

**Attachment 4**

Consolidated Version of the PCR Co-ownership Agreement as amended by the Fourth Amendment

**CONSOLIDATED PCR CO-OWNERSHIP AGREEMENT  
with the Fourth Amendment provisions**

The present agreement (hereinafter the “**Agreement**”) is made on the [13<sup>th</sup> of June 2012], by and between:

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway (“**Nord Pool**”);
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED];
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3<sup>rd</sup> District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;
8. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

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

**WHEREAS:**

1. *The Parties have entered into a cooperation regarding technical assessment concerning a day-ahead price coupling project named “price coupling of regions” which is now governed only by this PCR Co-ownership Agreement (hereafter the “PCR Cooperation”). Before the entering into force of the Third Amendment to the PCR Co-ownership Agreement, the PCR Cooperation has been formalized by:*
  - i) *a Letter of Intent dated 18 June 2009 (hereafter the “LoI”) signed by Nord Pool, EPEX Spot and OMEL;*
  - ii) *an Agreement Governing the Confidentiality and Use of Data in View of Assessing the Day-Ahead Price Coupling of Regions (hereafter “Data Sharing Agreement”) dated 18 August 2009 between Nord Pool , EPEX Spot and OMEL (which subsequently changed its company name in OMIE);*
  - iii) *a confidentiality agreement (hereafter the “NDA”) of 12 January 2010, between all Parties setting forth the terms and conditions under which a copy of the LoI and of the Data Sharing Agreement may be disclosed to APX (subsequently merged in EPEX Spot), Belpex (which subsequently changed its company name in EPEX Belgium SA and merged in EPEX Spot) and GME in the context of their adherence to the PCR Cooperation;*
  - iv) *an adherence letter to the LoI (hereafter the “Adherence Letter”) and an amendment to the Data Sharing Agreement (hereafter the “First Amendment Agreement”) of 23 February 2010, by which APX, Belpex and GME have adhered to the LoI and to the Data Sharing Agreement;*
  - v) *a second amendment agreement to the Data Sharing Agreement between Nord Pool, EPEX Spot, OMIE APX, Belpex and GME of 9 December 2010 (hereafter the “Second Amendment Agreement”) with the purpose of extending the original Data Sharing Agreement from the “study” phase, focused on the common analysis of the effects of the PCR Market Coupling, to the “algorithm selection” phase, regarding the developing and screening of a matching algorithm that could be used to perform the PCR Market Coupling;*
  - vi) *a third amendment agreement to the Data Sharing Agreement between the Nord Pool, EPEX Spot, OMIE APX, Belpex and GME of 23 May 2011 (hereafter the “Third Amendment Agreement”) with the purpose of extending the scope of the original Data Sharing Agreement to the further design and development of the matching algorithm selected by the Parties;*
  - vii) *an Extension Agreement in respect of the Adherence Letter and of the Data Sharing Agreement between the Nord Pool, EPEX Spot, OMIE APX, Belpex and GME entered into force on the 23 February 2012 (hereafter the “Extension Agreements”)*
  - viii) *on the 12 June 2012 the PCR Cooperation Agreement, as further amended and supplemented, which set the rights and obligations for the operations of market coupling in the day ahead time frame based on a decentralised coordinated calculation of Market Coupling results with common matching algorithmic software (“Algorithm”) taking into account the available Cross-Zonal Capacities and optional Allocation Constraints*
2. *Before the entering into force of the PCR Cooperation Agreement, in order to prepare the necessary technical arrangements and infrastructure for the implementation of the PCR Market Coupling, the Parties have constituted several technical working groups with dedicated tasks, involving to this end Internal Representatives of each Party, eventually supported by External Representatives, indicated ad hoc by the Parties.*
3. *Based on the results of the algorithm and simulations working group described in whereas 2, the Parties have elaborated a document describing the Starting Point Selection (as defined hereafter) in order to fix the procedure*

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to select a matching algorithm. The Parties have agreed that the selected matching algorithm becomes common under the terms of this Agreement for all the Parties in the PCR Cooperation.

4. The Parties have unanimously selected the algorithm submitted by APX, Belpex and EPEX Spot as the matching algorithm for PCR Market Coupling subject to further developments. APX, Belpex and EPEX Spot, as co-owners of the selected algorithm they submitted, agreed to transfer an equal undivided share of their rights in respect of the matching algorithm they submitted to each of the other Parties, who accepted such transfer, in order to have a Co-ownership (as defined hereafter) established between all Parties in respect of the matching algorithm they submitted.
5. APX, Belpex, GME and OMIE signed a co-ownership agreement which entered into force on March 7<sup>th</sup>, 2012 in order to define the general principles in respect of the co-ownership on the broker, matcher and helper applications to be delivered by an IT supplier selected by APX, Belpex, GME and OMIE.
6. On the 12<sup>th</sup> of June 2012 APX, Belpex, EPEX Spot, Nord Pool, GME and OMIE have entered this PCR Co-ownership Agreement which has replaced and superseded any other agreement entered into between the Parties or a subset of the Parties governing co-ownership on Co-Owned Assets. In December 2013, APX, Belpex, EPEX Spot, GME, OMIE, OTE and Nord Pool entered into the First Amendment to the PCR Co-Ownership Agreement which was followed by the Second Amendment to the PCR Co-Ownership Agreement, effective on the 1 October 2015
7. On 28<sup>th</sup> February 2013 OTE signed an adherence agreement to the PCR Co-ownership Agreement effective on the 1<sup>st</sup> of March 2013. Subsequently APX Commodities (which subsequently changed its company name in APX UK), TGE, OPCOM, HENEX and NASDAQ adhered the PCR Co-ownership Agreement with effective date, respectively, on the 1<sup>st</sup> of February 2014, the 26<sup>th</sup> of October 2015, the 30<sup>th</sup> of October 2015, the 30<sup>th</sup> of June 2018 and on the 28<sup>th</sup> of May 2019. On the 31 December 2016 was effective the merger of APX and APX UK (formerly named APX Commodities) in EPEX. On the 1 January 2019 was effective the merger of EPEX Belgium (formerly named Belpex) in EPEX.
8. On 15<sup>th</sup> August 2015, the Commission Regulation (EU) 2015/1222 of 24<sup>th</sup> July 2015 establishing a guideline on capacity allocation and congestion management entered into force in August 2015 (hereafter the “CACM”), has provided a mandatory framework for the single day ahead coupling (hereafter the “SDAC”) and single intraday coupling (hereinafter “SIDC”) describing the roles and responsibilities of the NEMOs and tasks to be jointly performed by the NEMOs.
9. On the 16<sup>th</sup> of June 2017, all NRAs have approved the All NEMO Proposal for the Plan on Joint Performance of MCO Function (hereafter the “MCO Plan”) submitted by the NEMOs pursuant to art. 7.3 of CACM.
10. On the 12<sup>th</sup> of June 2018, the Parties – with the exception of Nasdaq - together with the other NEMOs as well as with the TSOs subject to the CACM implementation have entered into the Intra Day Operational Agreement (hereinafter “IDOA”) to set forth i) the main principles of their cooperation in respect of SIDC, ii) the terms and conditions under which the relevant IT infrastructure will be developed and iii) the terms and conditions under which the SIDC shall be implemented, performed and operated among NEMOs and TSOs.
11. On the 12<sup>th</sup> of June 2018, pursuant to the MCO Plan, the Parties – with the exception of Nasdaq - together with the other NEMOs have entered into the All NEMO Intraday Operational Agreement (hereinafter “ANIDOA”) 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.
12. On the 28<sup>th</sup> of March 2019, the Parties together with the other NEMOs as well as with the TSOs subject to the CACM implementation have entered into the Day Ahead Operational Agreement (hereinafter “DAOA”) to set forth i) the main principles of their cooperation in respect of SDAC, ii) the terms and conditions under which the relevant

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*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.*

13. *On the 28th of March 2019 , pursuant to the MCO Plan, the Parties together with the other NEMOs have entered into the All NEMO Day Ahead Operational Agreement (hereinafter “**ANDOA**”) to set forth i) the main principles of 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 SDAC shall be implemented, performed and operated among NEMOs.”*
14. *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 HEREBY AGREE AS FOLLOWS:**

### TABLE OF CONTENTS

ARTICLE 1.	DEFINITIONS AND INTERPRETATION
ARTICLE 2.	SCOPE OF THE AGREEMENT
ARTICLE 3.	VESTING OF CO-OWNERSHIP
ARTICLE 4.	CLASSES OF CO-OWNED ASSETS
ARTICLE 5.	GENERAL PRINCIPLES GOVERNING CO-OWNERSHIP
ARTICLE 6.	RIGHTS OF A PARTY IN RESPECT OF THE CO-OWNED ASSETS
ARTICLE 7.	RIGHTS OF AN ORIGINAL OWNER ON THE PRE-EXISTING ASSETS
ARTICLE 8.	OBLIGATIONS OF THE PARTIES
ARTICLE 9.	GOVERNANCE
ARTICLE 10.	MODIFICATIONS TO AND ENHANCEMENT OF THE CO-OWNED ASSETS
ARTICLE 11.	COSTS
ARTICLE 12.	FILING FOR INTELLECTUAL PROPERTY RIGHTS
ARTICLE 13.	INFRINGEMENTS/THIRD PARTY CLAIMS
ARTICLE 14.	ADHERENCE
ARTICLE 15.	CONFIDENTIALITY
ARTICLE 16.	PRIVACY AND DATA PROTECTION
ARTICLE 17.	LIABILITY
ARTICLE 18.	FORCE MAJEURE
ARTICLE 19.	ENTRY INTO FORCE
ARTICLE 20 .	TERMINATION AND SUSPENSION
ARTICLE 21.	ASSIGNMENT AND CONTINUITY
ARTICLE 22.	AMENDMENTS AND ENFORCEABILITY
ARTICLE 23.	SEVERABILITY
ARTICLE 24.	LAW AND INTERPRETATION
ARTICLE 25.	DISPUTE RESOLUTION
ARTICLE 26.	MISCELLANEOUS
ARTICLE 27.	PARTICIPATION AS GROUP MEMBER TO THE AGREEMENT

*Execution Version*

Annex I Co-Owned Assets and Individual Assets' list;

Annex II PCR Algorithm requirements;

Annex III PCR Procurement Approach;

Annex IV Change Control Procedure

Annex V RIO;

Annex VI Standard form associate confidentiality declaration;

Annex VII Contacts;

Annex VIII Financial Annex;

Annex IX Standard power of attorney for third party services;

Annex X Standard Adherence Agreement;

Annex XI, Multilateral Liability Agreement templates

Part A (form of Limited Multilateral Liability Agreement)

Part B (form of Full Multilateral Liability Agreement)

Annex XII, License templates

Part A (form of TSO License)

Part B (form of Standard License)

Part C (form of Exit License)

ANNEX XIII Confidentiality Declaration

ANNEX XIV Controller Information Clause

**ARTICLE 1 DEFINITIONS AND INTERPRETATION**

**1.1. Definitions**

If not differently specified in this Agreement, the following capitalized terms referred to herein shall have the following meaning:

- “ACER”:** means the Agency for the Cooperation of Energy Regulators as established by Regulation No 713/2009 of the European Parliament and of the Council of 13 July 2009;
- “Adherence Fee”** shall have the meaning set forth in Annex VIII
- “Adherence Letter”:** shall have the meaning set forth in Whereas 1;
- “Adhering Party”** shall have the meaning set forth in art 14.1
- “Agreement”:** means this PCR Co-Ownership Agreement entered into by the PXs;
- “Annex”:** means any attachment to this Agreement;
- “ANDOA”:** shall have the meaning set forth in whereas 13;
- “ANIDOA”:** shall have the meaning set forth in whereas 11;
- “Anticipated Scope of PCR”:** means the geographical area of the Bids to be matched within the PCR Cooperation, which corresponds to the Bidding Areas of EU countries (or a part thereof) and any electrically connected country. For the avoidance of any doubt:
- the expression electrically connected country refers to a country connected, directly or through one or several intermediate non-EU countries, to a EU country via an interconnection between their electricity grids
  - the geographical area of the Anticipated Scope of PCR is regardless of the physical location of the PCR Market Coupling System requested for the implementation and operation of PCR Cooperation;
- “Belpex Spot Market”:** means the day-ahead and intraday spot electricity markets operated by Belpex;
- “Best Efforts”:** means performing an obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced Person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result (*“middelenverbintenis” / “obligation de moyen”*);
- “Bid”:** means a binding order to deliver or take off electricity against payment, including but not exclusively, hourly orders, block orders, MIC orders,

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MPC orders or PUN orders, as further defined in the PX market rules applicable to the concerned PX;

**“Bidding Area”:** means the geographical area where the delivery or take off of electricity, resulting from the matched Bid(s), takes place;

**“Change Control Procedure”:** means the procedure set forth in Annex IV

**“Concerned Party”:** means any Party (not being the Defendant Party) which may be under an obligation to hold harmless and indemnify a Defendant Party

**“CACM”** means the Commission Regulation (EU) 2015/1222 of 24th July 2015 described under whereas 8

**“Common PCR Operations”:** means the performance of the PCR Market Coupling by a Party as integrated with the pre and post coupling processes, where the market clearing prices and the net positions are determined in the day-ahead timeframe in a single step using physical hourly ATC and/or flow Based capacities between CWE Region, Nordic-/Baltic Region, Great Britain, SWE, IBWT and any further Bidding Area(s) coupled to the previous one.

**“Commonly Developed Assets”:** means any Co-Owned Asset jointly developed by the Parties with or without joint funding of the Parties;

**“Confidential Information”:** means the information contained in the documents listed in Annex I as First Class Co-Owned Assets and Second Class Co-Owned Assets. The submitted descriptive information and Source Code of any matching software submitted in the context of the Starting Point Selection are also deemed Confidential Information;

**“Control”:** means the situation where a company:

- directly or indirectly owns a fraction of the capital in another company that gives a majority of the voting rights at such company's general meetings;
- holds alone a majority of the voting rights in a company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to such company's interests;
- effectively determines the decisions taken at a company's general meetings through the voting rights it holds;
- has the power to appoint or dismiss the majority of the members of company's administrative, management or supervisory structures;
- directly or indirectly holds a fraction of the voting rights above 40% of a company and no other partner or shareholder directly or indirectly holds a fraction larger than this participation;

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

b) In any cases, an undertaking is presumed to control a company when it exerts a decisive influence over it. The decisive

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influence is defined according to the organizational, economic and legal links between both undertakings.

<b>“Co-Owned Assets”:</b>	means all rights (such as, amongst others, Intellectual Property Rights, if any) and title to and interest in goods (including Licenses) and materials as well as the goods and materials themselves, including all documentation and Confidential Information related to these goods and materials, Parties have expressly agreed in writing as being subjected to Co-ownership through the insertion in the attached Co-Owned Assets List or which are not listed in Annex I and have been commonly developed by the Parties on the basis of a specific written agreement between all the Parties;
<b>“Co-Owned Assets List”:</b>	means Annex I in which the Co-Owned Assets are described;
<b>“Co-ownership”:</b>	means the undivided ownership of the rights, title and interests pertaining to the Co-Owned Assets and of the Co-Owned Assets themselves, as a result of which each co-owner has an equal undivided share in the rights (including Intellectual) Property Rights), title, interests and obligations pertaining to the Co-Owned Assets and of the Co-Owned Assets themselves;
<b>“CWE”:</b>	means the Central Western European Region;
<b>“CWE Market Coupling”:</b>	means the Market Coupling implemented at date of this Agreement within CWE by the PXs and TSOs of CWE, as extended as the case may be, following a regulatory decision;
<b>“Data Sharing Agreement”:</b>	shall have the meaning set forth in whereas 1 ii);
<b>“DAOA”</b>	shall have the meaning set forth in whereas 12
<b>“Declaration of Exit”</b>	means the written declaration signed by a Voluntary Exit Party for informing the other Parties about its intention to exit from the PCR Co-ownership Agreement;
<b>“Dispute”:</b>	shall have the meaning set forth in Article 25.1;
<b>“Disputing Parties”:</b>	shall have the meaning set forth in Article 25.2;
<b>“Dispute Settlement Request”:</b>	shall have the meaning set forth in Article 25.2;
<b>“DS Chairman”:</b>	shall have the meaning set forth in Article 25.3;
<b>“DS Failure Notice”:</b>	shall have the meaning set forth in Article 25.5;
<b>“DSR Notice”:</b>	shall have the meaning set forth in Article 25.3;
<b>EnC CACM:</b>	means the adapted version of the CACM Regulation included in the "ACQUIS COMMUNAUTAIRE ON ENERGY" provided in the Treaty Establishing the Energy Community, pursuant to the Decision of the Ministerial Council of the Energy Community D/2022/03/MC-EnG;

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<b>“Exit License”:</b>	means the License with respect to the Exit Version, substantially similar to the template provided in Annex XII Part D, granted to a Party that has terminated this Agreement pursuant to art 20.2.8;
<b>“Exit Version”:</b>	means, in respect of a Party that has terminated this Agreement, the version of a Co-Owned Asset as existing at the date such Party has terminated its participation to the Agreement;
<b>“Extended TSO License”:</b>	means the license referred to in Annex VII;
<b>“Extension Agreements”:</b>	shall have the meaning set forth in whereas 1);
<b>“External Representative”:</b>	shall have the meaning set forth in Article 15.2.2
<b>“First Amendment Agreement”:</b>	shall have the meaning set forth in whereas 1);
<b>“First Class Co-Owned Assets”:</b>	shall have the meaning set forth in Annex I;
<b>“Force Majeure”:</b>	shall have the meaning set forth in Article 18;
<b>“Group”</b>	shall have the meaning set forth in Article 27.1.
<b>“Group Member”</b>	shall have the meaning set forth in Article 27.1.
<b>“Group Member Exit Date”</b>	shall have the meaning set forth in Article 27.4.1.
<b>“Forced Exit Party”</b>	shall have the meaning set forth in Article 20.2.2.1
<b>“ICC”:</b>	shall have the meaning set forth in Article 25;
<b>“IDOA”</b>	shall have the meaning set forth in whereas 10
<b>“Intellectual Property Rights (IPR)”:</b>	means any intellectual property rights or other (property) rights throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under statutory or common law, contract, or otherwise, and whether or not registered, registrable or perfected, including (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trade marks, service marks, trade names, internet domain names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other confidential information; (g) design rights, whether registered or unregistered; and (h) rights analogous to

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those in this definition and any and all other proprietary rights relating to intangible property;

- “Internal Representative”:** shall have the meaning set forth in Article 15.2.2
- “Legal Provision”:** means any type of mandatory legal provision of public order, proclaimed by any competent authority;
- “License”:** means the right to Use granted to a Third Party;
- “Licensee”:** means the Third Party or the Party to whom a License is granted pursuant to this Agreement;
- Licensing Party :** means a PCR Party which enters into a License with a Third Party
- “Lol”:** shall have the meaning set forth in Whereas 1;
- “Market Coupling”:** means a coordinated day-ahead electricity implicit auction mechanism, performing the matching of the supply and demand curves of different PXs, taking into account the cross border capacity made available by the TSOs, using a software application embedding a matching algorithm; for the avoidance of doubt, for the purpose of this Agreement, the term Market Coupling includes the concept known as Market Splitting;
- “Market Splitting”:** means a type of Market Coupling where the matching of the supply and demand curves of different PXs, taking into account the cross border capacity made available by the TSOs, is performed by one PX in stead of by several;
- “MIC”:** means the minimum income condition;
- “Minimal TSO License”:** means the license referred to in Annex VII;
- “Modification”:** means any change to Co-Owned Assets, any derivative work or any other update, upgrade, or modification carried out, in its own name and on its own behalf, by a Party;
- “MPC”:** means the maximum payment condition;
- “Nominated Electricity Market Operator/NEMO”** has the meaning provided under Commission Regulation (EU) 2015/1222 of 24 July 2015 as further amended and supplemented;
- “NEMO License”:** means the collective License between all Parties and all NEMO Licensees pursuant to art 6.1.2.3 by which all Parties grant to all NEMO Licensees the right of Use to enable their respective compliance with the obligations set by CACM Regulation;
- “NEMO Licensee”:** means each Third Party NEMO which is a Licensee pursuant to the NEMO License Agreement;
- “Non Servicing Party”** with respect to each Serviced PX, means any Party other than the Servicing Party of such Serviced PX;

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<b>“Opinion”:</b>	shall have the meaning set forth in Article 25.4
<b>“Original Owner”:</b>	means APX, Belpex or EPEX Spot, i.e. each of these Parties that owned by virtue of a co-ownership, an undivided share in the co-ownership rights on the Pre-Existing Asset;
<b>“Own Market”:</b>	means a day-ahead and/or intraday electricity auction market directly managed/operated, in its own name and on its own behalf, by a Party or its wholly owned subsidiary, i.e. a market place for which participants have signed with such Party or such subsidiary an agreement according to which the Party or such subsidiary is responsible for matching the Bids of participants in those Bidding Area(s) according to predefined rules or a market for which a Party or such subsidiary has been designated by law (including international treaties) or regulatory deed as operating this market; for the purpose of this Agreement the Belpex Spot Market is to be considered an Own Market of APX;
<b>“Passporting NEMO”:</b>	means a NEMO designated in one Member State offering day-ahead and intraday trading services with delivery in another Member State pursuant to to CACM Regulation or EnC CACM;
<b>“PCR”:</b>	means price coupling of regions;
<b>“PCR Algorithm”:</b>	means the matching algorithm software embedding the Pre-Existing Asset enhanced with Commonly Developed Assets that is to be used to perform PCR Market Coupling as described in Annex I, including its Source Code, its mathematical expression and all documentation and Confidential Information related thereto;
<b>“PCR Common Costs”</b>	shall have the meaning set forth in Article 11.1 i)
<b>“PCR Cooperation”:</b>	shall have the meaning set forth in Whereas 1).
<b>“PCR Cooperation Agreement”</b>	means the agreement entered into by the Parties described in Whereas 1 viii);
<b>“PCR Income”:</b>	means the retribution shared among the Parties for the usage of the Co-owned Assets as further described in Annex VIII (Financial Annex).
<b>“PCR Market Coupling”:</b>	means the day-ahead Market Coupling as described in this Agreement;
<b>“PCR Market Coupling System”:</b>	means the data processing environment (software and hardware) that will be used to calculate the PCR Market Coupling results and that is composed of amongst others the PCR Algorithm and other Co-Owned Assets;
<b>“PCR Non Common Costs”:</b>	shall have the meaning set forth in Article 11.1 ii)
<b>“PCR Software”:</b>	means the PCR Algorithm and any other software necessary for performing the PCR Market Coupling which has been jointly developed and/or jointly funded by all Parties;
<b>“Person”:</b>	means any individual, company, entity, business, partnership, joint venture or other person whatsoever, in the broadest meaning of the word;
<b>“Pre-Existing Asset”:</b>	means the COSMOS matching software as existing in June 2011 and as described in Annex I, i.e. its mathematical expression, its specifications, related documentation, the executable software embedding COSMOS and its Source Code and the rights (including the Intellectual Property Rights) pertaining to it;

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<b>“Pre-Exit Costs”:</b>	means the PCR Common Costs and the PCR Non Common Costs incurred by a Voluntary Exit Party before its termination of the Agreement.
<b>“PUN”:</b>	means the Italian uniform purchase price;
<b>“PX”:</b>	means any legal person that operates a business which facilitates for its customers (via an appropriate IT platform) the execution of day-ahead and/or intraday wholesale electricity contracts for delivery to any one or more Bidding Areas
<b>“Restricted Party”:</b>	shall have the meaning set forth in Article 27.4.1.
<b>“Restricted Period”:</b>	Shall have the meaning set forth in Article 27.4.2
<b>“Reimbursing Party(ies)”:</b>	means the Party or the Parties which, pursuant to art 20.2.1.3 (reimbursement of the Voluntary Exiting Party), have fully or partially reimbursed to a Voluntary Exit Party its Pre-Exit Costs.
<b>“Single day ahead coupling-SDAC”</b>	shall have the meaning set forth in whereas 8
<b>“Single Intra Day coupling-SIDC”</b>	shall have the meaning set forth in whereas 8
<b>“Suspended Party”:</b>	shall have the meaning set forth in article 20.3.1
<b>“Second Class Co-Owned Assets”:</b>	shall have the meaning set forth in Annex I;
<b>Serviced PX</b>	means a Third Party PX which has entered into with one or more PCR Parties an agreement for the provision of the services based on the Use of the Co-owned Assets
<b>Servicing Party</b>	means a PCR Party which provides services based on the Use of the Co-owned Assets to one or more Serviced PXs
<b>“Source Code”:</b>	means in respect of a software such software provided in a written computer programming language, usually technically designated as source code or source listings that would enable a Party to recreate and maintain the software including all updates and corrections;
<b>“Starting Point Selection”:</b>	means the screening process by the Parties among the existing matching algorithms/solutions of one or more Parties as submitted by one or more of them for selection and the selection thereof as a basis for the future development of the PCR Algorithm for use for the operation of the PCR Market Coupling;

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<b>“Third Class Co-Owned Assets”:</b>	shall have the meaning set forth in Annex I;
<b>“Third Party”:</b>	means a natural or legal person other than a Party to this Agreement;
<b>“Third Party’s Market”:</b>	means an individual electricity market which cannot be qualified as an Own Market of any of the Parties;
<b>“TSO”:</b>	means a Transmission System Operator;
<b>“Use”:</b>	means using the processing, calculation or any other functions of a Co-Owned Asset, and more generally load, run, access, employ (including by embedding in other systems), display, process a Co-Owned-Asset and/or make available its own data or data to which it has lawfully access through a Co-Owned Asset;
<b>“Voluntary Exit Party”:</b>	shall have the meaning set in 20.2.1.1
<b>“Working Day”:</b>	means any day other than a Saturday and a Sunday in which banks are open to the public for general business in the country or city of the registered office of the Party in charge with the performance of the relevant obligation;
<b>“Working Hours”:</b>	means 9 am to 5 pm CET on each Working Day. <sup>3</sup>

### **1.2. Interpretation Rules**

- 1.2.1.** No provision of the Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 1.2.2.** Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- 1.2.3.** The headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation.
- 1.2.4.** Any reference to any rule, enactment, statutory provision, regulation or code 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.

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<sup>3</sup> Definition of Wholly affiliated Undertaking deleted by the Second Amendment. Original text:  
**“Wholly Affiliated Undertaking”:** means an undertaking whose share capital is wholly owned by a Party or whose share capital is wholly owned by a Party together with its parent undertaking holding 100% of the share capital of such Party, it being understood that the notion of control is irrelevant for the determination of the applicability of this term;

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- 1.2.5.** 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, in accordance with Article 19 unless otherwise specified.
- 1.2.6.** Any Annex referred to in the Agreement forms an integral and inseparable part of this Agreement. Any reference to the Agreement includes a reference to its Annexes and vice versa.
- 1.2.7.** In case of any discrepancy or contradiction between the provisions in the main body of the Agreement and the contents of the Annexes, the wording of the main body shall prevail.

### **ARTICLE 2 SCOPE OF THE AGREEMENT**

The Agreement sets forth:

- a) The terms and conditions under which the Original Owners shall each transfer an equal share of their rights, title to and interest in the Pre-Existing Assets to the other Parties, in order to establish a Co-ownership between the Parties in respect of such Pre-Existing Assets; and
- b) The terms and conditions of the Co-ownership between the Parties in respect of the Co-Owned Assets.

### **ARTICLE 3 VESTING OF CO-OWNERSHIP**

#### **3.2. Transfer of an undivided share in the Pre-Existing Assets**

- 3.2.1.** The Original Owners hereby transfer, to each of the other Parties who accept such transfer, an undivided equal share of the rights (such as, amongst others, Intellectual Property Rights, if any), title and interests pertaining to the Pre-Existing Assets they co-own and which have been selected by the Parties for PCR Market Coupling, in order to establish a Co-ownership between all Parties in respect of such Pre-Existing Assets.
- 3.2.2.** The transfer referred to in Article 3.1.1 occurs in respect of the Pre-Existing Asset “as is”, and without any warranty of merchantability and fitness for a particular purpose whether express or implied. The Original Owners only warrant that they have legitimate title to the Pre-Existing Assets and, consequently that they have the full right, power and authority to contribute the Pre-Existing Assets to a Co-ownership. Therefore the Original Owners warrant to the other Parties that, to their knowledge, at the time of entering into this Agreement, the Intellectual Property Rights, pertaining to the Co-Owned Assets, do not infringe any Intellectual Property Rights of a Third Party.
- 3.2.3.** The Co-ownership thus vested in respect of the Pre-Existing Assets is without prejudice to the charges and obligations encumbering the rights of the Original Owners prior to and at the time the transfer is deemed to occur pursuant to Article 3.1.5 GME, Nord Pool, and OMIE acknowledge that at the time of entry into force of this Agreement:
  - d) The Original Owners have committed to put jointly at disposal and to jointly use the Pre-Existing Assets for the operation of CWE Market Coupling and the operations of their Own Market(s) in the event of decoupling; and
  - e) The Original Owners have granted an option to the TSOs participating in CWE Market Coupling to receive a minimal TSO license or an extended TSO license in respect of the Pre-Existing Assets;

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- f) EPEX Spot is using the Pre-Existing Assets to service HUPX Ltd. (Hungarian power exchange), OTE a.s. (Czech power exchange) and OKTE (Slovakian power exchange).

**3.2.4.** APX, Belpex and EPEX Spot agree that the transfer referred to in Article 3.1.1 shall occur without any pecuniary remuneration being due, given that:

- a) All Parties have, at the time of entry into this Agreement, made similar investments regarding their matching algorithm and that selection of the Pre-Existing Asset implies that all Parties will use the Pre-Existing Asset as embedded in the PCR Algorithm for PCR Market Coupling instead of their current matching algorithm; and
- b) All Parties except the Original Owners, have invested in acquiring the necessary knowledge regarding the Pre-Existing Asset; and
- c) All Parties have had equal access to the information on each others matching algorithm in the context of the Starting Point Selection; and
- d) The selection of the Pre-Existing Asset on which the PCR Algorithm is based will enable the re-use of the Pre-Existing Asset in a wider context than its use at date of entry into the Agreement and thus provide an indirect benefit to APX, Belpex and EPEX Spot; and
- e) The Parties other than the Original Owners have contributed their know-how for the further development of the PCR Algorithm.

**3.2.5.** The transfer of an undivided equal share i) of the rights to use ii) and of the title/interests pertaining to the Pre-Existing Asset and the vesting of a Co-ownership in respect of the Pre-Existing Assets shall be deemed to have occurred and be effective on the date this Agreement enters into force as set forth in Article 19. As a result of the vesting of the Co-ownership, the Pre-Existing Assets shall constitute Co-Owned Assets. The precise description of the Pre-Existing Asset constituting a Co-Owned Assets is set forth in the Co-Owned Asset List.

**3.2.6.** The vesting of a Co-ownership in respect of the Pre-Existing Assets is without prejudice to the fact that the Parties other than the Original Owners may, until PCR Market Coupling starts to be operational for each of them, continue to use their own current matching algorithm for i) their Own Market(s) or ii) to provide services, including price coupling services, to Third Party's. In particular, such provision of services is not subject to the consent of the other Parties provided that:

- a) Such service provision already existed before signature of this Agreement; or
- b) Should such service provision be contracted after the signature of this Agreement, it is contracted with such Third Party in light of its subsequent participation in PCR Market Coupling as soon as PCR Market Coupling shall be in operation for the contracting Party.

### **3.3. Co-ownership of Commonly Developed Assets**

**3.3.1.** The Parties agree that any Commonly Developed Assets that are developed by the Parties shall constitute a Co-Owned Asset as soon as it is being developed and, therefore, shall fall within the Co-ownership in respect of the Co-Owned Assets between the Parties. The precise description of the Commonly Developed Assets constituting a Co-Owned Asset is set forth in the Co-Owned Asset List. Each time a new Commonly Developed Asset is added, or those already listed are further developed, the Co-Owned Asset list shall be adapted accordingly.

**3.3.2.** Where Commonly Developed Assets have been or are developed by a third party service provider on the basis of a contract entered into by one Party (either in its own name and for the account of all the Parties or in the name and for the account of all the Parties), such Party hereby directly transfers, to each of the other Parties who accept such transfer, an undivided equal share of the rights (such as, amongst others, Intellectual Property Rights, if any), title and interests pertaining to such Commonly Developed Assets. For the avoidance of doubt, such direct transfer shall establish the Co-ownership to the extent that such Co-ownership has not already been vested by virtue of the contract entered into with the third party service provider by the contracting Party.

**3.4. Co-ownership in respect of Modifications to the Co-Owned Assets**

In the event of Modifications to the Co-Owned Assets, these Modifications shall fall within the Co-ownership vested between the Parties in respect of Co-Owned Assets to the extent provided by the provisions of Article 9. The Co-Owned Assets list shall be adapted to take into account such Modifications.

**3.5. Assets falling outside the Co-ownership**

For the avoidance of doubt, the Parties expressly agree that assets, which do not fall under the Co-ownership, according to the terms and conditions set forth hereby, are not directly nor indirectly governed by the Agreement.

**ARTICLE 4 CLASSES OF CO-OWNED ASSETS**

**4.1.** The Parties agree that the Co-Owned Assets shall be co-owned under different terms and conditions, pursuant to which the Co-Owned Assets are categorized in the following classes:

- a) First Class Co-Owned Assets which use and exploitation are governed especially by Article 6.1, Article 7 and Article 13 (except Article 13.2.4 and Article 13.3) in addition to the other provisions of the Agreement;
- b) Second Class Co-Owned Assets which use and exploitation are governed especially by Article 6.2, Article 7 and Article 13 ( except Article 13.3) in addition to the other provisions of the Agreement;
- c) Third Class Co-Owned Assets which use and exploitation are governed especially by Article 6.2, Article 7 and Article 13, in addition to the other provisions of the Agreement.

**4.2.** Modifications to or replacement of a Co-Owned Asset belonging to a certain class are deemed to belong to the same class as the modified Co-Owned Asset.

**4.3.** In the event that a Co-Owned Asset is not listed in the Co-Owned Assets List, it shall constitute a Third Class Co-Owned Assets, unless differently agreed by the Parties.

**ARTICLE 5 GENERAL PRINCIPLES GOVERNING CO-OWNERSHIP**

**5.1.** As co-owners of Co-Owned Assets, all Parties, without prejudice to Article 24, shall be treated on an equal basis not only with respect to the rights, benefits and interests directly derived from but also with respect to the obligations and risks associated with the Co-Owned Assets, such as, for the avoidance of any doubt, any pecuniary obligation deriving from the development/maintenance of the Co-Owned Assets. Without prejudice to Article 6 and Article 24 all Parties have equal decision rights regarding the decisions for which prior consent

## Execution Version

of all Parties is necessary, and such decisions shall be taken on the basis of unanimity unless otherwise provided.<sup>4</sup>

- 5.2.** For the avoidance of any doubt, the Parties acknowledge that, without prejudice to Article 8.1 c), Article 5.1 also applies, for decisions in respect of Pre-Existing Assets for which prior consent of all Parties is necessary, in the event that an Original Owner terminates its participation to the PCR Cooperation.
- 5.3.** Each Party is, as co-owner, entitled to employ, benefit from and dispose of the Co-Owned Assets to the fullest extent possible as if it were the sole owner thereof, subject to the relevant provisions of this Agreement. Consequently, any individual act by a Party regarding the Co-Owned Assets (e.g. employment, benefit or disposal of the Co-Owned Assets) is not subject to the prior consent of the other Parties except:
- a) If it falls outside the scope of Article 6, Article 7 or Article 9;
  - or/and
  - b) If such individual act has or would have a detrimental effect on the PCR Cooperation.
- 5.4.** In respect of First Class Co-Owned Assets, a Party is entitled to individually grant, via a bilateral agreement, a License consistently with the terms and conditions of the Agreement only if:
- a) Such License is revocable, non-exclusive, non-transferable and non sub-licensable; and
  - b) Access to the Source Code and, generally, to any mathematical formula related to the Co-Owned Assets is excluded; and<sup>5</sup>
  - c) Such Party and the Licensee enter into the standard License agreement attached as Annex XII part B and proof thereof is provided e.g. by a written declaration.

## ARTICLE 6 RIGHTS OF A PARTY IN RESPECT OF THE CO-OWNED ASSETS

### 6.1. First Class Co-Owned Assets within the Anticipated Scope of PCR

#### 6.1.1 Own Use

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<sup>4</sup> Art. 5.1 modified by the Second Amendment. Original text:

**5.1.** *As co-owners of Co-Owned Assets, all Parties, shall be treated on an equal basis not only with respect to the rights, benefits and interests directly derived from but also with respect to the obligations and risks associated with the Co-Owned Assets, such as, for the avoidance of any doubt, any pecuniary obligation deriving from the development/maintenance of the Co-Owned Assets. Without prejudice to Article 6 all Parties have equal decision rights regarding the decisions for which prior consent of all Parties is necessary, and such decisions shall be taken on the basis of unanimity unless otherwise provided. APX and Belpex shall, as long as Belpex is a Wholly Affiliated Undertaking, count as one Party for all decisions to be taken in respect of the Co-Owned Assets for which prior consent of all Parties is necessary (it being understood, for the avoidance of doubt, that Belpex shall be considered as a separate Party for the exercise of all rights deriving from the vested Co-ownership except receiving economic remunerations as long as Belpex does not contribute to the costs).*

<sup>5</sup> Letter b) modified by the First Amendment. Original text: "b) Access to the Source Code and, generally, to any mathematical formula related to the Co-Owned Assets is excluded, except in the event of the granting of an Extended License for analysis purposes as set out in Article 6.1.2.2; and"

## Execution Version

Each Party has the non-exclusive right to Use within the Anticipated Scope of PCR the First Class Co-Owned Assets to the fullest extent possible, without prior consent of the other Parties in the following cases:

- a) Use the PCR Algorithm for analysis purposes;
- b) Use the First Class Co-Owned Assets for operating its Own Market(s);
- c) Use the First Class Co-Owned Assets for operating its Own Market(s) in coupling projects with Third Party(ies) already in operation at the date of the signature of the Agreement, under the following conditions:
  - i) Such Use is performed in light of the subsequent inclusion of the Third Party's/Parties' coupled market in the PCR Market Coupling, as soon as PCR Market Coupling is in operation for the Party using the Co-Owned Asset; and
  - ii) The Third Party(ies) shall have no access to the PCR Algorithm;
- d) Use the First Class Co-Owned Assets for performing PCR Market Coupling in accordance with the PCR Co-ownership Agreement or any other agreement(s) entered into between the Parties in respect of such operations; and
- e) Use the PCR Algorithm for calculating additional reference prices. For the avoidance of doubt, reference prices other than area prices may be calculated with the Bids/offers in the Bidding Areas submitted by the PX that is calculating the reference price, including the flow in/out of the given PX Bidding Areas towards the other PX's Bidding Areas given from the PCR Market Coupling, while Bids/offers and capacities in and between other PX's Bidding Areas may only be used for calculation of such a reference price if explicit consent is given from the PX(s) concerned.

### 6.1.2 Granting of a License

#### 6.1.2.2. License to Third Parties other than TSOs

Each Party has the non-exclusive right to grant a License to Use within the Anticipated Scope of PCR the First Class Co-Owned Assets to enable a Third Party to operate its own electricity market in isolated mode, provided that:

- a) Such Party shall notify the other Parties promptly, in writing, of its plans to grant (a) License(s) to Use the First Class Co-Owned Assets of such purpose; and
- b) Such Party pays the remuneration set forth in Annex VIII to the other Parties in accordance with the sharing key set forth in Annex VIII; and
- c) In the event of a License the conditions set forth in Article 5.4 are fulfilled.

#### 6.1.2.3. License to TSOs<sup>6</sup>

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<sup>6</sup> Modified by the First Amendment. Original text:

6.1.2.2 *Without prejudice to Article 7 a License to a TSO acting as such within the Anticipated Scope of PCR to Use the PCR Algorithm for analysis purposes shall be granted jointly by the Parties. Parties agree that such a License shall only be granted according to the following options: i) Minimal TSO License which excludes access to mathematical formulas or the Source Code, or ii) Extended TSO License which includes access to mathematical formulas or the Source Code, and provided that:*

*Execution Version*

Without prejudice to Article 7 a License to one or more TSOs within the Anticipated Scope of PCR to use for analysis purposes the PCR Algorithm<sup>7</sup> shall be granted jointly by the Parties provided that:

- g) the Parties receive in writing a request of such TSO(s) which shall comprise:
  - iii) a list with the permitted access holders to be attached to License agreement to be signed and
  - iv) the explicit indication whether such License should include the Source Code of the PCR Algorithm;
- h) in the event the requested License concerns the Source Code of the PCR Algorithm, such TSO shall provide to the Parties the reasons for which a License to use the PCR Algorithm without the Source Code would not be sufficient to perform the pursued analysis;
- i) Such TSO pays the remuneration set forth in Annex VIII to the Parties in accordance with the sharing key set forth in Annex VIII;
- j) in the event the requested License concerns the Source Code of the PCR Algorithm, the Parties - before providing access to the Source Code of the PCR Algorithm - receive a copy of the confidentiality declaration substantially similar to the standard form attached to the Agreement as Annex II duly signed by all access holders, and
- k) such TSO enters with all the Parties into an agreement substantially similar to the template provided in Annex XII Part A;
- l) Such TSO License is revocable, non-exclusive, non-transferable and non sub-licensable.

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a) *The Parties received sufficiently in advance in writing a request of such TSO to be granted a License to Use for analysis purpose the PCR Algorithm with description of the purpose and with indication whether such License concerns a Minimal TSO License or an Extended TSO License; and*

b) *In the event the requested License concerns an Extended TSO License, such TSO provides to the Parties, the details of the intended Use for analysis purpose of the Extended TSO License and the need for such Extended TSO License; and*

c) *In the event the requested License concerns an Extended TSO License, such TSO provides the Parties a list with the permitted access holders in attachment to such License agreement and a copy of the confidentiality declaration substantially similar to the standard form attached to the Agreement as Annex II is duly signed by such access holders; and*

d) *Such TSO has paid the remuneration set forth in Annex VIII to the Parties in accordance with the sharing key set forth in Annex VIII; and*

e) *The condition set forth in Article 5.4 a) and b) are fulfilled; and*

f) *Such TSO enters into the Minimal TSO License or the Extended TSO License as the case may be.*

*For the avoidance of doubt, the License to Use the PCR Algorithm for analysis purposes does not include the right to use market or any other proprietary data of the other Parties for such analysis, such right to use being subject to the entry into a specific written agreement with the concerned Party."*

<sup>7</sup> Modified by the Second Amendment. Original text:  
*PCR Algorithm and/or Simulation Facility*

For the avoidance of doubt, the License to Use the PCR Algorithm for analysis purposes does not include the right to use market or any other proprietary data of the other Parties for such analysis, such right to use being subject to the entry into a specific written agreement with the concerned Party.

