confidential Information from any materials or documents (in whatever form) prior to such disclosure, so that sharing of Confidential Information is avoided.
- 30.9 If the Recipient Party is requested to disclose all or any part of the Confidential Information pursuant to an Applicable Law or pursuant to a valid and effective order or request issued by any Competent Authority, in such case:
- i) to the extent lawful, the Recipient Party undertakes to notify each Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation prior, if possible, or in any case soon after proceeding with any disclosure, provided that such disclosure does not constitute a breach of national rules;
 - ii) each Disclosing Party shall cooperate to respond adequately, consistently and in time; and

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- iii) should such Confidential Information be intended to be published by the relevant Competent Authority, the Recipient Party shall agree with the Disclosing Party(ies) in providing a non-confidential version of such Confidential Information for this publication, under the exception of mandatory rules or court or administrative orders or information requested by administrative, regulatory or court authorities in which case the publication shall not be constrained.
- 30.10 For the avoidance of doubt, the Parties confirm that the disclosure of Confidential Information in the circumstances foreseen under this Article 30 (Confidentiality) does not affect the confidential character of the Confidential Information so exchanged.
- 30.11 In cases of doubt as to whether an information is Confidential Information or whether Confidential Information may be disclosed pursuant to this Article 30 (Confidentiality), confidentiality shall be maintained until written confirmation (including by email) has been obtained from the other Parties (or, as the case may be, by the relevant Disclosing Parties) that one of the above exclusions applies.
- 30.12 All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party or its relevant service provider.
- 30.13 The Agreement does not grant the Recipient Party any license rights or any other rights related to the Confidential Information and its future use, except to the extent as set out in the Agreement or unless such rights are agreed upon in a separate, written, specific and signed agreement.
- 30.14 With respect to the Parties that have entered into the Confidentiality Declaration for the XBID EU Cooperation, it is understood that the provisions of this Article 30 (Confidentiality) shall solely govern the confidentiality obligations of such Parties as of the entry into force of the Agreement, . The Confidentiality Declaration for the XBID EU Cooperation remains applicable for any confidentiality breach committed before the entry into force of the Agreement.

ARTICLE 31. Liability and Force Majeure

31.1 General Principles

- 31.1.1 The provisions of this Article 31 (Liability and Force Majeure) apply to any liability whether based on contractual liability or non-contractual liability, of a Party (the “**Defaulting Party**”) towards another Party (the “**Affected Party**”) i) for any breach (whether by act or omission) of an obligation arising out of the Agreement or ii) for any breach of an extra-contractual duty (whether by act or omission) arising in the context of the Agreement (hereafter collectively “**Non-Performance**”).
- 31.1.2 [REDACTED]
- 31.1.3 [REDACTED]
- 31.1.4 The liability limitations and limitations regarding hold harmless and indemnification obligations contained in this Article 31 (Liability and Force Majeure) do not apply:
 - i) in the event of fraud (“*bedrog*”/”*fraude*”);
 - ii) in the event of own intentional fault or misconduct (“*opzettelijke fout*”/”*faute intentionnelle*”);

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- iii) in the event of delay or default in payments of any amount due under the Agreement; and
- iv) in the cases explicitly mentioned in this Article 31 (Liability and Force Majeure)
- v) in the cases governed by Article 39 (General Data Protection).

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

31.2 Liability between the Parties

31.2.1 The Defaulting Party shall be liable, subject to the limitations set out below, to an Affected Party for any direct loss, damage, charges, fees, expenses or any other direct prejudice (*“rechtstreekse schade”/ “dommage direct”*) (the **“Loss”**) which the Affected Party(ies) suffer(s) or incur(s) as a result of any Non-Performance and provided that i) such Non-Performance is attributable to the Defaulting Party and ii) that such Non-Performance is not excused on the basis of Force Majeure.

31.2.2 Without prejudice to Article 31.1.4, Parties shall not be liable for indirect loss or damage, including loss of profit, reputational damage, or loss of business opportunity.