#### 6.1.2.4. NEMO License

Without prejudice to Article 7, the Parties shall grant jointly to the NEMO Licensee(s) the right, to Use the First Class Co-owned Assets, Second Class Co-owned Assets and Third Class Co-owned Assets in order to enable their (NEMO Licensee's) compliance with the obligations set by CACM Regulation and EnC CACM provided that:

- a) the Parties received by a Third Party NEMO, which is already party to ANDOA and/or ANIDOA, a request in written form to enter into or adhere to the NEMO License Agreement;
- b) such Third Party NEMO entered into or adhered to the NEMO License Agreement;
- c) such Third Party NEMO pays the remuneration set forth in Annex VIII to the Parties in accordance with the sharing key set forth in Annex VIII;

Each NEMO Licensee has the right to Use PCR assets according to the terms and conditions of the NEMO License Agreement. For the avoidance of any doubt, the NEMO License Agreement does not grant to any NEMO Licensee the following rights:

- i. Right of use the PCR assets for any commercial purposes e.g. service provision to Third Parties;
- ii. Right of use the PCR assets outside the countries where a NEMO Licensee is authorized to operate as designated NEMO or Passporting NEMO;

#### 6.1.3. <sup>8</sup>Service Provision for matching Bids that are related to the Anticipated Scope of PCR

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<sup>8</sup> Modified by the Second Amendment. Original text:

##### 6.1.1. **Service Provision**

*Each Party has the non-exclusive right to Use within the Anticipated Scope of PCR the First Class Co-Owned Assets in the context of providing a service to a Third Party, without prior consent of the other Parties in the following cases:*

- a) Services for the operation of an individual Third Party's Market in isolated mode;*
- b) Services for including a Third Party's Market in the PCR Market Coupling.*

*In that event:*

- a) Such Party shall notify the other Parties promptly, in writing, of its plans to Use the First Class Co-Owned Assets for such purpose;*
- b) Such Party shall pay the remuneration set forth in Annex VIII to the other Parties in accordance with the sharing key set forth in Annex VIII; and*
- c) Access to the Source Code and, generally, to any mathematical formulae related to the Co-Owned Assets is excluded for the Third Party.*

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Each Party has the non-exclusive right to Use within the Anticipated Scope of PCR the First Class Co-Owned Assets in the context of providing a service to a Third Party, without prior consent of the other Parties, in the following cases only:

- A) services for the operation of a Serviced PX's Market in isolated mode and/or for including a Serviced PX's Market in any coupling operation different from the Common PCR Operations;
- B) services for including a Serviced PX's Market in the Common PCR Operations; and
- C) services for simulation purposes

The right to Use within the Anticipated Scope of PCR the First Class Co-Owned Assets for any service of the type specified in paragraph (A) and (B) and (C) above is conditional upon the following:

- i the Servicing Party shall notify the Non Servicing Parties promptly, in writing, of the Use the First Class Co-Owned Assets for such purpose by the day of the start of the services at the latest;
- ii the Servicing Party shall pay the remuneration set forth in Annex VIII to the Non Servicing Parties in accordance with the sharing key set forth in Annex VIII; and
- iii access to the Source Code and, generally, to any mathematical formulae related to the Co-Owned Assets is excluded for the Third Party
- iv the Servicing Party having complied with the requirements of the PCR Cooperation previously governed by Articles 6.1.3 (for services as described in paragraph A above) or 6.1.4 (for services as described in paragraph B above) of the PCR Cooperation Agreement, as appropriate.
- v in respect of the services described in paragraph (C) above, the Servicing Party shall insert in the agreement for the provision of services different from market operations a disclaimer stating that the Co-Owned Assets Used for the provision of the services are provided without any warranty for fitness for any particular purposes of the serviced Third Party. In the event that such services are commenced before the 1<sup>st</sup> of October 2015, the Servicing Party is entitled to provide its services without such disclaimer, it being understood that in such case the Servicing party will hold harmless the Non Servicing Parties from claims raised against them by its Serviced PX in relation to the usage, malfunctioning of the Co-owned Assets and without any liability limitation being applicable.

The Servicing Party is responsible for the provision of any service of the type specified in paragraphs (A) and (B) and (C) above being fully compliant with Article 13 (Confidentiality) including that the necessary conditions set forth in Article 13.2.2 are fulfilled during the whole period of the service provision.

### **6.2. Second Class Co-Owned Assets and Third Class Co-Owned Assets within the Anticipated Scope of PCR**

Each Party has, within the Anticipated Scope of PCR, the non-exclusive right to Use, grant a License on or provide a service with the Second Class Co-Owned Assets and Third Class Co-Owned Assets to the fullest extent possible, without prior consent of or notification to the other Parties subject to Article 13.

**6.3. <sup>9</sup>Rights of use of Co-Owned Assets for any purpose other than matching Bids that are related to the Anticipated Scope of PCR**

Without prejudice to Article 6.1.2.1 and unless otherwise agreed by the Parties, each Party has the non-exclusive right to use, employ, benefit from and dispose of the Co-Owned Assets for any purpose other than matching Bids that are related to the Anticipated Scope of PCR to the fullest extent possible as if it were the sole owner thereof (and thus without prior consent of the other Parties being required) provided that in case of a License or Use in the context of a service provision:

- a) The Servicing Party or the Licensing Party shall notify the other Parties (i.e. the Non Servicing Parties or the Non Licensing Parties) by the day of start of the services at the latest, of its plans to grant (a) License(s) or Use the Co-Owned Assets in the context of such a service provision ; and
- b) The Servicing Party or the Licensing Party shall pay, in case of licensing of First Class Co-Owned Assets or in the context of the Use of First Class Co-Owned Assets for the provision of a service, the remuneration set forth in Annex VIII to the other Parties in accordance with the sharing key set forth in Annex VIII; and
- c) In the event a License concerns First Class Co-Owned Assets, the conditions set forth in Article 5.4 are fulfilled.
- d) In the event that a Serviced PX is provided with market operations (including market coupling) services, its Servicing Party must comply with the requirements of the PCR Cooperation previously governed by Article 6.1.3 of the PCR Cooperation Agreement.
- e) the servicing Party shall insert in the agreement for the provision of services different from market operations a disclaimer stating that the Co-Owned Assets Used for the provision of the services are provided without any warranty for fitness for any particular purpose of the serviced Third Party. In the event that such services are commenced before the 1<sup>st</sup> of October 2015], the Servicing Party is entitled to provide its services without securing such disclaimer, it being understood that in such case the Servicing party will hold harmless the Non Servicing Parties from claims raised against them by its Serviced PX in relation to the usage, malfunctioning of the Co-owned Assets and without any liability limitation being applicable.
- f) The Servicing Party is responsible for the provision of services being fully compliant with Article 13 (Confidentiality) including that the necessary conditions set forth in Article 13.2.2 are fulfilled during the whole

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<sup>9</sup> Modified by the Second Amendment. Original text:

**6.3. *Rights of use of Co-Owned Assets outside the Anticipated Scope of PCR***

*Each Party has the non-exclusive right to use, employ, benefit from and dispose of the Co-Owned Assets (all classes) for any purpose other than matching Bids that are related to the Anticipated Scope of PCR to the fullest extent possible as if it were the sole owner thereof (and thus without prior consent of the other Parties being required) provided that in case of a License or Use in the context of a service provision:*

- a) *Such Party shall notify the other Parties promptly, in writing, of its plans to grant (a) License(s) to Use the Co-Owned Assets of such purpose; and*
- b) *Such Party shall pay, in case of licensing of First Class Co-Owned Assets, the remuneration set forth in Annex VIII to the other Parties in accordance with the sharing key set forth in Annex VIII; and*
- c) *In the event a License concerns First Class Co-Owned Assets, the conditions set forth in Article Article 5.4 a) and b) are fulfilled.*

## *Execution Version*

period of the service provision. In particular, should the services involve the use of PCR Market Coupling results or the market data of all Parties, the Servicing Party shall not start the provision of the services until the other Parties (i.e. the Non Servicing Parties) shall approve the agreement with the Serviced PX.

It remains understood that nothing in this Article 6.3 shall be interpreted as entitling a Party to License to one or more TSOs within the Anticipated Scope of PCR the use of the First Class Co-Owned Assets otherwise than pursuant to Article 6.1.2.1.

### **ARTICLE 7 RIGHTS OF AN ORIGINAL OWNER ON THE PRE-EXISTING ASSETS**

#### **7.1. In CWE Market Coupling or other existing cooperations**

Without prejudice to Article 5.3 b), the Original Owners, whether or not Party to this Agreement, have the right, without any remuneration being due and without prior consent of the other Parties,

- a) As long as PCR Market Coupling has not replaced CWE Market Coupling, to jointly grant a minimal TSO license on the Pre-Existing Assets or an extended TSO license on the Pre-Existing Assets to a TSO participating in CWE Market Coupling. Any amount paid by a TSO for such License shall be shared between the Original Owners on an equal basis;
- b) As long as PCR Market Coupling has not replaced CWE Market Coupling, to jointly Use and make joint Modifications to the Pre-Existing Assets to perform CWE Market Coupling (i.e. for the joint operation of CWE Market Coupling and the operations of their Own Market(s) in standalone or decoupled mode) without involving the Use of Co-Owned Assets other than the Pre-Existing Assets. Any decision between the Original Owners in respect of such joint Use or Modifications shall be taken on the basis of unanimity;
- c) To continue to provide services, including price coupling services, to Third Parties based on the Pre-Existing Assets provided such service provision already existed before signature of this Agreement or should such service provision be contracted after signature of this Agreement, is contracted with such Third Party provided that such Third party will subsequently participate in the PCR Market Coupling.

#### **7.2. In the event of exit of the PCR Cooperation**

##### **7.2.1. Own Use**

###### **7.2.1.1. Own Use of the Pre-Existing Assets within the Anticipated Scope of PCR**

Without prejudice to Article 7.1 and Article 5.3 b), an Original Owner whose participation to the PCR Co-ownership Agreement is terminated has, by virtue of the continued Co-ownership in respect of the Pre-Existing Assets, without prior consent of the other Original Owners, the non-exclusive right to Use the Pre-Existing Assets within the Anticipated Scope of PCR:

- a) For analysis purposes; or
- b) To operate its Own Market(s);
- c) To perform Market Coupling between its Own Markets if these Own Markets were Own Markets already coupled by Market Coupling before the signature of this Agreement;
- d) To continue to provide services with the Pre-Existing Assets to Third Parties, provided such service provision already existed before the signature of this Agreement or should such service provision be contracted after signature of this Agreement, if the serviced Third Party is not participating and does not have the intention to participate in PCR Market Coupling;
- e) Use the Pre-Existing Assets in any other case not covered under a), b), c) and d) above with the prior agreement of the other Original Owners, not to be unreasonably withheld, as long as such Use is not directly or indirectly related with PCR Market Coupling.

###### **7.2.1.2. Own Use of the Pre-Existing Assets outside the Anticipated Scope of PCR**

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An Original Owner whose participation to the PCR Co-ownership Agreement is terminated has, by virtue of the continued Co-ownership in respect of the Pre-Existing Assets, without prior consent of the other Parties, the non-exclusive right to Use the Pre-Existing Assets outside the Anticipated Scope of PCR to the fullest extent possible as if it were the sole owner thereof provided that in case of a License or Use in the context of a service provision:

- a) Such Original Owner shall notify the other Parties promptly, in writing, of its plans to grant (a) License(s); and
- b) In the event of a License the conditions set forth in Article 5.4 are fulfilled and the remuneration set forth in Annex VIII has been paid to the other Original Owners.
- c) In the event of a service the remuneration set forth in Annex VIII has been paid to the other Original Owners.

### **7.3. For purposes not related to day-ahead electricity Market Coupling**

For all cases not related to day-ahead electricity Market Coupling – whether within or outside the Anticipated Scope of PCR - each Original Owner has at all times, whether or not Party, the right, without any remuneration being due except to the Original Owners as set forth in Annex VIII and without prior consent of the other Parties, except of the Original Owners to i) individually Use and make Modifications to the Pre-Existing Assets, ii) individually grant Licenses for the Use of the Pre-Existing Assets or to iii) individually provide services implying the Use of the Pre-Existing Assets for the operation of any market or of any other Market Coupling.

## **ARTICLE 8 OBLIGATIONS OF THE PARTIES**

**8.1.** Each Party acknowledges and commits to:

- a) Hold harmless the other Parties against any Third Party claim, in the context of its individual Use, individual granting of a License or providing a service;
- b) Not to use the Co-Owned Assets in a way that infringes the Intellectual Property Rights of any Third Party or another Party or in a way that violates the provisions of the Agreement or any Legal Provision;
- c) Not to take any action that would limit another Party's right to Use, License or provide a service implying the Use of Co-Owned Assets; in particular an Original Owner that has terminated its participation to the PCR Co-ownership Agreement shall not block the other Party's rights and decisions in respect of the Pre-Existing Assets to the extent such rights are exercised in accordance with this Agreement and conversely a Party shall not block the Original Owner that has terminated its participation to the PCR Co-ownership Agreement its rights and decisions in respect of the Pre-Existing Assets to the extent such rights are exercised in accordance with this Agreement;
- d) In accordance with the specific procedures set forth in Article 13, to make its External Representatives and Internal Representatives, to the extent they are involved in activities related to this Agreement, aware of the commitments contained in this Agreement and use its Best Efforts to guarantee their enforcement;
- e) To ensure that the Co-Owned Assets are protected at all times from access, use or misuse, damage and destruction by any Person not legitimately authorised according to the terms and conditions of the Agreement; and
- f) In accordance with Article 11 and Article 13, to give immediate notice to the other Parties of any infringement by its employees, agents, contractors and associated, including affiliated and subsidiary companies or Third Parties, it is aware of.

- 8.2.** The Parties expressly undertake not to employ or involve assistants, consultants, contractors and/or agents for the performance of the Agreement, unless Article 13 is complied with.
- 8.3.** In accordance with Article 9 each Party undertakes, as a direct effect of the Co-ownership, to develop and maintain the Co-Owned Assets.
- 8.4.** Parties undertake, in accordance with Article 13, to ensure transparency of the information related to the Co-Owned Assets as required by the applicable Legal Provisions. Without prejudice to Article 13 the Parties shall use their Best Efforts in order to entitle each Party to provide a level of transparency of such information at least equal to the one provided before the entry into force of the Agreement.

## **ARTICLE 9 GOVERNANCE**

### **9.1 General principles**

Parties shall cooperate in close consultation with each other to give this PCR Co-ownership Agreement full effect. To this aim, the Parties have set up the following governing bodies in order to ensure the smooth and efficient performance of this PCR Co-ownership Agreement.

#### **9.1.1 The High Level Committee (HLC)**

The HLC comprises the Parties' chief executive officers or their representatives with all necessary power and authority to take strategic and binding decisions upon their respective entity concerning any aspect of the Cooperation. The HLC is entitled to decide on any matter related to the implementation and performance of this PCR Co-ownership Agreement in case of disagreement among SC members. For such purpose, the HLC is convened on an *ad hoc* basis upon decision of the SC. Section 4 and 5 (composition and voting rules) of Annex VI (RIO) shall apply *mutatis mutandis* to the HLC. The HLC does not have the power to amend the PCR Co-ownership Agreement.

#### **9.1.2 The Steering Committee (SC)**

**9.1.2.1** The Steering Committee comprises representatives from all Parties with all necessary power of representation appointed to this aim. The SC is in charge of any matter related to the implementation and performance of this PCR Co-ownership Agreement such as, without limitation to:

- i) changes and new developments to the Co-owned Assets consistently with the Change Control Procedure (Annex II) and ANDOA Change Control Procedure
- ii) external communication;
- iii) planning, budget, cost expenditure and cost sharing;
- iv) conditions/contracts with Third Parties;
- v) adherence of new Parties;
- vi) propose amendments to the Agreement.

The SC does not have the power to amend the PCR Co-ownership Agreement.

**9.1.2.2** Decisions of the SC made within its powers shall be binding provided they are taken in accordance with the RIO.

**9.1.2.3** The SC shall, in accordance with the provisions set forth in of the RIO (Annex VI), shall be supported, as the case may be, by the Secretary of the SC and the Change Control Board and any other body created by the SC for the good implementation or operation of this PCR Co-ownership Agreement. The Change Control Board shall be appointed

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by the SC in accordance with the RIO. Parties shall ensure proper level of representation with proper delegated powers to take decisions and ensuring at the same time the support of appropriate persons with suitable skills and competences to contribute to the relevant instances.

9.1.2.4 The SC may delegate its powers to other bodies it deems necessary to create for the good implementation or operation of this PCR Co-ownership Agreement. For the avoidance of doubt, only decisions made by the HLC and SC within its powers are binding for the Parties, unless such power has been delegated to another body designated by the SC.

9.1.2.5 Each meeting of the SC, the Change Control Board or of any other body created by the SC shall be recorded in minutes and such minutes shall be approved by the Parties according to the RIO.

### **9.2 Composition and meetings of the SC**

9.2.1 All Parties are entitled to participate in the SC. To this effect, each Party shall designate one voting representative in accordance with the RIO of the SC that has all necessary powers and authority to take decisions binding upon its company in the context of the powers of the SC.

9.2.2 Each Party shall be duly represented, with respect to each meeting of the SC, in accordance with the RIO of the SC.

### **9.3 Decision making**

9.3.1 The SC shall be quorate when all Parties entitled to vote are present or represented in accordance with the RIO.

#### **9.3.2 Voting Members**

9.3.2.1 Decisions of the SC shall be taken by unanimous consent of the Parties in accordance with the decision making process rules in the RIO.

9.3.2.2 For the avoidance of doubt, any Party that, pursuant to any provision of the Agreement is not entitled to vote [such as in the cases mentioned Article 20.2.1.3 n. i) (reimbursement of the Voluntary Exit Party) 20.2 (Forced Exit) and Article 20.5 (Suspension)], shall not be a voting member for the matters for which its vote is excluded.

## **ARTICLE 10 MODIFICATIONS TO AND ENHANCEMENT OF THE CO-OWNED ASSETS**

**10.1.** Each Party is entitled to modify and/or enhance Co-Owned Assets.

**10.2.** Any Modification or any implementation of a Modification to be implemented in the context of PCR Market Coupling is subject to the Change Control Procedure and the decision-making rules set forth under the PCR Co-ownership Agreement.

**10.3.** In the event of a Modification to be implemented outside the context of PCR Market Coupling, the aforementioned Change Control Procedure is not applicable. To the extent such Modification is co-owned in accordance with this Article, the Party implementing such Modification shall provide each other co-owner, on written request of the latter, with all the documentation related to such Modification (including the modified or enhanced Source Code, if any).

**10.4.** An Original Owner that has terminated early its participation to the PCR Co-ownership Agreement shall be entitled to modify and/or enhance the Pre-Existing Assets.

**10.5.** Any Modification by a Party or by a subset of Parties on Co-Owned Assets developed to be used for PCR Market Coupling within the Anticipated Scope of PCR shall automatically be deemed to form part of the Co-Owned Assets, co-owned by all the Parties in accordance with and under the terms of the provisions of the Agreement (and thus governed by amongst others Article 5 to Article 9). The precise description of such Modification constituting a Co-Owned Asset shall be set forth in the Co-Owned Assets List in accordance with Article 3.3.

Modifications by a Party or by a subset of Parties on Co-Owned Assets developed to be used outside the Anticipated Scope of PCR are owned by the Party or Parties making the Modification.

**10.6.** In deviation of Article 10.5:

a) Modifications made by an Original Owner to the Pre-Existing Assets in accordance with Article 7.1 shall be co-owned by the Original Owners only and the Parties other than the Original Owners shall have no decision making rights in respect of, nor rights on, or title to such Modifications. Thus the Parties other than the Original Owners shall have no rights to Use, to grant a License or to provide services implying the Use of such Modifications to the Pre-Existing Assets in the context of CWE Market Coupling;

b) Modifications made by an Original Owner to the Pre-Existing Assets in the context of Article 7.2 or 7.3 shall be co-owned by the Original Owners only. Such Modifications do not form part of the Co-ownership in respect of the Co-Owned Assets and the other Parties shall have no decision making rights in respect of, nor rights on, or title to such Modifications. Thus the other Parties than the Original Owners shall have no rights to Use, to grant a License or to provide services implying the Use of such Modifications to the Pre-Existing Assets;

c) An Original Owner whose participation to the PCR Co-ownership Agreement terminated has no decision making rights in respect of, nor rights on, or title to Modifications to Co-Owned Assets developed by the other Parties since the day such termination is effective.

**ARTICLE 11 COSTS**

11.1 Any cost incurred by the Parties as a result of the execution of this Agreement shall belong to one of the two following categories:

[Redacted text block]

[Redacted text block]

11.2 [Redacted text block]

11.3 [Redacted text block]

[Redacted text block]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

The Parties undertake to further assess and agree on all needed principles and calculation details related to article 11.3 in the context of the fourth amendment to this Agreement.

**ARTICLE 12 FILING FOR INTELLECTUAL PROPERTY RIGHTS**

- 12.1 Parties acknowledge that no one of them has registered or filed at the date of enforcement of the Agreement any applications to register any Intellectual Property Rights in any of the Co-Owned Assets, including in respect of patents or trademarks, which may be relevant for the Use of the Co-Owned Assets.
- 12.2 In the event a Party believes that it is appropriate to register (part of) the jointly owned Intellectual Property Rights pertaining to the Co-Owned Assets (including but not limited to filing patent or trademark applications) the following provisions shall apply:
  - a) Such Party shall notify the other Parties in writing, with specific reference to the text of the envisaged application to be filed;
  - b) The Parties shall decide in good faith and in accordance with Article 5 on the desirability and the consequences thereof;
  - c) If it is decided to register (part of) the jointly owned Intellectual Property Rights pertaining the Co-Owned Assets, the Parties shall appoint among themselves one Party to proceed, on behalf of all concerned Parties, with the registration in the name of all concerned Parties and the maintenance of such registration.
- 12.3 All expenses incurred in respect of the registration shall be shared between the Parties according to Article 5, unless otherwise agreed upon in writing. An Original Owner whose participation to the PCR Co-ownership Agreement has terminated shall not participate in the sharing of the registration costs if it is not included as beneficiary of the registration.

**ARTICLE 13 INFRINGEMENTS/THIRD PARTY CLAIMS**

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- 13.1 The Parties shall inform each other without delay of any act committed by a Third Party which could be considered as an infringement of any of the jointly owned Intellectual Property Rights pertaining the Co-Owned Assets or any action of any Third Party relating to the Co-ownership of the Co-Owned Assets.
- 13.2 The Parties shall inform each other without delay of any Third Party claim in respect of an infringement or alleged infringement of any Third Party's Intellectual Property Rights in connection with the Co-Owned Assets.
- 13.3 In the event set forth under Article 13.2 the Parties shall jointly decide on the joint strategy and actions to be taken to remedy the alleged infringement of the Intellectual Property Rights of a Third Party and at their joint option may, amongst others, decide to:
- a) Come to an arrangement with the owner of the infringed or allegedly infringed Intellectual Property Rights, procuring for the Parties the right to continue using the Intellectual Property Rights pertaining to the Co-Owned Assets free from any liability for such infringement; or
  - b) Modify or replace Co-Owned Assets so as to avoid the infringement.
- 13.4 The Parties shall select one of them which shall receive a full power of attorney from the other Parties to act in accordance with such jointly decided strategy and actions, including representing them in any legal proceedings against the Third Party or any settlement on an amicable basis.
- 13.5 Consistently with Article 25.8, if reaching a timely agreement between Parties on the joint strategy should prove to be impossible in the available timeframes, such does not prejudice the right of the Party firstly and/or directly involved to act as it deems necessary or appropriate to mitigate its damages, protect its best interests or defend its position, provided that it shall immediately notify the other Parties and keep them informed of any decision or action taken in this respect. In particular, the Party firstly and/or directly involved shall inform the other Parties about any possible interim or conservatory measures, judicial order or decision following such infringements.
- 13.6 Without prejudice to Article 24, any compensation for damage received from a Third Party following a joint claim of the Parties shall be equally shared between the Parties unless otherwise agreed upon in writing, it being understood that the Group Members in respect of such compensation, are to be considered as one Party<sup>10</sup>.
- 13.7 Without prejudice to Article 3.1.2 and Article 24, all costs associated with a claim of a Third Party, including compensations (to be) paid to Third Parties, in accordance with the agreed joint strategy shall be equally shared among the Parties unless otherwise agreed upon in writing. Group Members shall be considered as one Party for this purpose<sup>11</sup>.

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<sup>10</sup> Modified by the second Amendment. Previous wording:

*Any compensation for damage received from a Third Party following a joint claim of the Parties shall be equally shared between the Parties unless otherwise agreed upon in writing, it being understood that APX and Belpex, in respect of such compensations, are to be considered as one Party, as long as Belpex is a Wholly Affiliated Undertaking.*

<sup>11</sup> Modified by the second Amendment. Previous wording:

*Without prejudice to Article 3.1.2, all costs associated with a claim of a Third Party, including compensations (to be) paid to Third Parties, in accordance with the agreed joint strategy shall be equally shared among the Parties unless otherwise agreed upon in writing, it being understood that APX and Belpex, in respect of such costs, are to be considered as one Party, as long as Belpex is a Wholly Affiliated Undertaking*

## ARTICLE 14 ADHERENCE<sup>12</sup>

14.1 The Agreement is open to the adherence of new co-owners (“Adhering Party”), according to the following conditions:

- a) written request of adherence addressed to the Steering Committee;
- b) being a party to the ANDOA or ANIDOA;
- c) signature of an Adherence Agreement substantially similar to the template set under Annex X to this Agreement;
- d) payment of the Adherence Fee.

### 14.2 Adherence Procedure

Following the receipt of the written request by the Adhering Party, the Steering Committee shall decide upon the acceptance of the such adherence request. Should the Steering Committee approve the adherence request of the Adhering Party, the Secretary of the Steering Committee shall inform the latter about the accession procedure and shall provide it with a copy of the Agreement and a first draft of the Adherence Agreement (Annex X), provided that the Applicant has executed a confidentiality declaration substantially similar to the template set under Annex VI. The adherence to this Agreement shall become effective at date of signature of the adherence agreement between the Parties and the Adhering Party provided that the payment by such Adhering Party of the Adherence Fee is completed.

## ARTICLE 15 CONFIDENTIALITY

### 15.1 Obligations in respect of Confidential Information

15.1.1 In respect of Confidential Information, each Party hereby expressly undertakes that it shall:

- a) Not disclose, convey or transfer to any individual or entity other than a Party to this Agreement Confidential Information in any form whatsoever without the express, prior written consent (including email) of the other Party(ies); the other Party(ies) shall not unreasonably withhold, delay or condition such consent in the context of the requesting Party’s transparency obligation as referred to in Article 8.5 unless such obligation conflicts with other Legal Provisions;

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<sup>12</sup>Modified by the second Amendment. Previous wording:

### **ARTICLE 12 ADHERENCE OF NEW POWER EXCHANGES**

*The Agreement is open to Adherence by other PX(s). Adherence by other PXs is subject to:*

- a) Written request for adherence by such PX to all other Parties;*
- b) Formal adherence to the PCR Cooperation Agreement by signing a joinder agreement; and*
- c) Participation in all common costs related to the Commonly Developed Assets already i) performed or ii) planned and already paid by the Parties, for an amount reflecting equal contribution by all co-owners and the adhering PX, which amount shall be determined by the Parties based on available evidence of such common costs and which will be compliant with the applicable Legal Provisions.*

*The adherence to this Agreement shall become effective at date of signature of the joinder agreement between the Parties and the adhering PX following the payment by such PX of its pro-quota of the common costs referred to under letter letter a) above in accordance with the modalities agreed upon by the Parties and the adhering PX.*

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- b) Without prejudice to Article 15.1.4, which regulates the event of publication, not use the Confidential Information in any way or for any purpose other than the performance of its obligations or the exercise of its rights under this Agreement, unless such other use is previously and specifically authorized in writing (including email) by the other Parties;
- c) Not incorporate Confidential Information into data, documents, databases, or any other support other than necessary for the performance of its obligations or the exercise of its rights under this Agreement unless the other Party(ies), by a duly authorized person, has (have) given its (their) prior written explicit consent (including e-mail) to this incorporation;
- d) Not copy or reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the performance of its obligations or the exercise of its rights under this Agreement.

15.1.2 Each Party furthermore expressly undertakes that it shall:

- a) Immediately notify the other Party(ies) in writing (including email) in the event of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to mitigate any harmful effects the other Party(ies) may sustain or incur as a result of such a breach of this Agreement; and
- b) Indemnify the other Party(ies) in accordance with this Agreement.

15.1.3 The Parties agree that the obligations assessed by this Article shall survive the termination for any reason whatsoever of this Agreement for a term of five (5) years.

15.1.4 Confidential Information shall only be published after formal approval of the Parties.

15.1.5 The Parties in their communication with Third Parties about the Co-Owned Assets, to the extent such communication is permitted under the present Article, shall always refer to the Co-ownership in respect of the Co-Owned Assets between the Parties.

15.1.6 [REDACTED]

15.1.7 [REDACTED]

15.1.8 [REDACTED]

**15.2 Permitted disclosure of Confidential Information**

15.2.1 Notwithstanding Article 15.1 above, a Party may disclose Confidential Information if one of the following conditions is met:

- a) Such Party can demonstrate by written evidence that all Parties have agreed to such disclosure, it being understood that in the event of disclosure of Confidential Information regarding Pre-Existing Assets in the context of the Use of such Pre-Existing Assets as permitted under Article 7.1 such disclosure shall be permitted subject only to the consent of all the Original Owners;

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- b) Such Party can demonstrate by written evidence that the received information was known to it prior to the disclosure, without such information being governed by a confidentiality obligation towards any of the other Parties;
- c) Such Party can demonstrate by written evidence that the received information has come into the public domain through no fault or negligence of a Party or a Third Party to this Agreement;
- d) To the extent the disclosed information only consists of a high level description of the Confidential Information without revealing any information that would allow for reproduction or illegal copy of the Confidential Information or the First Class Co-Owned Assets or Second Class Co-Owned Assets themselves;

15.2.2 Each Party shall be entitled to disclose Confidential Information to i) its directors, members of management, officers, employees, and authorized representatives, including those of the companies under the Party's Control or those of the companies that Control such Party (hereafter the "**Internal Representative**"), and to ii) any Person which acts as its subcontractor, agent, professional advisor, auditors, external consultants and insurer and attorneys-at-law (hereafter the "**External Representative**"), only if the following cumulative conditions are met: <sup>13</sup>

- a) The Internal Representative or External Representative of a Party has a definite need to know such information for the execution of its assignment which must be strictly related to the performance of this Agreement or related to the application of mandatory Legal Provisions.
- b) For an External Representative :  
in respect of the First Class of Co-Owned Assets, the Party shall inform the other Parties in writing (including by e-mail), prior to any disclosure, of the identity of the External Representative. The External

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<sup>13</sup> Article 13.2.2 modified by First Amendment. Original Text:

**13.2.1.** Each Party shall be entitled to disclose Confidential Information to i) its directors, members of management, officers, employees, and to legal representatives of companies under its Control or of companies that Control such Party (hereafter the "**Internal Representative**"), and to ii) subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (hereafter the "**External Representative**"), only if the following conditions are met:

- a) Access to the Confidential Information in respect of First Class Co-Owned Assets may only be given to the Internal Representatives or External Representatives of such a Party that have been indicated in the list of permitted access holders, indicated in Annex III to this Agreement;
- b) The Internal Representative or External Representative of a Party has a definite need to know such information for the execution of its assignment which must be strictly related to the performance of this Agreement. Each Party shall directly assume full responsibility for any acts of its Internal Representative or External Representative related to the disclosed Confidential Information;
- c) For an External Representative the Party shall inform the other Parties in writing (including by e-mail) prior to any disclosure of the identity of the External Representative;
- d) The Internal Representative or the External Representative is informed by the Party of the confidential nature of the Confidential Information and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement;
- e) The Internal Representatives or External Representatives to whom access is granted to Confidential Information in respect of the First Class Co-Owned Assets, must prior to any access have signed a confidentiality declaration substantially similar to the standard form attached to this Agreement as Annex III;
- f) The necessary procedures and protections must have been put into place by the disclosing Party so as 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 disclosing Party;
- g) Consistently with 15 the disclosing Party is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations; and
- h) The disclosing Party undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal Representatives and External Representatives to whom Confidential Information is disclosed.

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Representatives to whom access is granted to Confidential Information in respect of the First Class of Co-Owned Assets, must prior to any access have signed a confidentiality declaration substantially similar to the standard form attached to this Agreement as Annex XIII;

- c) For an Internal Representative:  
the Internal Representative is informed by the Party of the confidential nature of the Confidential Information prior to its disclosure and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Agreement.
- d) The necessary procedures and protections must have been put into place by the disclosing Party so as 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 disclosing Party;
- e) Consistently with Article 17, the disclosing Party is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations.
- f) The disclosing Party has implemented sufficient procedures and protections in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal Representatives and External Representatives to whom Confidential Information is disclosed.

15.2.3 A Party may decide to add, replace or remove its Internal Representative and External Representative mentioned on the list of permitted access holders provided that the conditions of this Article are complied with. In such event the Parties shall add, replace or remove the Internal Representative or External Representative indicated in the list of permitted access holders attached as Annex III.

15.2.4 In deviation with the above, the Parties agree that the disclosure of Confidential Information concerning, exclusively the Second Class Co-Owned Assets is permitted subject to prior notification to the other Parties and to the extent covered by confidentiality obligations to following entities:

- a) NRAs within the Anticipated Scope of PCR;
- b) ACER;
- c) PXs operating within the Anticipated Scope of PCR; and
- d) TSOs operating within the Anticipated Scope of PCR.

### **15.3 Disclosure of information concerning Third Class Co-Owned Assets**

The Parties agree that no confidentiality obligations apply in respect of information concerning the Third Class Co-Owned Assets except where such disclosure would imply a breach of Article 5.3 b).

### **15.4 Requests of competent authorities regarding Confidential Information**

A Party may disclose Confidential Information if it is requested to disclose all or any part of the received Confidential Information pursuant to an applicable Legal Provision or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if a Party considers itself to be under a legal obligation to disclose all or part of the Confidential Information provided, it undertakes to:

- a) Immediately and in any case prior to proceeding with any disclosure (and to the extent lawful), notify the other Parties of the existence, terms and circumstances surrounding such request or legal obligation;

- b) If consistent with the terms assigned by law or public authority to disclose the Confidential Information, consult with the other Parties on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the other Parties to take such legal steps itself, and to agree on the content and form of the Confidential Information to be disclosed; and
- c) If disclosure of such Confidential Information is required, exercise its Best Efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed.

15.5 In cases of doubt as to whether information is Confidential Information or whether Confidential Information may be disclosed pursuant to this Article 13, confidentiality shall be maintained until written confirmation has been obtained from the other Parties that one of the above exclusions applies.

**ARTICLE 16 PRIVACY AND DATA PROTECTION**

16.1 Any personal data exchange between parties in the context of this Agreement is processed in accordance with the Legal Provisions (including GDPR) and only for the purpose of this Agreement, including managing the contractual relationship amongst the Parties.

16.1.1 With respect to personal data, each Party has the right to provide individual controller information in Annex XIV (Controller Information Clause) - Controller has the meaning given to it in the Data Protection Laws.

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

16.2 Following termination of this Agreement, the Parties shall continue to maintain any personal personal data in accordance with the Legal Provisions, including without limitation in accordance with any rights of access and rights to rectification, erasure, objection, restriction, portability by any data subjects, whether pursuant to the General Data Protection Regulation or any other Legal Provision.

16.3 Save as otherwise provided for by any Legal Provision, Parties will not communicate to third parties the personal data received from other Parties or transfer it to a third country or international organisation, without the prior consent of the other Party and without taking the necessary measures to safeguard the transfer of the personal data.

**ARTICLE 17 LIABILITY**

17.1 [REDACTED]

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14 [REDACTED]

17.2 [Redacted]

17.3 [Redacted]

17.4 [Redacted]

17.5 [Redacted]

17.6 [Redacted]

17.7 [Redacted]

17.8 [Redacted]

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[Redacted]

[Redacted]

17.9 [Redacted]

17.10 [Redacted]

17.11 [Redacted]

17.12 [Redacted]

17.13 Third party claims

17.13.1. [Redacted]

17.13.2 [Redacted]

ARTICLE 18 FORCE MAJEURE

18.1. For the purpose of this Agreement “Force Majeure” means any event or situation reasonably beyond the control of the Parties, and not due to a misconduct of the affected Party, which cannot be reasonably avoided

<sup>19</sup> Modified by the Second Amendment. Previous text:

[Redacted]

[Redacted]

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or overcome, and which makes it impossible for such Party to fulfil temporarily or permanently, its obligations hereunder in accordance with the terms of this Agreement. An event of Force Majeure shall include, but shall not be limited to:

- a) An enemy act or an act of terrorism, declared or undeclared war, threat of war, blockade, revolution, riot, insurrection, civil commotion, demonstration or public disorder; or
- b) Sabotage or act of vandalism;
- c) Natural disaster or phenomenon; or
- d) Fire, explosions, radioactive, chemical or other hazardous contamination; or
- e) A general or industry-wide strike; or
- f) Faults or malfunctions of telecommunication lines (e.g. telephone lines), Internet accesses, to the extent not attributable to a misconduct of the Party invoking Force Majeure.

**18.2.** The Party, which invokes Force Majeure, shall:

- a) Send the others Parties prompt notification describing the nature of Force Majeure and its probable duration and the impact on the performance of its obligations under this Agreement;
- b) Endeavour in good faith and expeditiously to adopt measures to mitigate or cure the circumstances giving rise to the event of Force Majeure;
- c) Provide regular (and, in any event, weekly) notices to the other Party about its actions and plans for action under letter (b); and
- d) Provide prompt notice to the other Party of the termination of the event of Force Majeure.

**18.3.** A Party affected by Force Majeure shall be suspended from the performance of the obligations under this Agreement that are affected by the Force Majeure for so long as, performance of such obligations is affected by the event of Force Majeure. For so long as and to the extent that the Party affected by Force Majeure is suspended from performing its obligations under this Agreement, the other Parties shall also be entitled to suspend their performance of the obligations that correspond to the suspended obligations of the Party claiming Force Majeure.

**18.4.** A Party cannot, under any circumstances, be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of its obligations, when such non performance or faulty performance is due to a Force Majeure event.

**18.5.** The Party, which invokes Force Majeure, shall use its Best Efforts to limit the consequences and duration of the Force Majeure.

## **ARTICLE 19 ENTRY INTO FORCE**

**19.1.** This Agreement will enter into force on the date on which all Parties will have executed it by sending a scan of the signed signatory page of this Agreement to the Secretary. For evidence reasons each Party shall also provide the third coordinating party with nine (9) original signed signatory pages copies (one per Party) of the Agreement. The coordinating third party will collect all copies of the original signed signatory pages, compile

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them with the main text of the Agreement and provide each of the Parties one (1) original of the Agreement with the original signed signatory pages, which constitutes valid proof of the main text of the Agreement.

- 19.2.** 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.
- 19.3.** As of its date of entry into force this Agreement will replace any other agreements entered into between the Parties or a subset of the Parties regarding the rights and titles pertaining to the Co-Owned Assets, and especially i) the agreement governing the co-ownership between the Original Owners in respect of the Co-Owned Assets and ii) the agreement referred to under Whereas E).
- 19.4.** The Agreement is entered into for twenty (20) years or for the longest duration of the Intellectual Property Rights pertaining to Co-Owned Assets under applicable law, should that duration exceed twenty (20) years. In the event the Parties mutually agree to terminate this Agreement, such agreement shall only have effect to the extent it is formalised in a written document signed by all Parties consistently with Article 19. The Parties shall then decide upon the repartition of the Co-Owned Assets. The Original Owners will unanimously decide upon the rights to use the Pre-Existing Assets in this case.

## **ARTICLE 20 TERMINATION AND SUSPENSION**

### **20.1 Full termination**

In the event the Parties mutually agree to terminate this Agreement, such agreement shall only have effect to the extent it is formalised in a written document signed by all Parties which shall specify the treatment of the

Co-Owned Assets in the context of the termination of the Agreement. The Original Owner will unanimously decide upon the rights to use the Pre-Existing Assets in this case.

## **20.2. Partial Termination**

### **20.2.1. Voluntary Exit**

20.2.1.1 Any Party (hereinafter, the “**Voluntary Exit Party**”) may at any time, without cause and without any court intervention, exit the Agreement.

20.2.1.2 The Voluntary Exit Party shall notify the SC of its intention to exit the Agreement by sending its Declaration of Exit. The Voluntary Exit Party shall indicate in the Declaration of Exit if it wishes to seek the reimbursement of its Pre-Exit Costs. It is understood that the remaining Parties have no obligation to reimburse such Pre-Exit Costs.

#### **20.2.1.3 Procedure for the reimbursement of Pre-Exit Costs**

Should the Voluntary Exit Party expressed its wish to seek the reimbursement of Pre-Exit Costs, the Parties shall proceed as follows:

- i) all Parties with the exception of Voluntary Exit Party, in SC, decide to equally share the reimbursement of the Pre-Exit Costs to the Voluntary Exit Party;
- ii) in the event no reimbursement is decided pursuant to i) above (i.e. no reimbursement of the Pre-Exit Costs in equal sharing among the remaining Parties) , the Voluntary Exit Party is entitled to start negotiations for the reimbursement of its Pre-Exit Costs with any Party or sub-group of Parties. It is understood that:
  - any Party which has expressed in the SC its refusal to reimburse the Pre-Exit Costs, shall not be entitled to negotiate any reimbursement with Voluntary Exit Party until the negotiation with the interested Parties (as mentioned above in this paragraph (ii))is ended;
  - the Voluntary Exit Party and the negotiating Party(ies) shall assure a reasonable transparency of the negotiations;

**20.2.1.2** The exit from the Agreement by the Voluntary Exit Party that does not seek the reimbursement of its Pre-Exit Costs shall be effective on the date in which the Exit License is entered into

### **20.2.2 Forced Exit**

20.2.2.1 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 SC. The effective date of such exit shall be decided by the SC. A Forced Exit Party shall be compelled to exit the Agreement only in the following circumstances:

- i) the Forced Exit Party is no more a PX and, at the same time, no longer a party to ANDOA and/or ANIDOA;  
or
- ii) the bankruptcy or insolvency (or equivalent) of the Forced Exit Party to the extent permitted by the Applicable Law; or
- iii) in case of material breach caused by fraud (“bedrog”/”fraude”) or intentional misconduct (“opzettelijke fout”/”faute intentionnelle”) by the Forced Exit Party, in circumstances where such material breach has not been remedied within fifteen (15) Business Days (or such longer period as may be decided by the SC) of a written notice of such breach.

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For the avoidance of doubt, Dispute settlement does not affect the effectiveness of the SC decision. However, the SC may decide to suspend its decision in case of Dispute settlement pursuant to Article 25 (Dispute resolution).

20.2.2.2 For all decisions of the 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.

20.2.2.3 For the avoidance of doubt, a Party that loses its NEMO designation is not compelled to exit the Agreement by the other Parties (i.e. art 20.2.2.1 and 20.2.2.2 (Forced Exit) do not apply) As a consequence such Party may decide either to :

- a) to voluntarily exit this Agreement it being understood that, in no event, the remaining Parties are obliged to reimburse its Pre-Exit Costs, or
- b) to remain Party to the PCR Co-ownership Agreement, benefiting from all rights and titles in respect of the Co-owned Assets as the other Parties .

20.2.3 The Voluntary Exit Party and the Forced Exit Party shall remain liable for:

[REDACTED]

20.2.6 The Parties agree that art 20.2.5 shall not apply to:

[REDACTED]

20.2.7 In the event the Voluntary Exit Party or the Forced Exit Party is the Original Owner:

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<sup>21</sup> Modified by the Second Amendment. Previous text:  
*In the event the participation to the PCR Cooperation Agreement of a Party other than an Original Owner is terminated (for any reason whatsoever), its share in the Co-ownership of the Co-Owned Assets and*

## Execution Version

- a) it shall remain co-owner of the Pre-Existing Assets of which he was an Original Owner under the terms and conditions of the Articles 5, 7, 8, 10.4, 10.6,c), 11, 12, 17 to 26 (included); such Original Owner thus remains Party to this Agreement for the purpose of application of the aforementioned Articles.
- b) its share in the Co-ownership of the Co-Owned Assets other than the Pre-Existing Assets and all rights and obligations pertaining to its Co-ownership of the Co-Owned Assets other than the Pre-Existing Assets shall automatically be retransferred in equal shares to the other co-owners of these Co-Owned Assets at the date the termination becomes effective, consistently with this art 20.2.

20.2.8 The Voluntary Exit Party or the Forced Exit Party is entitled to enter into, upon its request, the Exit License in the following cases:

- a) the Voluntary Exit Party has not requested the reimbursement of its Pre-Exit Costs, or it has requested but not received the reimbursement of its Pre-Exit Costs. In such event, the Exit License shall not foresee any remuneration (i.e. license fee).
- b) the Forced Exit Party has been compelled to exit the Agreement by the other Parties

For the avoidance of doubt, the remaining Parties are committed to enter into the Exit License upon the request of the Voluntary Exit Party or the Forced Exit Party.

### 20.3 Suspension of Party

20.3.1 A Party (hereinafter the "Suspended Party") may be made subject to a suspension of all or part of its rights and obligations under the Agreement by the other Parties without any court intervention, through a decision of the SC. The effective date of such suspension and, if possible, its duration shall be decided by the SC. A Party may be subject, to a suspension of its rights and obligations under the Agreement only in the following circumstances:

- i. the bankruptcy or insolvency (or equivalent) of the Suspended Party to the extent permitted by the Applicable Law; or
- ii. in case of material breach caused by fraud ("bedrog"/"fraude") or intentional misconduct ("opzettelijke fout"/"faute intentionnelle") by the Suspended Party, in circumstances where such material breach has not been remedied within fifteen (15) Business Days (or such longer period as may be decided by the SC) of a written notice of such breach.

20.3.2 Following the expiry of a period of suspension imposed under the terms of this Article 20.3 , the Suspended Party's rights to vote at the SC, a subcommittee, a work group or a task force meeting and

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*all rights and obligations pertaining to its Co-ownership of the Co-Owned Assets shall automatically be retransferred in equal shares to the other co-owners of these Co-Owned Assets at the date the termination becomes effective, it being understood however that such a Party remains liable for any obligation that is due and claimable at time of such termination. The co-owners to whom such share is retransferred shall jointly grant such Party in return the Exit License set forth in Annex V for the use of the Exit Version of the Co-Owned Assets. The Party other than an Original Owner whose participation to the PCR Cooperation Agreement was terminated accepts hereby such Exit License. As soon as the Exit License is granted, the Agreement shall be considered terminated as regards such Party terminating its participation to the PCR Cooperation Agreement.*

## Execution Version

its rights and obligations with respect to the Agreement and any related Third Party agreement shall be immediately and unconditionally restored.

20.3.3 For all decisions of the 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.

### ARTICLE 21 ASSIGNMENT AND CONTINUITY

- 21.1.** Neither this Agreement nor any rights or obligations under this Agreement shall be assigned or transferred (including by means of sale, merger, split-off or transfer or contribution of universality or a branch of activity or otherwise) by a Party without the prior written consent of the other Parties unless such assignment or transfer is executed between Parties or if such assignment or transfer is required under the applicable Legal Provisions. If the intended assignee or transferee is i) a PX which would, if it were a Party to this Agreement, meet the requirements for being treated as a Group Member of the assigning or transferring Party, or ii) another PX with comparable technical and financial requirements as the assignor or transferor, such consent shall not be unreasonably withheld provided that such intended assignee or transferee shall adhere to the PCR Co-ownership Agreement. In particular, should two (2) or more Parties merge into a single legal entity, the Parties will evaluate the consequences therefore in good faith, taking into account, amongst others, the cost sharing principles.
- 21.2.** The Parties' consent to a Third Party PX assignee or transferee is subject to the adherence of such PX to this Agreement by signing a joinder agreement to this Agreement.
- 21.3.** In the event that one of the following events occur:
- a) Agreement, compromise or settlement of a Party with its creditors and, more generally, in any case of dissolution or winding up of a Party, otherwise than as a result of a merger, demerger, consolidation or transfer/contribution of assets;
  - b) Bankruptcy or insolvency of a Party determined by a judicial order for the liquidation of a Party; or
  - c) If a Party has a receiver or administrative receiver or administrator or similar official (in the event of bankruptcy etc. of a Party) appointed over all or part of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of thirty (30) days

the other Parties have, to the extent permitted under applicable Legal Provisions a pre-emption right to purchase jointly, equal parts of the Co-ownership of any of the Co-Owned Assets of such Party at the then current book value (acquisition value - depreciation) in the accounting of such Party.

Should the above mentioned events occur to a Group Member, its share in the Co-Owned Assets shall remain owned (jointly) by the other Group Member(s) of its Group<sup>22</sup>.

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<sup>22</sup> Modified by the Second Amendment. Previous text:  
*In the event that one of the following events occur:*

a) *Agreement, compromise or settlement of a Party with its creditors and, more generally, in any case of dissolution or winding up of a Party, otherwise than as a result of a merger, demerger, consolidation or transfer/contribution of assets;*

- 21.4.** A Party shall notify in writing the other Parties as soon as possible of the occurrence of an event listed under a), b) or c) above or as soon as it is aware one of these events could occur. The joint right to purchase shall be exercised by the other Parties at the latest within three (3) months after receipt of the written notice informing them of such event.

## **ARTICLE 22 AMENDMENTS AND ENFORCEABILITY**

- 22.1.** Amendments to this Agreement, or its Annexes, shall be valid, if approved unanimously in writing and signed by all Parties. If no different procedure is approved by the Parties, any amendment to this Agreement is subject to the same signing process applied by the Parties for its first signature. The consent of a Party to a modification proposal shall not be withheld without justification. In deviation from the foregoing, Annex I (Asset List) and Annex IV (Change Control Procedure) may be amended via a SC decision. Annex VII (Contacts), may be amended directly by each Party, only in relation to its own contacts information, through a notification (also only via email) to all the other Parties.
- 22.2.** The Parties expressly agree to review this Agreement if relevant modifications to Legal Provisions that impact this Agreement should emerge.

## **ARTICLE 23 SEVERABILITY**

- 23.1.** If any provision of this Agreement is determined by a court and/or tribunal to be invalid, illegal or unenforceable, or becomes invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated.
- 23.2.** In the event mentioned under Article 23.1, the Parties shall immediately commence good faith negotiations to remedy such invalidity either through (i) an amendment which reflects as nearly as possible the purpose of the original provision and, in any case, best adhere to the overall intent of the Parties on the date hereof or (ii) a deletion where such modification is not practicable. The remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.
- 23.3.** If no agreement on the amendment or deletion regarding such provision shall be reached between the Parties within three (3) months, Article 25 applies.
- 23.4.** The Parties expressly agree that each provision of this Agreement, which provides for a limitation of liability, disclaimer of warranties or exclusion of damages is intended to be severable and independent from any other provision and to be enforced as such.

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*b) Bankruptcy or insolvency of a Party determined by a judicial order for the liquidation of a Party; or*

*c) If a Party has a receiver or administrative receiver or administrator or similar official (in the event of bankruptcy etc. of a Party) appointed over all or part of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of thirty (30) days*

*the other Parties have, to the extent permitted under applicable Legal Provisions a pre-emption right to purchase jointly, equal parts of the Co-ownership of any of the Co-Owned Assets of such Party at the then current book value (acquisition value - depreciation) in the accounting of such Party.*

## **ARTICLE 24 LAW AND INTERPRETATION**

- 24.1.** This Agreement will be governed by and construed in accordance with the Belgian law, to the exclusion of the provisions on conflict of laws thereof and the United Nations Convention on Contracts for the International Sale of Goods (1980).
- 24.2.** Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail. The use of the English language is however without prejudice to the fact that legal concepts in this Agreement are to be understood as civil law concepts of Belgian Law (and not as common law concepts).

## **ARTICLE 25 DISPUTE RESOLUTION**

- 25.1.** Any dispute arising under, in connection to or in the framework of this Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties (a “**Dispute**”) shall be subject to this Article 25.
- 25.2.** In the event of a Dispute arising between two or more Parties (the “**Disputing Parties**”), such Dispute shall first be subject to amicable settlement between the Disputing Parties, each represented by their Chief Executive Officers or any other Person with power of representation appointed to this aim by each of the concerned Disputing Party (the dispute settlement representative, hereafter “**DSR**”). To this aim the most diligent Disputing Party shall notify a written request (“**Dispute Settlement Request**”) to the other Disputing Parties containing the following information:
- a) A description of the Dispute; and
  - b) The identification of the Disputing Parties ; and
  - c) The scope of the demand(s) or claim(s) of the Disputing Parties; and
  - d) The legal basis of the demand(s) or claim(s).
- 25.3.** Within two (2) weeks of the Dispute Settlement Request, the DSRs of the Disputing Parties shall jointly appoint between them a chairman responsible for organizing and leading the amicable dispute settlement procedure (the “**DS Chairman**”) who shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) by sending a written notice indicating the date, location and time of the meetings (“**DSR Notice**”). The DSRs of the Disputing Parties shall in first instance hear the positions of the Parties in Dispute and subsequently attempt to resolve the Dispute amicably. The DSRs of the Disputing Parties may hear and/or appoint technical experts provided that they are bound by confidentiality obligations at least equivalent to those in this Agreement. In view of achieving an amicable settlement the DSRs of the Disputing Parties shall:
- a) Assess the facts and identify the claims of each Disputing Party;
  - b) In case of damage use their Best Efforts to:
    - i) Determine which Party(ies) suffered damage;
    - ii) Estimate the damage (and its nature and extent);
    - iii) Determine which Party(ies) is(are) liable for the damage; and
    - iv) Determine the extent and modalities of indemnification;

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- c) Assess the interests of the Disputing Parties in light of the objectives of this Agreement; and
- d) Formulate a proposal for settlement.

**25.4.** In the event that the DSRs of the Disputing Parties fail to appoint a DS Chairman or fail to achieve an amicable settlement within one (1) month of the DSR Notice, or within any other timeframe agreed between the Parties, the DSRs of the Disputing Parties shall solicit ACER for a non-binding legal-regulatory opinion on the Dispute (hereafter the “**Opinion**”). Upon receipt of the Opinion, the DSRs of the Disputing Parties will use their Best Efforts to achieve an amicable settlement based on the Opinion.

**25.5.** In the event that:

- a) The DSRs of the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt; or
- b) ACER 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 subject to a mediation procedure under the guidance of an external duly certified independent mediator. In such event the most diligent Disputing Party shall inform the other Parties hereof (“**DS Failure Notice**”).

The external independent mediator shall be chosen, within one (1) month of the DS Failure Notice, by unanimous written consent of the non Disputing Parties or by the unanimous written consent of the DSRs of the Disputing Parties in case all Parties are involved in the Dispute, amongst a list of names of four (4) external independent mediator’s proposed by each Disputing Party. The external independent mediator to be chosen must i) be committed to the European Code of Conduct for Mediators and ii) have experience in the electricity and/or the Information and Communication Technologies sector. The Disputing Parties shall pay an equal share of the mediator fees and expenses, unless otherwise agreed in writing.

**25.6.** If no amicable settlement is reached through the mediator within two (2) months of the DS Failure Notice or in the event that no agreement is reached on the appointment of a mediator within one (1) month of the DS Failure Notice, the Dispute shall be exclusively and finally settled by arbitration under the International Chamber of Commerce (“**ICC**”) Rules of Arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have (3) three 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. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the Information and Communication Technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.

**25.7.** Any amicable settlement reached pursuant to this Article 25 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.

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

**25.9.** For the purposes hereof, the Parties elect domicile at the addresses set forth herein, or at a different address as may be designated by written notice.

## **ARTICLE 26 MISCELLANEOUS**

### **26.1. Relationship**

Each Party acknowledges and agrees that this 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.

### **26.2. No Waiver**

No waiver of any term, provision or condition of this 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 this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this 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 this Agreement shall not prevent its later enforcement.

### **26.3. Notices and invoices**

**26.3.1.** All notices and correspondence under this Agreement shall be in writing and shall be delivered, previously anticipated by e-mail, by personal service, express courier using an internationally recognised courier company, or certified mail, return receipt requested, to the following addresses, or at such different address as may be designated by such party by written notice to the other party from time to time. A notice shall be effective upon receipt and shall be deemed to have been received (i) at the time of delivery, if delivered by hand, registered post or courier or (ii) at the time of transmission if delivered by e-mail provided that, in either case, where delivery occurs outside Working Hours, notice shall be deemed to have been received at the start of Working Hours on the next following Working Day. The invoices shall be delivered by email. In case of failure of the email systems, the invoices shall be sent by personal service or express courier using an internationally recognised courier company.

**26.3.2.** The addresses, e-mails and phone numbers of the Parties for the purpose of this Agreement are indicated in Annex IV and each Party may update such references by means of a written notice of its Reference Coordinator.

**26.3.3.** The Parties agree that the working language for all notifications and for all matters relating to their cooperation under this Agreement shall be English, to the extent compatible with the applicable Legal Provisions, if any.

### **26.4. Reference Coordinator**

Each Party will appoint a Reference Coordinator (hereinafter the "RC") as set forth in Annex IV. The RC will be considered the reference point for all issues connected to this Agreement. Each Party may replace the RC at any time and shall inform the other Parties via e-mail providing all relevant operational references of the new RC.

### **26.5. Survival**

In the event of termination of this Agreement for whatever reason the provisions which expressly or by their nature are intended to remain into force following the termination shall survive the termination of the Agreement, such as but not limited to Article 13, (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 this Agreement in accordance with all the provisions of the Agreement.

#### **26.6. Inequitable clauses-Entire Agreement**

The Parties agree that the Agreement, in all its part, has been specifically discussed and negotiated and agreed upon and supersedes any and all prior agreements, understandings, documents and arrangements, whether oral or written, between the Parties relating to the subject matters hereof on which this Agreement is based.

#### **26.7. Records**

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 this Agreement and each Party shall retain such records for a period as required under the applicable Legal Provisions applicable to it, with a minimum of three (3) years unless in conflict with the applicable Legal Provisions. On another Party's first motivated 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.

#### **26.8. Remedies provided by law**

The rights and remedies under this Agreement are cumulative with and not exclusive of any rights and remedies provided by law.

### <sup>23</sup> **ARTICLE 27 - Participation as Group Member to the Agreement**

#### **27.1 Group Member**

In the event that and as long as 100% of the issued and outstanding share capital of:

- (a) a Party is directly or indirectly owned by another Party or
- (b) two or more Parties are directly or indirectly owned by the same Third Party,

such Parties may elect, by joint written notification to the other Parties, to be treated as a single Party (a "**Group**") (where the members of each Group shall be collectively referred to as the "**Group Members**" and each shall be individually referred to as a "**Group Member**"), based on the principle that all rights, entitlements and obligations granted to any Party who is a Group Member under the Agreement shall be deemed granted to (and may be individually exercised by) each individual Group Member of that Party's Group subject to following exceptions and as otherwise may be expressly provided under this Agreement:

- i) all Group Members of each Group shall jointly have one undivided share in the Co-ownership equivalent to its participation as one Party in deviation to Article 3 of this Agreement;
- ii) all Group Members of each Group shall jointly have one vote with regard to any decision to be taken under this Agreement;
- iii) all Group Members of each Group shall jointly have one share in the Common Costs;
- iv) in deviation of Article 17.11, all Group Members of each Group shall be jointly and severally liable for any breach by any Group Member of its Group in accordance with the terms of the Agreement. For

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<sup>23</sup> Art 24 has been added by the Second Amendment

## Execution Version

the purpose of calculating the limits to the indemnification obligations set forth in Article 17.7 for a particular breach, the liability limitations shall apply to all the Group Members of such Group together as if they were a single Party, regardless of which or how many Group Members committed such breach, unless otherwise provided by the applicable Legal Provisions. The same principle shall apply to the lump sum compensations set forth in Article 17.5.

- v) All notices and correspondence under this Agreement from a Group Member to a Party (who is not a Group Member) or vice versa shall be deemed as a notice and correspondence from all Group Members of such Group to a Party (who is not a Group Member) or vice versa. In deviation of the foregoing, a Group Member may send a notification with respect to the termination of the Agreement in its own name and for its own account.

27.2 With respect to any Group:

- i) As soon as a Party exercises any right or entitlement under this Agreement against a Group Member of such Group, the exercise of such right or entitlement shall be considered as having been exercised against all the Group Members of such Group unless otherwise provided by the applicable Legal Provisions and without prejudice to the principle of joint and severable liability of the Group Members provided under 27.1 n. v) above.
- ii) in the event of a breach committed by a Party:
  - a), the limits to the indemnification obligations set forth in Article 17.7 shall apply to such Party regardless of how many Group Members suffered the breach. For the avoidance of doubt, in no event shall a particular act or omission constituting a breach of any of the terms of the Agreement be considered as a multiple breaches towards all the Group Members of a Group. The same principle shall apply to the lump sum compensations set forth in Article 17.5.
  - b) should other Parties suffer the breach in addition to the Group Members of such Group, these Group Members shall be considered as a single Party in the sharing of the indemnification paid by the defaulting Party

27.3 Should the Parties decide to review the voting principles of the Agreement, the Parties will also review the provisions of this Article 27.

### 27.4 Restrictions on a Group Member leaving its Group

**27.4.1** Subject to Article 27.4.4, in the event that during the PCR Cooperation a Party ceases being a Group Member, such Party (the “**Restricted Party**”) shall notify all the other Parties in writing as soon as possible but in any event no later than three (3) Working Days after it has ceased to be a Group Member, the termination of its Group Member status, indicating in such notice:

- a) the date on which it ceased to be a Group Member (the “**Group Member Exit Date**”); and
- b) whether it wishes to continue its participation in the PCR Cooperation. In the event that the Restricted Party fails to indicate its wish to continue being a Party to this Agreement, the Restricted Party will automatically cease being a Party with effect from the Group Member Exit Date.

Article 27.1 shall no longer apply to the Restricted Party with effect from the Group Member Exit Date.

**27.4.2** Should the Restricted Party indicate its wish to continue its participation in the PCR Cooperation by remaining a Party to this Agreement, it shall:

- a) have two (2) months as from its Group Member Exit Date, or any other further period unanimously determined by the Parties, excluding the Restricted Party, (the “**Restricted Period**”), to pay the Adherence Fee,
- b) be granted an equal share of the Co-ownership for the duration of the Restricted Period. However, such equal share of the Co-ownership shall not entitle the Restricted Party either to vote in respect of any decision to be taken in respect of the Co-Owned Assets nor to transfer its share of the Co-ownership until the full payment of the Adherence Fee by the Restricted Party is completed.

For the avoidance of doubt, except for the limitations provided under paragraph b) above, all other rights and obligations provided by the Agreement shall remain in force in respect of the Restricted Party for the duration of the Restricted Period.

**27.4.3** In the event that the Adherence Fee is not paid by the Restricted Party within the Restricted Period, the Restricted Party will automatically cease being a Party and all rights set forth in Article 24.4.2 shall automatically terminate with effect from the date following the end of the Restricted Period. In the event that the Adherence Fee is paid by the Restricted Party within the Restricted Period, the Restricted Party shall become a full Party and shall receive all rights, obligations and entitlements as any other Party to the Agreement.

**27.4.4** For the avoidance of doubt, it is understood that the Restricted Period shall expire on the date:

- a) in which the full payment of the Adherence Fee by the Restricted Party is completed, as stated in writing by the other Parties without delay, or
- b) determined pursuant to art 24.4.2. letter a).

**27.5.5** Should all the Parties forming a Group terminate their Group Member status, the rights and obligations provided by the Agreement shall be upheld, without any limitation whatsoever, by the Party indicated by the Group Members within one (1) month from the Group Member Exit Date. Should the Group Members not provide such indication, the rights and obligations provided by the Agreement shall be upheld by:

- i) the Party which, in such Group, was the owning Party pursuant to Article 24.1 letter a). or
- ii) when i) does not apply, the Party which, among those referred to immediately above, was the first one that entered into the PCR Cooperation.

## **27.6 Adherence of a Third Party PX as a Group Member**

By deviation to Article 12 of this Agreement, any Third Party PX which would meet the requirements for being treated as a Group Member of an existing Party, if it were a Party to this Agreement, shall be entitled to adhere to this Agreement as a Group Member, subject to the fulfilment of the conditions mentioned under Article 12 (a) and (b).”

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**List of Annexes:**

*Annex I Co-Owned Assets and Individual Assets' list;*

*Annex II PCR Algorithm requirements;*

*Annex III PCR Procurement Approach;*

*Annex IV Change Control Procedure*

*Annex V RIO;*

*Annex VI Standard form associate confidentiality declaration;*

*Annex VII Contacts;*

*Annex VIII Financial Annex;*

*Annex IX Standard power of attorney for third party services;*

*Annex X Standard Adherence Agreement;*

*Annex XI, Multilateral Liability Agreement templates*

*Part A (form of Limited Multilateral Liability Agreement)*

*Part B (form of Full Multilateral Liability Agreement)*

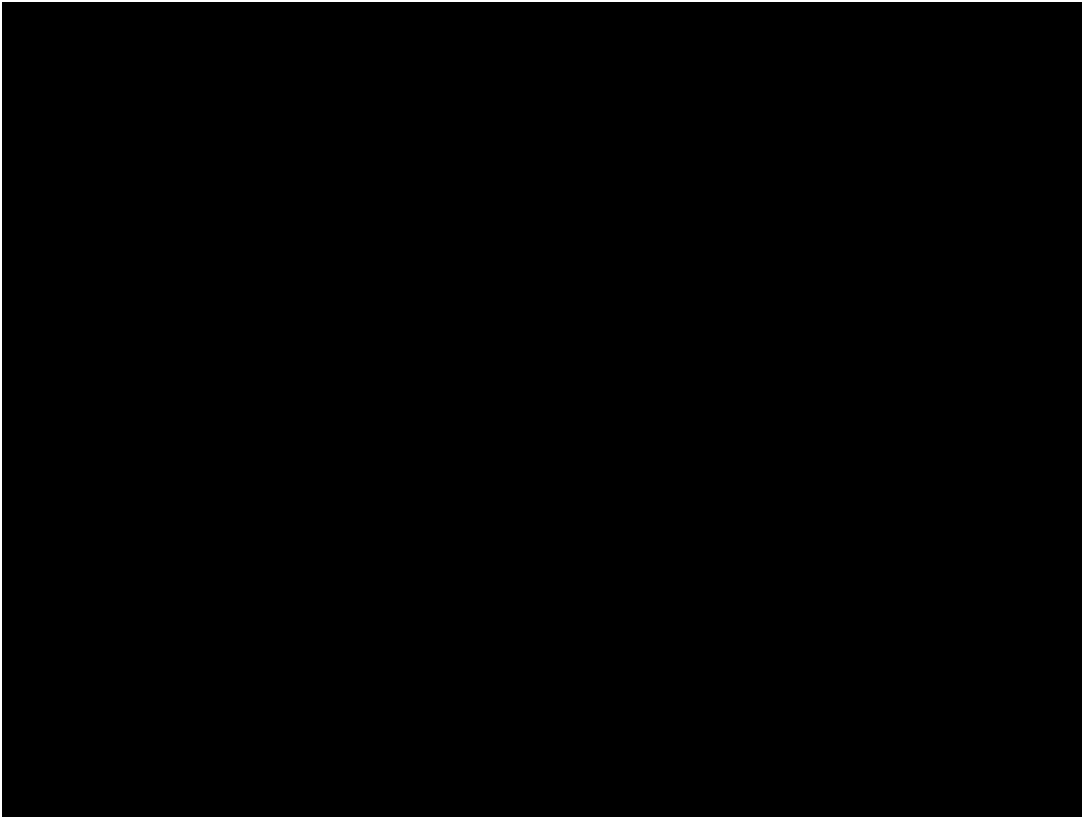
*Annex XII, License templates*

*Part A (form of TSO License)*

*Part B (form of Standard License)*

*Part C (form of Exit License)*

*ANNEX XIII Confidentiality Declaration*



*Execution Version*

**ANNEX I**

**Asset list**

Assets	Joint PX assets	Individual PX assets	Asset Class	Clarification
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**Under Change Control Procedure**

*Execution Version*

**PCR Co-ownership Agreement**

**ANNEX II**

**PCR Algorithm Requirements Description**

**INPUT/OUTPUT FILE FORMAT DESCRIPTION**

<b>Date</b>	2019-05-XX
<b>Author</b>	1.1.1 PCR Parties
<b>Topic</b>	PCR Matching Algorithm – General requirements
<b>Summary</b>	This document describes the requirements of the PCR Matching Algorithm, being the base for the selection of the provider, and later for the implementation.
<b>Version</b>	0130

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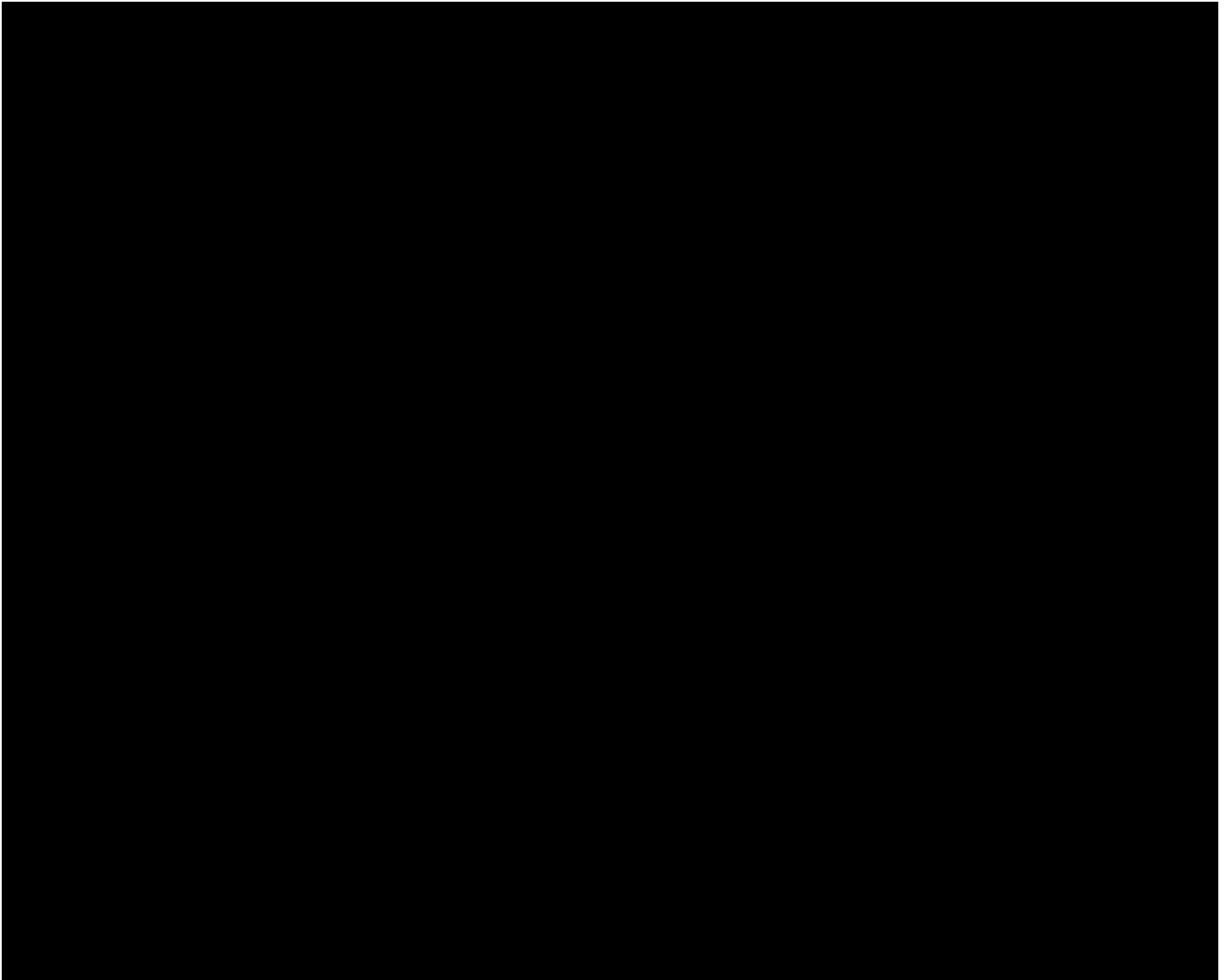
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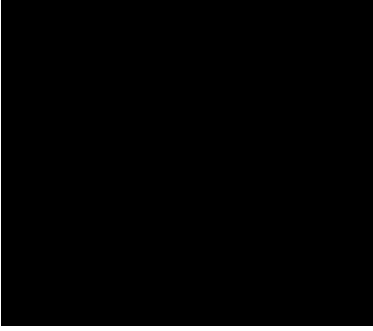
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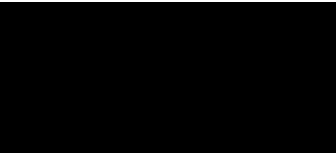
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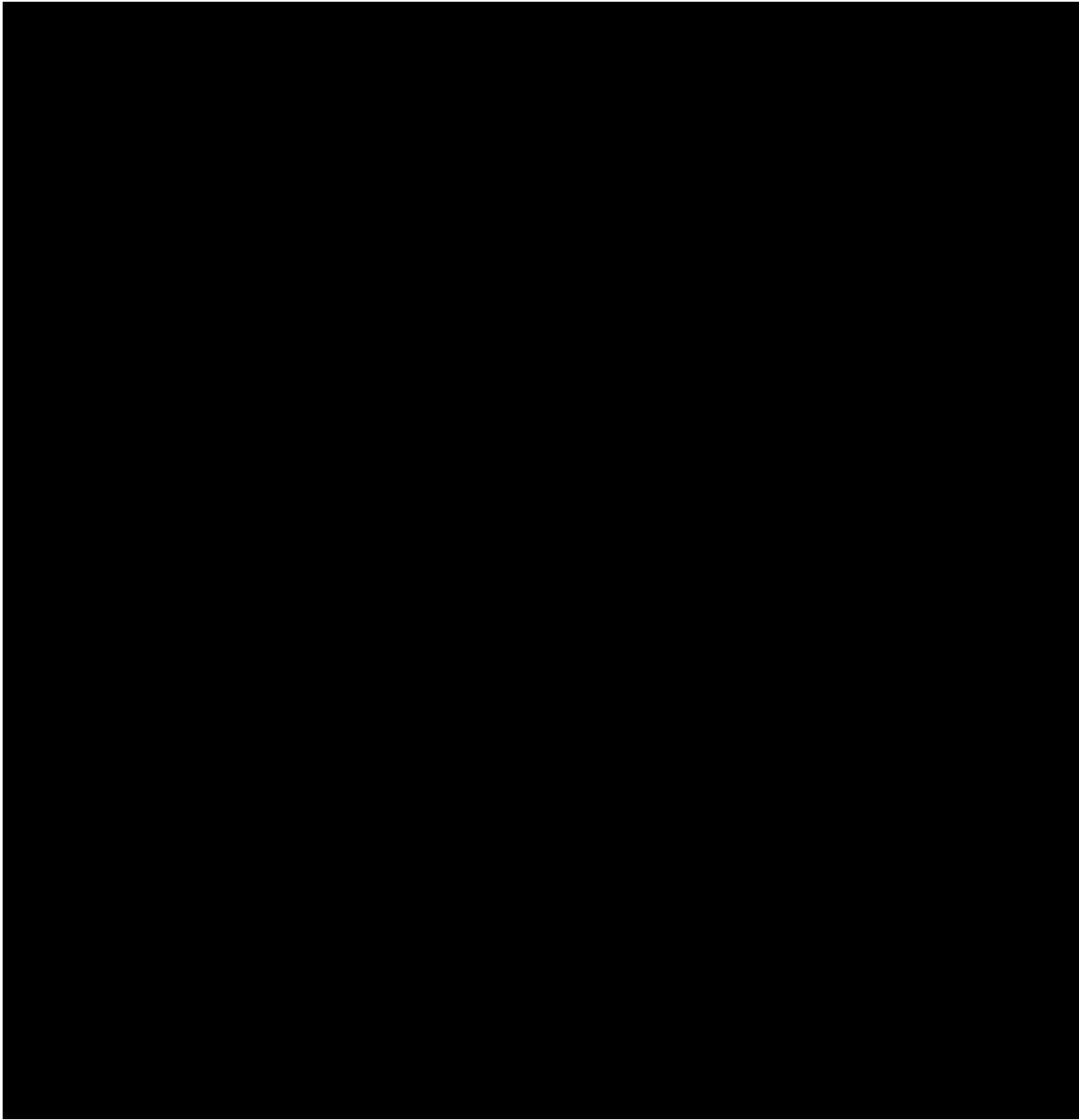
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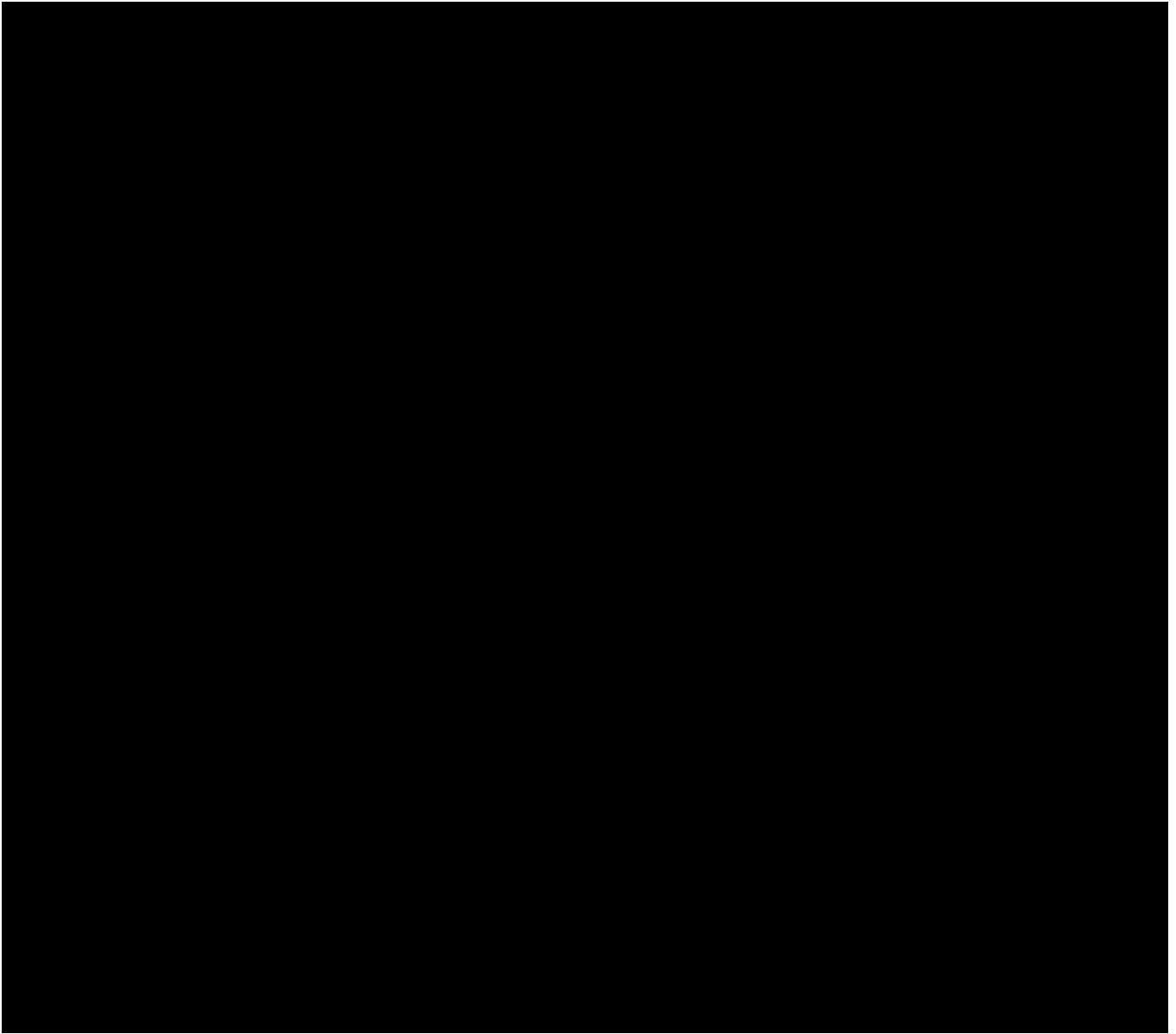
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**ANNEX III**

**PCR Procurement Approach**



**1. INTERPRETATION**

1.1. Capitalized terms and expressions used in this Annex shall have the meaning set forth in Article 1 of the PCR Co-ownership Agreement.

1.2. For the purpose of this Annex, the capitalized terms and expressions used herein and that are not set forth in Article 1 of the PCR Co-ownership Agreement, shall have the following meaning:

<b>“ALWG”:</b>	means the Algorithm Design & Simulation Workgroup composed of representatives of the Parties and as organized by the parties in accordance with XXX (refer to the appropriate document) ;
<b>“Contractor”:</b>	means the candidate that has been selected to become the Third Party Service Provider and therefore has entered into an agreement with one or more of the Parties;
<b>“DB”:</b>	means database;
<b>“Decision”:</b>	means the decision whereby the PB indicates which type of procurement procedure has been selected;
<b>“GOWG”:</b>	means the Governance Workgroup composed of representatives of the Parties and as organized by the parties in accordance with XXX (refer to the appropriate document);
<b>“IT”:</b>	means information technology;
<b>“Party”:</b>	the PX that participates in the PCR Project and will be party to the PCR Co-ownership Agreement;
<b>“PB”:</b>	means project the board, a committee responsible for the efficient management of the PCR Project and for ensuring that the PCR Project is focused throughout its lifecycle on achieving the objectives and delivering the required deliverables. This committee is composed of representatives of the Parties and is organized by the Parties in accordance with Annex VI to PCR Co-ownership Agreement
<b>“PCR Project”:</b>	means the collaboration between the Parties regarding a European day-ahead price coupling of regions cooperation;
<b>“PoA”:</b>	means power of attorney;
<b>“Procurement Manager”:</b>	means the person or entity that has been designated by the Parties to coordinate and follow up the procurement processes as well as to execute the tasks attributed to it as set out in this Annex;
<b>“Procuring PX”:</b>	means the Party that will conduct the procurement process in its name and on the account of the other Parties and shall stipulate the awarded contract with provider;

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<b>“PRWG”</b>	means the Procurement Workgroup composed of representatives of the Parties and is organized by the Parties in accordance with Annex VI to PCR Co-ownership Agreement
<b>“PX”:</b>	any PX that participates or may participate in the future to PCR;
<b>“PX IT Systems”:</b>	means the information technology systems necessary to calculate the Market Coupling Results;
<b>“Public Procurement”:</b>	means the purchasing by public sector bodies and certain utility sector bodies of contracts for goods, works or services
<b>“Request for Proposal”:</b>	means the document drafted by the Procurement Manager that describes the project, the requirements and specifications and the contractual terms with regard to procurement process as further described in this Annex;
<b>“SDWG”:</b>	means the System Design Workgroup composed of representatives of the Parties and is organized by the Parties in accordance with Annex VI to PCR Co-ownership Agreement
<b>“SPOC”:</b>	means the special point of contact of each Party for all matters related to procurement. The SPOCs shall ordinarily coincide with the members of the PRWG;
<b>“Third Party Service Provider”</b>	a party who could potentially provide the service the Parties are procuring.

## 2. INTRODUCTION

- 2.1. Within the PCR Project several services might be subject to procurement by Parties.
- 2.2. The PCR design includes three main applications to be developed in order to put the PCR process in operation: the PCR Broker, the PCR Matcher and the PCR Algorithm, for which a procurement strategy must be adopted.
- 2.3. The object of this Annex is first to describe the general principles and procedure of the PCR procurements and then to provide a description that deals in particular with the choices the Parties have made with regard to the procurement of the 3 applications mentioned above.

## 3. GENERAL PRINCIPLES FOR PROCUREMENT WITHIN PCR

### 3.1. General

- 3.1.1. The following general principles shall be followed in the common PCR procurements and by each Party individually:

- Any procurement procedure that may be required for the development of the PCR Project shall always ensure the compliance with the founding principles of the EU Directives in respect of public procurement in the energy sector (i.e. Directives 2004/17/EC and 2004/18/EC) such as equal treatment, non-discrimination and transparency, while assuring, at the same time, economic efficiency, efficacy, timeliness and correctness ;
- Strict following of the planning of the procurement;
- Selection based on objective criteria;
- Approval of procurement deliverables by the relevant PCR governance bodies;
- Recommendation of selection to the relevant PCR governance bodies;
- Equal terms of participation are provided to all candidates, in the same manner;
- Documentation of the conducted process must be recorded for auditing purposes.