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

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

31.2.5 Without prejudice to Article 31.1.4, the indemnification obligations of each Defaulting Party:

- a) [REDACTED]
 - i) [REDACTED]
 - ii) [REDACTED]
 - b) [REDACTED]
- [REDACTED]

31.2.6 [REDACTED]

31.2.7 [REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

31.2.8 Provided it is proven that a Party breaches any terms of Article 9 (Intellectual Property Rights – Right of use) or Article 30 (Confidentiality), the Affected Parties are entitled to claim from this Defaulting Party a lump sum indemnification of:

i) [REDACTED]

ii) [REDACTED]

in both cases without such Party having to prove any Loss and without prejudice to such Affected Parties' right to claim compensation for actual damage or losses incurred in excess of the aforementioned lump sum within the limitation set forth in this Article 31 (Liability and Force Majeure).

31.2.9 [REDACTED]

31.2.10 If the sum of all Losses per calendar year exceeds the amount of the liability limitation as set forth in Article 31.2.5, the compensation payable to the Affected Party(ies) shall be reduced *pro rata*.

31.2.11 Each Party is responsible for any action or conduct of its employees, assistants, consultants, contractors and/or agents, provided the conditions under this Article 31 (Liability and Force Majeure) are met.

31.2.12 [REDACTED]

31.2.13 With respect to breaches concerning or in relation to SIDC/IDA, the Parties waive, to the extent permitted under Applicable Law, any right to claim compensation for damages against each other related to:

i) any SIDC/IDA Operational Breach of another Party(ies), including if such SIDC/IDA Operational Breach qualifies as gross negligence,

ii) the use of the SIDC/IDA Assets such as but not limited to:

- a. any hidden defect in the joint design and joint development of the SIDC/IDA Assets;
- b. the SIDC/IDA Assets not being fit for purpose;
- c. non-compliance of the SIDC/IDA Assets with local requirements;
- d. interruption of operations caused by SIDC/IDA Assets;

since:

A) the coupling phase of SIDC/IDA is based on decentralized organization (as specifically described in Article 18.2);

B) pursuant to Article 18.2.1.1 iv), each Party, either directly or through its SIDC/IDA Servicing NEMO, can check and accept or reject the SIDC/IDA Preliminary Market Coupling Results produced by the SIDC/IDA System ;

C) any decision concerning SIDC/IDA Operations (such as the decisions taken within the SIDC/IDA Session Calls or SIDC/IDA Incident Committee pursuant to the NEMO Operational Procedures and/or the Joint SIDC

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Procedures) is taken by unanimity of the vote cast by the Parties directly or indirectly via its SIDC/IDA Servicing NEMO according to the relevant provisions of this Agreement or the IDOA;

D) Partial Decoupling or Cancellation apply in case of impossibility of performing the SIDC/IDA Operations and are considered by all Parties as the agreed solutions in case of SIDC/IDA Incident;

E) all NEMOs have approved the SIDC/IDA Assets as set under Article 4.1 vii) above;

F) SIDC/IDA Assets are put in operation only after the completion of the tests set under the testing and simulation performed pursuant to IDOA; and

G) Operational NEMOs have positively completed directly or by delegation such tests before their SIDC/IDA Operational Date.

31.2.14. However, in respect of each SIDC/IDA Serviced NEMO, the waiver set under Article 31.2.13 shall apply only for the benefit of the non SIDC/IDA Servicing NEMOs since the liability amongst such SIDC/IDA Serviced NEMO and its SIDC/IDA Servicing NEMO is outside the scope of this Agreement and is governed by their bilateral service contract.

31.2.15. For the sake of clarity, the waiver set forth under Article 31.2.13 shall apply, in particular, but without limitation, for damages arising in relation to:

- i) the production of SIDC/IDA Market Coupling Results;
- ii) the provision of data requested under Article 18.2.1.5;
- iii) the absence of SIDC/IDA Market Coupling Results;
- iv) wrongful act or omission by an Operational NEMO acting as SIDC/IDA Coordinator, SIDC/IDA Backup Coordinator or SIDC/IDA NEMO Operator;
 - v) Partial Decoupling;
- vi) any decision taken within the SIDC/IDA Session Calls or SIDC/IDA Incident Committee.

31.2.15. Each Daily Observer explicitly waives any right to claim against any SIDC/IDA NEMO Operator compensation for damages related to any information on the SIDC/IDA Operations which was not received for any reason during its performance.