**3.2. PCR internal rules and procedure for procurement**

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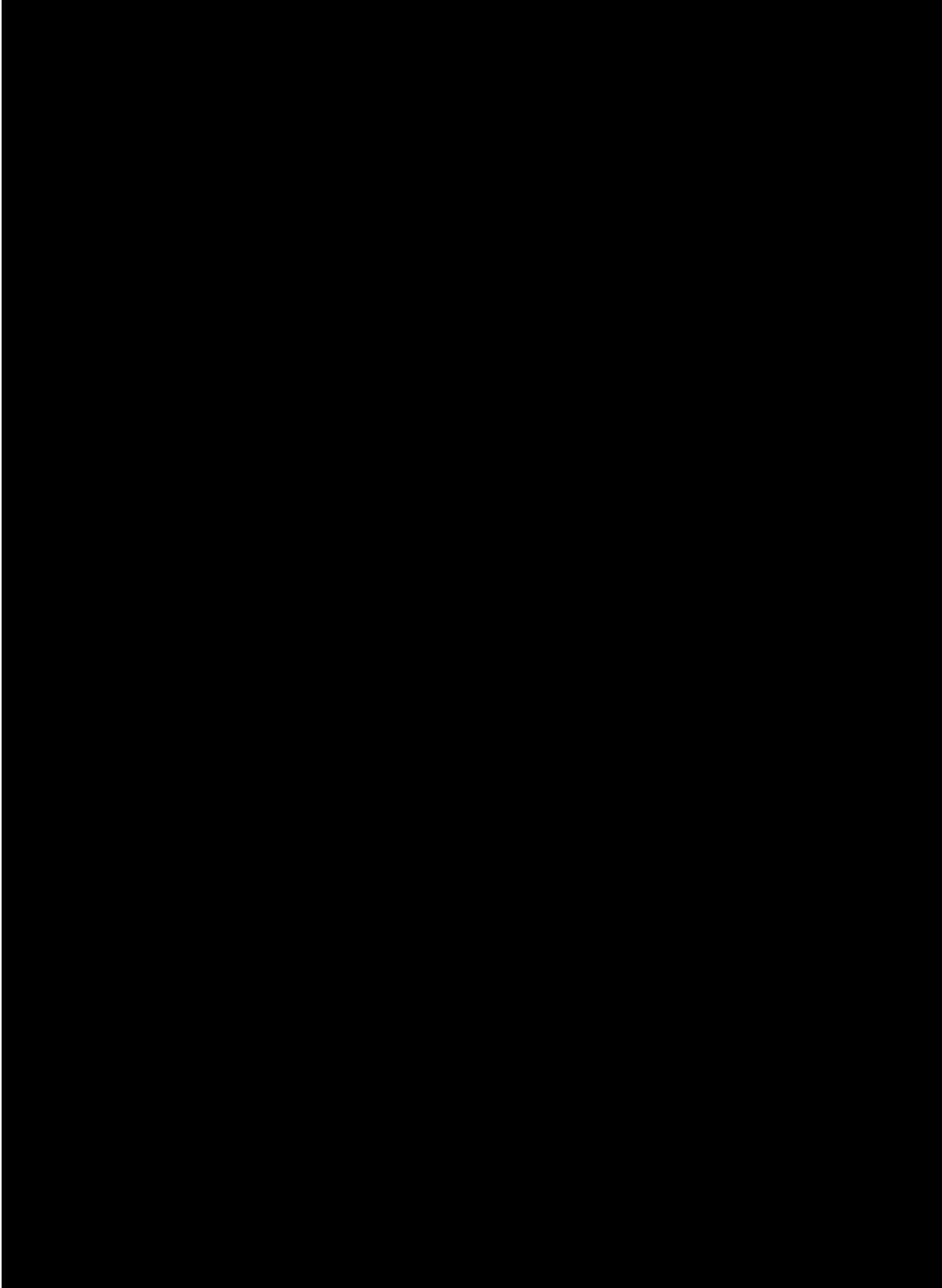
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**Annex IV  
Change Control Procedure**

<b>Version</b>	1.0		
<b>Date</b>	XX MAY 2019		
<b>Status</b>	Draft	X <input type="checkbox"/>	Final

**Review History**

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Summary of changes</b>
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<b>CHAPTER 1 INTRODUCTION</b>	<b>161</b>
1.1. Definitions	161
1.2. Scope	162
1.3. Bodies and roles involved	164
1.3.1 Change Control Board (CCB)	164
1.3.1.1 Introduction	164
1.3.1.2 General tasks	164
1.3.1.3 Specific tasks	164
1.3.2.1 Introduction	165
1.3.2.2 Tasks of CCA	166
1.3.3.1 Introduction	167
1.3.3.2 Tasks of LCA	167
1.3.4 Local change administrator board (LCAB)	168
1.3.4.1 Introduction	168
1.3.4.2 General tasks	168
1.3.4.3 Specific tasks	168
1.3.5 Implementation Manager	169
1.3.5.1 Introduction	169
1.3.5.2 General tasks	169
1.3.5.3 Specific tasks	170
<b>2 PROCEDURE DETAILS</b>	<b>171</b>
2.1 Outline of the Change Control Procedure	171
2.2 Regulatory Changes	172
2.3 Emergency Changes due to Critical Incidents	172
2.4 Process description tables	173
2.4.1 Introduction	173
2.4.2 Activity and Timing Information	173
2.4.3 Add or update LCA Details	174
2.4.4 Amend the Operational Manual or other controlled Documentation	176
2.4.5 RFC Procedure for other objects under change control.	179
<b>3 RISK AND IMPACT ALLOCATION</b>	<b>189</b>
3.1 Categories and Risk	189
3.2 Component Impact	190
3.3 Route of the Change through the Procedure	190
<b>4 ASSURANCE GATHERING</b>	<b>193</b>
4.1 Assurance Activities	193
4.2 Scope of Assurance Gathering	194
<b>5 CHANGE CONTROL FORMS</b>	<b>196</b>
5.1 Introduction	196
5.2 LCA Registration Form	197
5.3 Operational Manual Form	198
5.4 Request for Change Form	200
5.5 Solution Proposal Form	205

*Execution Version*

5.6	Impact Assessment Form	206
5.7	Implementation Plan Form	208
5.8	Objections Form	210
5.9	Component Version Update Form	211
5.10	LCA list	211
<b>6</b>	<b>COMPONENT LIST</b>	<b>213</b>

## Chapter 1 Introduction

This document describes the Change Control Procedure (hereinafter also CCP) to be used as part of the PCR Market Coupling operations. It provides a controlled environment in which changes can be implemented efficiently with the minimum of delay and the least risk.

The process aims at tracking any change, small and large, both in software and in documents. Whilst the majority of changes are likely to be simple operational changes or small textual changes, it is still important that the procedure is robust to the processing of more complex changes.

The implementation of the timings and procedures of the CCP must be always consistent with the relevant provisions set forth in the contracts for the maintenance of the Co-owned Assets stipulated for the benefit of all PCR Parties. Should such an inconsistency emerge, the Steering Committee or any other Body delegated by the latter (as defined below) shall be entitled to approve any deviation from this CCP.

### 1.1. Definitions

For the purpose of the CCP document the following capitalized terms and expressions used herein shall have the following meaning:

**“Central Change Administrator (CCA)”**: is the person in charge to coordinate the Change Control Procedure. Such person is selected on a yearly rotational basis among the members of the CCB. The detailed description of the role is provided under section 1.3.2 below

**“Change”**: is any change, small and large, both in software and in documents, through which a component, both in Components and in documents, subjected to the CCP, becomes different.

**“Change Control Board (CCB)”**: is the PCR body with delegated decision making power on any changes to the PCR Assets and Components. The detailed description of the role is provided under section 1.3.1 below

**“Component”**: asset of list of Components with associated asset code and asset class

**“Implementation manager”**: is the person identified in the Implementation Plan as responsible for the implementation of the Change. The detailed description of the role is provided under section 1.3.5 below

**“Implementation Plan”**: is the form to be filled in that describes how the system will be tested, deployed, installed and transitioned into an operational system.

**“Local Change Administrator (LCA)”**: is the person appointed by each PCR member as single point of contact for the Party, being involved for the purpose of the Change Control Procedure. The detailed description of the role is provided under section 1.3.3 below

**“Local change administrator board (LCAB)”**: is the PCR body formed by all the LCAs and advises the CCB on the impact, urgency and priority on any changes to the PCR Assets and Components. The detailed description of the role is provided under section 1.3.4 below

**“Modification”**: is a request for complex changes, with a medium/high risk category, affecting multiple Components or Components which are under the responsibility of more than one Party.

**“Notification”**: is a request for i) simple changes, with a very low/low risk category, affecting a small number of Components owned by one or more Parties and ii) changes only to local items with no identified impact on common items.

**“Originator”**: Party submitting an RFC

**“PX Trading System”**: is the IT platform used by a Party for PCR operations and Common PCR Operations through which the latter collects and validates i) the offers for the day-ahead market submitted in its Own Market and ii) the relevant TSO data.

**“PCR IT Documentation “**: means the supporting documentation, and information necessary to use the Co-owned Assets as listed in Annex I to this Agreement;

**“PCR’s system hardware and OS”**: are the Hardware and OS which runs PCR’s common asset and dedicated network infrastructure as example MPLS”

**“PX local system hardware and OS”**: is the infrastructure which runs PX local system included under the CCP control. Infrastructure consists mainly of: server, storage; FireWalls, network equipment, virtualization platform, domain controller, antivirus tool, back-up tool.

**“Request For Changes (RFC)”**: is the proposal containing the request for any Change subjected to the CCP.

**“Regional Initiatives (RI)”**: The Regional Initiatives (RIs) including in some cases sub-regional or supra-regional initiatives were set up either by the relevant PX and TSOs via own joint initiative or by the energy national regulatory authorities (NRAs), and in both cases with the intent to speed up the integration of national the energy markets in Europe. Seven electricity regions were established as part of the 2nd and then 3rd Energy Package Regulations/Directives as a stage towards the creation of a well-functioning integrated Internal Energy Market (IEM). They The Regional and sub/supra-regional Initiatives bring together NRAs, the European Commission, Member States, transmission system operators (TSOs), Power Exchanges (PXs), gas and electricity companies and other relevant stakeholders to tackle specific barriers to trade and competition and to improve market integration.

**“Risk”**: is the potential that a change will lead to a situation involving exposure to danger or to an undesirable outcome.

## **1.2. Scope**

**1.2.1** Any changes (including relevant documentation) related to PCR or any of its regional implementations can be proposed – either through the Modifications procedure or the Notifications procedure - through this Change Control Procedure. For the following items this CCP is mandatory:

1. The annexes to the PCR Cooperation Agreement indicated as “in scope” in the “List of Cooperation Agreement Annexes under change control”, (Annex 01 to the Cooperation Agreement);
2. All Requirements and Specifications documents, and all other documents produced by the PCR project as of the moment of their first approval by the PCR Steering Committee (or, with delegated authority, Project Board), as listed in the “List of documents under change control” (Annex 01 to the PCR Co-ownership Agreement);
3. All technical components indicated as “in scope” in the “Component list” (Annex 01 of the PCR Co-ownership Agreement; sample list to be found in chapter 10 of this document).

**1.2.2** Consequently, the Change Control Procedure shall apply, but not limited to, the following actions:

- 1) Make an adaptation to the regional decoupling procedure that is valid for oneself only (being a PCR PX);
- 2) Correct an error in the specification of the interface between Algorithm and Matcher;

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- 3) Make an adaptation to this Change Control Procedure to reflect an improvement verbally agreed among several Parties;
- 4) Make an addition to the list of Components under change control;
- 5) Upgrade the OS of the server one's PMB runs on;
- 6) Replace the server one's PMB runs on;
- 7) Change the configuration of one's Algorithm;
- 8) Change the bandwidth of one's connection to the MPLS cloud;
- 9) Implement an upgraded interface specification for one's reception of ATCs from one's TSO;
- 10) Skip a validation step in one's internal validation of the PCR result;
- 11) Implement a bug fix in one's PMB.
- 12) Implement a change to one's PMB which adds functionality that will not be used by any of the other Parties.
- 13) Adding of, or deleting, one or more Bidding Areas in a DA Implicit Auction Spot Market operated by a given PCR PX,
- 14) Changing the configuration of and links between Bidding Areas in a DA Implicit Auction Spot Market operated by a given PCR PX.
- 15) Adaptations of special or ordinary procedures or rules stipulated by Regulatory or other Authorities locally/regionally within a given PCR PXs Own Market (DA Spot), as further detailed in the following section 2.2.
- 16) Making a change to one's local trading system that impacts or involves changes to the interface to PMB or any other common object.

For the avoidance of any doubt, the Parties agree that the above list is provided by way of example and therefore is not exhaustive.

**1.2.3** In the event of uncertainty by a PCR Party whether a change falls under the scope of this CCP and/or regarding which CCP's procedure should apply, such PCR Party shall request guidance to the Change Control Board (CCB). The guidance provided by the Steering Committee or any other Body delegated by the latter can be disputed by the PCR Party according to the relevant provisions of the PCR Co-ownership Agreement

### **1.3. Bodies and roles involved**

#### **1.3.1 Change Control Board (CCB)**

##### **1.3.1.1 Introduction**

The Change Control Board is a body comprising all PCR parties, which oversees the change process. The tasks of the CCB under the Change Control Procedure are defined in the present section.

##### **1.3.1.2 General tasks**

Under the Change Control Procedure, the CCB performs three (3) main tasks, namely it:

- 1) Ratifies proposed changes (for those that are provided to it in accordance with the Change Control Procedure);

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- 2) Ratifies proposed scheduling of the implementation of changes (in case several changes relate to the same Component or to different Components but in the same timeframe); and
- 3) Appoints a manager responsible for implementing changes (or instructs that such person should be appointed).

### **1.3.1.3 Specific tasks**

Under the Change Control Procedure, the CCB has the following specific tasks:

- 1) It designates, among its members, a CCA and substitute CCA for cases of unavailability;
- 2) It controls and monitors the activities of the CCA;
- 3) It notifies the CCA of the contact details of the CCB members;
- 4) It is available, within the timeframes set forth in the Change Control Procedure, to perform the tasks as defined in the Change Control Procedure;
- 5) It reviews RFCs;
- 6) It assesses completeness of the RFC in light of the Change Control Procedure , requests for additional information , budgets and contracts;
- 7) It accepts or rejects RFCs;  
Rejections can only be made when:
  - (i) Costs exceed benefits;
  - (ii) Development is excessive;
  - (iii) Implementation entails risks;
  - (iv) Objections are upheld; and
  - (v) RFC contradicts other implementations.
- 8) It reviews objections to changes;
- 9) It assesses completeness of objections to change in the light of the Change Control Procedure and requests for additional information;
- 10) It accepts or rejects objections to changes;
- 11) It ratifies that the go-live criteria have been met and also ratifies the implementation date for changes and the timing of implementation;
- 12) It receives monthly reports from the CCA;
- 13) It escalates issues for decision of the SC as set forth in the Change Control Procedure;
- 14) It reviews the appropriateness and efficiency of the Change Control Procedure at least once a year; and
- 15) It proposes changes to the Change Control Procedure to the SC.

## **1.3.2 Central Change Administrator (CCA)**

### **1.3.2.1 Introduction**

The CCA is the person responsible for the central management and administration of changes under the Change control Procedure. The role of the CCA is key to the successful operation of the

Change Control Procedure. He is the single point of contact for notifications and RFCs and for circulating information and analysis requests. He is the central repository for change control information. The CCB appoints the CCA among its members. The CCA role shall rotate among the Parties on a yearly basis (according to the measures agreed in the PCR Co-ownership Agreement). The appointed CCA, for the period in which it has been empowered, acts as the secretary to the CCB.

### **1.3.2.2 Tasks of CCA**

The tasks of the CCA (or the substitute CCA in cases of unavailability of the primary CCA) under the Change Control Procedure are:

- 1) keeps an updated version of the contact details of the LCAs and distributes it to the attention of the CCB and of the LCAs;
- 2) proposes updates of the List of Components (Annex 01 of the PCR Co-ownership Agreement) to the SC;
- 3) updates and maintains a register of changes;
- 4) reviews RFCs and notifications;
- 5) receives notifications of change from the LCAs or external parties related with PCR, like the bodies of the Regional Initiatives, and circulates these for information in accordance with the change control procedure.
- 6) Acts a single point of contact with the external parties related with PCR, like the bodies of the Regional Initiatives, regarding changes requested by them of that required joint testing or that have any impact outside PCR.
- 7) assesses the completeness of RFCs in the light of the Change Control Procedure, including the check of the Components and risk categories in accordance with the Change Control Procedure and the List of Components (Annex 01 of the PCR Co-ownership Agreement);
- 8) requests for additional information on RFCs;
- 9) allocates unique RFC numbers;
- 10) coordinates the agenda of the CCB;
- 11) requests emergency meetings of the CCB to review urgent RFCs;
- 12) provides relevant RFCs to the CCB and ensures the follow up of the decisions of the CCB in this matter;
- 13) reviews objections to changes;
- 14) assesses completeness of objections to change in the light of the Change Control Procedure;
- 15) requests for additional information on objections to change;
- 16) in case the objection to change remains unmotivated or motivated inadequately following a request for additional information, escalates the matter to the SC;
- 17) communicates to all LCAs the implementation date for changes and the timing for implementation;
- 18) communicates the go live criteria to the LCAs;
- 19) provides monthly change management reports to the CCB and the LCAs, including details of the RFCs that have been raised, their type (notification, emergency fix, etc.), status (position in the change control cycle), risk category and impact on Components. These reports are provided in due time before the CCB meeting.
- 20) provides monthly implementation reports to the CCB and LCAs setting out the dates of future planned changes, the Party responsible for the changes and the impact on Components. These reports are provided in due time before the CCB meeting.

- 21) provides advice to any concerned Party (or subcontractor if any) on completing the forms under the Change Control Procedure as necessary.

### **1.3.3 Local Change Administrator (LCA)**

#### **1.3.3.1 Introduction**

LCAs perform a key role in the Change Control Procedure. LCAs are the single point of contact for any communications in respect of the RFCs and notifications. As a general matter LCAs are responsible for:

- 1) submitting RFCs and notifications;
- 2) coordinating the responses to solution analysis requests (section B of the RFC) and impact assessments within their own organizations;
- 3) ensuring that agreed changes are implemented.

For any Component for which a RFC must be filed, the relevant LCAs will be responsible for submitting the RFC, for coordinating the assessment of the impact of the change and for ensuring that the change is implemented.

An LCA shall be appointed for:

- i) each of the Parties. In this case, each Party shall appoint its own representative and
- ii) each working group or operating committee appointed by the Parties and approved by the CCB. The Parties involved in such working groups or operating committees shall be in charge of the appointment

The LCA shall perform all tasks assigned to them. The LCA will perform its tasks during Business Hours.

A sample list of LCAs to be appointed is given in chapter 9 of this document.

In the different steps of the processes, the LCA will ensure that all received information is distributed inside its organization and that the comments of such organization, when existing, are brought in the LCAB discussions.

#### **1.3.3.2 Tasks of LCA**

Each LCA shall have the following tasks:

1. designate a person who will substitute the LCA in case the LCA cannot perform its tasks;
2. provide the CCA with its contact details and those of its substitute and keep the CCA updated of any change of these;
3. provide the CCA with details of any new Components that should be added to the register of change, including the Component category and risk category;
4. send complete RFC and notifications to the CCA in accordance with the Change Control Procedure;
5. inform all relevant persons within its company of RFCs as communicated by the CCA and follow up these internally;
6. take receipt of RFC from the CCA for solution analysis and impact assessment;
7. Receiving notice of the RFC from the CCA and ensuring that the relevant departments within their organisation are informed about its content. The LCA will ensure that the relevant persons within its organisation are informed of it with a view of assessing the RFC within the timeframes set out in the Change Control Procedure.

8. raise objections, if any, against received RFC. Objections shall always be motivated. Before raising an objection, the LCA ensures that reasonable efforts have been made to resolve the objection between the relevant Parties (or subcontractors if any) informally.
9. collect the results of the internal analysis/assessment and communicate a common position of its company to the CCA;
10. distribute the monthly overview reports received from CCA internally;
11. ensure that the date upon which a change will be implemented is reported to all the relevant persons within its company;

### **1.3.4 Local change administrator board (LCAB)**

#### **1.3.4.1 Introduction**

The LCAB is the PCR body that advises the CCB on the impact, urgency and priority on any changes to the PCR Assets and Components. The LCAB will also be the forum for objections or comments from the LCA's on any change (including notification) to the PCR Assets and Components. External experts or representatives of serviced Power Exchange can be invited to participate in LCAB's discussions. .

The LCAB will be formed by all the LCAs and will be chaired by the CCA. During the process, the CCA may ask for the help/advice of the LCAB in any of the steps/tasks assigned to the CCA.

#### **1.3.4.2 General tasks**

Under the Change Control Procedure, the LCAB performs three (3) main tasks, namely it:

- 1) Review and advice of RFC for impact
- 2) Provides advice to the CCB about proposed changes (for those that are provided to it in accordance with the Change Control Procedure);
- 3) Determines when changes should be scheduled (in case several changes relate to the same Component or to different Components but in the same timeframe);

#### **1.3.4.3 Specific tasks**

Under the Change Control Procedure, the LCAB has the following specific tasks:

- 1) It controls and monitors the activities of the CCA;
- 2) It's available within the timeframes set forth in the Change Control Procedure to perform the tasks as defined in the Change Control Procedure;
- 3) It reviews RFCs;
- 4) It assesses completeness of the RFC in the light of the Change Control Procedure and requests for additional information;
- 5) It accepts or rejects RFCs;

Rejections can only be made when:

- (i) Completeness of request;
- (ii) Availability of documents;
- (iv) Objections are upheld; and
- (v) RFC contradicts other implementations.

- 6) It reviews objections to changes;
- 7) It assesses completeness of objections to change in the light of the Change Control Procedure and requests for additional information;
- 8) It accepts or rejects objections to changes or in the case of disputes advises the CCB on details of objections;
- 9) It confirms that the go-live criteria have been met and advises the implementation date for changes and the timing of implementation to the CCB;
- 10) It receives monthly reports from the CCA;
- 11) It escalates issues for decision of the CCB as set forth in the Change Control Procedure;
- 12) It reviews the appropriateness and efficiency of the Change Control Procedure at least once a year; and
- 13) It proposes changes to the Change Control Procedure to the CCB.

### **1.3.5 Implementation Manager**

#### **1.3.5.1 Introduction**

The Implementation Manager is a person identified in the implementation plan as the person responsible of the execution of the change. The implementation manager (in the scope of this process) is responsible for presenting the change to the CCA, LCAB and , where appropriate, the CCB. He is also responsible for gathering all approvals from all the PCR bodies involved and, in cooperation with the CCA, with the external entities affected by the change (as requestors of the RfC or serviced by the PCR)

The Implementation Manager will also be responsible for the execution of the change. The implementation Manager should be either an internal employee of one PCR member or an external expert selected case by case by the PXs.

#### **1.3.5.2 General tasks**

Under the Change Control Procedure, the Implementation Manager performs three (3) main tasks, namely it:

- 1) Implement the change;
- 2) Collect the various authorisations and approvals required for approval of the implementation;
- 3) Coordinates and presents all and any required documentation required by the LCA's, CCA, and CCB;

#### **1.3.5.3 Specific tasks**

Under the Change Control Procedure, the Implementation Manager has the following specific tasks, namely it:

- 1) Requests approval on the acceptance criteria from the LCA's;
- 2) Coordinates and collates all required documentation for the LCAB;
- 3) Collects all authorisations required for the LCAB and CCB;
- 4) Provides information and answers questions from the LCA's, CCA and CCB in regards to any implementation approval;

## 2. Procedure details

### 2.1 Outline of the Change Control Procedure

This procedure is based on the distinction between Notifications and Modifications.

Simple changes (with a very low and low-risk solution affecting a small number of Components owned by a single or joint Party, as further specified below) and changes only to local items with no identified impact on common items will be handled as Notifications. This means the other Parties are informed of the change, but there is no collective acceptance of the change. It is understood that it shall be handled as a Notification a Change concerning a PX Trading System that doesn't require any further Change to the PMB's interface or to any other common object (Co-Owned Asset )

All other changes (which are more complex, of a higher risk category, affecting multiple Components or Components which are the responsibility of more than one Party or their subcontractors), are handled as Modifications. This means their explicit approval by the LCAB and, if required, the CCB is necessary. As further detailed in section 2.3, the CCP applicable to Modifications entitles:

- a) Each Party to individually review the changes and provide feedback; and
- b) to request a review by the CCB if objections by other Parties may occur or to better handle the complexity of the proposed change.

All changes, both Notifications and Modifications, are recorded in a Request for Change (RFC).

For Notifications and simple changes, the Originator will record the requested change in the Request for Change (RFC) form (see chapter 8). This will contain all the information required including the cause of the change, the proposed solution, its impact and the way in which the change will be implemented. In this case no other forms will be required to be completed. If an automated workflow tool is used the automated RFC input form will replace the paper based form.

In case of complex changes it may not be possible for the Originator to complete all of the sections of the RFC. In this case contribution to some sections, such as e.g. solution analysis (Section B of the RFC), impact assessment (Section C of the RFC), and implementation plan (section D of the RFC) will be requested from the appropriate people/Parties, that will provide necessary contribution using the relevant form(s). This will allow individual responses from several Parties which will together form one single RFC in the case, for example, the solution affects several Components.

When the Originator of the change is an external party related with PCR, the CCA will take the responsibility of recording it in the appropriate forms.

All challenges to the type of request (Notifications *versus* Modifications), priority and impact of a change will first be notified and resolved in the LCAB. If the issue cannot be resolved in the LCAB it shall then be escalated to the CCB. If the issue cannot be resolved in the CCB it shall then be escalated to the Project Board or to any other delegated/substituting body consistently with the relevant provisions of the PCR PCR Co-ownership Agreement.

The use of an automated workflow is desired but not covered in this procedure. If an automated workflow tool is used for this procedure the standard RFC forms documented in this procedure should be represented in the automated tool and the paper version will not be required to be used.

#### 2.1.1 Change Control Procedure for PCR IT Documentation

A reasoned proposal for a change in PCR IT documentation is brought to the CCA by the LCA. This is a mark-up of the document to be changed together with the appropriate form explaining the reason for change. The CCA checks the proposal and sees to its handling if it is correct. After formal approval by the CCB, the CCA (or anyone the CCA delegates this task to) amends accordingly the relevant PCR IT documentation. The Change Control Procedure for documents is described by the workflow diagram in section 2.3.

### **2.1.2 Change Control Procedure for software, hardware and configuration changes**

The Change Control Procedure for software, hardware and configuration changes is applicable to both simple and complex solutions and is described by the workflow diagrams of Section 2.4. below.

## **2.2 Regulatory Changes**

In cases where compliance with special or ordinary procedure or rules stipulated by Regulatory or other Authorities locally/regionally within a given PCR PXs Own Market is required, these changes shall automatically be deemed to be subject to the fast track timing.

In addition, in case the RFC implies a Modification, should the other PX Parties raise an objection (PCR\_OTH\_04/FORM\_07) to the RFC a decision by the CCB should be made by the end of the next business day after the objection has been filled with the CCA. In the event the objection is upheld by CCB the PX Party having filed the change shall have the right to (1) request withdrawal of the objection based on validated arguments on why the objection is not justified, and (2) have the right to immediately share the objection filed by the other PX Party(ies) to the above referred to Regulatory or other Authorities, and (3) escalate the case directly to the Project Board or Steering Committee.

## **2.3 Emergency Changes due to Critical Incidents**

In the case of operational problems that require the introduction of a change or hotfix in the applications during the operation session, the relevant Operational Procedure will be applied. Once the operation problem is solved, the session coordinator will provide the CCA with all the introduced change related information.

## **2.4 Process description tables**

### **2.4.1 Introduction**

The process description tables in this section describe the overall flow of the procedure in two specific cases as well as the generic case:

- a) Add or update LCA details,
- b) Amend the Operation Manual or other controlled documentation only, where only a documentation change is required,
- c) RFC procedure on any other item.

### **2.4.2 Activity and Timing Information**

The tables below provide details of the actions to be taken at each step of the procedure and the timeframe within which they should be carried out.

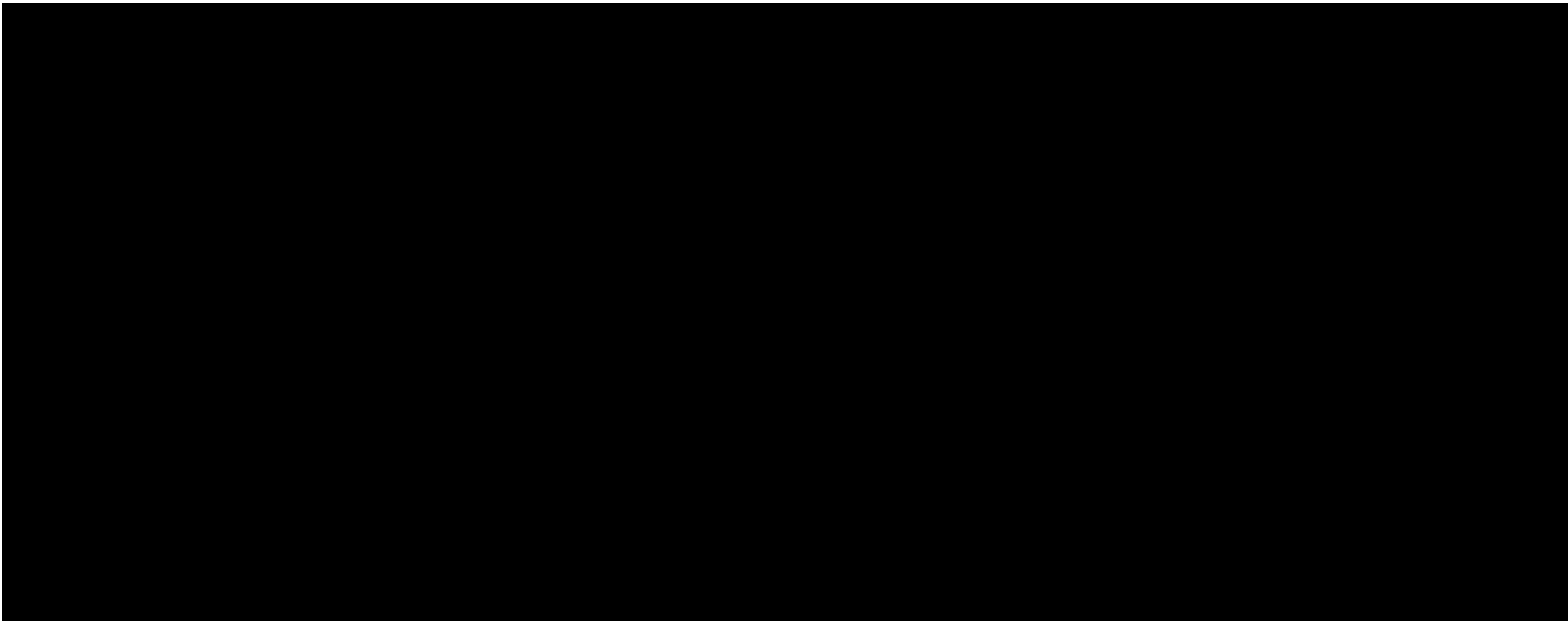
In all cases where there is activity to be carried out by a Party (or their subcontractors if any) the latter shall provide its best efforts to implement such changes as soon as practically possible. In

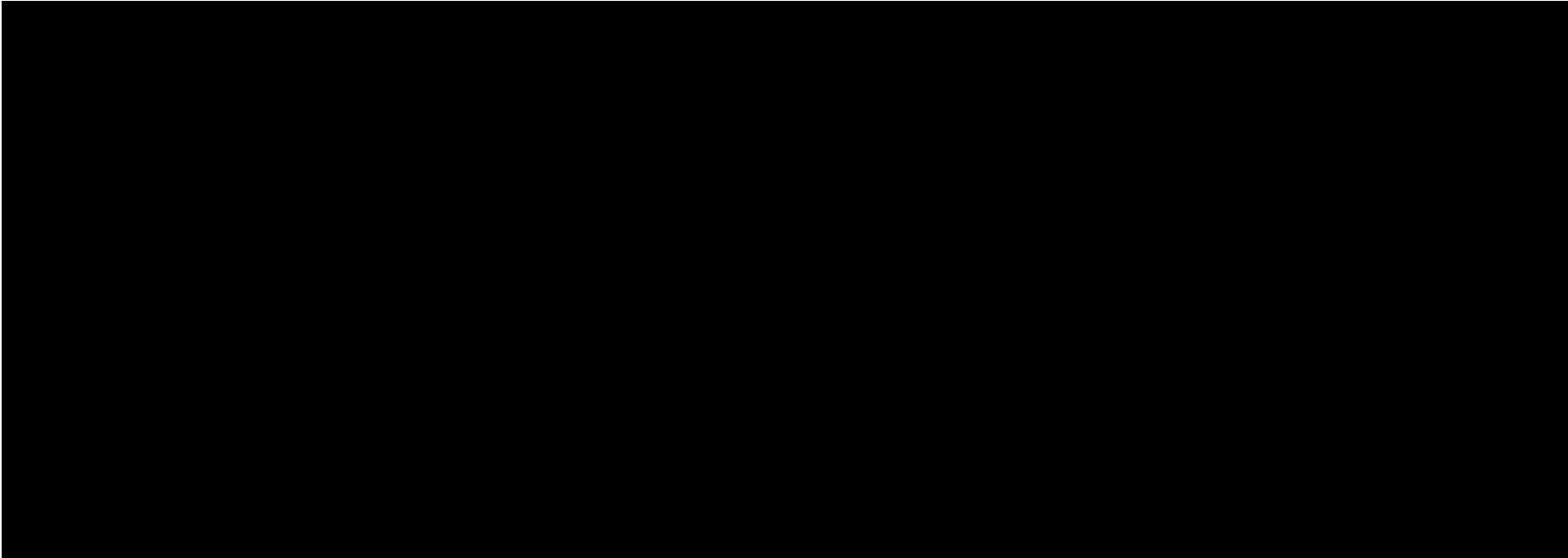
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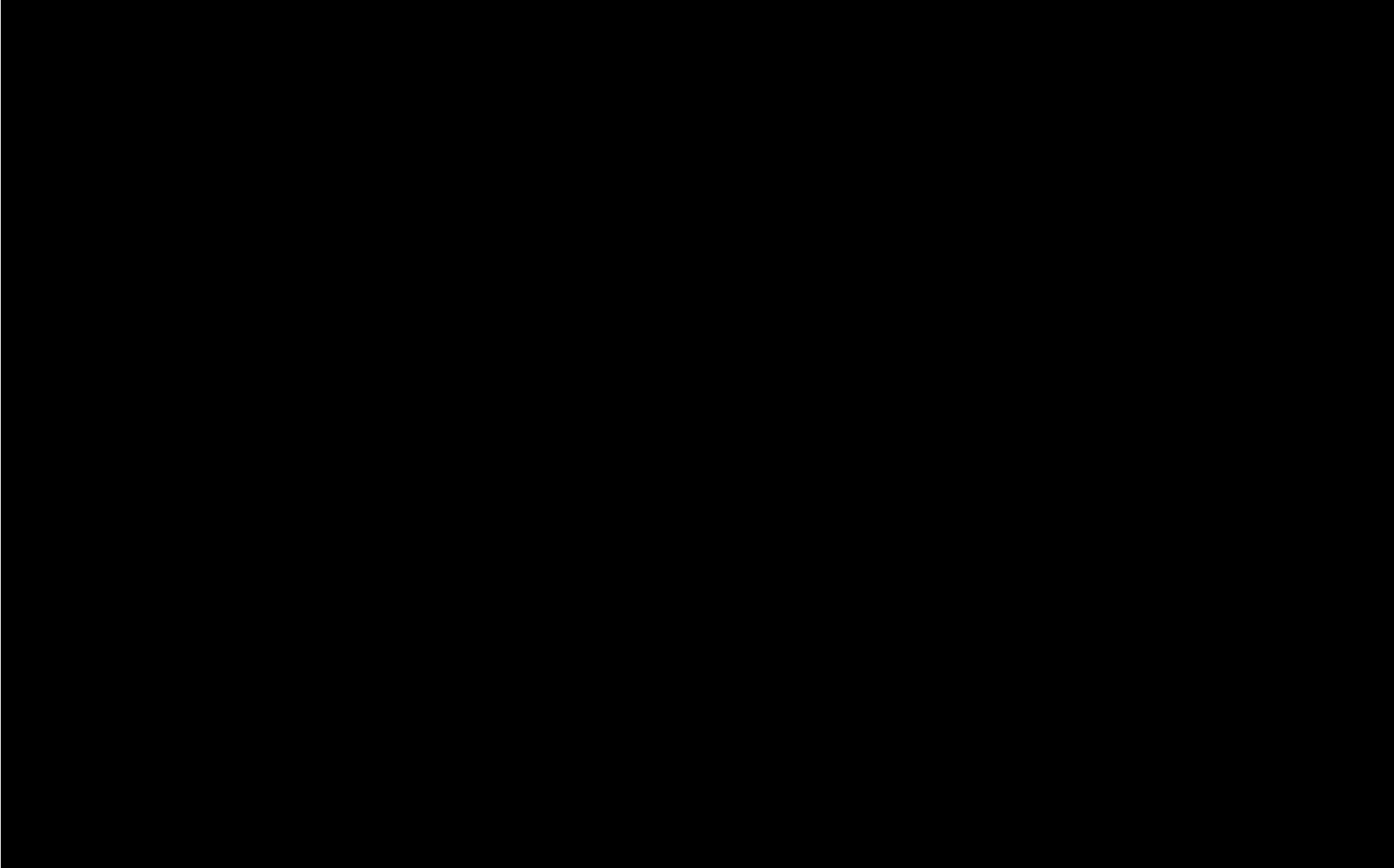
particular, the CCA will review the RFC and any supporting documentation within the timeframes set forth herein.

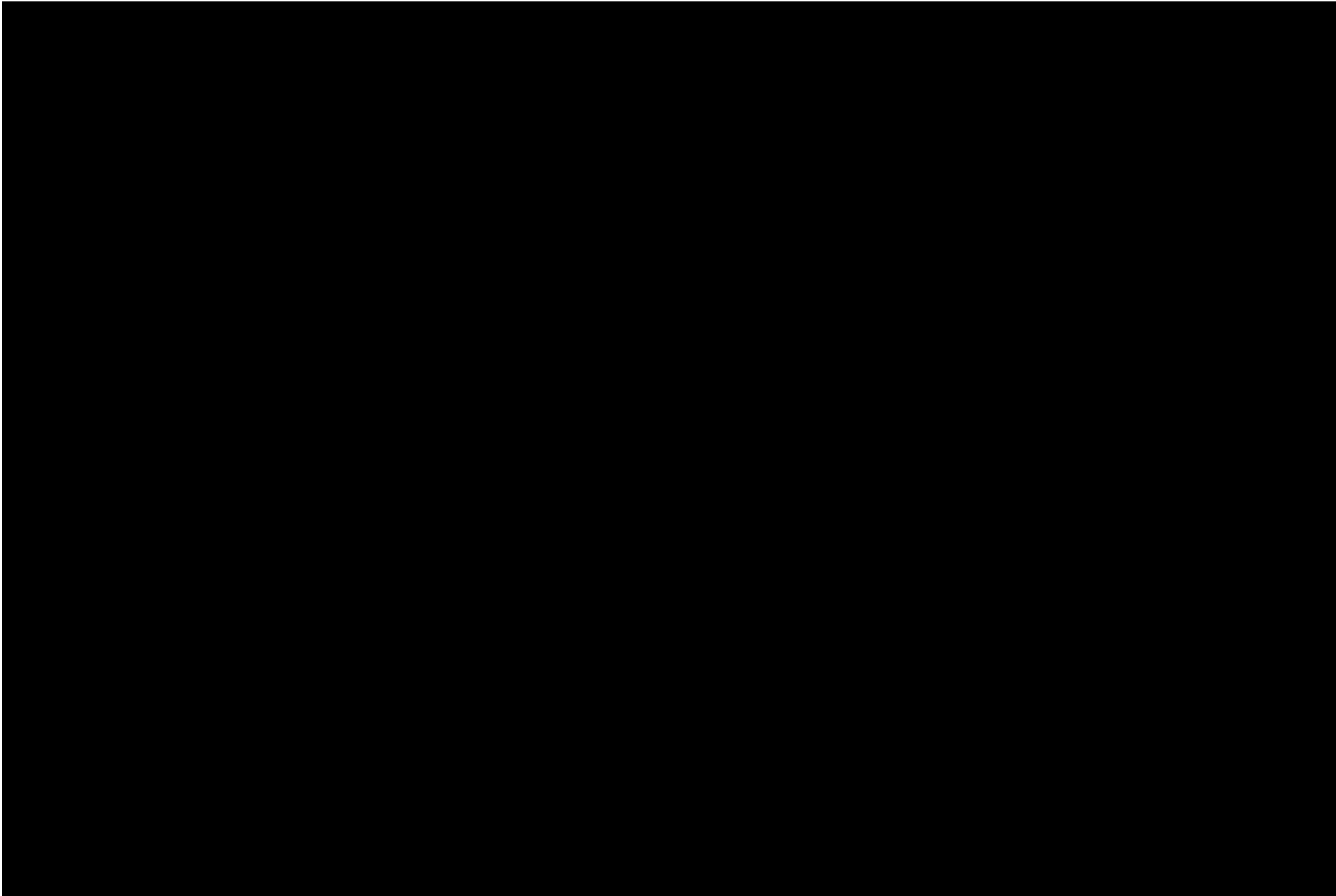
Two sets of timings are identified for each process described in the Change. The column 'normal timing' of the below tables provides the timeframe for dealing with changes in normal circumstances, except for bug fixes and changes needed for continuity reasons which fall under the column 'fast track timing'. The timings set forth in the "fast track timing" column of the below tables shall apply only under exceptional conditions. In all cases the processing of changes will be much faster when the RFC will be as complete and as detailed as possible from the beginning.

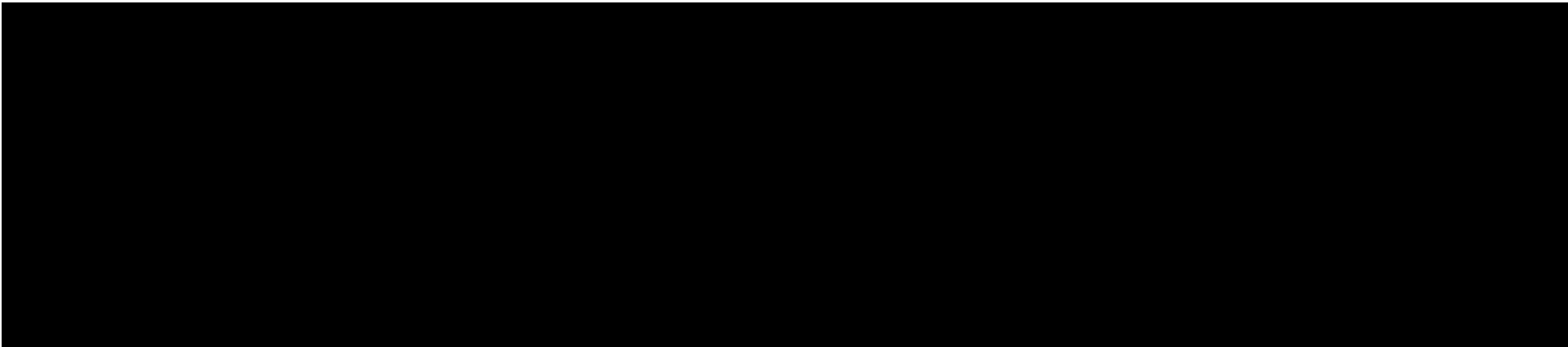
Communications will be ordinarily sent via email, being fax and telephone back up devices. If an automated workflow tool shall be developed/implemented (which shall provide adequate identification of the user), such tool will become the default standard for communication. The communications with external entities involved of affected by the change will be performed by the CCA.

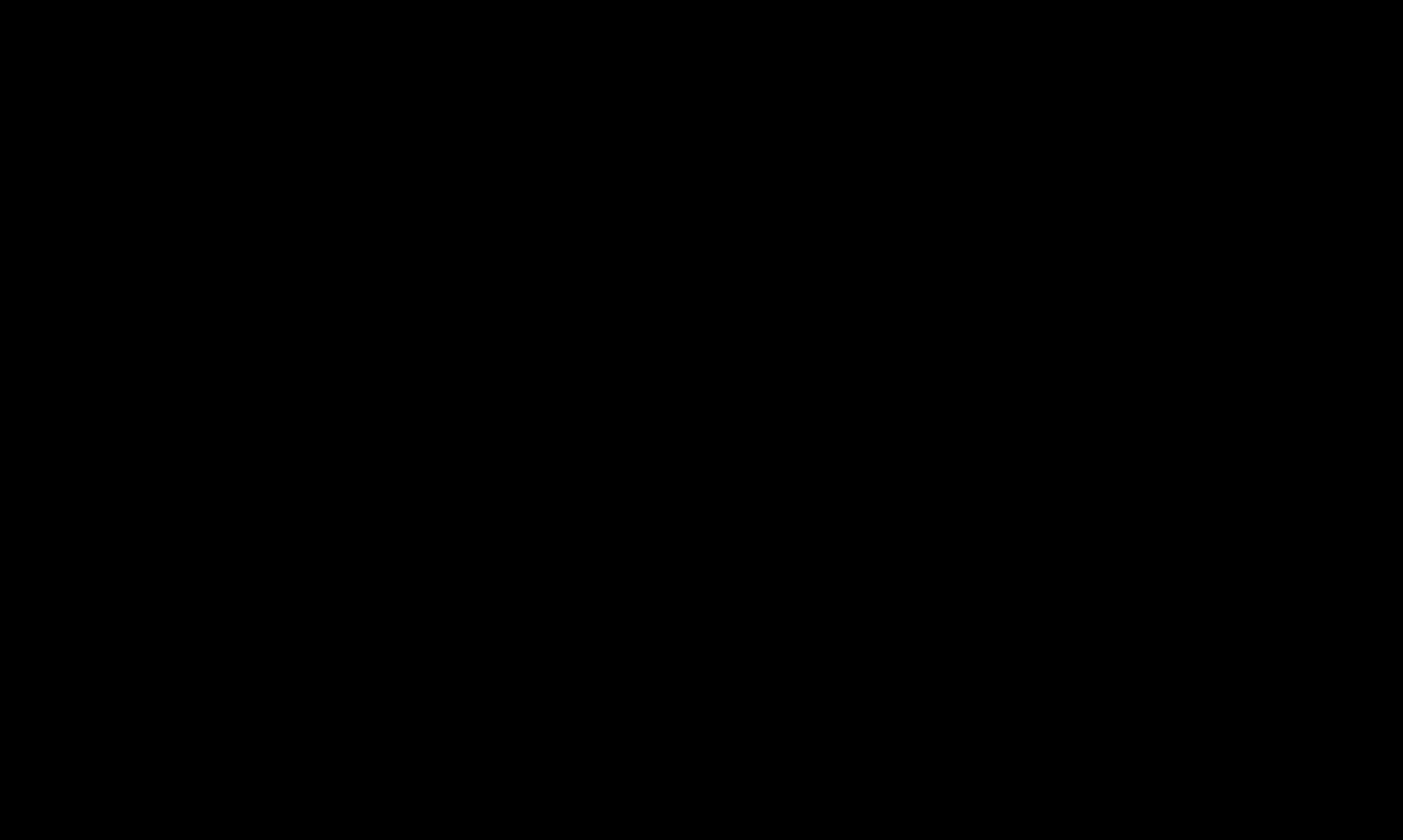


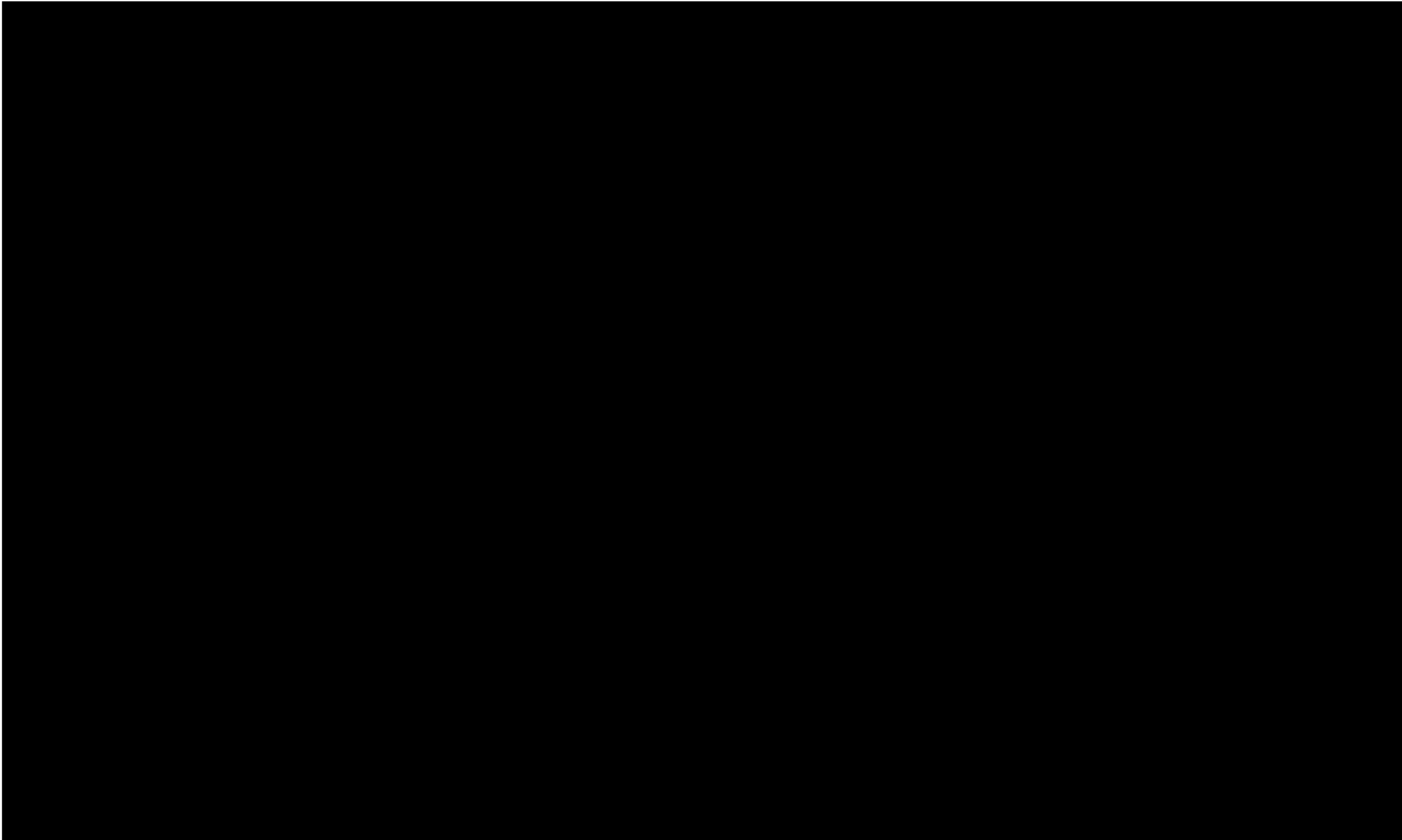


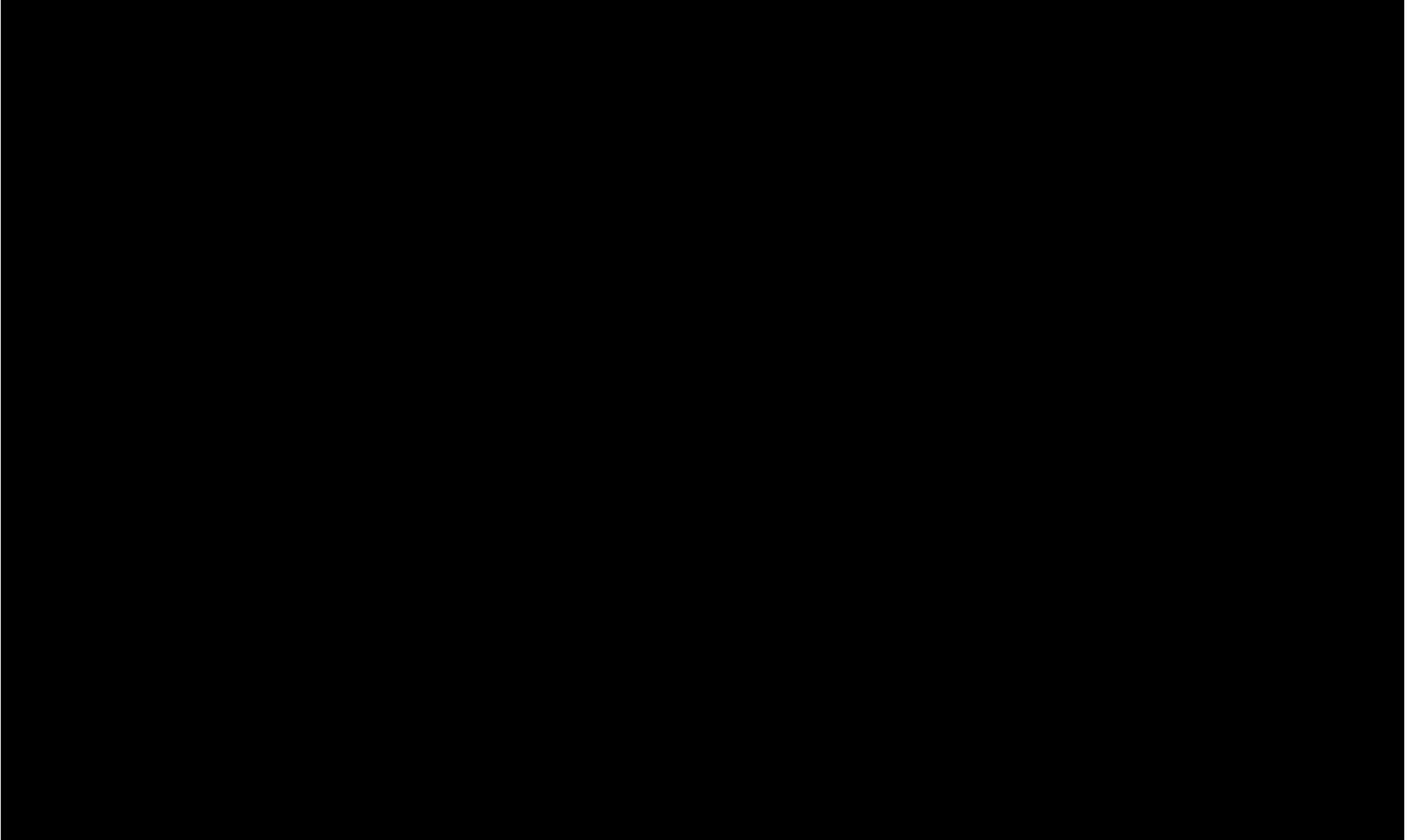


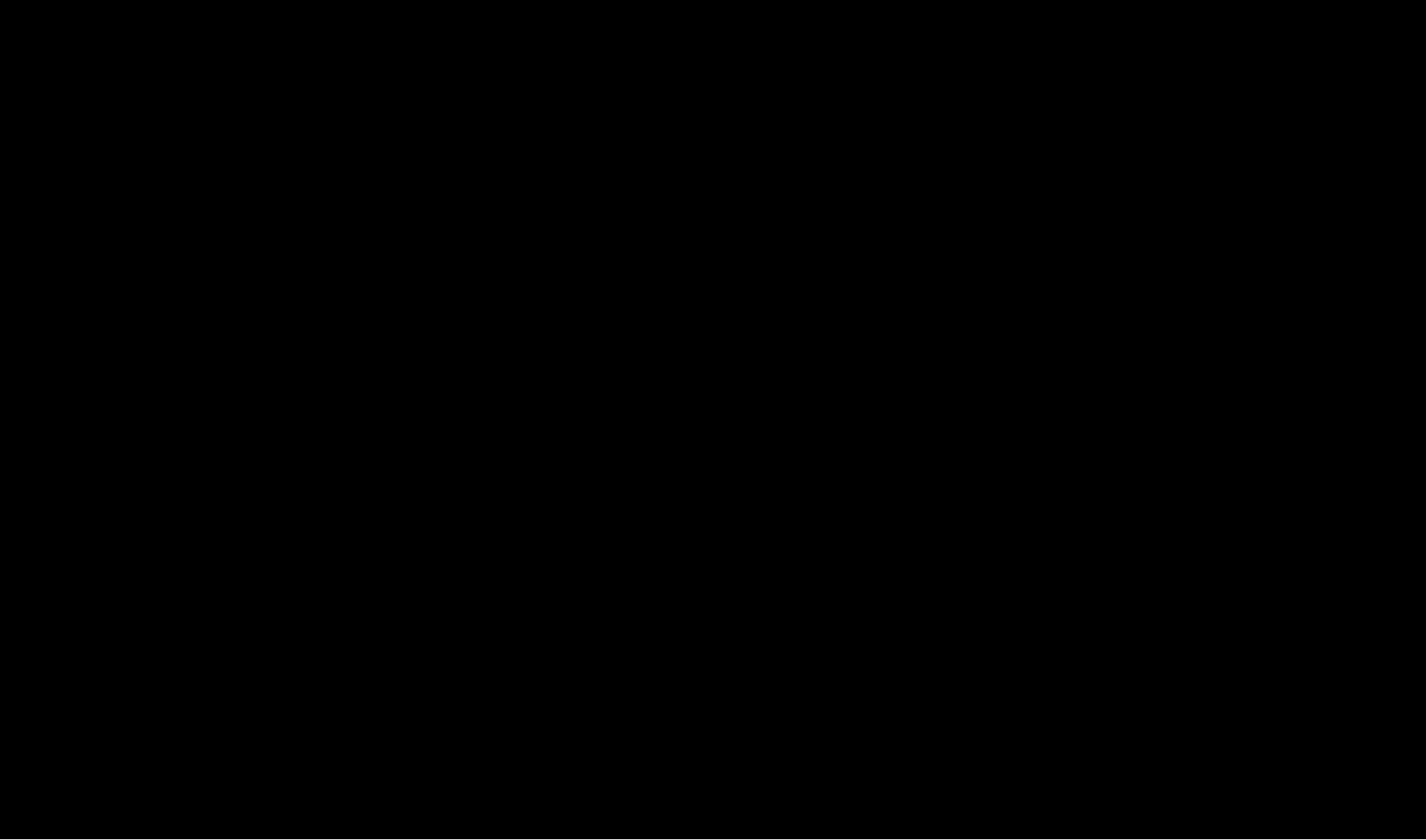


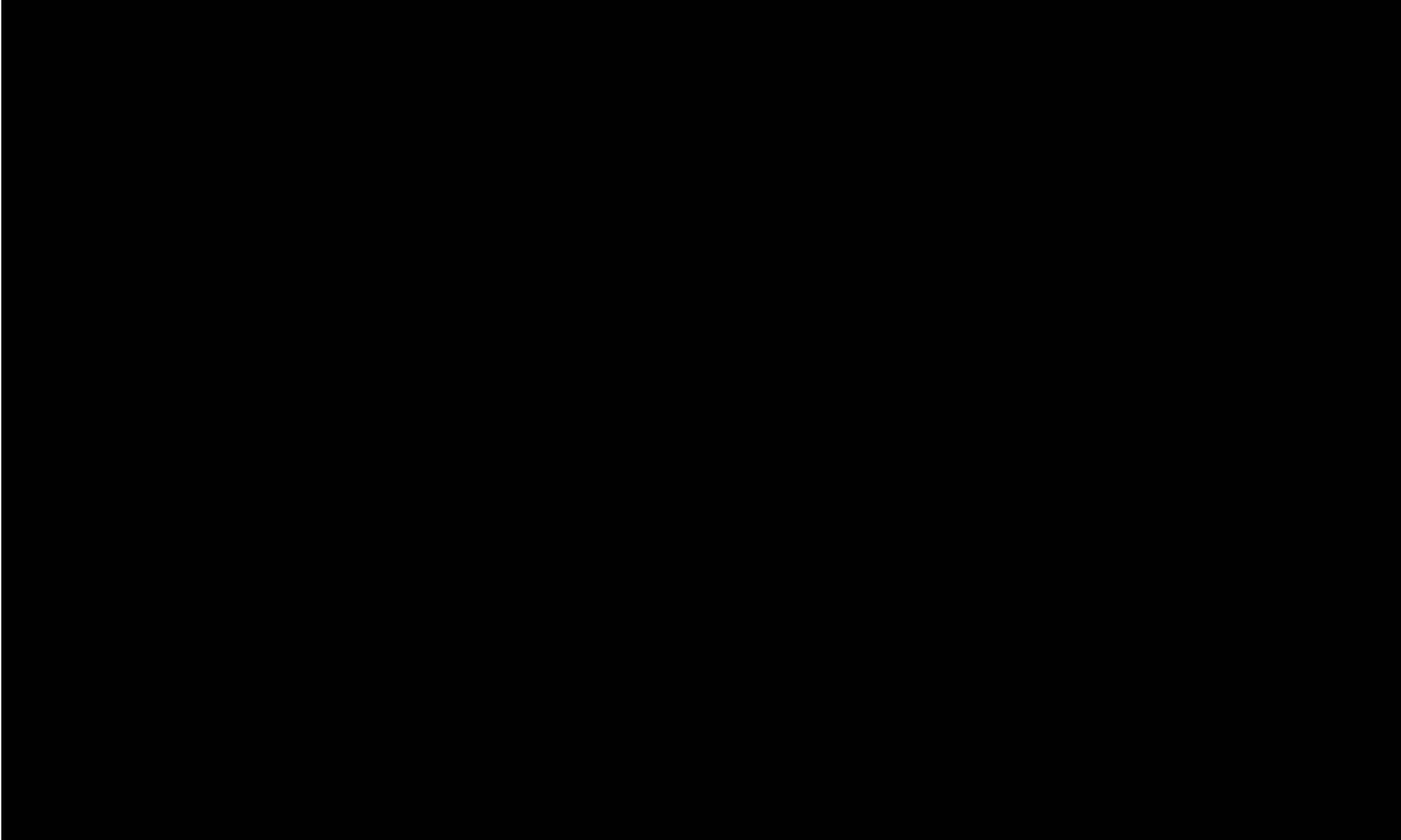


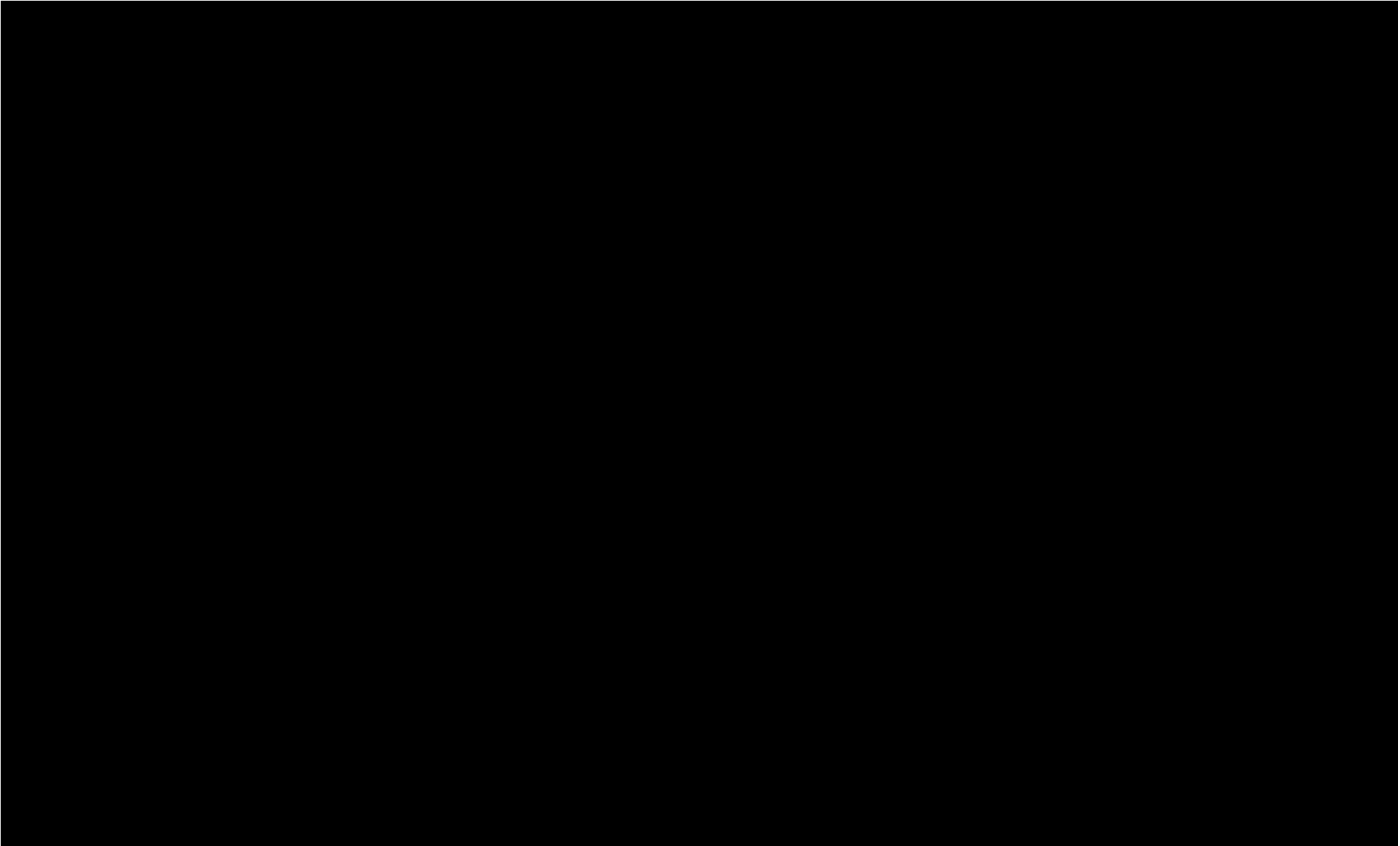


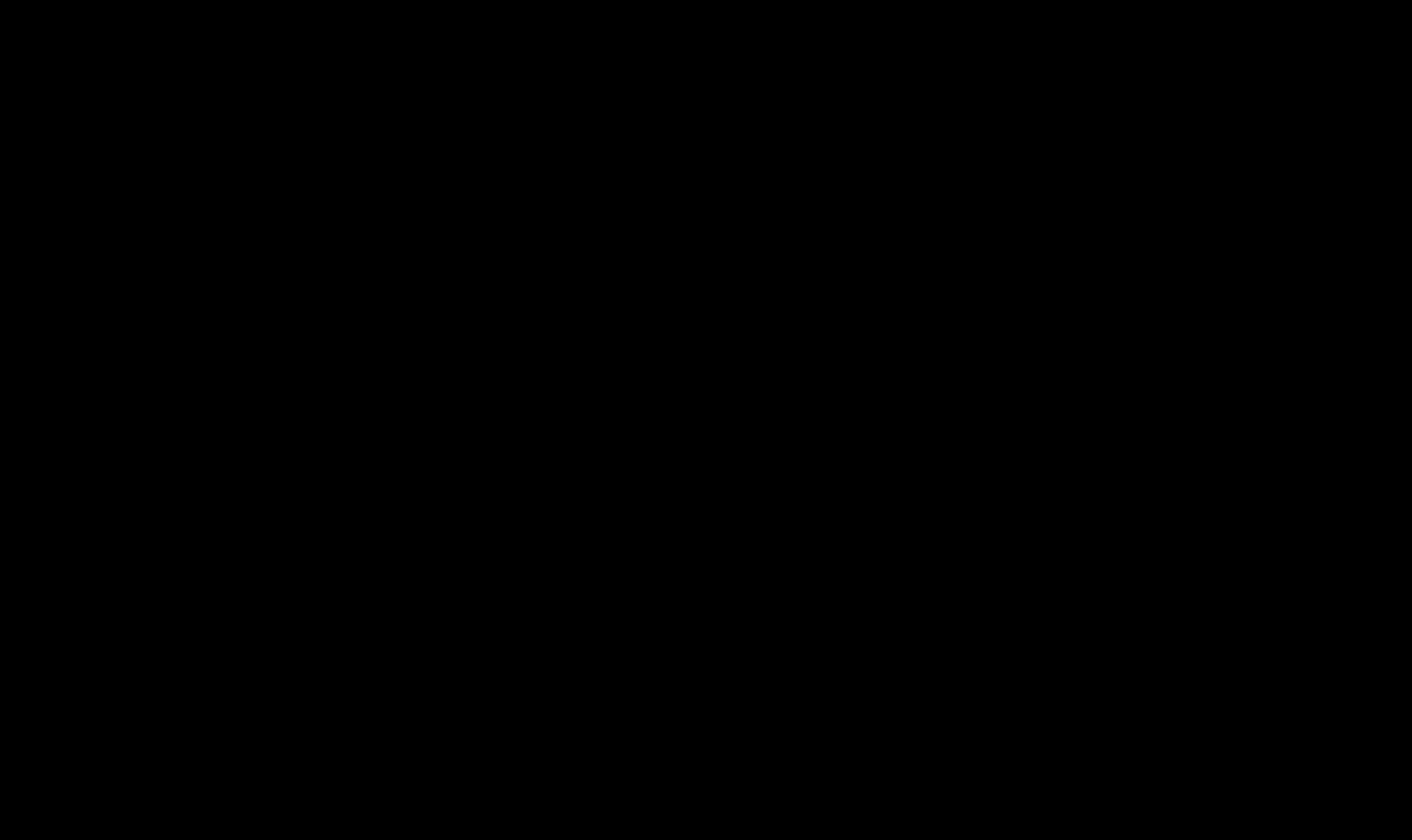


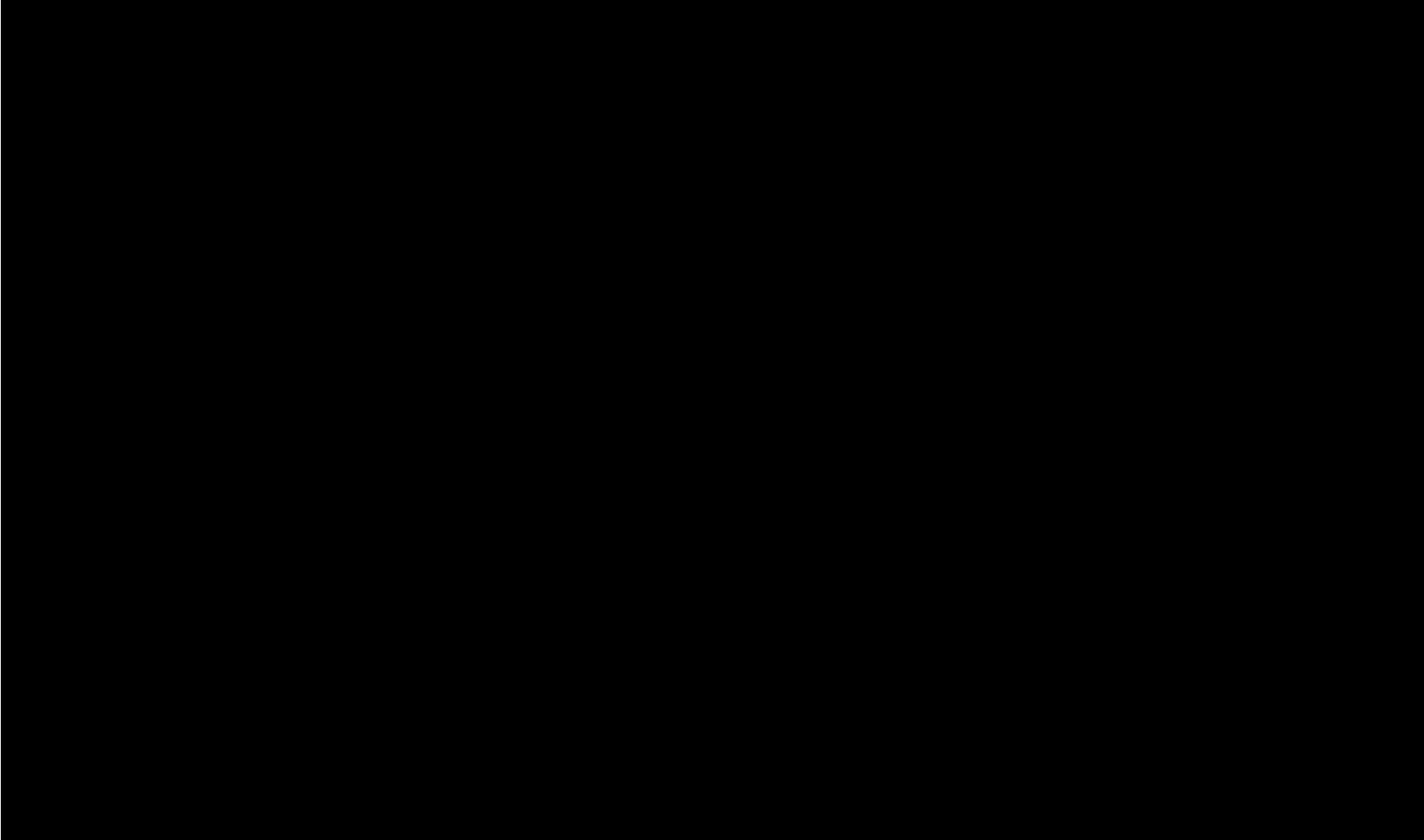


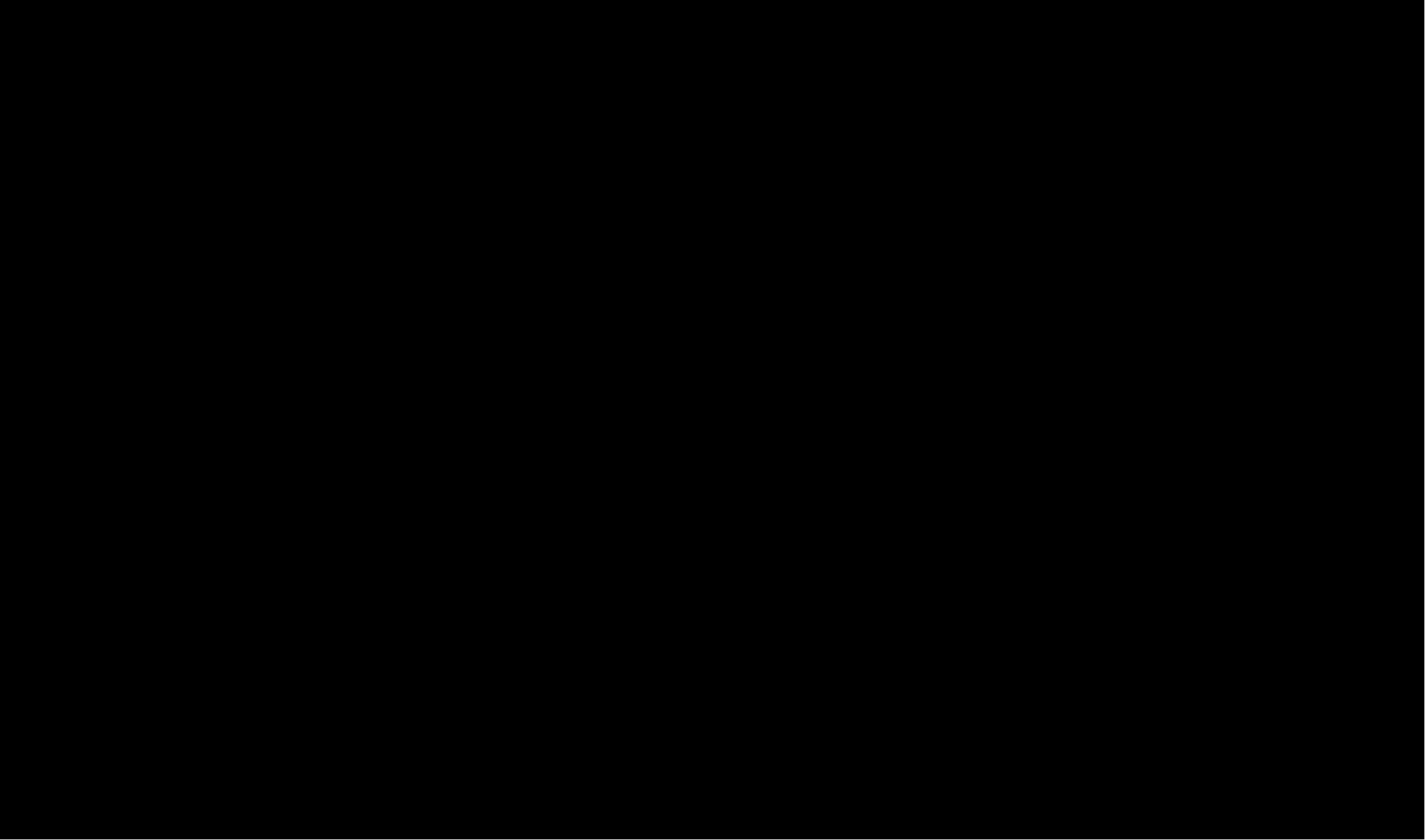


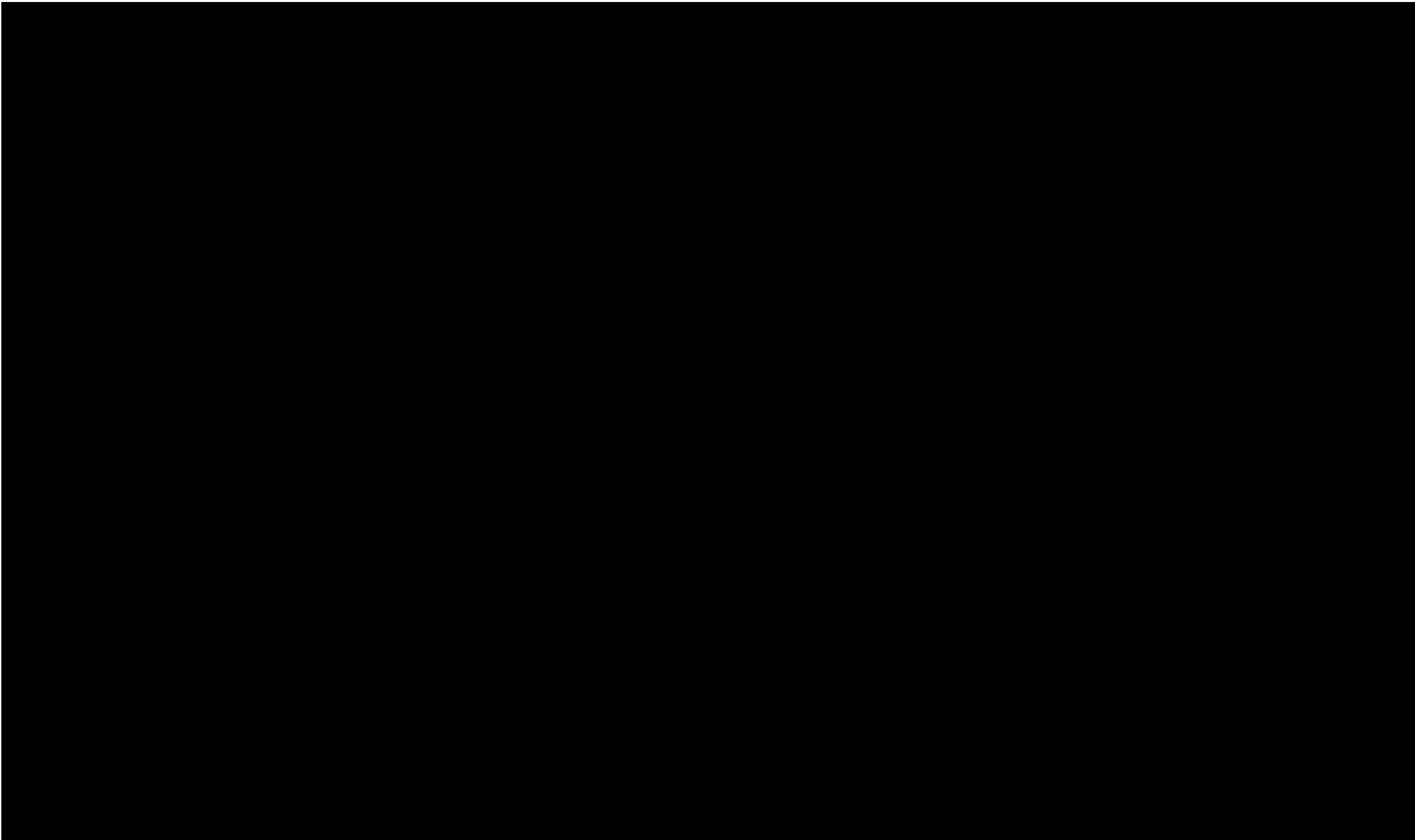














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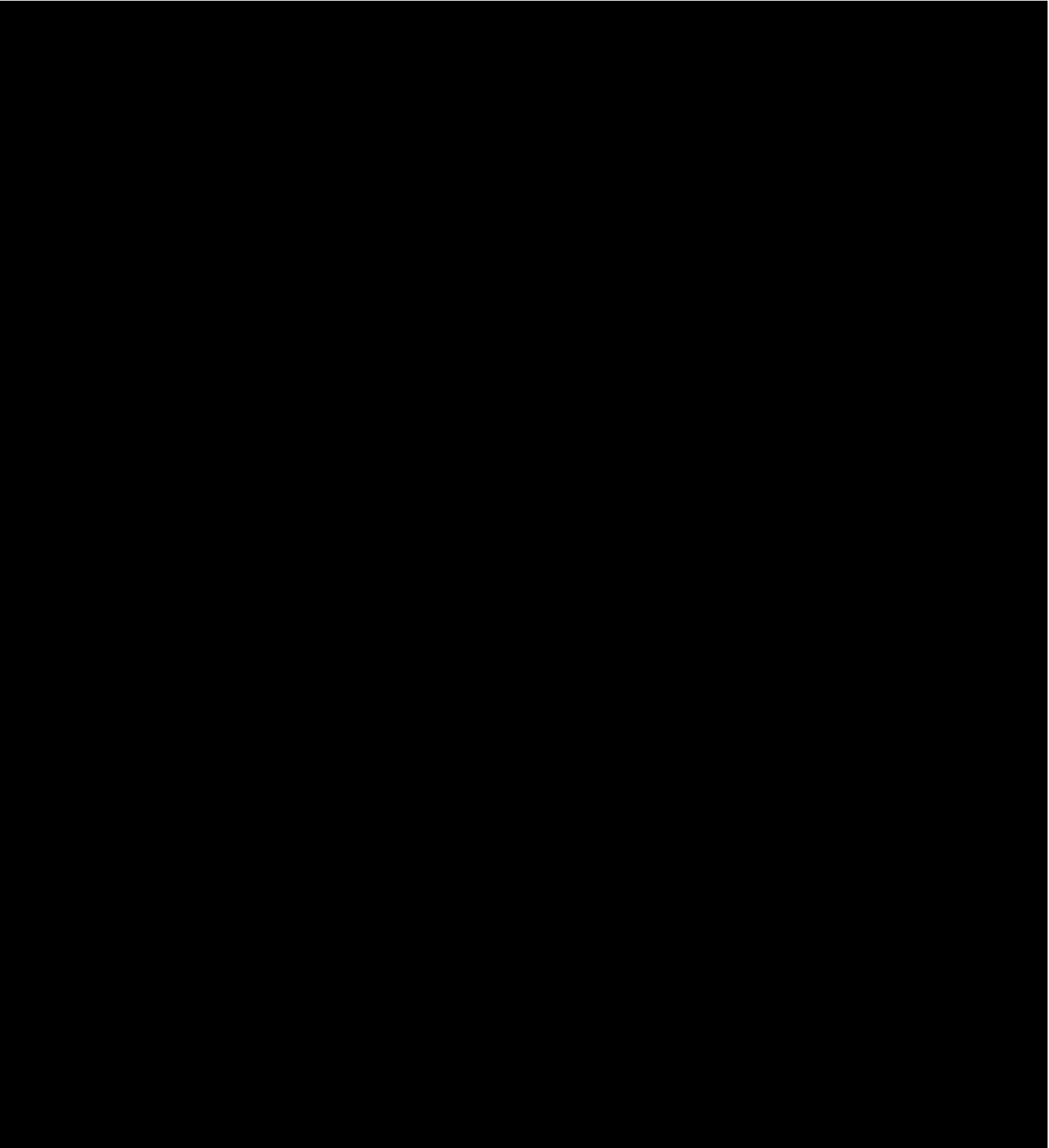

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**ANNEX V**

**Rules of Internal Order**

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*Execution Version*

**ANNEX VI**

**Confidentiality Declaration Associate members**

**PCR Associate Member Confidentiality Declaration**

**in respect of information provided to PCR Associate Members**

This PCR Associate Member Confidentiality Declaration is entered into on \_\_\_\_\_ towards and to the benefit of:

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS, (“Nord Pool”)** 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,
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED];
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;
8. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa,

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Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

And

any future adhering party to PCR Co-ownership Agreement, as described below,

Hereafter together the **"PCR Members"**

**WHEREAS:**

1. Nord Pool, EPEX Spot and OMIE (previously named OMEL) have entered into a collaboration regarding technical assessment concerning an European Price Coupling cooperation (the **"PCR Cooperation"**). This PCR Cooperation is formalized by a Letter of Intent dated 18 of June 2009 (hereinafter **"LoI"**) signed by these three parties;
2. For the purpose of the PCR Cooperation, Nord Pool, EPEX Spot and OMEL have also entered into an Agreement Governing the Confidentiality and Use of Data in View of Assessing the Day-Ahead Price Coupling of Regions (hereinafter **"Data Sharing Agreement"**) dated 18 August 2009;
3. Nord Pool, EPEX Spot and OMEL agreed to extend the LoI to APX-ENDEX, Belpex and GME through an adherence process which was previously subjected to the signature, on 12 January 2010, by all the afore mentioned parties of a Confidentiality Agreement (also referred to as **"Non Disclosure Agreement or NDA"**) setting forth the terms and conditions under which a copy of the LoI and of the Data Sharing Agreement would be disclosed to APX-ENDEX, Belpex and GME;
4. On the 23<sup>rd</sup> of February 2010, APX-ENDEX, Belpex and GME adhered to the LoI and to the Data Sharing Agreement by signing with EMCO, EPEX Spot and OMEL, respectively, an Adherence Letter to the LoI (the **"Adherence Letter"**) and an Amendment to the Data Sharing Agreement (the **"First Amendment Agreement"**). The latter has been further amended on 9 December 2010 (the **"Second Amendment Agreement"**) with the purpose of extending the original agreement from the "study" phase, focused on the common analysis of the effects of the Day-Ahead Price Coupling of Regions, to the "algorithm selection" phase, regarding the screening of an algorithm that could be used to perform the Day Ahead Price Coupling of Regions. For such "algorithm selection" phase, a specific obligation for PCR Members to produce a confidentiality declaration by the individuals involved in the selection operations has been provided for;
5. Following an expression of interest by third parties, the PCR Members are willing to grant an *ad hoc* status, named PCR associate member status, in light of their possible participation to the PCR Cooperation. Such acknowledgment shall be formalized, in a PCR Cooperation Steering Committee (hereinafter: SC) written assessment which shall enforce the rights and the obligations set forth by the present Confidentiality Declaration;
6. The PCR associate member status implies, as core feature, the access to a part of the PCR documentation uploaded on a PCR project management web based tool named Projectplace (hereinafter: **"Projectplace"**), for the purpose of the examination and/or deeper understanding of this documentation;
7. Bearing in mind that the PCR documentation contains confidential business information, the PCR Members are willing to provide access to a part of these documents in the context of the PCR associate

member status, provided that confidentiality is sufficiently guaranteed and thus the PCR associate member status is subject to the PCR Associate Member undertaking towards the PCR Members the commitments set forth in this Confidentiality Declaration (hereafter the “**Confidentiality Declaration**”).