31.3 Third Party Claims – Hold Harmless (“Vrijwaring” / “Garantie”)

31.3.1 Third Party Claims concerning SIDC/IDCT

31.3.1.1

[REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

31.3.1.2 [REDACTED]

31.3.1.3 [REDACTED]

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

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

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

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

31.3.2 Third Party Claims concerning SIDC/IDAs

31.3.2.1 [REDACTED]

31.3.3 Conduct of claims by Third Parties

31.3.3.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

(c) [Redacted]

31.3.3.2 [Redacted]

31.3.3.3 [Redacted]

31.3.3.4 Article 31.3.3.3 ii) [Redacted]

31.3.4 SIDC/IDA Operational Liability Claim

31.3.4.1 Should a Third Party claim be an SIDC/IDA Operational Liability Claim, the Defaulting Party(ies) shall hold harmless and indemnify the Defendant Party only if and to the extent that the breach of the Defaulting Party(ies) qualifies as fraud (“bedrog”/”fraude”) or intentional fault / misconduct (“opzettelijke fout”/ ”faute intentionnelle”);

31.3.4.2 In deviation of the liability limitation mentioned above in Article 31.2.5, in the event of a Third Party claim by a service provider jointly contracted by all Parties (or a subset of them) in accordance with Articles 14.1, 14.2 and 14.3 the aggregate obligation of a Party to hold harmless and indemnify the other Parties shall not exceed the amount of the indemnification obligation the Parties have contracted towards such service provider.

31.3.4.3 [Redacted]

31.3.4.4 [Redacted]

31.3.4.5 [Redacted]

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

This Article 31.3.4.5 shall not apply in case of TSOs' claim under article 22.7.5 or article 22.9.3.4 of the IDOA, in which case any compensation received from a Third Party Service Provider for damage to the TSOs shall be paid out to the TSOs in accordance with the terms of the IDOA.

31.4 Total Cap



31.5 Mitigation obligation

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

31.6 Subrogation

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

31.7 Force Majeure

- 31.7.1 No Party shall be liable for delay or failure to fulfil its obligations under the Agreement if the delay or failure in performing the concerned obligation results from Force Majeure.
- 31.7.2 Any Party affected by Force Majeure, shall:
- i) send the other Parties prompt notification describing the nature of Force Majeure, its probable duration and the impact thereof on the performance of the Party’s obligations under the Agreement;
 - ii) use its Best Efforts to limit the consequences and duration of the Force Majeure;
 - iii) provide regular (and, in any event, weekly) notices to the other Parties about its actions and plans for action under Article 31.7.2, ii); and
 - iv) provide prompt notice to the other Parties as soon as the circumstances giving rise to the event of Force Majeure have been cured, mitigated or have otherwise ceased.
- 31.7.3 A Party affected by Force Majeure shall be excused from any delay or failure in performance, in whole or in part, of its obligations under the Agreement for so long as, and to the extent that, the performance of such obligations is affected by Force Majeure.
- 31.7.4 A Party cannot, under any circumstances, be held responsible or held liable to pay any compensation for damage suffered, due to any delay or failure in performance, in whole or in part, of any one or more of its obligations, when such delay or failure in performance is due to a Force Majeure event.
- 31.7.5 If Force Majeure continues for two (2) consecutive months following the notice under Article 31.7.2, i), the Party(ies) that has (have) invoked Force Majeure shall be entitled to Voluntary Exit (under the terms and conditions of Article 0) immediately upon notice sent in writing and provided that it demonstrates that:
- i) the event of Force Majeure invoked in the notice under Article 31.7.2, i) prevents it from performing its obligations under the Agreement which are to be considered as essential obligations under the Agreement; and
 - ii) it (they) has (have) taken all reasonable measures to remedy such Force Majeure but it is impossible to remedy the Force Majeure by such reasonable measures.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

ARTICLE 32. Entry into force – Term

32.1 Entry into Force

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

For evidence reasons:

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

ii) [REDACTED]

32.2. Term

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

32.3 The Agreement governs the Parties' relationship as of its entry into force and shall be the sole contract between the Parties governing their cooperation for the development, implementation and operation of the SIDC. Any previous relationship is governed by the PCA for the signatories to this agreement. The PCA is terminated by the entry into force of the Agreement (without prejudice to the application of any survival clauses and the right to claim under that agreement and without prejudice to the mandate specified in annex XVII of the PCA, which remains in force)