**NOW THEREFORE:**

[*Company name of the PCR Associate Member*] , a company duly organized and existing under the laws of [*Country*], with registered office in [*address of the PCR Associate Member*] , registered with [...] under number [*Company number, VAT number*], duly represented by [ *Representative*] in his capacity of [*Title*], hereafter referred to as “[*Company Shortname*]” or “the **PCR Associate Member**”,

**HEREBY ACCEPTS THE FOLLOWING AND COMMITS TOWARDS THE PCR MEMBERS TO COMPLY WITH THE FOLLOWING:**

**1. CONFIDENTIAL INFORMATION**

1.1. The term “**Confidential Information**” as used in this Confidentiality Declaration means all information whether or not marked as confidential, directly or indirectly related to the PCR Cooperation, which a PCR Member provide(s) verbally or in writing or give(s) access to through the Projectplace (hereafter each, also, a “**Disclosing Party**”), to the PCR Associate Member for the purpose of the examination and/or deeper understanding of the documentation in light of the possible adherence to the PCR Cooperation (the “**Examination**”).

The information (to be strictly interpreted) defined in Article 3 of this Confidentiality Declaration (hereinafter referred to as the “**Available Information**”) is not to be considered as Confidential Information.

1.2. Confidential Information may only be published after formal approval of all the PCR Members or in the case of mandatory disclosure for regulatory reasons as set out in Article 3. The published part of the Confidential Information shall therefore be regarded as Available Information from that moment as defined under article 3, provided the conditions required under this Article 1.2 are met.

**2. NON DISCLOSURE OF CONFIDENTIAL INFORMATION**

2.1. The PCR Associate Member hereby expressly undertakes towards the PCR Members that it shall:

(i) not disclose, convey or transfer to any party other than a PCR Member Confidential Information in any form whatsoever without the express, prior written consent (including email) of the Disclosing Party;

(ii) not use the Confidential Information in any way or for any purpose other than the Examination unless such other use is previously and specifically authorized in writing (including email) by the Disclosing Party;

(iii) not incorporate Confidential Information into data, documents, databases, or any other support other than necessary for the Examination unless the Disclosing Party has given its prior

## *Execution Version*

written explicit consent (including e-mail) to this incorporation; should such material necessary for the PCR Cooperation be meant for publication or disclosure, such publication or disclosure shall not be made without the fulfillment of the requirements assessed in Article 1.2;

(iv) not copy or reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the Examination;

(v) not share nor disclose in any manner whatsoever any Confidential Information with any person or entity (even if such person or entity is an affiliate, holding company or subsidiary of the concerned party), other than the PCR Members;

2.2. The PCR Associate Member furthermore expressly undertakes towards the PCR Members that it shall:

(i) immediately notify the Disclosing Party in writing (including email) in the event of any unauthorized use or disclosure of Confidential Information of the Disclosing Party and take all reasonable steps to mitigate any harmful effects the Disclosing Party may sustain or incur as a result of such a breach of this Confidentiality Declaration;

(ii) immediately (and in any event within three days) return or destroy all Confidential Information in any tangible form whatsoever at the first written request of Disclosing Party;

(iii) indemnify the Disclosing Party in accordance with this Confidentiality Declaration (see Article 4.3 and Article 4.4. below).

### **3. AVAILABLE INFORMATION**

3.1. Notwithstanding Article 2, the PCR Associate Member may disclose Confidential Information it has received:

(i) If it can document by written evidence that the information was known to it prior to the disclosure, through no breach of a confidentiality obligation towards the Disclosing Party;

(ii) If it can document by written evidence that the Confidential Information has come into the public domain through no fault or negligence of the PCR Associate Member;

(iii) If, in the event of disclosure by a PCR Associate Member to its directors, members of management, officers, employees, (referred to as "Internal Representative"), subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (referred to as "External Representative"), the following conditions are met:

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

b) the Internal Representative or an External Representative is informed by the PCR

## Execution Version

Associate Member of the confidential nature of the Confidential Information; and

- c) the Internal Representative or an External Representative is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Confidentiality Declaration.
- d) For the avoidance of doubt, the Parties confirm that the Disclosure of Confidential Information in the circumstances foreseen under (iii) of this article does not affect the confidential character of the Confidential Information so exchanged.
- e) The PCR Associate Member undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal and External Representatives to whom Confidential Information is disclosed.

It is understood that the Recipient remains at all times fully liable pursuant to the present art 3 n. (iii) for any breach by its Internal Representative or External Representative

(iv) If the PCR Associate Member is requested to disclose all or any part of the Confidential Information pursuant to an applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if the PCR Associate Member considers itself to be under a legal obligation to disclose all or part of the Confidential Information, in which case the PCR Associate Member undertakes to:

- a. immediately and in any case prior to proceeding with any disclosure (and to the extent lawful), notify the Disclosing Party of the existence, terms and circumstances surrounding such request or legal obligation; and
- b. if consistent with the terms assigned by law or public authority to disclose the Confidential Information, consult with the Disclosing Party on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the Disclosing Party to take such legal steps itself, and to agree on the content and form of the Confidential Information to be disclosed;  
and
- c. if disclosure of such Confidential Information is required, exercise its best efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed. Best efforts shall mean performing its obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result ("*middelenverbintenis*" / "*obligation de moyen*").

## 4. RESPONSIBILITY

## *Execution Version*

- 4.1. The PCR Associate Member acknowledges and agrees that a Disclosing Party shall have no liability with respect to the use by the PCR Associate Member of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Disclosing Party and the PCR Associate Member.
- 4.2. The PCR Associate Member acknowledges and agrees that in case of a breach by the PCR Associate Member of any of its obligations under this Confidentiality Declaration, the Disclosing Party shall be entitled to cease immediately the disclosure of any further Confidential Information and to claim full compensation of the PCR Associate Member for any and all direct losses, damages, charges, fees or expenses, expected and unexpected, arising out, or resulting from, such breach of the terms of this Confidentiality Declaration. The indemnification obligations of the PCR Associate Member shall at all times be limited to a cap of hundred thousand Euro (100.000 €) per claim, except in the event of fraud or intentional breach by the PCR Associate Member in which cases the indemnification obligations shall be uncapped. In no event a PCR Associate Member shall be liable for consequential or indirect damages, such as loss of profit, loss of business, reputation damage or incidental damages of any kind, except in the event of fraud or intentional breach by the PCR Associate Member in which cases the indemnification obligations shall be uncapped .
- 4.3. The PCR Associate Member undertakes to hold the Disclosing Party harmless and indemnify it against any third-party claim, including claims of participants to the market operated by the Disclosing Party, directly related to a breach by a PCR Associate Member of its obligations under this Confidentiality Declaration.
- 4.4. The PCR Associate Member acknowledges that unauthorized disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Disclosing Party. Accordingly, the PCR Associate Member agrees that the Disclosing Party may seek immediate injunctive relief to enforce obligations under this Confidentiality Declaration in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.
- 4.5. The rights a PCR Member may have against third parties pursuant to a confidentiality agreement shall in no event affect a PCR Member's right to claim damages under this Article 4 from the PCR Associate Member (to the extent that such damages have not yet been recovered by the claiming PCR Member with the third party).

## **5. INTELLECTUAL PROPERTY RIGHTS (IPR)**

- 5.1. All rights, title and interest in and to the Confidential Information shall be retained by the Disclosing Party/ies.
- 5.2. This Confidentiality Declaration shall not be construed as granting the PCR Associate Member any license right or any other right related to the Confidential Information and its future use, except to the extent as set out in this Confidentiality Declaration or unless such is agreed upon in a separate, written, specific and signed agreement.

## **6. ENTRY INTO FORCE, TERM AND TERMINATION**

- 6.1. This Confidentiality Declaration enters into force as of the date of its signature by the PCR Associate Member provided that its associate member status has been conferred in writing by the SC. In respect of any adhering party to the PCR Agreements, this Confidentiality Declaration shall enter into force as of the date in which such new PCR Member shall inform in writing (including e-mail) the PCR Associate Member about the completion of its adherence process to the PCR Agreements.
- 6.2. This Confidentiality Declaration shall remain in effect towards the PCR Members for the duration of the PCR associate member status of the PCR Associate Member, with a maximum of two (2) years. The PCR Associate Member may terminate its PCR associate member status by giving the PCR Members by 14 (fourteen) days prior written notice. The PCR Members may terminate the PCR associate member status by giving the PCR Associate Member 14 (fourteen) days prior written notice. In the event of expiration or termination by the PCR Associate Member of its PCR associate member status the obligations of confidentiality and restriction of use of the Confidential Information shall survive the expiration or termination for ten (10) years.
- 6.3. Upon termination of this Confidentiality Declaration, the PCR Associate Member undertakes within eight (8) days following termination of this Confidentiality Declaration:
  - i. To return to the Disclosing 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 the Confidential Information; or
  - ii. To destroy all documents and other material in its possession, custody or control which bear or incorporate any part of the Confidential Information or which are produced by using any part of the Confidential Information (except that a copy may be kept if necessary for recordkeeping purposes) and to certify to the Disclosing Party that this has been done.

## **7. PCR ASSOCIATE MEMBER STATUS AND ADHERENCE TO THE PCR COOPERATION**

- 7.1. For the avoidance of doubt, the PCR Associate Member agrees that the granting of PCR associate member status does not constitute adherence to the PCR Cooperation. The adherence to the PCR Cooperation by the PCR Associate Member shall require its explicit written consent with its content to be formalized in writing by adherence to the Lol, the Data Sharing Agreement (as amended), the NDA and any other agreement the PCR Members may have concluded in respect of the PCR Cooperation. Nothing in this Confidentiality Declaration, nor the exchange of Confidential Information with or use of the Confidential Information by the PCR Associate Member shall be deemed to constitute an expression of the adherence to the PCR Cooperation. The PCR Associate Member shall agree beforehand with the PCR Members on any external communication related to such adherence. The PCR Associate Member agrees and accepts that it has no decision rights in respect of the PCR Cooperation as long as it has not adhered to the PCR Cooperation.
- 7.2. Without prejudice to Article 7.1 by signing this Confidentiality Declaration, the PCR Associate Member commits to support the PCR Cooperation and acknowledges that the PCR Members are free to promote

further extension of PCR to new members or Associate Members.

## **8. MISCELLANEOUS**

- 8.1. Severability. If any term of this Confidentiality Declaration is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective by operation of law, then this Confidentiality Declaration, including all of the remaining terms, will remain in full force and the PCR Associate Member and the PCR Members shall negotiate in good faith to replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to their intentions.
- 8.2. Beneficiaries. For the avoidance of doubt the PCR Associate Member acknowledges that the commitments hereunder are its binding commitments towards each of the PCR Members individually and agrees and accepts that the PCR Members may, individually or collectively, claim performance by the PCR Associate Member in compliance with this Confidentiality Declaration.
- 8.3. Assignment. This Confidentiality Declaration shall protect the PCR Member and its permitted assignees and successors in interest. A PCR Member may assign its rights hereunder to another third party, provided the PCR Associate Member is informed thereof by written notification.

## **9. DISPUTE PROCEDURE**

- 9.1. In case of a dispute between the PCR Associate Member and one or more PCR Members, arising out of or in relation with this Confidentiality Declaration, the PCR Associate Member undertakes to meet in good faith with the concerned PCR Members at their first written request to resolve such dispute without recourse to legal proceedings and to achieve a reasonable and fair amicable settlement amongst each other within fourteen (14) days, or within any other timeframe agreed between the PCR Associate Member and the concerned PCR Members after the PCR Members' request.

Should the parties to the dispute not reach an amicable settlement within the above set days, or within the aforementioned agreed timeframe, the dispute will be submitted for settlement to the Chief Executive Officers of each of the parties concerned or any person appointed to this aim by the party concerned. The most diligent party shall thereto address a written request (telefax, e-mail, etc.) for settlement to the Chief Executive Officer(s) of the other party (s) or any person appointed to this aim.

- 9.2. If no amicable settlement can be reached by the Chief Executive Officers of each of the parties to the dispute or any person so appointed within fourteen (14) days, or within any other timeframe agreed between the parties to the dispute, following written request of the PCR Members referred to in Article 9.1, the PCR Associate Member commits to enter into an arbitration agreement with the PCR Members at their first request, with a view to submit the dispute to arbitration under the International Chamber of Commerce (hereafter the "ICC") rules, provided such agreement foresees that:
  - a) the arbitral tribunal shall have three arbitrators, regardless of the number of the parties involved,
  - b) the place of arbitration shall be Paris and all procedures shall be in English,
  - c) the award of the arbitration will be final and binding upon the Parties concerned.

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9.3. Nothing in this Article shall preclude the PCR Members from applying for injunctive relief in summary proceedings before any competent court.

9.4. This Confidentiality Declaration is governed and shall be construed in accordance with Belgian law.

IN WITNESS WHEREOF the PCR Associate Member has caused its duly authorized representative to execute this Confidentiality Declaration in seven (7) original copies on the date first mentioned above.

[Company name of PCR  
Associate Member]

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—  
[Name]  
[Title]

**ANNEX VII**

**Contacts**

**Parties' general contact details**

This Annex VII to the PCR Co-ownership Agreement provides an overview of the Parties' contact details of for general notifications.

**2. Contact person for notifications in general**

Party	Name contact person	Contact address	Telephone	Email
EPEX Spot SE	[REDACTED]	[REDACTED] [REDACTED] [REDACTED]		[REDACTED]
Nord Pool	[REDACTED]	[REDACTED] [REDACTED]		[REDACTED] [REDACTED]
GME	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]		[REDACTED] [REDACTED] [REDACTED] [REDACTED]
OMI-Polo Español, S.A.	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]		[REDACTED]
OPCOM	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]		[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
HELLENIC ENERGY EXCHANGE S.A.	[REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]		[REDACTED] [REDACTED] [REDACTED]
OTE, a.s.	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]

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Party	Name contact person	Contact address	Telephone	Email
TGE	██████████ ██████████	██████████ ██████████ ██████████	██████████ ██████████ ██████████ ██████████	██████████ ██████████

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**ANNEX VIII**

**Financial aspects of the PCR Cooperation**

**7. GENERAL**

**8. PCR CO-OWNER COSTS**

**8.1 Costs of changes to Co-Owned Assets outside the scope of the SDAC PCR Co-OWNER INCOME**

**9. PCR CO-OWNER INCOME**

**9.1 Adherence of a new Party**

**9.2 Licensing of First Class Co-Owned Assets and service provision using First Class Co-Owned Assets**

**9.3 Services provisions by PCR Parties to third parties**

**10. INVOICING AND PAYMENTS OF PCR INCOME AND PCR COSTS**

**11. BUDGETING**

**12. STANDARD MAN DAY TARIFF**



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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9. PCR CO-OWNER INCOME

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**10. INVOICING AND PAYMENTS OF PCR CO-OWNER INCOME AND PCR CO-OWNER COSTS**

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**11. BUDGETING**

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[Redacted]

[Redacted]

**12. STANDARD MAN DAY TARIFF**

[REDACTED]

**Attachment 1 – Definition list**

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<b>“Adherence Fee”</b>	Shall have the meaning set forth in Paragraph 3.1
<b>“Co-funders”</b>	means Party(ies) which have paid relevant costs of the change request or new development according to paragraph 2.1 of this Annex
<b>“Contributor”</b>	means a Party participating through direct payment in PCR costs according to the Sharing Key
<b>“Historical Costs”:</b>	with respect to each Adhering Party, means the amount equal to the sum of all the PCR Common Costs incurred by the Parties until the adherence of such Adhering Party
<b>“Isolated Mode”</b>	For the purpose of this Annex VIII, a Third Party PX shall not be considered as operating its own electricity market in “Isolated Mode” when: <ul style="list-style-type: none"><li>iv) the geographical area of the Bids to be matched by this Third Party PX is within the Bidding Areas of the EU countries or part thereof,</li><li>v) or the geographical area of the Bids to be matched by this Third Party PX is within Bidding Areas that are already in operations and coupled with at least one Bidding area of the EU countries and part of the operational PCR Market Coupling,</li><li>vi) or a project is effectively launched to fulfil the above ii).</li></ul>
<b>“Licensed NEMO”</b>	Means each designated NEMO, non PCR co-owners, which has entered into the NEMO License Agreement, in accordance with Article 6.1.2.3
<b>“Licensed PX”</b>	means a Third Party PX granted with a License by a PX Licensing Party in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the PCR Co-ownership Agreement
<b>“Licensed TSO”</b>	means any TSO granted with a License by all Parties in accordance with Article 6.1.2.2 of the PCR Co-ownership Agreement

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<b>“PX Licensing Party”</b>	means any Party granting a License to a Third Party PX in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the PCR Co-ownership Agreement
<b>“NEMO License Agreement”</b>	means the standard license agreement as provided in Annex XII Part B of the PCR Co-Ownership Agreement
<b>“NEMO License fee”</b>	Shall have the meaning set forth in Paragraph 3.2.7 of this Annex
<b>“One Time Amount Fee”</b>	means a lump sum amount, as further described in Paragraph 3.2 of this Annex, to be paid by the Servicing Party/ PX Licensing Party for the right to Use Co-Owned Assets for the benefit of a Serviced PX or Third Party PX.
<b>” PCR Co-owners Costs”</b>	The cost items listed under section 2 of this Annex
<b>“Quarterly Balance”</b>	Shall have the meaning set forth in Section 4.2.1
<b>“Standard Man Day Tariff”</b>	Standard Day Tariff means the amount defined in section 6
<b>“Third Party PX”</b>	means a PX which is not a Party to the PCR Co-ownership Agreement

**Attachment 2: Practical details for invoicing**

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- PX recipient of the invoice: Company name, VAT number and complete address and email address to which the invoice **will be sent**

- GME

[Redacted]  
[Redacted]  
[Redacted]  
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[Redacted]  
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[Redacted]  
[Redacted]

- OMIE

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[Redacted]  
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[Redacted]  
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[Redacted]

- Nord Pool

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[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]  
[Redacted]

○ EPEX

[REDACTED]

○ OTE

[REDACTED]

○ OPCOM

[REDACTED]

○ TGE

[REDACTED]

- HEnEx

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**ANNEX IX**  
**Standard Power of Attorney**

INSERT NAME] for [INSERT SHORT DESCRIPTION OF SERVICES] services

This PCR Power of attorney (hereafter **“PoA”**) by and between:

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1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS (“Nord Pool”)**, 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,
4. **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, 4th floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;
8. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

and

**WHEREAS:**

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1. The Parties entered into a Co-ownership Agreement (hereinafter the “PCR Co-ownership Agreement”) and a Co-Ownership Agreement (hereinafter the “PCR Co-ownership Agreement”), which both entered into force on the 13th of June 2012, containing the terms and conditions of their cooperation in respect of the implementation of the European day-ahead price coupling of regions (hereinafter the “PCR Cooperation”).

2. On [DATE], the [PCR COMPETENT BODY] (as defined in Schedule 3) decided to select a provider (hereinafter the “**Contractor**”) for the provision of [SHORT DESCRIPTION OF SERVICES] (the “**Services**”) via a procurement procedure (“**Procurement**”) in accordance with art 4.9 of the PCR Co-ownership Agreement and Annex IV to the PCR Co-ownership Agreement. The Services are fully described in Schedule 2.

alternatively

3. On [DATE], the [PCR COMPETENT BODY] decided to appoint [NAME OF CONTRACTOR] (the hereinafter “**Contractor**”) for the provision of [SHORT DESCRIPTION OF SERVICES] (hereinafter the “**Services**”) in accordance with art 4.9 of the PCR Co-ownership Agreement and Annex IX to the PCR Co-ownership Agreement,. The Services are fully described in Schedule 2.

4. On the [DATE], the [PCR COMPETENT BODY] decided to appoint [NAME OF CONTRACTING PARTY] as the counterparty of the Contractor [or IF APPLICABLE as Procuring PX (as defined in Schedule 3)] in accordance with art 4.9 of the PCR Co-ownership Agreement and Annex IX [or IF APPLICABLE Annex IV] to the PCR Co-ownership Agreement. [NAME OF CONTRACTING PARTY] has been identified by the other Parties as the best qualified power exchange for the performance of such role.

5. Therefore the Parties wish that the appointment of [NAME OF CONTRACTING PARTY] as counterparty of the Contractor [or IF APPLICABLE as contracting Party in charge of the Procurement] is set forth through this PoA providing the terms and conditions under which [NAME OF CONTRACTING PARTY] will [or IF APPLICABLE conduct the Procurement and] contract a services agreement in its own name, on its own behalf and on behalf of the other Power Exchanges, according to the instructions unanimously agreed by the Parties (hereinafter the “**Services Agreement**”).

**NOW THEREFORE IT IS DECLARED AND AGREED AS FOLLOWS:**

**ARTICLE 1. SUBJECT MATTER**

1.1 This PoA sets forth the terms and conditions under which:

- i) [IF APPLICABLE the Procurement shall be conducted];
- ii) the Service Agreement with the Contractor shall be entered into by the Contracting Party;
- iii) the Costs (as defined in Schedule 3) and Fees (as defined in Schedule 3) shall be shared between the Parties.

**ARTICLE 2. POWER OF ATTORNEY**

- 2.1 The Parties other than [NAME OF CONTRACTING PARTY] (hereinafter "Appointing Parties") hereby appoint [NAME OF CONTRACTING PARTY], which accepts such appointment [IF APPLICABLE as Procuring PX and, therefore,] as counterparty of the Contractor in the Service Agreement (hereinafter "Contracting Party"). For this purpose, the Appointing Parties grant the Contracting Party with the powers to act in its own name, on its own behalf and on behalf of the Appointing Parties in order to:
- i) [IF APPLICABLE carry out the Procurement for the selection of ..... pursuant to the terms and conditions set out under Schedule....;]
  - ii) [IF APPLICABLE appoint an internal procurement manager unanimously indicated by the Parties (hereinafter "**Procurement Manager**") as the internal superintendent of the Procurement and special point of contact for the candidates participating in the Procurement;]
  - iii) [IF APPLICABLE select the Contractor, being understood that all instructions and all decisions to be taken in the contest of the Procurement shall be decided unanimously by the Parties;]
  - iv) enter into the Service Agreement, according to the instructions unanimously agreed by all Parties by the way of the decision of the Steering Committee (as defined in Schedule 3) or of any other body of the PCR Cooperation designated by the latter.
  - v) pay in its own name, on its own behalf and on behalf of the Appointing Parties the Costs and Fees due to the Contractor in accordance with the provisions of the Service Agreement;
  - vi) act in its own name, on its own behalf and on behalf of the Appointing Parties as special point of contact of all Power Exchanges (hereinafter "SPOC") for the management of the contractual relationship with the Contractor.
- 2.2 The Contracting Party agrees not to charge any fee to the Appointing Parties for the execution of its obligations under this PoA. The gratuity of the PoA does not affect the liability of the Contracting Party towards the Appointing Parties, in accordance with this PoA, being understood that the Contracting Party shall use that same degree of diligence as when the PoA would have been granted upon payment;

**ARTICLE 3. CONTRACTUAL RELATIONSHIP**

- 3.1 The Services Agreement to be entered into with the Contractor by the Contracting Party in its own name, on its own behalf and on behalf of the Appointing Parties shall be based on the template Services Agreement enclosed in this PoA as Schedule 2. All deviations thereto shall be agreed upon by the Parties in writing, including via mail, by the way of the decision of the Steering Committee or of any other body of the PCR Cooperation designated by the latter.
- 3.2 In the event of negotiations with the Contractor, the Contracting Party shall regularly inform the Appointing Parties on the content and status (including the then current draft of Services Agreement) of such negotiations, as well as provide them with the execution version of the Services Agreement. For the avoidance of any doubt, the final version of the Services Agreement shall be approved, in accordance with art. 2.1 n. iv) above, by the Parties by means of a prior decision of the Steering Committee or of any other body of the Cooperation designated by the latter.

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- 3.3** The Contracting Party will not be entitled to enter, amend, terminate, renew or withdraw from [IF APPLICABLE the Procurement or] from the Services Agreement without the previous written consent of all the Parties by means of a prior decision of the Steering Committee or of any other body of the PCR Cooperation designated by the latter. For the avoidance of any doubt, the present provision applies also to any pre-contractual arrangement related to the Services Agreement which may be preliminary enforced with the Contractor.
- 3.4** The Steering Committee or any other body of the PCR Cooperation designated by the latter shall approve all instructions to Contractor which imply:
- (i) any binding or material decision,
  - (ii) any decision with an impact on the planning,
  - (iii) any decision with a financial impact,
  - (iv) any decision to conclude a change request on the Services Agreement, or to conclude any agreement in relation thereto,
- 3.5** Decisions of the Steering Committee or of any other body of the PCR Cooperation designated by the latter in this respect shall be taken with unanimity. Contracting Party shall inform the Contractor of such decisions. Pursuant to art 2.1 n. vi), Contracting Party shall represent and act as SPOC for the management of the contractual relationship with the Contractor including all issues related to invoicing and payment in relation to the Services and Costs. Contracting Party shall keep the other Parties informed of any issues related to the contractual relationship with the Contractor and, with specific reference to issues related to invoicing and payment, shall promptly, and in any event no later than [OPTIONAL 5] days from the date of receipt, transmit to the other Parties any notice received from Contractor in respect of invoicing and payment.

### **ARTICLE 4. COST RECOVERY AND INVOICING**

- 4.1** The Fee and Costs shall be shared equally by all Parties, APX-ENDEX and Belpex being considered as one party as long as Belpex is a **Wholly Affiliated Undertaking** (as defined in Schedule 3) of APX-ENDEX. Therefore, consistently with art. 2.2 above, Contracting Party has no right to recover any amount which does not qualify as a Fee or a Cost.
- 4.2** Consequently, Contracting Party shall be entitled to recover an equal share of the Fee and the Costs, from each of the other Parties (APX-ENDEX and Belpex being considered as one party for the purpose of this article as long as Belpex is a **Wholly Affiliated Undertaking** of APX-ENDEX), provided that the following procedure is duly fulfilled:
- a. the Contractor shall send, within the deadline provided in the Services Agreement, pro-forma invoice and related detailed timesheets (if applicable) to the Contracting Party and, in copy mode, to each Appointing Party's representative within the Steering Committee or within any other body of the PCR Cooperation designated by the latter using the e-mail contact information mentioned in Schedule 1.

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- b. The Parties, by unanimous decision of the Steering Committee or of any other body of the PCR Cooperation designated by the latter, shall approve the pro-forma invoice within [OPTIONAL five (5)] Business Days (as defined in Schedule 3) from its receipt date. In particular, the Parties agree that the pro-forma invoice is deemed accepted if no objection is raised by a Party within the [OPTIONAL fifth (5th)] Business Day from its receipt date. Approval of the pro-forma invoice may not unreasonably be withheld by the Parties.
  - c. Once the Contracting Party has duly received the approval of the pro-forma invoice by the Steering Committee or of any other body of the PCR Cooperation designated by the latter, it shall request the Contractor to issue the invoices.
  - d. Following the receipt of the Contractor's invoice, the Contracting Party shall issue and distribute the respective invoices via e-mail to each Appointing Party with the pro-rata amounts due for each Appointing Party. The invoices issued by the Contracting Party shall also bear the same descriptions of the rendered services and of the Costs incurred as provided in the pro-forma invoice issued by the Contractor.
  - e. Each Appointing Party shall pay to the Contracting Party its own pro-rata amount within thirty (30) calendar days from the date on which each invoice, issued by Contracting Party is received by email by the respective Appointing Party (invoicing contacts indicated in Schedule 1), if duly compliant with EU VAT regulation in force.
- 4.3** In the event of interruptions in electricity or in operation of data transmission lines, Parties shall agree on an alternative transmission device for the invoices. If no agreement shall be reached within 48h from the interruption, hard copy invoices shall be sent also by courier. In any case, the standard email transmission shall be continued as soon as the interruption it's terminated.
- 4.4** Payments due on a day other than a Business Day shall be made on the first following Business Day. All payments shall be made by wire transfer to the bank account indicated by Contracting Party on the invoice.
- 4.5** Without the prior approval of the Steering Committee or of any other body of the PCR Cooperation designated by the latter, no Appointing Party may withhold payments to the Contracting Party's invoices for recovering the Fees and Costs incurred by the performance of the Services Agreement, even in case of non-fulfilment or breach by Contractor.
- 4.6** Subject to the provisions of the Services Agreement and applicable mandatory law, the Contracting Party will be entitled to claim damages and compensation from the Contractor based on the breach of the Services Agreement by the Contractor:
- i. if such breach of the Services Agreement leads to a detrimental effect or damage for the Contracting Party;
  - ii. if such breach of the Services Agreement leads to a detrimental effect or damage for one or more Appointing Party(ies) (hereafter the "**Concerned Party(ies)**").

Subject to the provisions of the Services Agreement and applicable mandatory law, the Appointing Parties shall also be entitled to claim damages and compensation from the Contractor based on the breach of the Services Agreement by the Contractor.

- 4.7** The Parties shall equally share any costs and indemnification which may arise from any claim against the Contracting Party raised by the Contractor or by any other third party directly related to the execution of this PoA, provided that such claim is not deriving from a breach of the present PoA by the Contracting Party.
- 4.8** In the event the Contractor or any other third party directly related to the execution of this PoA has paid the Contracting Party damages, lump sum indemnification (if any) or any other compensation, the Parties shall equally share the amount received unless the Parties, by unanimous decision of the Steering Committee or of any other body of the PCR Cooperation designated by the latter, decide otherwise.

#### **ARTICLE 5. LIABILITY AND DISPUTE RESOLUTION**

The Parties hereby confirm that all relevant provisions of the PCR Co-ownership Agreement shall apply to any breach or dispute related to the present PoA.

#### **ARTICLE 6. ENTRY INTO FORCE AND TERMINATION**

- 6.1** This PoA shall enter into force on [...]. Should the Parties not sign on the same date, the date of the last signature will trigger the entry into force.
- 6.2** This PoA is entered into for the duration of the Services Agreement.
- 6.3** The Parties accept and acknowledge the importance of legal and regulatory requirements to which they are subject as market operators. Consequently, each Party may request to reasonably amend or, if necessary, and without court intervention, terminate the PoA immediately by registered letter without having to compensate the other Parties for such amendment or termination, if a legislative or regulatory text, decree, decision issued by a competent regulatory authority, or an opinion, proposal or demand issued by such an authority, require any such amendment or termination.
- 6.4** Without any court intervention and without any compensation being due, each Party may, wholly or partly, terminate the PoA by registered letter with acknowledgement of receipt with immediate effect in respect to the Party which:
- (i) ceases its business or becomes the object of a liquidation or dissolution;
  - (ii) is the object of an appointment of a receiver, or admitted in writing its inability to pay its debts generally as they come due (to the extent compatible with applicable law);
  - (iii) in the event of a significant and detrimental change in the legal status, legal structure, the activities and/or the financial situation of such Party, which reasonably leads to the conclusion that the terms and conditions of this PoA can or will, in a nearby future, no longer be satisfactorily complied.
- 6.5** This PoA will be automatically terminated in respect of a Party who exits from the PCR Co-ownership Agreement. In case of full termination of the PCR Co-ownership agreement, this PoA shall not be automatically terminated. In such case the Parties shall in good faith consider the following options:
- (i) - to terminate the Services Agreement,
  - (ii) - to renegotiate the Services Agreement,

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- (iii) - to continue the execution of the Services Agreement under the same terms and conditions.
- 6.6** In case one or more Parties terminate(s) this PoA or in case one or more third parties would like to adhere to this PoA, the Steering Committee or any other body of the PCR Cooperation designated by the latter shall assess the impact on the Services Agreement of such termination or adherence in view, among other possible aspects, of the cost recovery applicable between the Parties. In particular, the Steering Committee or of any other body of the PCR Cooperation designated by the latter shall consider the following options:
- (i) - to terminate the Services Agreement,
  - (ii) - to renegotiate the Services Agreement,
  - (iii) - to continue the execution of the Services Agreement under the same terms and conditions.
- 6.7** It is understood that if one or more Appointing Parties terminate this PoA, the PoA will continue to be valid and effective between Contracting Party and the non-terminating Appointing Parties. Upon termination of the PoA by one or more Appointing Parties, Contracting Party will only be entitled to recover the amounts under Article 4 from the terminating Appointing Party(s) if related to Services performed by Contractor before such termination.

## **ARTICLE 7. MISCELLANEOUS PROVISIONS**

- 7.1** This PoA constitutes the entire agreement between the Parties with respect to the subject matter thereof and supersedes any prior or contemporaneous agreements, whether oral or written, between the Parties with respect to said subject matter. Therefore, No Party has relied upon any other promise, representation or warranty other than those contained herein, in executing this PoA.
- 7.2** If one or more of the provisions of this PoA is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this PoA is not affected in any material manner adverse to any Party. In such event, the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- 7.3** The Parties agree that the working language for all notifications and for all matters relating to this PoA shall be English, to the extent compatible with the applicable provisions of mandatory law, if any.
- 7.4** The Schedules to this PoA form an integral part thereof and any reference to this PoA shall include a reference to the Schedules and vice versa.
- 7.5** Any change to this PoA can only be validly agreed upon in writing, duly signed by the legal representatives of the Parties with exception of Schedule 1.
- 7.6** Each Party acknowledges that the Parties to this PoA are independent entities and that it will not, except in accordance with this PoA, represent itself as an agent or legal representative of the other Party.
- 7.7** Neither Party may assign or transfer this PoA partially or as a whole, unless with the prior explicit written consent of the Parties which will not be unreasonably withheld, conditioned or delayed.

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- 7.8** No agency, partnership or joint venture relationship is created between the Parties as a result of this PoA.
- 7.9** The Parties shall be responsible for their individual commitments only and do not bear any joint and several liability under this PoA or the Services Agreement.
- 7.10** The present PoA is governed by and construed with [APPLICABLE LAW] without regard to the conflict of laws principles of it.

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**In witness thereof**, the Parties have caused their duly authorised representatives to execute the present Contract in ..... ( ...) original copies and each Party acknowledges having received its original copy.

**For EPEX**

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

**For GME**

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

**For Nord Pool**

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

**For OMIE**

Name:  
Function:  
Signature:  
Date:

\_\_\_\_\_

Name:  
Function:  
Signature:  
Date:

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**For OTE**

Name:  
Function:  
Signature:  
Date:

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Name:  
Function:  
Signature:  
Date:

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**For HENEX**

**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**For OPCOM**

**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**For TGE**

**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**Name:**  
**Function:**  
**Signature:**  
**Date:**

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**SCHEDULE 1 to PoA**

**I. General Contact**

**II. For invoicing and payments**

**a. Pro-forma approval - Steering Committee**

**b. Final invoicing and payments**

Contact information and addresses can be changed by sending a note to above mentioned addressees.

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**SCHEDULE 2 to PoA  
Service Agreement**

**CONTRACT FOR ..... SERVICES**

This agreement (hereafter the "**Agreement**") by and between:

....., a company incorporated under the laws of in the form of an .... (corporation), with registered office at .... ,..... , ....., hereto represented by .....and ....., duly authorized to act on the company's behalf for the present agreement hereinafter called "....." or the "**Contracting Party**".

**AND:**

....., a company incorporated and existing under the laws of ....., having its registered offices located in ....., registered with the Registry of Enterprises of ..... under n° ....., represented by ....., hereinafter called "**Contractor**",

..... and/or Contractor may also be indicated individually as the "**Party**" and/or collectively as the "**Parties**".

**WHEREAS [TO BE ADAPTED in respect of possible further descriptions regarding the services/service provider]:**

1. .... (hereinafter individually "**Power Exchange**" and collectively "**Power Exchanges**") entered into a co-ownership agreement (hereinafter the "**PCR Co-ownership Agreement**") containing the terms and conditions of their a cooperation in respect of the implementation of the European day-ahead price coupling of regions (hereinafter the "**PCR Cooperation**").
2. In the framework of the PCR Cooperation,, the Power Exchanges decided to select, [[IF APPLICABLE through a procurement procedure (hereinafter the "**Procurement**")], an external service provider for the provision of the services described in Annex I, (hereinafter the "**Services**").
3. Following its candidature, the Power Exchanges decided to assign the role of counterparty of the external service provider [or IF APPLICABLE contracting entity of the Procurement] to [NAME OF CONTRACTING PARTY], having the latter been identified as the best qualified Power Exchange for the performance of such role.
4. On ... the Power Exchanges have entered into a power of attorney (hereinafter the "**PoA**").which sets forth the terms and conditions under which [NAME OF CONTRACTING PARTY] shall sign the services agreement with the selected provider [or IF APPLICABLE manage the Procurement and enter into the services agreement with the provider selected via the Procurement]] in its own name, on its own behalf and on behalf of the other Power Exchanges.
5. On [DATE], consistently with terms and conditions set forth in the PCR Agreements, the Power Exchanges have appointed the Contractor as the best qualified provider of the Services [or IF APPLICABLE or

following the assessment of the candidates which have applied for the Procurement, Contractor has been appointed as the provider of the Services being the best qualified candidate participating in the Procurement].

6. Contractor has accepted this appointment and wishes to enter into this Agreement with the Contracting Party for the delivery of the Services under the terms and conditions of this Agreement [or IF APPLICABLE consistently with the proposal submitted in the Procurement and attached to the present Agreement as Annex 3].

**NOW THEREFORE IT IS DECLARED AND AGREED AS FOLLOWS:**

**Article 1. SUBJECT MATTER**

- 1.1. The present Agreement sets forth the terms and conditions under which the Contractor shall provide, against remuneration, the Services within the time limits agreed and strictly in accordance with the criteria of quality and performance set forth in the present Agreement
- 1.2. Contractor shall provide the Services to :
- 1.3. each of the Power Exchanges, and
- 1.4. any adhering party to the PCR Agreements, upon previous notification by the Contracting Party;
- 1.5. (these third parties under i and ii hereinafter referred to as a "Beneficiary" or "Beneficiaries")
- 1.6. Therefore, each Beneficiary shall be entitled to request directly from Contractor the provision of the Services [IF APPLICABLE: in accordance with the procedures described in Annex XXX [Service Description].
- 1.7. The Contracting Party, as sole counterparty of the Contractor, acts in its own name, on its own behalf and on behalf of the other Beneficiaries and shall be in charge of the contractual management of the Agreement.

**Article 2. CONTRACTUAL DOCUMENTS, VALIDITY AND PRECEDENCE**

- 2.1. The Services to be provided by the Contractor are governed by the terms and conditions of this Agreement. No other terms and conditions shall apply to the supply of Services under this Agreement, unless explicitly otherwise agreed in writing by the Parties.
- 2.2. The documents constituting this Agreement are:
  - (i) this Agreement;
  - (ii) the annexes and supplementary documents attached to this Agreement,
- 2.3. In the event of difficulty of interpretation, contradiction, ambiguity or difference between the documents constituting this Agreement, each document shall prevail over the following in the order listed above in this Article 2.2.

**Article 3. SERVICES PROVIDED BY THE CONTRACTOR**

- 3.1. The Contractor shall provide the Services in accordance with the specifications set forth in Annex 1.
- 3.2. [IF APPLICABLE Contractor shall not provide to third parties services identical or similar to the Services while the present Agreement shall be in force.]
- 3.3. The Contractor undertakes and warrants:
  - i) To render and provide the Services in strict compliance with all the requirements of this Agreement and any other further written specifications and/or requirements subsequently provided by the Contracting Party and/or the Beneficiaries as far as those further specifications and/or requirement are directly related to the PCR Cooperation;
  - ii) To provide the Services within the deadlines specified in Annex 1 and to respect any deadlines in connection with the Services defined by the Contracting Party and/or the Beneficiaries. Any expected delay in the Services must be reported and deadlines may only be extended with prior written consent (including e-mail) of the Contracting Party and Beneficiaries;
  - iii) To perform its obligations under this Agreement in the best interest of the Power Exchanges and with a view of assuring the good and successful implementation of this Agreement and the PCR Cooperation;
  - iv) To use the highest degree of diligence, prudence and foresight that is exercised by experienced service providers engaged in the same line of business under the same or similar circumstances;
  - v) To report to the Power Exchanges (through the SPOC referred to under Article 10.5 below) on a regular basis on the progress of the Services as well as highlight and report on the important decisions that need to be taken during the term of this Agreement;
  - vi) That at all time during the duration of this Agreement, it shall fulfil all the legal and technical obligations relating to its activities. Each and all Power Exchanges are entitled to directly claim any damage caused by a violation by the Contractor of its legal obligations related to its activities.

3.4. **Sub-contractors**

3.4.1 Contractor shall be entitled to use subcontractors to perform part of the services under the Agreement subject to the prior written consent of the Contracting Party thereto (such consent not to be unreasonably delayed or withheld) and provided that the subcontractor is bound by and complies with confidentiality obligations, under terms at least equivalent to the terms set forth in this Agreement [*possible other specific obligations to be bound and to comply with*]. To this aim, Contractor shall inform the Contracting Party, prior to any subcontracting, of the name and expertise of such subcontractor and the part of the Services Contractor intends to subcontract.

3.4.2 Contractor warrants that the performance by the subcontractor shall at all times be in accordance with the terms and conditions of the Agreement.

3.4.3 Contractor shall provide the Contracting Party at its written request with proof that the subcontractor has undertaken the requested confidentiality obligations.

3.4.4 Contractor shall at all times remain fully responsible and liable towards the Contracting Party and the other Beneficiaries for the performance of the subcontracted part of the Services in accordance with the Agreement and the fulfilment of its obligations under the Agreement.

3.5. **[ alternatively IF APPLICABLE Provisions *intuitu personae* ]**

3.5.1 The Contractor commits that the Services shall be exclusively performed by [NAME OF CONTRACTOR'S EMPLOYEE/S]

3.5.2 The Contractor declares and undertakes that [NAME OF CONTRACTOR'S EMPLOYEE/S] shall be available [HOURS/DAYS].

3.5.3 Contractor shall ensure that the Services are provided from its own premises and with its own infrastructure.

3.4.4 Substitution or support of [NAME OF CONTRACTOR'S EMPLOYEE/S] by another person during the course of this Agreement is subject to prior approval by the Power Exchanges of the substituting or supporting person, on the basis of its curriculum-vitae and references to be provided by the Contractor to the SPOC, as defined in Article 10.5.

3.6. The Contractor shall organize the provision of the Services at its discretion, but in accordance with the business needs of the PCR Cooperation, in particular in respect of timing and requirements as set forth in Annex 1, as the case may be.

3.7. Neither the Contractor nor any person or third party appointed by the Contractor to execute the Services in compliance with this Article 3.4, may be considered from any point of view whatsoever as having the capacity of employees of the Contracting Party or of the Beneficiaries. No contract of employment shall mutually link the Parties and neither persons or third parties to the Contracting Party or of the Beneficiaries.

3.8. The employees, if any, used by the Contractor to provide the Services shall remain under its exclusive authority and supervision. Possible instructions or directives formulated by ..... to the Contractor's

representatives or personnel shall not be considered as interference in Contractor's employer's authority vis-à-vis its personnel.

- 3.9. As employer, the Contractor shall be responsible for any payment and any procedure, formality and/or obligation of a fiscal, social security (in its broadest sense) or other nature, including obtaining, if necessary, any permission to work in ..... or abroad in good and proper form and for the term of the present Agreement, for any person who, in one way or another, would be led to intervene or to provide Services on behalf of the Contractor within the context of the execution of the present Agreement. In this regard, any staff member of the Contractor shall in all respects remain an employee of the Contractor and the Contractor shall be responsible for the payment of wages, social contributions, employer's contributions, fiscal retentions, insurance premiums and all other legal or extra-legal obligations to which the Contractor is bound towards its own employees. No remuneration shall be paid by or be due from the Contracting Party to the employees of the Contractor or any person or third party appointed by the Contractor to provide the Services.
  
- 3.10. [IF APPLICABLE In the event of non-performance or delayed or defective performance by Contractor, Contracting Party shall be entitled, without any court intervention, to request a third party service provider to substitute Contractor in the provision of the Services until Contractor has resumed performance in compliance with the Agreement. The costs of such substitution shall be borne by Contractor in the event the non-performance, delayed or defective performance is attributable to Contractor.]

**Article 4. INVOICING AND PAYMENT**

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

4.7. Contractor's invoices must compulsorily include:

- i) the VAT number of Contractor:.....;
- ii) the imputation code of Contractor: .....;
- iii) [IF APPLICABLE detailed timesheet with any references useful to identify clearly the Services to which the invoice relates;]
- iv) bank account on which the relevant payment shall be made.

4.8. The absence of any of the statutory references of art. 4.6 will render the invoice(s) null and void. In this case the Contracting Party reserves the right to return the invoice(s) to the Contractor, such returning being equivalent to disputing it.

**Article 5. RELATIONSHIP WITH THE BENEFICIARIES**

5.1 Pursuant to art. 1.2, the Parties agree that the Contractor shall be entitled to have direct contact with each Beneficiary.

5.2 The Contracting Party shall support the Beneficiaries in facilitating the provision of the Services by the Contractor towards them. In particular the Contracting Party shall support the Beneficiaries, if needed, in order to:

- i) Transmit or communicate to the Contractor the information which is required for provision of the Services;
- ii) Put the Contractor in contact with the relevant representatives of the Beneficiaries directly involved with the Services;

**Article 6. CONFIDENTIALITY**

6.1. The Contractor undertakes not to disclose and to maintain strictly confidential any confidential information, as hereafter defined, of which it gains knowledge or to which it has access within the

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context of providing the Services. The Contractor acknowledges, the specific provisions with regard to confidentiality to which the Power Exchanges are subject as market operators, in particular with respect to market data. The Contractor further confirms that it has been personally and specifically informed on such provisions and that it fully understands and accepts them.

- 6.2. For the purpose of this Agreement any information exchanged between the Power Exchanges and Contractor in respect of the Services, as well as this Agreement is to be considered as confidential information (hereafter called “**Confidential Information**”), to the exception of information which is:
- (i) Already in the public domain at the time it is divulged, it being understood that the foregoing only applies to the extent the Contractor proves to the satisfaction of the Power Exchanges that the information was already in the public domain at the time of divulgation;
  - (ii) Already known to the Contractor at the time it is divulged and not having been previously obtained either directly or indirectly from the Power Exchanges, it being understood that the foregoing only applies to the extent the Contractor proves to the satisfaction of the Power Exchanges that the information was already known to it at the time of divulgation;
  - (iii) After having been divulged, it becomes accessible to the Contractor following a lawful communication by a third party without breaching any obligation of confidentiality (explicit or implied) to the extent the Contractor proves to the satisfaction of the Power Exchanges that the information was lawfully communicated by such third party.
- 6.3. Notwithstanding the foregoing, the Contractor undertakes to maintain strictly confidential any Confidential Information and not to divulge it, in whatever form that may be, except if communication thereof is required by law or by competent administrative or judicial authorities provided that such authorities have a legally justified need to know such information and are, by law or contractually, bound to respect the confidential nature of this information under terms equivalent to the terms of this Agreement.
- 6.4. In the event that the Contractor is required in accordance with this Article 6 to disclose any Confidential Information, it shall first give immediate written notice of such requirement to the disclosing Power Exchanges (s) to allow it/them, if possible, to intervene in the proceedings or to take all possible measures to protect their interests in the matter.
- 6.5. The Contractor shall make no reference either to the Agreement or to the work done within its context or even to the relationship with the Power Exchanges, in any publication or presentation of a technical, commercial or other nature, without the prior explicit written agreement of the Power Exchanges. The Contractor is however allowed to refer to the Power Exchanges as one of its clients and to mention in brief the scope of the PCR Cooperation. For the avoidance of doubt, each of the Power Exchanges shall be entitled to provide any report delivered to it by the Contractor to its clients or to make it public in whatever form, provided that reference is made to the Contractor, except in the event the Contractor has indicated in a motivated writing that such report contains sensitive information and may not be communicated. In such event the Parties shall in good faith determine how such report can be communicated without disclosing such sensitive information.
- 6.6. [TO BE ADAPTED in respect of nature of the services/service provider] Contractor is entitled to grant access to such Confidential Information to its directors, members of management, officers, employees,

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and authorized representatives (hereafter the “Internal Representative”), and/or to any third party to whom it has subcontracted or delegated part of the Services (always in compliance with the provisions set forth under Article 3.4 above), on a need-to-know basis and provided that the Power Exchanges are previously informed [IF APPLICABLE have previously approved the disclosure and such Internal Representative(s) and/or third party(ies) undertake non-disclosure obligations on the Confidential Information at least as strict as the non-disclosure obligations undertaken by the Contractor under this Agreement. Such non-disclosure obligations undertaken by the Internal Representative and/or by any third party shall be disclosed on request from the relevant Power Exchanges.

- 6.7. Moreover, the Contractor undertakes to fulfil the confidentiality undertakings under this Article 6 and to have them fulfilled by their Internal Representative and/or by any third party to whom it has subcontracted or delegated part of the Services, throughout the term of the Agreement and during five (5) years following its termination or expiration. Any breach of the confidentiality undertakings under this Article 6 by the Internal Representative(s) and/or (possibly) by a third party(ies) to which Contractor has subcontracted or delegated part of the Services, shall be considered as being a material breach on the part of the Contractor. The Contractor shall be jointly and severally liable with such Internal Representative(s) and/or such third party(ies) for any loss (including indirect loss) resulting from a breach of this Article 6 by such Internal Representative(s) and/or third party(ies).
- 6.8. Immediately upon receiving the written request of a disclosing Power Exchanges thereon, the Contractor shall return any and all Confidential Information to the disclosing Power Exchanges, and shall, to the extent possible, at first written request of the disclosing Power Exchanges destroy all not returned Confidential Information and prove such destruction to the disclosing Power Exchanges. To the extent the computer back-up procedures of the Contractor create copies of the Confidential Information, the Contractor may retain those copies for the period they normally archive backed-up computer records, but in any event no longer than 3 months, which copies are subject to the provisions of this Agreement until they are destroyed.
- 6.9. In case of a breach by the Contractor with regard to its obligations under this Article 6, the relevant Power Exchanges shall be entitled to cease immediately the disclosure of any further Confidential Information and to claim full compensation of the Contractor for any and all direct and indirect losses, damages, charges, fees or expenses, expected and unexpected, arising out, or resulting from, a breach of the terms of this Article 6.
- 6.10. The Contractor acknowledges that unauthorized disclosure or use of Confidential Information may cause irreparable harm and significant prejudice to the Power Exchanges. Accordingly, the Contractor agree that the concerned Power Exchanges may seek immediate injunctive relief to enforce obligations under this Article 6 in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law.

## **Article 7. INTELLECTUAL PROPERTY**

- 7.1. It is explicitly agreed between the Parties that the documentation, software, specifications and any other information provided by the Power Exchanges within the context of the Services (the “Data”) to the Contractor shall be and remain the exclusive property of the Power Exchanges providing such Data, as the case may be, and that the Contractor shall not benefit from any right in their regard, except the non-exclusive and non-transferable, right to use those Data solely to the extent that such use is strictly necessary for the provision of the Services.

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- 7.2. For the purpose of this Article, intellectual property rights shall mean all existing and future, registered or unregistered, intellectual, industrial, commercial and all other property and similar or related rights, title and interest including applications for the same, in [COUNTRY OF CONTRACTING PARTY] and/or elsewhere in the world, including but not limited to copyrights, neighbouring rights, portrait rights, moral rights, sui generis database rights, models and design rights and all other possible rights in the field of literature, arts and science, rights to patents or patent applications, topography rights, rights to know-how or trade secrets, and all other rights on intellectual creations in the field of technology, trademarks, trade names rights to statutory and commercial denominations, domain names and all other possible rights to signs used in business to distinguish one good or service from another in trade (hereinafter the “**Intellectual Property Rights**”).
- 7.3. All works, preparations, creations, studies, researches, experiences, inventions or other information, including without limitation all documents, drawings, documentation, manuals, reports, schemes, software (system programs, applications, object codes, source codes), algorithms, technologies, business secrets, methods, inventions, findings, know-how technical or other data, databases, statistical analyses as well as information derived directly or indirectly there from, of whatever kind, developed by the Contractor, as the case may be, pursuant to or in connection with the Services provided under this Agreement or constituting a direct or indirect result of the performance by the Contractor of this Agreement (hereinafter the “**Developments**”), shall become the Power Exchanges’ joint property as they are developed, at no additional cost or remuneration and all Intellectual Property Rights in respect thereto shall be vested with the Power Exchanges to the fullest possible extent, and to the extent necessary, immediately transferred and/or assigned to the Power Exchanges as from their creation.
- 7.4. In case of termination of this Agreement the Power Exchanges shall thus be considered the co-owners of all Developments and the Intellectual Property Rights pertaining thereto. The Power Exchanges shall thus be entitled to maintain and use all these Developments, at no additional cost or remuneration.
- 7.5. [IF APPLICABLE The Contractor undertakes to provide, costless, the Power Exchanges with all useful support in obtaining and maintaining the right or legal title concerned, this including but not limited to the signature of documents useful to its participation in procedures for obtaining the said right or title. In particular, should the Contractor, for certain components necessary for the provision of the Services, be obliged to enter into license agreements with third parties, the Contracting Party, shall be assured by the Contractor that such license agreement provides for a sublicense to the benefit of all Power Exchanges. In such event, the Contractor shall grant to the Power Exchanges, free of any charge, irrevocable sublicenses (for the avoidance of any doubt such sublicenses shall include development sublicenses if needed), on any and all Intellectual Property Rights covered by such license agreements, to their same extent and scope].
- 7.6. The Contractor shall indemnify and hold harmless the Power Exchanges against all claims, demands, actions, costs, expenses (including reasonable legal fees), liabilities, losses and damages arising out of or in connection with any infringement or alleged infringement (including but not limited to the defense of such infringement) of any third party’s Intellectual Property Right related to the provision of the Services by the Contractor, including its affiliates or its third party suppliers. On this respect, it is understood that:
- (i) Contractor shall provide prompt written notice of any such claim to Contracting Party;
  - (ii) Contracting Party is entitled to control and direct the defense and settlement of such claim;

- (iii) the Contracting Party and the Beneficiaries, if required, shall fully cooperate with the Contractor in the defense and settlement of such claim at Contractor's expense,
- 7.7. If a court of competent jurisdiction grants any third party an injunction, whether final or interim, the direct or indirect result of which is to restrain the provision of the Services, including the possession or use by the Power Exchanges of the Deliverables or any part of them, then Contractor shall either procure the right to use the same or replace or modify the Services or the Deliverables in order to avoid such injunctive restrain.
- 7.8. The Contractor will ensure that its Internal Representatives and sub-contractors also comply with the obligation under this Article 7.

## **Article 8. ENTRY INTO FORCE, DURATION AND EARLY TERMINATION**

- 8.1. This Agreement enters into force on the date of signature by the Parties and shall terminate on the [DATE]. In the event Contracting Party and the Contractor do not sign on the same date, the date of last signature will trigger the entry into force.
- 8.2. This Agreement shall not be tacitly renewed. Any renewal of the Agreement is subject to the explicit written agreement of the Parties [or IF APPLICABLE The Parties agree that the Contracting Party shall be entitled to extend the duration of this Agreement by a [two (2) months] prior notice, in written form (including e-mail)].

### **8.3. Early termination**

#### **8.3.1 Early termination by Contracting Party**

##### **8.3.1.1 Ordinary termination terms**

The Contracting Party may terminate the Services Agreement at any time without any Court intervention nor justification and without having to compensate the Contractor for such termination (subject to the payment of any fee and cost related to the services performed by Contractor before the effective date of the termination) by ways of a registered letter with acknowledgement of receipt with a [\_\_\_\_\_] months prior notice.

##### **8.3.1.2 Termination in case of breach of Contractor**

The Contracting Party may, terminate, wholly or partly, the Services agreement by registered letter without any court intervention and without having to compensate the Contractor for such termination in the event of a breach by the Contractor of the present Agreement which is so substantial that it defeats the purpose of the Parties in making the Agreement (such as but not limited to, the non compliance of the delivery of Deliverables, a breach of confidentiality obligations, breach of Intellectual Property Rights) and which is not remedied or is not capable for remedy.. In case the breach is capable of remedy, the Contractor shall be entitled to a grace period of [DAYS]) days to remedy the breach. Should the breach not be capable of remedy or not be remedied within the above mentioned grace period, Contracting Party shall be entitled to terminate the agreement immediately.

### **8.3.1.3 Detrimental change of the legal or financial status of the Contractor**

The Contracting Party may terminate, wholly or partly, this Agreement with immediate effect by registered letter to the Contractor with acknowledgement of receipt, without any court intervention and without having to compensate the Contractor for such termination any compensation being due, if the Contractor:

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

### **8.3.1.4 Legal and regulatory changes having an adverse effect on the execution of the Services agreement**

The Contractor accepts and acknowledges the importance of legal and regulatory requirements to which the Power Exchanges are subject as market operators. Consequently, the Contracting Party may reasonably request to amend or, if necessary, and without court intervention, terminate immediately by registered letter the present Agreement and without having to compensate the Contractor for such amendment or termination of the present Agreement, if a legislative or regulatory text, decree, decision issued by a competent regulatory authority, or an opinion, proposal or demand by such an authority, require, any such amendment or termination. In particular, the Contractor agrees that the Contracting Party will be entitled to terminate the Agreement immediately by registered letter, without any court intervention in the event of termination of the PCR Cooperation.

**8.3.1.5** Any termination by Contracting Party shall be without prejudice to any other rights and remedies the Contracting Party or the Beneficiaries may have against the Contractor, including any claim for damages or reimbursement of paid Fees.

**8.3.1.6** The Contractor shall not be entitled to any compensation whatsoever in the cases of termination set forth in art. 8.3.1, above,

**8.3.1.7** In case of early termination pursuant to this Article 8.3.1, the Contracting Party will pay to the Contractor only the services already performed consistently with terms and conditions of the Agreement.

### **8.3.2 Early termination by the Contractor**

The Contractor may unilaterally terminate this Agreement by registered letter to the Contracting Party with acknowledgement of receipt, without any court intervention and without any compensation being due, in case of lack of payment by the Contracting Party of non-disputed Fees or Costs and

subject to a notice period of [IF APPLICABLE thirty (30) days]. The notice of default that triggers such [IF APPLICABLE thirty (30) days] term shall be sent in copy to all Beneficiaries.

**Article 9. [IF APPLICABLE] CONTINUITY**

- 9.1** If the Agreement is completely or partially terminated (for whatever reason) Contractor shall supply the Contracting Party and/or the Beneficiaries, at their request, with the necessary support and training to guarantee the continuity of the Services, during the time needed for the Contracting Party and the Beneficiaries to supply or organize, by themselves or by another service provider, in a satisfactory manner the same services as the Services under this Agreement.
- 9.2** Contractor agrees to cooperate fully to operate the transition of the Services to the person indicated by the Contracting Party, including transferring any and all documentation or information essential for the operation of the Services hereunder and for guaranteeing the continuity of these Services.
- 9.3** Upon a request for support and training to guarantee the continuity of the Services Parties shall meet and agree on a continuity plan.
- 9.4** Such support and training for continuity will be remunerated according to the standard scale of charges set forth in Annex XXX [REMUNERATION], except in the case where the termination of the Agreement, resulting in such continuity request, is caused by a breach of the Agreement with Contractor as defaulting Party in which case no remuneration whatsoever shall be due to Contractor and article 9 [LIABILITY] shall apply accordingly.]

**Article 10. LIABILITY [CHECK ALWAYS CONSISTENCY WITH APPLICABLE LAW]**

10.1 In the event of a breach of the Agreement by Contractor, the liability of the latter shall be limited to an amount of [IF APPLICABLE/MINIMAL PROPOSAL the overall value of the Agreement (meaning the total Fees and the estimation of the total Costs provided by Contractor in its offer submitted in the Procurement, including the penalty service levels set forth in Annex ...)]per calendar year. The indemnification obligations of Contractor shall be uncapped in the event of:

- i) breach of the Agreement due to gross negligence or intentional breach or fraud, and
- ii) infringement of third party's Intellectual Property Right pursuant to art 7.6 above (Intellectual Property Rights)

10.2 Except in case of fraud, intentional misconduct or [IF APPLICABLE gross negligence], the total liability (including the total indemnification obligations) of the Contracting Party arising out of or in connection with the present contract shall in any event not exceed [IF APPLICABLE 50,000 EUR],

10.3 In the event of any breach of this Agreement by any Party, the damaged Party shall notify in writing the defaulting Party without undue delay setting out the details of such breach. Such notice shall trigger the grace period set forth in art. 8.3.1.2 and 8.3.2 above.

10.4 The Contractor agrees that, in any case and unless otherwise provided under applicable law, the Beneficiaries shall never be held responsible for damages suffered by Contractor.

10.5 For the avoidance of any doubt, should the Contractor breach the Agreement, the Contracting Party will also be entitled to claim compensation from the Contractor for damages suffered by one or more Beneficiaries only (and not only for damages suffered by the Contracting Party).

10.6 **[one lump sum indemnification for breach of articles 3, 6 and 7]** In the event of a breach (including a breach as a result of gross negligence (APPLICABLE LAW TERM ex. “grove fout”/”faute grave”), wilful misconduct (APPLICABLE LAW TERM ex. “opzettelijke fout”/”faute intentionnelle”) or fraud (APPLICABLE LAW TERM ex. “bedrog”/”fraude”)) by the Contractor of its commitments under Article 3 , 6 and 7 of this Agreement, the Contractor shall immediately forfeit a lump sum indemnification of EUR XXX per breach and which shall not have any prejudice over the Contracting Party’s right to seek full compensation of all damages incurred as a result of, or in connection with, such breach.

Or

**[different lump sum indemnifications for articles 3, 6 and 7]**

In the event of a breach (including a breach as a result of gross negligence (APPLICABLE LAW TERM ex. “grove fout”/”faute grave”), wilful misconduct (APPLICABLE LAW TERM ex. “opzettelijke fout”/”faute intentionnelle”) or fraud (APPLICABLE LAW TERM ex. “bedrog”/”fraude”)) by the Contractor of its commitments under 3 , 6 and 7 of this Agreement, the Contractor shall immediately forfeit the following lump sum indemnification:

- i) In case of a breach of Article 3, the Licensee shall forfeit a lump sum indemnification of EUR XXX;
- ii) In case of a breach of Article 6, the Licensee shall forfeit a lump sum indemnification of EUR XXX;
- iii) In case of a breach of Article 7, the Licensee shall forfeit a lump sum indemnification of EUR XXX.

The lump sum indemnification shall not have any prejudice over the Contracting Party’s right to seek full compensation of all damages incurred as a result of, or in connection with, such breach.

Or

**[one lump sum indemnification for all breaches under this License Agreement]**

In the event of a breach (including a breach as a result of gross negligence (APPLICABLE LAW TERM ex. “grove fout”/”faute grave”), wilful misconduct (APPLICABLE LAW TERM ex. “opzettelijke fout”/”faute intentionnelle”) or fraud (APPLICABLE LAW TERM ex. “bedrog”/”fraude”)) by the Contractor of its commitments under this Agreement, the Contractor shall immediately forfeit a lump sum indemnification of EUR XXX per breach and which shall not have any prejudice over the Contracting Party’s right to seek full compensation of all damages incurred as a result of, or in connection with, such breach.

**Article 11. DISPUTE SETTLEMENT**

11.1. Escalation procedure

In case of a dispute between the Contracting Party and the Contractor, arising out of or in relation with the Services Agreement, the Parties undertake to pursue in good faith an amicable settlement within [fifteen (15)] Business Days or within any other agreed timeframe between the Parties, as of the date of notification of the dispute by the concerned Party (hereinafter the “**Dispute Request**”).

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### 11.2. [IF APPLICABLE Amicable Dispute Resolution (Optional)]

In a second instance, should the Parties not reach an amicable settlement pursuant to art. 11.1 within [fifteen (15)] days from the Dispute Request, the dispute will be submitted by the most diligent Party for settlement to their respective Chief Executive Officers and/or Chairman of the Board or to any person delegated by the latter. Parties commit to endeavour their best efforts in order to find an agreement within [fifteen (15) Business] Days or within any other agreed timeframe between the Parties, as of the notification of the settlement request (the “**Settlement Request**”).

### 11.3. [[IF APPLICABLE Mediation

In a third instance, in the event that the Parties fail to achieve an amicable settlement pursuant to art. 11.2 within the timeframes established therein, the most diligent Party shall submit the dispute to mediation by an external independent duly certified mediator under the ICC mediation rules.]

### 11.4. [IF APPLICABLE In case of failure to appoint a mediator within [one (1) month] from the submission of the dispute to mediation or in case of failure of the mediation procedure within [one (1) month] from the appointment of the mediator ] the dispute shall be finally settled by [TO BE DECIDED CASE BY CASE the Courts of [\_\_\_\_\_] / Arbitration Court].

### 11.5. The dispute procedure set forth under this article 11 is without prejudice to the fact that the each Party can apply for injunctive relief before any other competent court.

## **Article 12. MISCELLANEOUS PROVISIONS**

### 12.1. This Agreement constitutes the entire agreement between the Parties with respect of the subject matter thereof and supersedes any prior or contemporaneous agreements, whether oral or written, between the Parties with respect to said subject matter. No Party has relied upon any other promise, representation or warranty other than those contained herein, in executing this Agreement.

### 12.2. Any change to this Agreement can only validly be agreed upon in writing, duly signed by the representatives of the Parties.

### 12.3. The nullity or invalidity of one or more provision(s) of the present Agreement shall not affect the validity of the other provisions. Any provision declared null, invalid or unenforceable shall be considered as omitted from the present Agreement without affecting the other provisions, which shall continue to be applicable, unless the provision(s) declared null or invalid is (are) essential to the object hereof. In that case, the Parties shall consult each other on the request of the most diligent Party in order to negotiate and agree upon a legally valid replacement provision with the same economic effect as the null, invalid or unenforceable provision.

### 12.4. Should the Beneficiaries change during the execution of the Services Agreement by ways of (i) partial termination by one of the original Beneficiaries or (ii) adherence of a new Beneficiary, the Contractor undertakes, upon request of the Contracting Party, to renegotiate in good faith the terms of the Services Agreement with the Contracting Party, including the amount of the Fee, provided that the Contractor is informed of such change by the Contracting Party.

### 12.5. Each Party acknowledges that the other Party to this Agreement is an independent contractor. Therefore no agency, partnership or joint venture relationship is created between the Parties as a result of this Agreement.

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- 12.6. All notices shall be sent by registered letter with acknowledgement of receipt at the addresses mentioned in Annex 2.
- 12.7. Save as otherwise expressly stated throughout the Agreement, the Parties acknowledge and agree that the Beneficiaries have appointed the Contracting Party as single point of contact (hereinbefore the “**SPOC**”) with the Contractor for the contractual management of the Agreement. The Parties agree that the working language for all notifications and for all matters relating to this Agreement shall be English, to the extent compatible with the applicable provisions of mandatory law, if any.
- 12.8. Contractor may not assign or transfer this Agreement without the prior explicit written consent of the other Party which will not unreasonably withhold or delay its consent. On the other hand, the Contractor hereby agrees to any transfer of this Agreement or any substitution of the Contracting Party with another Power Exchange.
- 12.9. Contractor hereby previously accepts that Contracting Party may assign or transfer the Agreement in whole or in part to:
- i) (any of its affiliates; or
  - ii) any other third party acquiring the whole or part of Contracting Party’s assets; or
  - iii) any Beneficiary.
- The Contracting Party shall duly notify to the Contractor all relevant references of such assignee or transferee
- 12.10. The Parties agree that the Agreement shall be directly enforceable by the Beneficiaries to the extent compatible with the applicable provisions of mandatory law. Taking into account the PoA according to which the Beneficiaries have received and approved the execution version of this Agreement, the Contractor hereby confirms that it has been fully acquainted by the Contracting Party with the approval by the Beneficiaries of the terms and conditions set forth in this Agreement.
- 12.11. The present Agreement shall be governed by [COUNTRY OF THE CONTRACTING PARTY] Law without regard to the conflict of laws principles thereof.

**In witness thereof**, ..... and the Contractor have caused their duly authorised representatives to execute the present Agreement in two (2) original copies.

For: Contractor  
By :  
Function : Managing Director  
Signature :  
Date:

For: .....  
By :  
Function :  
Signature :  
Date:

[ANNEXES ARE TO BE REVIEWED CASE BY CASE, THE FOLLOWING ARE ONLY INDICATIVE]

**ANNEX 1- SERVICES**

**ANNEX 2- CONTACT INFORMATION**

**General Contact**

**For the Contracting Party:**

**For the Contractor:**  
**[DETAILS TO BE PROVIDED]**

**Contacts for invoicing and payment**

**For the Contracting Party:**

**For the Contractor:**  
**[DETAILS TO BE PROVIDED]**

**For the other Beneficiaries** (email address for each of the other Beneficiaries ref. Annex 1)

**ANNEX 3 – CONTRACTOR’ PROPOSAL**

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Proposal from ..... dated ..... regarding services for the PCR Cooperation Manager Office as submitted  
[IF APPLICABLE in the Procurement Procedure.

**SCHEDULE 3 to PoA  
Definitions**

**Business Day** means any day, other than a Saturday and a Sunday, in which banks are open to the public for general business in the city of the registered office of the Party in charge with the performance of the relevant obligation.

**Procuring PX** means, pursuant to Annex IV to PCR Co-ownership Agreement, the Party that will conduct the Procurement its own name, on its own behalf and on behalf of the other Parties and that will stipulate the awarded contract with the Contractor.

**Steering Committee** shall have the meaning set forth in the PCR Co-ownership Agreement

**Wholly Affiliated Undertaking** means an undertaking whose share capital is wholly owned by a Party or whose share capital is wholly owned by a Party together with its parent undertaking holding 100% of the share capital of such Party, it being understood that the notion of control is irrelevant for the determination of the applicability of this term.

**Cost** means the telephone (e.g. phone conferences), travel and accommodation expenses incurred by Contractor for the provision of the Services. Any other expense incurred by Contractor for the provision of the Services shall be qualified as Cost only upon prior specific approval by the Steering Committee or by any other body of the PCR Cooperation designated by the latter.

**Fee** means the remuneration due by the Contracting party to the Contractor set forth in the executed Services Agreement

**(IF APPLICABLE) SCHEDULE 4 to PoA  
RFO**

**ANNEX X**

**GESTORE DEI MERCATI ENERGETICI S.P.A.**

- and -

**OMI POLO ESPAÑOL S.A.**

- and -

**EPEX SPOT SE**

- and -

**NORD POOL EMCO AS**

-and-

**OTE, a.s.**

-and-

**Towarowa Giełda Energii S.A.**

-and-

**OPCOM S.A.**

-and-

**Hellenic Energy Exchange S.A.**

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**ADHERENCE AGREEMENT  
TO THE  
PCR CO-OWNERSHIP AGREEMENT**

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This adherence agreement (hereafter the “**Agreement**”) is entered into by and between:

1. Nord Pool **EMCO AS**, a company incorporated and existing under the laws of Norway, having its registered office at Vollsveien 17B, PO Box 121, 1325 Lysaker, registered with the commercial register in Norway n° 984 058 098, (hereafter “Nord Pool”);
2. **EPEX SPOT SE**, an European Company (Societas Europae) incorporated under the French Law, with registered office located at 5 boulevard Montmartre, 75002 Paris – France, and registered with the commercial register in Paris under the number 508 010 501, (hereafter “EPEX”);
3. **OMI– Polo Español S.A.**, a company incorporated and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4<sup>th</sup> floor, 28014 Madrid, Spain, and with the commercial register in Madrid under Section 8, Sheet: 506799, (hereafter “OMIE”);
4. **Gestore dei Mercati Energetici S.p.A.** is a company duly organised and existing under the Italian law, with registered office in 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, (hereafter “GME”);
5. **OTE, a.s.**, a company organised and existing under the laws of the Czech Republic, having its registered office at Sokolovská 192/79, 186 00 Praha 8, Czech Republic, and registered with Commercial Register in Prague Municipal Court in section B, file 7260, under number 26463318 and VAT n° CZ26463318, OTE’s contract number: 8/13 (hereafter “OTE”);
6. **Towarowa Giełda Energii S.A.**, a company duly organized and existing under the laws of Poland, with the registered office at Książęca 4, 00-498 Warszawa, Poland, registered with National Court Register under number 0000030144 and VAT No PL5272266714, with the share capital paid in full in an amount of 14.500.000,00 PLN (hereafter „TGE”);
7. **HELLENIC ENERGY EXCHANGE S.A.**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]

██████████ (hereafter “HEnEx”);

8. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A.**, a company duly organized and existing under the laws of Romania, with registered office in Bucharest, 16-18 Hristo Botev Bld., 3rd District, Romania, registered with Bucharest Trade Register Office under number J40/7542/2000, (hereafter “OPCOM”),

hereinafter individually also referred to as a “PCR PX” and collectively as the “PCR PXs”.

And

9. .... a company duly organized and existing under the laws of ....., with V.A.T. number ....., with registered office at ....., registered in the commercial register at General Commercial Registry under number ....., (hereafter called “Adhering Party”);

the PCR PXs and the Adhering Party hereafter individually also referred to as a “Party” and collectively as the “Parties”.

**WHEREAS:**

- (1) On the 13<sup>th</sup> of June 2012, APX, EPEX Belgium (formerly Belpex), EPEX, GME, OMIE and Nord Pool have signed the PCR Cooperation Agreement and the PCR Co-ownership Agreement (collectively referred as the “PCR Agreements”) and, therefore, entered into a co-operation for the implementation of a single European day-ahead price coupling of power regions (hereafter the “PCR Cooperation”). The PCR Cooperation was preliminary launched, in 2009, by an initial collaboration between some of the PCR PXs regarding a first technical assessment of the coupling mechanism.
- (2) On 28<sup>th</sup> February 2013 OTE signed an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement and formally joined PCR Cooperation as of the 1st of March 2013. Subsequently TGE and OPCOM joined PCR Cooperation adhering to the PCR Agreements on the 26<sup>th</sup> of October 2015 and respectively on the 30<sup>th</sup> of October 2015.
- (3) Following the entering into force of COMMISSION REGULATION (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (hereafter the “CACM”), the PCR PXs have started a negotiation in order to arrange the compliance of the PCR Agreements with CACM ((hereafter the “Negotiation”).
- (4) On the 6<sup>th</sup> of November 2012, Operator of Electricity Market S.A. (hereinafter “LAGIE”) has signed the Associate Member’s Confidentiality Declaration and the status of Associated Member was granted to the LAGIE by a decision of the Steering Committee dated 29<sup>th</sup> of November 2012. LAGIE has subsequently extended the duration of Associate Member’s Confidentiality Declaration by signing the Amendment no. 1 to the PCR associate member confidentiality declaration on 11<sup>th</sup> of December 2013. The Confidentiality Declaration has been extended on 19<sup>th</sup> of April 2016 with a retroactive effect as from 6<sup>th</sup> November 2014 by signing the Addendum no. 2 to the PCR Confidentiality Declaration. The confidentiality declaration expired on 6<sup>th</sup> of November 2016 and was extended with retroactive effect as of 6<sup>th</sup> November


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2016 until the 6<sup>th</sup> of November 2018 with Addendum no. 3 signed on 15<sup>th</sup> February 2018 by LAGIE.

- (5) LAGIE has expressed its interest in the participation in the PCR Co-ownership Agreement. Following such first expression of interest, LAGIE has formally requested to adhere to the PCR Cooperation by letter to the Steering Committee dated 15<sup>th</sup> of January 2018.
- (6) On 22<sup>nd</sup> of January 2018, PCR Steering Committee representing all PCR PXs has agreed to the adherence of LAGIE or its legal successor, as the case may be;
- (7) On 18<sup>th</sup> of June 2018 due to the spin-off of the branch of LAGIE in accordance with the provisions of par. 1 of article 117B of Law 4001/2011, as amended by the article 96 of Law 4512/2018, Hellenic Energy Exchange S.A. was established (distinctive title "**HEnEx S.A.**")
- (8) Adhering Party is the legal successor of LAGIE according to Article 117 E par. 1, 2 and 5 of Law 4001/2011 as amended by laws 4512/2018 and 4546/2018 since from the one hand all legal relationships pertaining to the branch of LAGIE are transferred to Adhering Party and on the other hand the NEMO designation is also transferred to Adhering Party according to the here above provisions.
- (9) As a result of the above, all documents signed by LAGIE before 18<sup>th</sup> of June 2018 with regard to adherence to PCR Agreements are transferred to Adhering Party and are governed by the provisions to which LAGIE was subject at the time of the spin off.
- (10) The Adhering Party fully acknowledges the content of the PCR Agreements as well as any other contract presently in force between the PCR PXs in the context of the PCR Cooperation as listed in Annex I (hereinafter the "PCR Contracts") to the PCR Cooperation Adherence Agreement. Therefore, the Adhering Party wishes to adhere to the PCR Co-ownership Agreement subject to the terms of this Agreement.

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

**1. Adherence to the PCR Co-ownership Agreement**

- 1.1 The Adhering Party agrees to adhere to the PCR Co-ownership Agreement accepting all the terms and conditions thereby provided, with no exclusion whatsoever. The PCR PXs hereby accept the adherence by the Adhering Party to the PCR Co-ownership Agreement.
- 1.2 The Parties agree that the adherence to the PCR Co-ownership Agreement by the Adhering Party will be retroactively effective as of the date of entering into force of the present Agreement (30<sup>th</sup> of June 2018) if the following conditions are duly fulfilled:
  - a) 
  - b) signature of the PCR Cooperation Adherence Agreement.
- 1.3 Should the payment of the Fee by the Adhering Party not be completed within the terms set forth under section 3 of Annex I, the PCR PXs shall be entitled to immediately terminate this Agreement.

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- 1.4 Pursuant to art. 13.2.4 of the PCR Co-ownership Agreement, PCR PXs confirm that the Adhering Party is entitled to disclose to its relevant NRA information regarding its costs and obligations deriving from its adherence to PCR Co-ownership Agreement

### 2. Acknowledgements by the Parties

- 2.1 Upon signature of this Agreement, the Adhering Party declares to be fully aware of, all obligations of the PCR Cooperation Agreement, PCR Co-ownership Agreement and of the PCR Contracts.
- 2.2 PCR PXs declare that no relevant information for adherence of the Adhering Party to PCR Co-ownership Agreement has been withheld.

### 3. Entry into force and termination

- 3.1 This Agreement shall enter into force on the 30<sup>th</sup> of June 2018 retroactively to such date, as the case may be, provided that each Party, expressly derogating to Article 1325 of the Belgian Civil Code, has individually signed one original of the Agreement and sent a scanned copy of it to the other Parties and to the project manager office of the PCR Cooperation. Should the Parties not sign and send the scanned signatory page on the same day, the date of the receipt of the last scanned original of the Agreement shall trigger the entry into force. Subsequently, the Parties shall sign this Agreement as well in nine (9) original hard copies, one for each of the Parties.
- 3.2 This Agreement is entered into for the duration of the PCR Co-ownership Agreement as set forth under art 17.3 of PCR Co-ownership Agreement. For the avoidance of any doubt, should the PCR Co-ownership Agreement be earlier terminated, this agreement shall be terminated accordingly.
- 3.3 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 and of a redacted version of the PCR Co-ownership Agreement (with confidential parts blackened out) in the National Contract Registry.

### 4. Miscellaneous

- 4.1 No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 4.2 Any change to this Agreement can only be validly agreed upon in writing, duly signed by the legal representatives of the Parties.

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- 4.3 This Agreement shall in no event be considered a legal partnership or joint venture or other similar relation between the Parties. Each Party acknowledges that the Parties to this Agreement are independent entities and that it will not, except in accordance with this Agreement, represent itself as an agent or legal representative of the other Parties. Therefore, the Parties shall be responsible for their individual commitments only and do not bear any joint and several liabilities under this Agreement.
- 4.4 If one or more of the provisions of this Agreement is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Agreement is not affected in any material manner adverse to any Party. In such event, the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- 4.5 The Parties agree that the working language for all notifications and for all matters relating to this Agreement shall be English, to the extent compatible with the applicable provisions of mandatory law, if any. Any term used in this Agreement with capital letter and not otherwise defined herein, shall have the same meaning ascribed to it in the PCR Co-Ownership Agreement.
- 4.6 The Annexes and the recitals to this Agreement form an integral part thereof and any reference to this Agreement shall include a reference to the Annexes and vice versa.
- 4.7 In case of contradiction or discrepancy between this Agreement and the PCR Co-ownership Agreement and/or any of their respective annexes the precedence shall be:
1. Main text of the PCR Co-ownership Agreement;
  2. Annexes to the PCR Co-ownership Agreement;
  3. Main body of this Agreement;
  4. Annex 1 to this Agreement;
  5. Annex 2 to this Agreement;
  6. Annex 3 to this Agreement;
- 4.8 Parties may not assign or transfer this Agreement, partially or as a whole.
- 4.9 The present Agreement is governed by and construed with Belgian laws without regard to the conflict of laws principles of it.
- 4.10 Any dispute arising out of or in connection with this Agreement shall be settled in accordance with art 22 of PCR Co-Ownership Agreement.

*(The remainder of this page intentionally left blank)*

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In witness thereof, the Parties have caused their duly authorised representatives to execute the present Agreement in eight (8) original copies and each Party acknowledges having received its original copy.