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

ARTICLE 33. Voluntary Exit, Forced Exit and suspension

33.1 Voluntary Exit

33.1.1 Any Party (hereinafter, the “**Voluntary Exit Party**”) may at any time, without cause and without any court intervention, exit the Agreement by means of a Voluntary Exit. A Voluntary Exit shall not trigger the payment of any compensation, but shall be without prejudice to: i) any pre-existing payment obligations towards or between the other Parties under the Agreement up to and including the effective date of exit by the Voluntary Exit Party; and/or ii) such already committed payment obligations towards Third Parties up to and including the

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

earliest possible termination date applicable to such Third Party agreement, which in each case shall remain due unless agreed otherwise in the relevant Exit Plan.

33.1.2 The Voluntary Exit Party shall notify the NEMO ID SC of its intention to exit the Agreement. The NEMO ID SC shall meet within two (2) weeks after any such notification to commence the preparation of the Voluntary Exit Party's Exit Plan according to Article 33.4.1. In particular, the NEMO ID SC shall assess the timescales within which such exit shall occur. Except if decided otherwise by the NEMO ID SC, with the consent of the Voluntary Exit Party, or except if provided otherwise by Applicable Law or regulatory decision, the following timescales for the effectiveness of such exit shall apply by default:

- i) in the event of Force Majeure, subject to Article 31.7.5 immediately upon the concerned notice sent in writing;
- ii) in the event of change due to regulatory reasons, in case of failure to reach an agreement with regard to the modification of the Agreement according to Article 35(Amendment), subject to three (3) months as from the notification of the Voluntary Exit Party;
- iii) in the event of a Dispute as set forth in Article 37(Dispute resolution and jurisdiction) and provided the conditions of Article 37.8 are met, subject to three (3) months as from the notification of the Voluntary Exit Party;
- iv) to the extent compatible with Applicable Law, in the event of bankruptcy or any other insolvency proceeding, dissolution or liquidation of such Voluntary Exit Party upon one (1) month as from the notification of the Voluntary Exit Party;
- v) in the event of an order of a Competent Authority to end the participation of a Party to the SIDC, upon one (1) month from the notification of the Voluntary Exit Party; or
- vi) in all other cases, upon six (6) months as from the notification of the Voluntary Exit Party.

33.2 Forced Exit

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

[REDACTED]

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

For the avoidance of doubt, Dispute settlement does not affect the effectiveness of the NEMO ID SC decision. However, the NEMO ID SC (it being understood that the Forced Exit Party shall not take part to the decision in this respect) may decide to suspend its decision under Article 0 in case of Dispute settlement (Article 37(Dispute resolution and jurisdiction)).

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

33.3 Suspension of Party

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

be decided by the NEMO ID SC. A Party may be subject to a suspension of its rights and obligations under the Agreement only in the following circumstances:

[REDACTED]

[REDACTED]

[REDACTED]

33.3.2 Following the expiry of a period of suspension imposed under the terms of this Article 0.2 the Suspended Party's rights to vote at the NEMO ID SC, a subcommittee, a work group or a task force meeting and its rights and obligations with respect to the Agreement, any related Third Party agreement and with respect to all joint property shall be immediately and unconditionally restored.

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

33.4 Exit Plan/Suspension Plan and Consequences of Exit/Suspension

33.4.1 In case of any exit or suspension of a Party in accordance with the provisions of this Article 33 (Voluntary Exit, Forced Exit and suspension), the remaining Parties shall each use their respective Best Efforts to secure the continuity of the SIDC. The NEMO ID SC shall prepare a plan (the "**Exit Plan**" or "**Suspension Plan**", as appropriate), setting forth the actions and measures to be taken to ensure continuity during the period of suspension of any Party or following a Party's exit (as the case may be) including, but not limited to, the following:

- i) an assessment of the changes to be made to the Agreement (if any) with the aim of continuing the SIDC without the Voluntary Exit Party, Forced Exit Party or the Suspended Party;
- ii) an assessment of the costs related to such exit or suspension and the allocation thereof;
- iii) the status of the licenses and sublicenses granted under the Agreement or granted by Third Party service providers (termination of the licenses and sublicenses at the date of exit, unless agreed otherwise in the Exit Plan);
- iv) the measures for ensuring continuity of the SIDC;
- v) the measures to ensure that the exit or suspension is conducted as smoothly as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and
- vi) the exact date on which the exit or suspension shall become effective, according to the abovementioned timescales.

33.4.2 The NEMO ID SC shall propose the Exit Plan/Suspension Plan to the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) for its approval. If the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) does not approve the Exit Plan/Suspension Plan, the matter shall be resolved in accordance with Article 37 (Dispute resolution and jurisdiction). If the Voluntary Exit Party, Forced Exit Party or Suspended Party (as the case may be) approves the Exit Plan/Suspension Plan, it shall be submitted to the NEMO ID SC for formal approval. If the NEMO ID SC does not approve the Exit Plan/Suspension Plan, the matter shall be resolved in accordance with Article 37 (Dispute resolution and jurisdiction).

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

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

33.4.6 As of the date on which the exit becomes effective as determined in the Exit Plan in accordance with Article 33.4.1, vi), any co-owned Intellectual Property Rights of the Voluntary Exit Party or Forced Exit Party (as the case may be) pertaining to joint developments (such as Identical NEMO Components) or any right of the Voluntary Exit Party or Forced Exit Party (as the case may be) to use data and systems (including the XBID System) under the Agreement and the jointly owned developments in accordance with Article 9.2.1, shall automatically terminate for such Voluntary Exit Party or Forced Exit Party (as the case may be), it being understood that any share in co-ownership rights shall automatically be retransferred in equal parts to the remaining Parties without any compensation being due.

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

33.4.8 Voluntary Exit, Forced Exit and suspension shall always concern both the SIDC/IDCT and the SIDC/IDA.

ARTICLE 34. Nominated Contact Person

Each Party shall appoint a nominated person (the “**Nominated Contact Person**”) to act as the initial contact point for such Party for all issues connected to the Agreement. The names of each Party’s Nominated Contact Person are to be recorded in Annex 4 (Contact and invoicing details). Each Party may replace its Nominated Contact Person at any time in accordance with Article 33.

ARTICLE 35. Amendment

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

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

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

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

35.2 The Parties expressly agree to review the Agreement if any Applicable Law is introduced or modified in such a way that this has a substantive effect on the Agreement. In the event that any such introduction or change to Applicable Law – including, for the avoidance of doubt, measures and/or decisions of Competent Authorities as far as within the competence of these authorities – require an amendment or modification of the Agreement, any

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Party(ies) affected by the new/amended Applicable Law may send a request for modification of the Agreement to the other Parties containing:

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

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

35.4 To the extent a Party is not affected by a change to any Applicable Law notified to it by another Party, it may refuse to make the requested amendments to the Agreement on reasonable grounds, stating its reasons for such refusal. In such case, the Affected Party(ies) shall inform its (their) Competent Authority(ies) to see if execution of/continued participation in the Agreement is still possible without making the requested amendment. If the relevant Competent Authority(ies) raise any objection to the rejection of such requested changes, the Affected Parties may apply Article 37 (Dispute resolution and jurisdiction).

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

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

ARTICLE 36. Governing law

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

ARTICLE 37. Dispute resolution and jurisdiction

37.1 Any dispute arising under, in connection to, or in the framework of the Agreement (including, for the avoidance of doubt, related to its conclusion and its validity) between one or more Parties (“**Dispute**”) shall be subject to the provisions of this Article 37(Dispute resolution and jurisdiction).

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

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

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

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- 37.5 The NEMO ID SC shall in the first meeting hear the positions of the Disputing Parties and attempt to resolve the Dispute amicably under the chair of the person responsible for the amicable Dispute settlement procedure. The NEMO ID SC may hear and/or request opinions of experts provided that they are bound by confidentiality obligations at least equivalent to those in the Agreement. In particular, the NEMO ID SC shall:
- i) assess the facts;
 - ii) assess the interests of the Parties in light of the objectives of the Agreement; and
 - iii) in case of damage:
 - a) estimate the damage (and its nature and extent);
 - b) determine which Party(ies) suffered the damage;
 - c) determine which Party(ies) is(are) liable for the damage;
 - d) determine the extent and modalities of indemnification; and
 - e) formulate a proposal for settlement.
- 37.6 In the event that the NEMO ID SC fails to achieve an amicable settlement within one (1) month of receipt of the Referral, the Parties shall be notified thereof by the person responsible for the amicable Dispute settlement procedure and the Dispute shall be referred to the NEMO Committee to the extent it is foreseen in the ANCA, or should it not be foreseen in the ANCA, it is agreed by the NEMO ID SC.
- 37.7 Should the Dispute directly concern a regulatory issue (e.g. amendment of the Agreement due to regulatory reasons or change requests related to Applicable Law) and in the event that the NEMO Committee (in the case mentioned in [Article 37.6](#)) or the NEMO ID SC (if [Article 37.6](#) is not applicable) fails to achieve an amicable settlement within one (1) month of receipt of the Referral, the Parties shall be notified thereof by the person responsible for the amicable Dispute settlement procedure and the NEMO ID SC may solicit the NRAs and/or ACER for a non-binding opinion on the Dispute (the “**Opinion**”). Upon receipt of the Opinion, the Disputing Parties shall pursue an amicable settlement based on this Opinion.
- 37.8 In the event that:
- i) the Disputing Parties decide not to seek an Opinion from the NRAs and/or ACER;
 - ii) the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt, or
 - iii) ACER and/or the NRAs denies its competence to provide an Opinion or does not provide an Opinion within a timeframe of one (1) month of the filing of the request thereto,
- the Dispute shall be exclusively and finally settled by arbitration under the ICC’s rules of arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have three (3) arbitrators, regardless of the number of Parties involved. They shall be appointed by the ICC court of arbitration, according to the ICC rules of arbitration. All appointed arbitrators shall preferably be familiar with the applicable sector, specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration shall be final and binding upon the Parties concerned.
- 37.9 Each Party agrees that it may be joined as an additional party to any arbitration involving one or more parties to the ANCA. If more than one arbitration is begun under the Agreement and/or the ANCA and any party to any such arbitrations contends that two or more arbitrations are substantially related and that the issues should be

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

heard in one proceeding, the arbitrator(s) selected in the first-filed of such proceedings shall determine whether, in the interests of justice and efficiency, the proceedings should be consolidated before that (those) arbitrator(s).

- 37.10 Any amicable settlement reached pursuant to this Article 37 (Dispute resolution and jurisdiction) shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract, signed by the Parties participating in the concerned amicable settlement.
- 37.11 In the event of a Dispute, nothing in this clause shall preclude a Party from applying for injunctive relief in summary proceedings before any competent court.

ARTICLE 38. Miscellaneous

38.1 In connection with the interpretation of the Agreement:

- i) no provision of the Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision;
- ii) words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender;
- iii) the headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation;
- iv) any reference to any rule, enactment, statutory provision, regulation or code, Applicable Law or any subdivision or provision thereof shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced;
- v) all references to Articles or Annexes refer to the corresponding Articles or Annexes of the Agreement as amended, supplemented or modified from time to time, unless otherwise specified; and
- vi) any Annex referred to in the Agreement forms an integral and inseparable part of the Agreement. Any reference to the Agreement includes a reference to its Annexes and vice versa.

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

38.3 Each of the Parties, unless expressly provided otherwise herein, is prohibited from assigning (including by means of merger, split-off, or transfer or contribution of universality or a branch of activity or otherwise) all or part of its rights and obligations arising from the Agreement to a Third Party without the prior written consent of the other Parties.

38.4 No waiver of any term, provision or condition of the Agreement shall be effective except to the extent to which it is made in writing and signed by the waiving Party. No omission or delay on the part of any Party in exercising any right, power or privilege under the Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under the Agreement. For the avoidance of doubt, if a Party fails to perform any of its obligations hereunder, and another Party fails to enforce the provisions relating thereto, such Party's failure to enforce the Agreement shall not prevent its later enforcement.

38.5 Unless otherwise stated in the NEMO Operational Procedures all notices and correspondence under the Agreement shall be in writing and may be delivered by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested to the recipient Party at the relevant postal and/or email address specified for such purposes in Annex 4 (Contact and invoicing details). Unless otherwise stated in the NEMO Operational Procedures a notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail, provided that, in either case, where delivery occurs outside

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

Working Hours, the notice shall be deemed to have been received at the start of Working Hours on the next following Business Day.

- 38.6 The Parties agree that the working language for all notifications and for all matters relating to their cooperation under the Agreement shall be English, to the extent compatible with the Applicable Law.
- 38.7 The invalidity or ineffectiveness of any Article of the Agreement shall not affect the validity of the remainder of the Agreement.
- 38.8 In the event of the termination of the Agreement for whatever reason, the provisions which, expressly are intended to survive the termination of the Agreement are Articles 1 (Definitions), 9 (Intellectual Property rights / Rights of use), 30 (Confidentiality), 31 (Liability and Force Majeure), 36 (Governing law), 37 (Dispute resolution and jurisdiction) and 38 (Miscellaneous) (for the term indicated therein) and without prejudice to the right of a Party to settle any Dispute arising after termination out of or in connection with the Agreement in accordance with all the provisions of the Agreement.
- 38.9 The Parties may appoint a legal or natural person (which person may be the same person as is appointed Secretary) to establish a common (online) storage location for the keeping of records of contractual documents (including meeting minutes and contracts with Third Parties) and to keep the common storage up to date (amongst others by collecting and storing all minutes).

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

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

ARTICLE 39. General Data Protection

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

39.2 Purpose of the processing and storage

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

- 39.2.1 With respect to the processing of Personal Data referred to under Article 39.1, the Parties agree that:
- i) it shall be carried out purely by virtue of the data subject's representation of/service to a Party in the context of the performance of the Agreement. Any Personal Data shall only be processed for the limited purpose of the performance of the Agreement.
 - ii) the legal grounds for processing the contact information of Party representatives is based on the legitimate interest of the Parties, namely to perform through their employees, service providers or representatives, the contractual rights and obligations under the Agreement.
- 39.2.2 Personal Data shall be stored so long as it is relevant, that is related to persons representing/working for a Party, otherwise it shall be immediately erased. All Parties shall ensure erasing Personal Data that is no longer necessary as well as accuracy of the Processed Data.

39.3 Joint Data Controller

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

39.4 General distribution of responsibilities

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

However, if the reason for the breach is not immediately attributable to one of the data controllers, and the breach is attributable to the provider of the common (online) storage place referred to in Article 38.9 or any processor jointly chosen by the Parties, the GDPR SPOC is responsible for managing a Personal Data breach and notifying the Personal Data breach to the supervisory authority and/or to the data subjects.

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

39.4.4 The GDPR SPOC is responsible for:

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

39.5 Use of data processors and sub-processors

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

39.6 Security

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

39.7 Liability with regards to this Article 39

- 39.7.1 The Parties shall be individually liable towards each other with regard to any Data Protection Legislation violation related to their individual responsibilities according to Article 39.4.1.
- 39.7.2 The Parties shall be jointly and severally liable towards data subjects with regard to any Data Protection Legislation violation occurring in relation to data processing for which they are joint controllers according to Article 38.3 and in respect of the choice of commonly agreed processors.
- 39.7.3 To the extent a third-party claim or damage in relation to a violation of Data Protection Legislation is caused by one or more Party(ies)'(s) violation of Data Protection Legislation, such defaulting Party(ies) shall indemnify the other Parties in accordance with article 82 of the GDPR. Such defaulting Party(ies) shall also indemnify the other Parties for fines imposed on them in relation to Data Protection Legislation violations caused by the defaulting Party(ies) in relation to joint data processing. In the event a fine is imposed for violation of Data Protection Legislation concerning the joint processing of Personal Data and such violation is attributable to all Parties or to the GDPR SPOC, the fine shall be equally shared between the Parties, without prejudice to any possible indemnification which may be requested from the GDPR SPOC. In these cases, the liability caps and caps on hold harmless set forth in Article 30 do not apply.

39.8 Right to provide individual controller information

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body

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

Third Amendment to ANIDOA
Attachment 1 Consolidated version of ANIDOA – main body