<b>For GESTORE DEI MERCATI ENERGETICI S.P.A.</b>  Name:  Function:  Date:  Signature:  _____	
<b>For OMI POLO ESPAÑOL S.A.</b>  Name:  Function:  Date:  Signature:  _____	
<b>For EPEX SPOT SE</b>  Name:  Function:  Date:  Signature:  _____	  Name:  Function:  Date:  Signature:  _____

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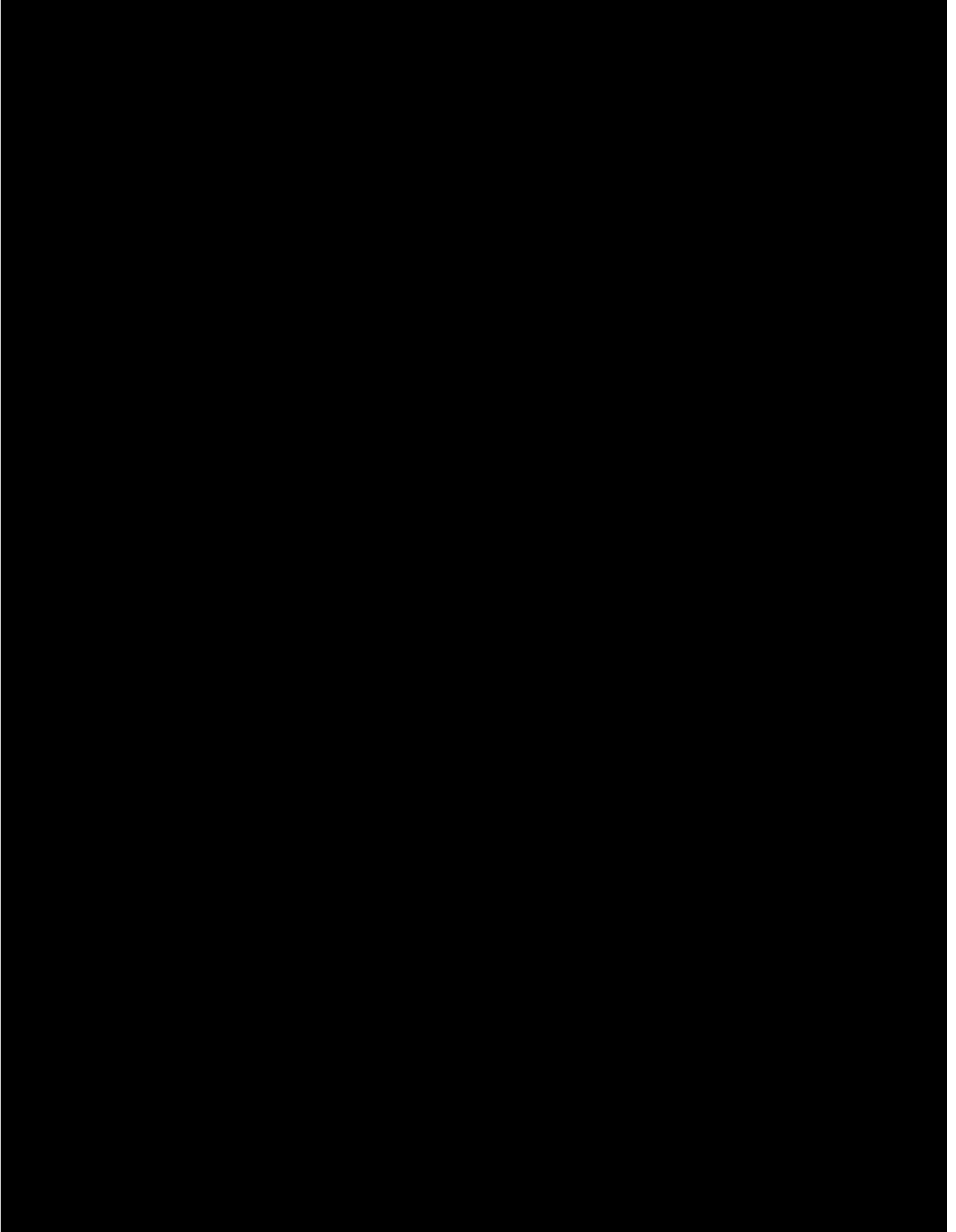
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<b>For OTE, a.s.</b>  Name:  Function:  Date:  Signature:  _____	Name:  Function:  Date:  Signature:  _____
<b>For TGE</b>  Name:  Function:  Date:  Signature:  _____	Name:  Function:  Date:  Signature:  _____
<b>For OPCOM S.A.</b>  Name:  Function:  Date:  Signature:  _____	Name:  Function:  Date:  Signature:  _____

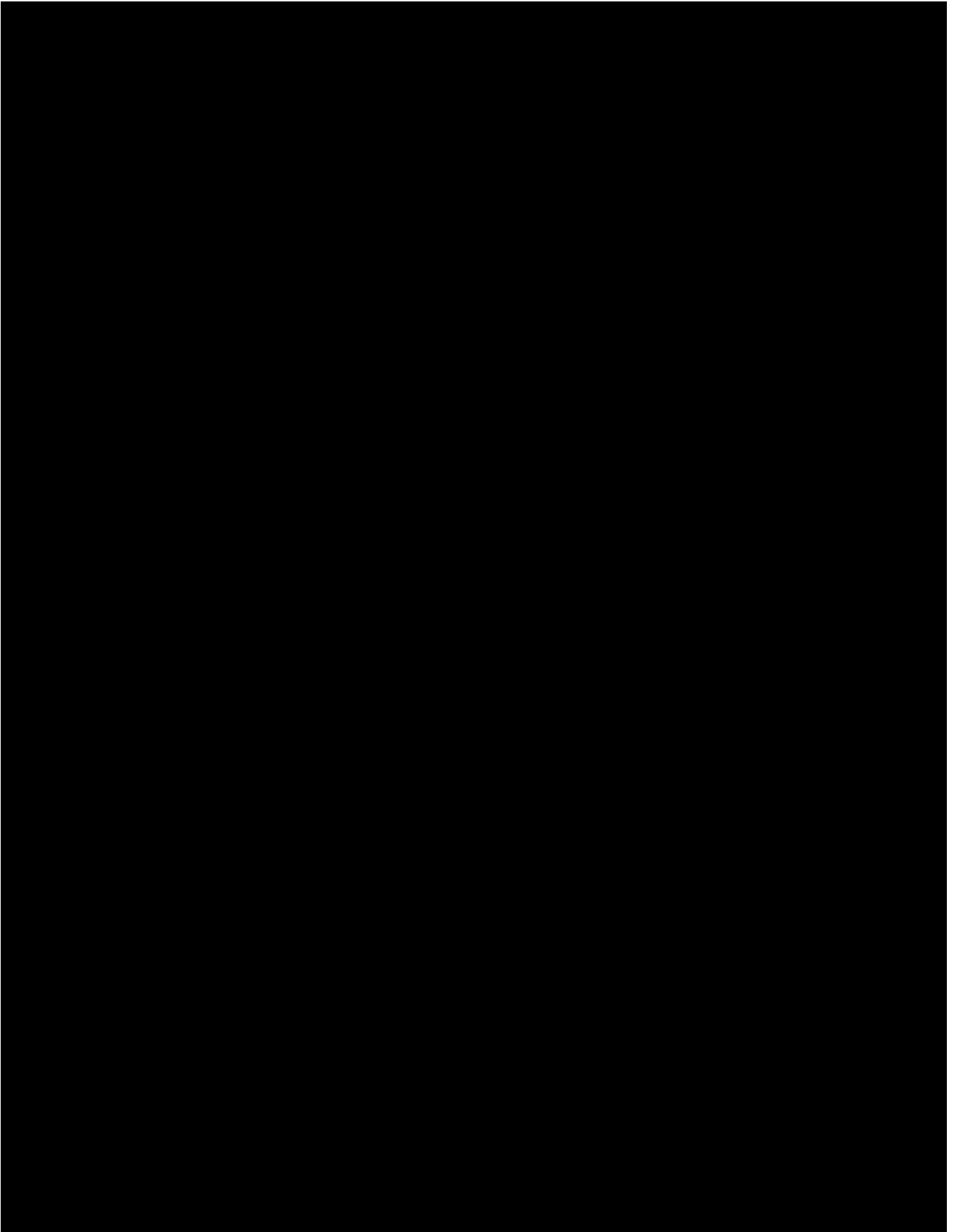
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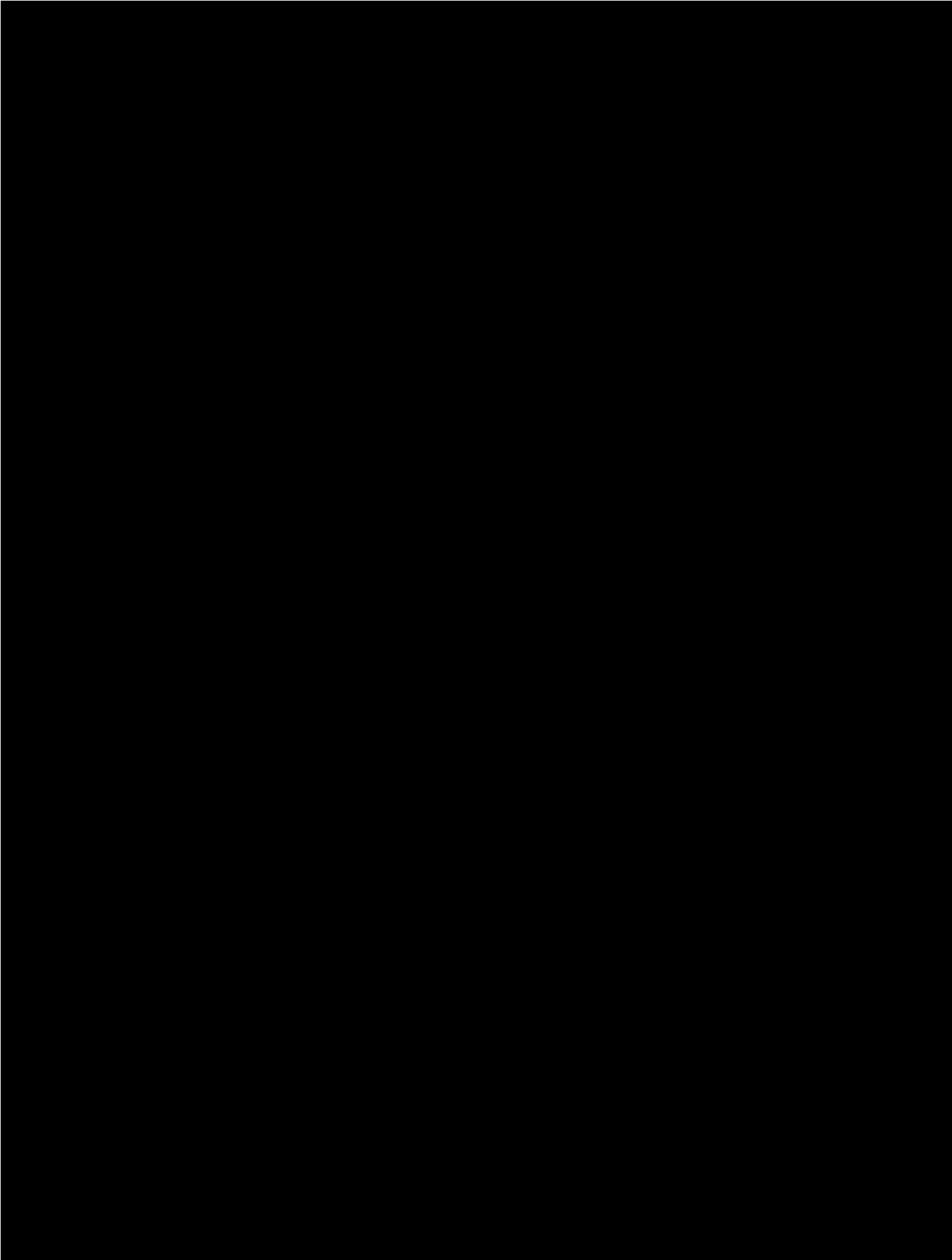
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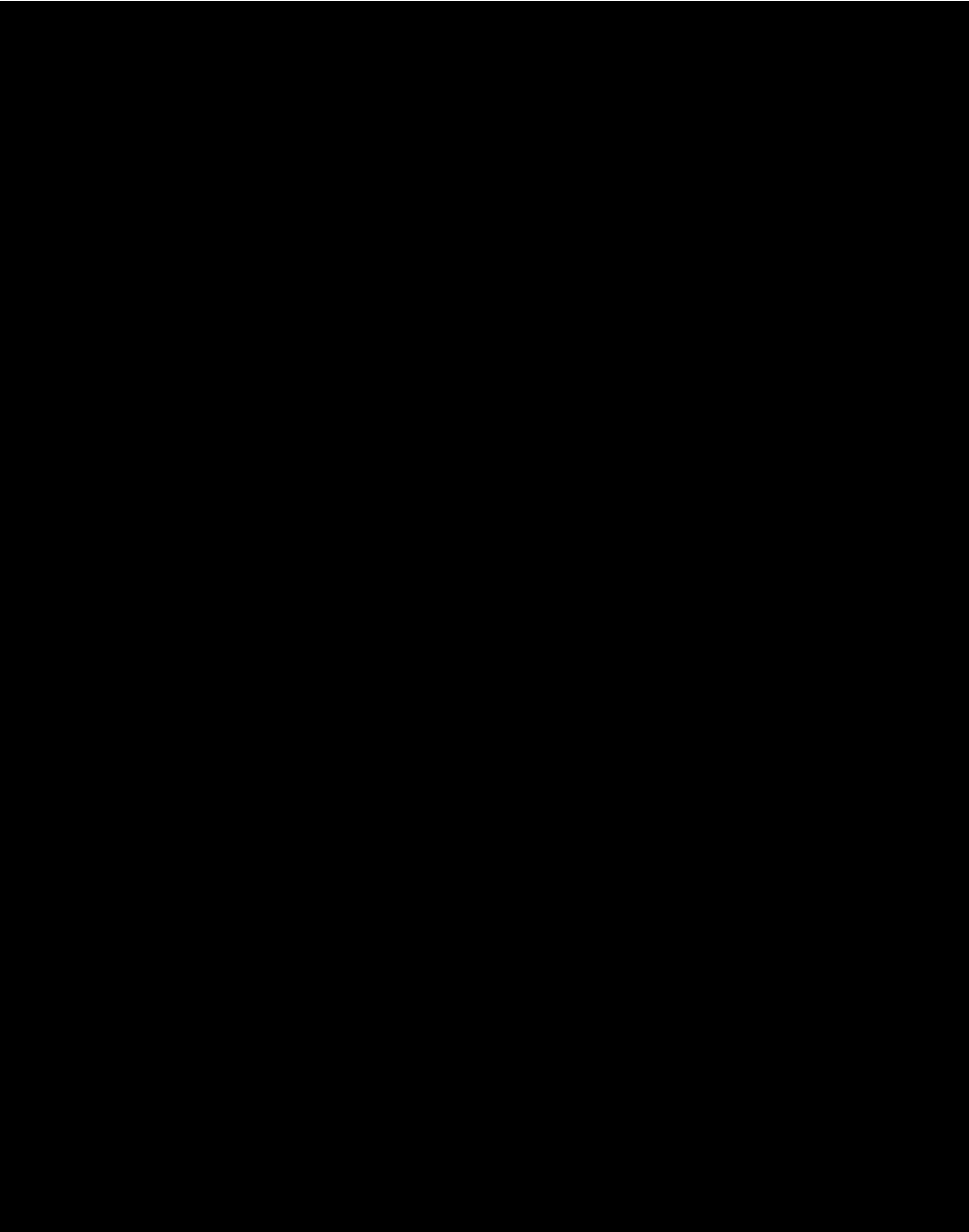
**Annex 1**

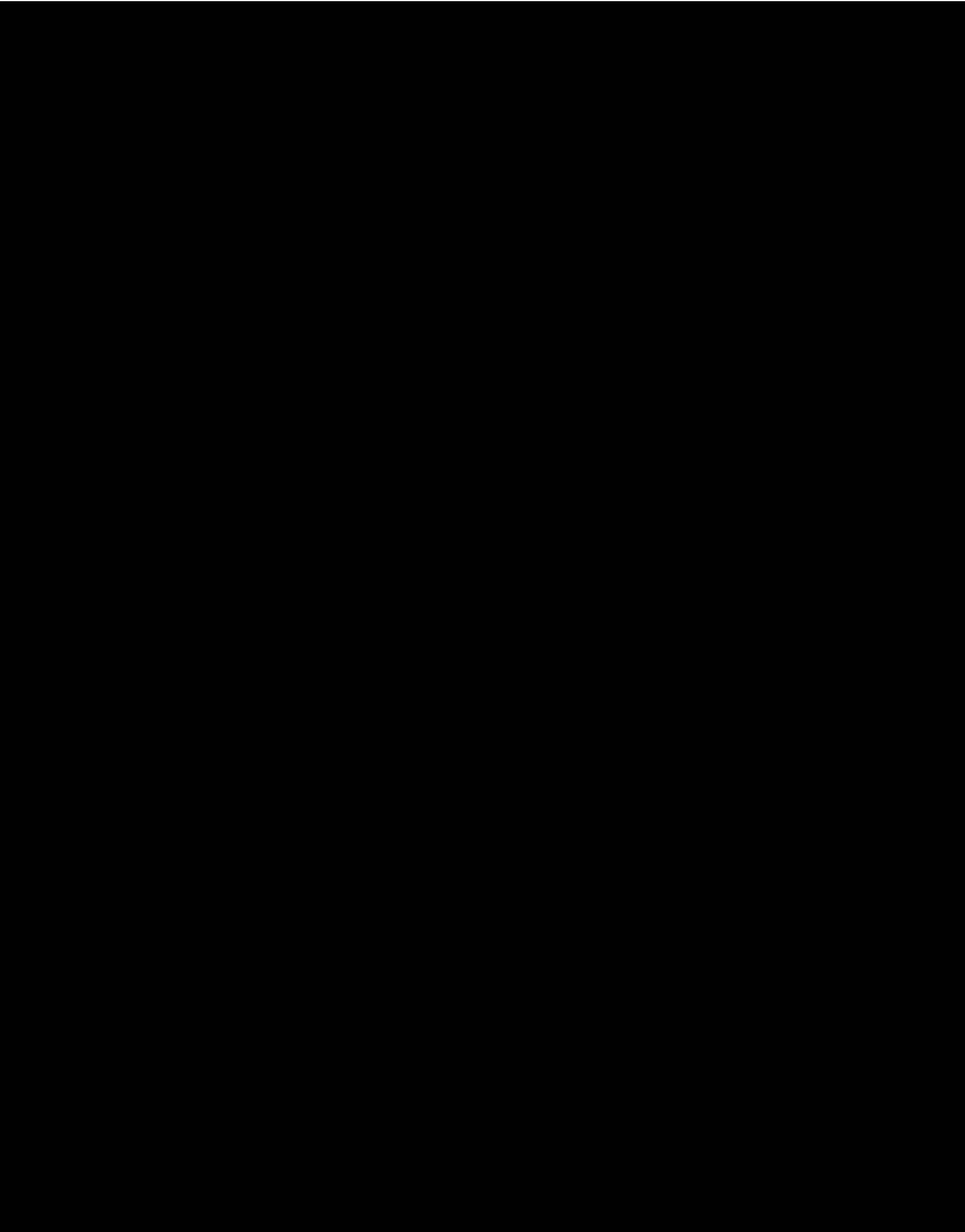
**ADHERENCE FEE**





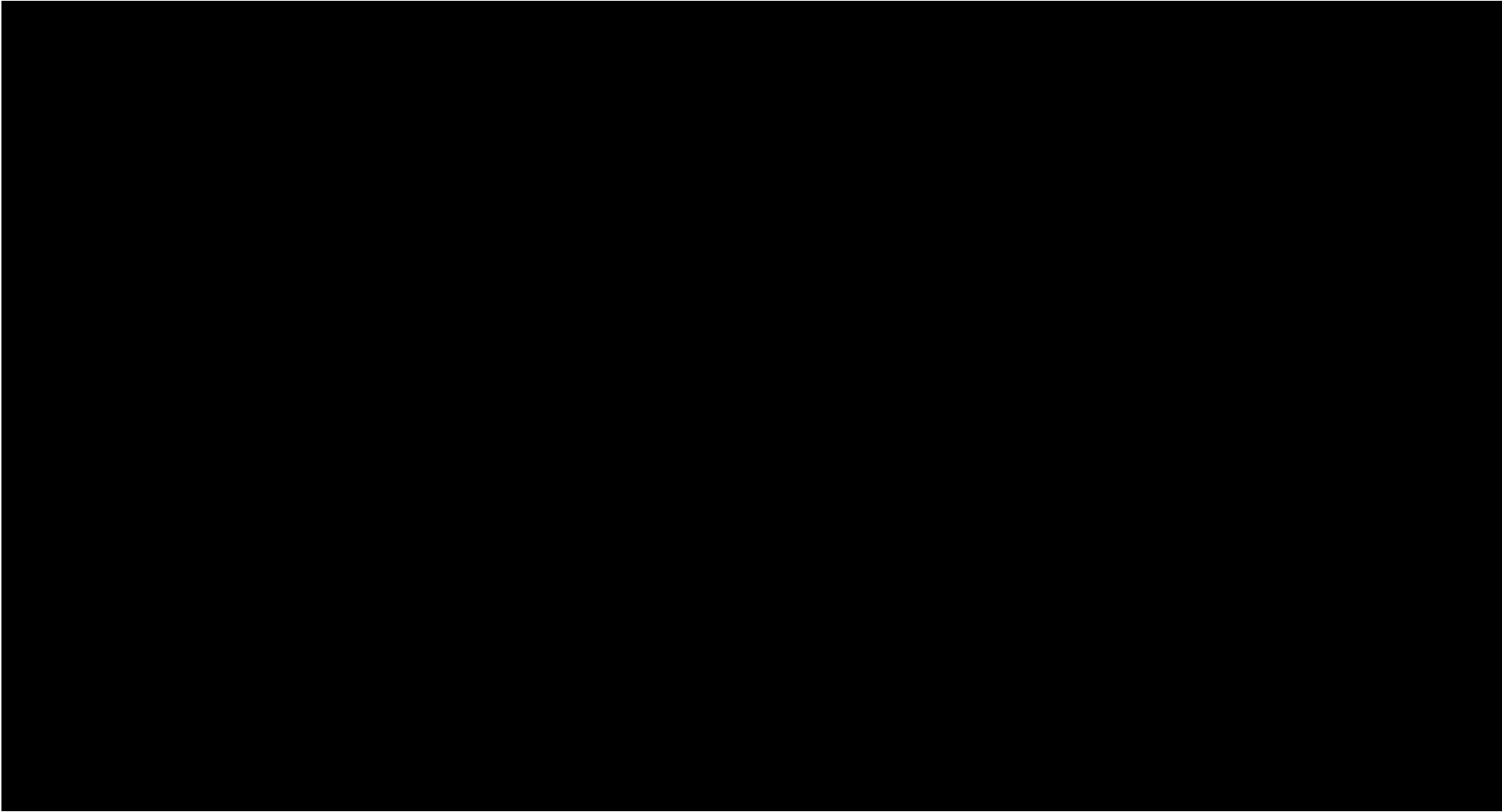








**Annex 3**



**ANNEX XI**  
**Multilateral Liability Agreements templates**

**Part A**

**LIMITED MULTI - LATERAL LIABILITY AGREEMENT**

**MULTI-LATERAL LIABILITY AGREEMENT FOR THE USE OF PCR ASSETS**

This Multi-Lateral Liability Agreement (the "Agreement") dated [\_\_\_\_\_] is made by and between, on one hand:

1. **EPEX SPOT SE ("EPEX")**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway ("**Nord Pool**");
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. ("HEEx")**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED];
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" S.A. ("OPCOM")**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3<sup>rd</sup> District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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,

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Section B 7260 under the number 264 63 318 and VAT n° CZ26463318; OTE's contract number: 8/13;

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

and:

9. .... a company incorporated under the laws of ..... in the form of ..... (limited liability company), with its principal place of business at ....., and registered at District Court of ..... under registration n° ..... and VAT n° ....., hereto represented by ..... duly authorized to act on the company's behalf for the present agreement (hereafter "....." or "**Serviced PX**").

(each being a "**Serviced PX**" and together the "**Serviced PXs**").

WHEREAS:

- A)** The PCR Parties have entered into a cooperation for the implementation of the PCR Market Coupling (as defined under art. 1.1) as a single European day-ahead price coupling of power regions by entering into the PCR Co-ownership Agreement (as defined under art. 1.1) .
- B)** The Signing PCR Parties and EPEX SPOT SE, an European Company (Societas Europae) incorporated under the French Law, with registered office located at 5 boulevard Montmartre, 75002 Paris – France, and registered with the commercial register in Paris under the number 508 010 501, (hereafter "**EPEX**") have entered the PCR Agreements (as defined under art. 1.1) as of the 13<sup>th</sup> of June 2012;
- C)** Under the terms and conditions of the PCR Agreements (as defined under art. 1.1), the PCR Parties are co-owners of all intellectual property rights pertaining to the assets required for the matching solution used in the PCR Market Coupling as listed in the PCR Agreements (together referred to as the "**PCR Assets**").
- D)** PCR Parties may provide services through the use of the PCR Assets according to the terms and conditions set forth in Article 6 of the PCR Co-ownership agreement to PXs (as defined under art. 1.1) which are not parties to the PCR Agreements.
- E)** EPEX has entered into a services agreement with each of the Serviced PXs for the provision of coupling services for the 4MMC Project.
- F)** Under the relevant confidentiality obligations entered into for the benefit of the PCR Parties, the Serviced PXs have been informed about the structure and functioning of the PCR Market Coupling and have received full access to all relevant PCR documentation and in particular the PCR Agreements. The Serviced PXs are aware of and understand the content of such relevant PCR documentation, in

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particular of the PCR Agreements, and the manner in which the PCR Parties agreed to operate the PCR Market Coupling. The Serviced PXs thus acknowledge that:

- i) PCR Market Coupling's operations are based on a decentralized model (as specifically described in article 6 and in particular in articles 6.1, 6.2, 6.3, 6.4, 6.5, 6.8 and 6.9 of PCR Cooperation Agreement) , in the form appended hereto, the PCR Cooperation Agreement being part of this Agreement;
- ii) each Servicing PX (as defined under art. 1.1) has the right to check, accept or reject the Market Coupling Results (as defined under art. 1.1) produced by the PCR Market Coupling also for its Serviced PX and is entitled to Decouple in accordance with Article 6.1.4 and 6.1.5 of PCR Cooperation Agreement. For the purpose of this Agreement and the PCR Agreements, all actions, obligations and tasks under the Common PCR Operations (as defined under art. 1.1) are -or are deemed to have been-performed by the Servicing PX on behalf of the Serviced PX and only the actions performed by the Servicing PX are relevant for Common PCR Operations, irrespective of any possible conflicting bilateral arrangements between the Servicing PX and the Serviced PX.
- iii) Decoupling (as defined under art. 1.1) is considered by all PCR Parties as an acceptable fall-back solution not in itself leading to any liability claim between PCR Parties;
- iv) the PCR Parties have, taking into account the foregoing and especially the decentralised model, agreed upon and implemented a specific liability scheme between them;

- G)** The Serviced PXs have been also explicitly informed and acknowledge that the PCR Assets have been developed by the PCR Parties, and shall not be used for rendering services to third parties in reliance upon any collective warranty (without prejudice to the individual commitments that the EPEX may bilaterally have established).
- H)** The Serviced PXs have declared (Annex 2) that until the signature of this Agreement they have not suffered any damage deriving from EPEX's use of the PCR Assets for the provision of coupling services for the 4MMC Project
- I)** Based on the request of the PCR Parties, as more particularly described in a letter from the PCR Steering Committee to the Serviced PXs dated [ ] hereby attached as Annex I., the Parties now wish to enter into this Agreement to establish appropriate waiver of liability arrangement between on the one hand each Serviced PX and on the other hand the PCR Parties with respect to the use by a Serviced PX of the PCR Asset, subject to the conditions herein provided.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

**CLAUSE 1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this Agreement, the following words and phrases shall have the following meanings:

<b>4MMC Project</b>	The 4MMC Project involves the National regulatory authorities (ERÚ, ÚRSO, MEKH, and ANRE), transmission system operators (ČEPS, SEPS, MAVIR, and Transelectrica), and power exchanges
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	/ market operators (OTE, OKTE, HUPX, and OPCOM, from the Czech Republic, Slovakia, Hungary, and Romania and its an intermediate step before joining MRC. The main aims is to be MRC compatible to facilitate further market coupling to MRC
<b>Annex</b>	means any attachment to this Agreement;
<b>Best Efforts</b>	means performing an obligation with the highest degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result (“middelenverbintenis” / “obligation de moyens”).
<b>Bid</b>	means a binding order to deliver or take off electricity against payment, including but not exclusively, hourly orders, block orders, MIC orders, MPC orders or PUN orders, as further defined in the PX market rules applicable to the concerned PX.
<b>Bidding Area</b>	means the geographical area where the delivery or take off of electricity, resulting from the matched Bid(s), takes place;
<b>Business Day</b>	means any day other than a Saturday and a Sunday in which banks are open to the public for general business in the city of the registered office of the recipient Party.
<b>Business Hours</b>	means 9 am to 5 pm on any Business Day.
<b>Clause</b>	means a clause of this Agreement;
<b>Common PCR Operations</b>	means the performance of the PCR Market Coupling within the MRC by a Party. Any PX shall be considered as in Common PCR Operations when the capacity is implicitly allocated between at least one of the Bidding Areas it operates and the Bidding Areas of MRC, via its Servicing PX if this PX is a Serviced PX.
<b>Defaulting Party</b>	means the Party that has committed a breach of any of its obligations under this Agreement;
<b>Dispute</b>	shall have the meaning given to that word in Clause 9;
<b>Disputing Parties</b>	shall have the meaning given to that phrase in Clause 9;
<b>Dispute Settlement Request</b>	shall have the meaning given to that phrase in Clause 9;
<b>DS Chairman</b>	shall have the meaning given to that phrase in Clause 9;

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<b>DS Failure Notice</b>	shall have the meaning given to that phrase in Clause 9;
<b>DSR Notice</b>	shall have the meaning given to that phrase in Clause 9;
<b>Market Coupling Results</b>	means the results of the PCR Market Coupling, calculated in accordance with the PCR Cooperation Agreement
<b>Multiregional Price Coupling or "MRC"</b>	refers to the PCR Market Coupling as integrated with the pre and post coupling processes, where the market clearing prices and the net positions are determined in the day-ahead timeframe in a single step using physical hourly ATC- and/or flow based capacities between CWE Region, Nordic-/Baltic Region, Great Britain, SWE and any further Bidding Area(s) as may be coupled to MRC from time to time
<b>Party</b>	means any party to this Agreement, being either a PCR Party or Serviced PX, and "Parties" will mean any group of two or more PCR Parties and/or Serviced PXs as appropriate.
<b>PCR Agreements</b>	means the PCR Cooperation Agreement and PCR Co-ownership Agreement
<b>PCR Assets</b>	shall have the meaning given to that phrase in Recital B;
<b>PCR Cooperation Agreement</b>	means the agreement of that name dated 12th June 2012, as subsequently amended and supplemented, signed between the PCR Parties which establishes the terms and conditions in respect of their cooperation for the implementation and operation of PCR Market Coupling.
<b>PCR Co-ownership Agreement</b>	means the agreement of that name dated 12th June 2012, as subsequently amended and supplemented, signed between the PCR Parties which establishes the terms and conditions in respect of their cooperation in the ownership of PCR Assets.
<b>PCR Market Coupling</b>	means the day-ahead Market Coupling as described in the PCR Cooperation Agreement and in the PCR Co-Ownership Agreement
<b>PCR Operations</b>	means the performance of coupling operations based on the use of at least one of the PCR Assets including the performance of such coupling operations by a PCR Party on behalf of a Serviced PX and any act or omission of a Serviced PX in this respect or with this purpose (whether for operating a market or for testing or simulation).
<b>PCR Parties</b>	means the Parties listed on page 1 of this Agreement (the current parties to the PCR Agreements excluding the Servicing PX ), and any PX that may adhere to the PCR Agreements from time to time in accordance with their terms.
<b>PX</b>	means a power exchange, a company that organizes directly, or through services of a third party, wholesale trade of electricity, to be delivered in a certain Bidding Area, or of electricity related products

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<b>Services Agreement</b>	the agreement freely negotiated and entered into by one or more PCR Parties with one or more Serviced PXs for the provision, inter alia, of the services described under Article 6.1.3 of the PCR Co-ownership agreement;
<b>Servicing PX</b>	a party to the PCR Agreements which provides PCR market coupling services, among other services as the case may be, to one or more PXs consistently with the PCR Agreement.
<b>Serviced PX</b>	Are HUPX, OKTE, OPCOM and any PX entering into a Servicing Agreement with EPEX which shall adhere to this Agreement

## **1.2 Interpretation**

In this Contract:

- i) Words importing a singular number include the plural and vice versa where the context requires;
- ii) Words importing one gender include the other gender where the context requires;
- iii) The insertion of headings is for convenience only and does not affect the interpretation of the Contract;
- iv) References to statutory provisions shall be construed as references to those provisions as replaced, amended, or re-enacted from time to time (whether before or after the entry into force of this Contract) and shall include any provisions of which they are re-enactments (whether with or without modification) and any subordinate legislation made under such provisions.
- v) The references to provisions of the PCR Agreements are construed as references to those provisions as replaced or amended from time to time by the PCR Parties (whether before or after the entry into force of this Contract).
- vi) Capitalised terms used in this Agreement which are otherwise not defined shall have the meaning attributed to them in the PCR Agreements.
- vii) This Agreement comprises the recital section, the main body of this Agreement and the annexes as attached to this Agreement.

## **CLAUSE 2. GENERAL PRINCIPLES**

The Parties agree:

- a) that nothing in this Agreement shall be understood or have as effect to grant a Serviced PX any right towards a PCR Party based upon or deriving from the PCR Agreements in respect of which such Serviced PX remains a third party. The services provided by EPEX to such Serviced PX are provided under the sole responsibility of EPEX; hence, any claim for damages in relation to the services provided to a Serviced PX is to be issued by the Serviced PX solely against EPEX pursuant to the terms and conditions of the Services Agreement entered into between them;

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- b) that nothing in this Agreement shall be understood or have as effect to grant a PCR Party any right towards a Serviced PX based upon or deriving from the PCR Agreements; any claim for damages in relation to the services provided to the Serviced PX is, to the extent permitted pursuant to the PCR Agreements, to be issued solely against EPEX and the PCR Parties remain third parties towards the Services Agreement entered into between a Serviced PX and EPEX,
- c) The Servicing PX and a Serviced PX may agree on a different liability regime applicable solely amongst them under the respective Services Agreement. Nothing in a Services Agreement shall have an effect on the rights and obligations provided under this Agreement concerning the relationship between the Non Servicing PX and the Serviced PXs.

### **CLAUSE 3. WAIVERS**

#### **3.1. Waiver by the Serviced PXs for claims related to the malfunctioning of the PCR Assets**

Each Serviced PX hereby explicitly waives any right to claim compensation towards any PCR Party for any damage:

- A) ascertained after the entering into force of the Agreement, and
- B) directly or indirectly related to the malfunctioning of the PCR Assets, such as, but not limited to:
  - a. interruption of operations caused by PCR Assets, or
  - b. errors in the development of the PCR Assets or
  - c. no correspondence to local requirements; or
  - d. no fitness to particular purposes of the Serviced PX.

This Clause 3.1 shall be effective between a Serviced PX and the Non Servicing PXs from the first use of the PCR assets in the context of the service provision (whether for operating a market or for testing or simulation)

#### **3.2 Non-application of the waivers**

The waivers provided under Clauses 3.1 and 3.2 apply only to the extent these are not prohibited by public order or mandatory law and they are not applicable in case of wilful misconduct nor fraud (*"faute intentionnelle"*).

#### **3.3. DAOA**

Without prejudice to PCR Agreements, the Parties that are also parties to the DAOA agree that in the cases in which this Agreement is applicable amongst them, the relevant clauses of this Agreement shall apply and exclude the application of DAOA.

### **CLAUSE 4. ADHERENCE**

All Parties accept the adherence of any PX provided that the adhering PX has duly signed the Adherence Form.

The Adherence Form which shall be sent by adhering PX to the other Parties via electronic mail. The Adherence Form shall enter into force and the adhering PX shall be considered as a new PCR Party or Serviced PX, as the case may be, as of the date on which all Parties have received the signed Adherence Form by electronic mail.

**CLAUSE 5. CONFIDENTIALITY**

The content of this Agreement or of the information exchanged between the Parties related to this Agreement is confidential and is governed:

- a) in respect of the Serviced PX, by the relevant confidentiality obligations entered into by each Serviced PX with the PCR Parties;
- b) between the PCR Parties, by the PCR Agreements.

However, by way of exception, each Party is entitled to disclose to any PX, TSO or to any public authority/body, at its own initiative, the existence and the content of this Agreement, provided that the recipient PX, TSO or public authority/ body shall not further use or disclose the information provided unless authorized by the relevant national legislation.

**CLAUSE 6. AMENDMENTS AND ENFORCEABILITY**

**6.1.** Amendments of this Agreement, or its Annexes, shall only be valid, if approved unanimously in writing and signed by all Parties. If no different procedure is approved by the Parties, any amendment to this Agreement is subject to the same signing process applied by the Parties for its first signature. The consent of a Party to a modification proposal shall not be withheld without justification. In deviation of the foregoing, Annex III (Contacts) may be amended by way of notification by the concerned Party and the adherence of a new Party shall follow the procedure provided under Clause 4.

**6.2.** It is understood that, if amendments of the PCR Agreements occur that affect the execution of the Agreement in such a way that it needs to be amended, the Parties commit to amend accordingly the Agreement, or its Annexes. The Parties expressly agree to review this Agreement if relevant modifications to Legal Provisions that require a change of this Agreement should emerge.

**CLAUSE 7. SEVERABILITY**

**7.1** If any provision of this Agreement is determined by a court and/or tribunal to be invalid, illegal or unenforceable, or becomes invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated.

**7.2** In the event mentioned under Clause 7.1, the Parties shall immediately commence good faith negotiations to remedy such invalidity either through (i) an amendment which reflects as nearly as possible the purpose of the original provision and, in any case, best adhere to the overall intent of the Parties on the date hereof or (ii) a deletion where such modification is not practicable. The remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.

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- 7.3 The Parties expressly agree that each provision of this Agreement, which provides for a waiver of liability, limitation of liability, disclaimer of warranties or exclusion of damages is intended to be severable and independent from any other provision and to be enforced as such.

### **CLAUSE 8. LAW AND INTERPRETATION**

- 8.1 This Agreement will be governed by and construed in accordance with the Belgian law, to the exclusion of the provisions on conflict of laws thereof .
- 8.2 Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail. The use of the English language is however without prejudice to the fact that legal concepts in this Agreement are to be understood as civil law concepts of Belgian Law (and not as common law concepts).

### **CLAUSE 9 DISPUTE RESOLUTION**

- 9.1 Any dispute arising under, in connection to or in the framework of this Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties (a “**Dispute**”) shall be subject to this Clause 9.
- 9.2 In the event of a Dispute arising between two or more Parties (the “**Disputing Parties**”), such Dispute shall first be subject to amicable settlement between the Disputing Parties, each represented by their Chief Executive Officers or any other Person with power of representation appointed to this aim by each of the concerned Disputing Party (the dispute settlement representative, hereafter “**DSR**”). To this aim the most diligent Disputing Party shall notify a written request (“**Dispute Settlement Request**”) to the other Disputing Parties containing the following information:
- a) A description of the Dispute; and
  - b) The identification of the Disputing Parties ; and
  - c) The scope of the demand(s) or claim(s) of the Disputing Parties; and
  - d) The legal basis of the demand(s) or claim(s).
- 9.3 Within two (2) weeks of the Dispute Settlement Request, the DSRs of the Disputing Parties shall jointly appoint between them a chairman responsible for organizing and leading the amicable dispute settlement procedure (the “**DS Chairman**”) who shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) by sending a written notice indicating the date, location and time of the meetings (“**DSR Notice**”). The DSRs of the Disputing Parties shall in first instance hear the positions of the Parties in Dispute and subsequently attempt to resolve the Dispute amicably. The DSRs of the Disputing Parties may hear and/or appoint technical experts provided that they are bound by confidentiality obligations at least equivalent to those in this Agreement. In view of achieving an amicable settlement the DSRs of the Disputing Parties shall:

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- a) Assess the facts and identify the claims of each Disputing Party;
- b) In case of damage use their Best Efforts to:
  - i) Determine which Party(ies) suffered damage;
  - ii) Estimate the damage (and its nature and extent);
  - iii) Determine which Party(ies) is(are) liable for the damage; and
  - iv) Determine the extent and modalities of indemnification;
- c) Assess the interests of the Disputing Parties in light of the objectives of this Agreement; and
- d) Formulate a proposal for settlement.

**9.4** In the event that the DSRs of the Disputing Parties fail to appoint a DS Chairman or fail to achieve an amicable settlement within one (1) month of the DSR Notice, or within any other timeframe agreed between the Parties, the DSRs of the Disputing Parties shall solicit ACER for a non-binding legal-regulatory opinion on the Dispute (hereafter the “**Opinion**”). Upon receipt of the Opinion, the DSRs of the Disputing Parties will use their Best Efforts to achieve an amicable settlement based on the Opinion.

**9.5** In the event that:

- a) The DSRs of the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt; or
- b) ACER 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,

**9.6** the Dispute shall be subject to a mediation procedure under the guidance of an external duly certified independent mediator. In such event the most diligent Disputing Party shall inform the other Parties hereof (“**DS Failure Notice**”).

**9.7** The external independent mediator shall be chosen, within one (1) month of the DS Failure Notice, by unanimous written consent of the non Disputing Parties or by the unanimous written consent of the DSRs of the Disputing Parties in case all Parties are involved in the Dispute, amongst a list of names of four (4) external independent mediator’s proposed by each Disputing Party. The external independent mediator to be chosen must i) be committed to the European Code of Conduct for Mediators and ii) have experience in the electricity and/or the Information and Communication Technologies sector. The Disputing Parties shall pay an equal share of the mediator fees and expenses, unless otherwise agreed in writing.

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- 9.8** If no amicable settlement is reached through the mediator within two (2) months of the DS Failure Notice or in the event that no agreement is reached on the appointment of a mediator within one (1) month of the DS Failure Notice, the Dispute shall be exclusively and finally settled by arbitration under the International Chamber of Commerce (“ICC”) Rules of Arbitration. Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have (3) three 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. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the Information and Communication Technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.
- 9.9** Any amicable settlement reached pursuant to this 9 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.
- 9.10** Nothing in this Clause shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts of Brussels, Belgium. The application of a Party to a judicial authority for such measures or for the implementation of any interim or conservatory measures ordered by the arbitration tribunal shall not be deemed as an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitration tribunal. Any order or provision issued by the judicial authority must be notified without delay to the arbitrators.
- 9.11** For the purposes hereof, the Parties elect domicile at the addresses given herein, or at a different address as may be designated by written notice.

### **CLAUSE 10 ENTRY INTO FORCE AND TERMINATION**

- 10.1** This Agreement shall enter into force with effect from [DATE\* as soon as all the Parties have individually signed one original of the Agreement and sent a scanned copy of it to the other Parties via electronic mail.
- 10.2** This Agreement is entered into for the following duration:
- i) in respect of the PCR Parties, as long as the PCR Cooperation Agreement or PCR Co-ownership Agreement is in force
  - ii) In respect of a Serviced PX, as long as such Serviced PX is provided with services by EPEX for PCR Operations.

### **CLAUSE 11 MISCELLANEOUS**

### **11.1 Relationship**

Each Party acknowledges and agrees that this 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.

### **11.2 No Waiver**

No waiver of any term, provision or condition of this 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 this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this 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 this Agreement shall not prevent its later enforcement.

### **11.3 Notices**

11.3.1 All notices and correspondence under this Agreement shall be in writing and shall be delivered, previously anticipated by e-mail, by personal service, express courier using an internationally recognised courier company, or registered mail, return receipt requested, to the following addresses, or at such different address as maybe designated by such party by written notice to the other party from time to time. 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 Business Hours, notice shall be deemed to have been received at the start of Business Hours on the next following Business Day..

11.3.2 The addresses, e-mails and phone numbers of the Parties for the purpose of this Agreement are indicated in Annex I (Contacts) and each Party may update such references by means of a written notice of its Reference Coordinator.

11.3.3 The Parties agree that the working language for all notifications and for all matters relating to their cooperation under this Agreement shall be English, to the extent compatible with the applicable Legal Provisions, if any.

### **11.4 Survival**

Notwithstanding any valid termination of this Agreement for whatever reason, Clauses 5 (Confidentiality), 8 (Law and Interpretation), 9 (Dispute Resolution) and 10 (Entry into force and Termination) shall survive such termination of the Agreement..

### **11.5 Inequitable clauses-Entire Agreement**

The Parties agree that the Agreement, in all its part, has been specifically discussed and negotiated and agreed upon and supersedes any and all prior agreements, understandings, documents and arrangements, whether oral or written, between the Parties relating to the subject matters hereof on which this Agreement is based.

### **11.6 Records**

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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 this Agreement and each Party shall retain such records for a period as required under the applicable Legal Provisions applicable to it, with a minimum of three (3) years unless in conflict with the applicable Legal Provisions. On another Party's first motivated 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.

**11.7 Remedies provided by law**

The rights and remedies under this Agreement are exclusive of any rights and remedies provided by law.

\_\_\_\_\_

This Agreement has been duly executed in .... (X) original copies, one for each of the undersigned parties.

SIGNED by:

[\_\_to be mentioned all the parties referred to in the preamble\_\_]

Annex I – PCR SC Letter dated [\_\_\_\_]

Annex II – Adherence Form

Annex III - Contacts

**Adherence Form to become a Party to the**

**Multi-Lateral Liability Agreement**

**(MLA)**

This adherence form (hereinafter Adherence Form) is made on [SAME DATE OF THE SIGNATURE] by

**[company name]**, a company duly organized and existing under the laws of ....., with registered office in ....., registered with National Court register in ..... under the number ....., duly represented by ....., hereafter called "**Adhering Party**",

towards

1. **EPEX SPOT SE ("EPEX")**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway ("**Nord Pool**");
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. ("HEEx")**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 ;
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" S.A. ("OPCOM")**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev, 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: I 8/13;

*Execution Version*

8. **Towarowa Giełda Energii S.A. ("TGE")**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;
9. **BSP Regional Energy Exchange LL C** a company incorporated under the laws of Republic of Slovenia in the form of an LL C (limited liability company), with its principal place of business at Dunajska cesta 156, 1000 Ljubljana, Slovenia, and registered at District Court of Ljubljana under registration no 3327124000 and VAT no 5137748661,

hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

**Whereas**

- A. On the 3<sup>rd</sup> of February 2015, the Parties have entered into the Multi-Lateral Liability Agreement, hereby enclosed as Attachment 2 (hereinafter "**MLA**")
- B. On the 22<sup>nd</sup> of June 2015, the **Adhering Party** has expressed to the PCR SC its wish to adhere to the MLA.
- C. Always on the 22<sup>nd</sup> of June 2015, the **Adhering Party** has been provided with a copy of the MLA.
- D. According to Article 4.1 of the MLA, all Parties accept the adherence to the MLA of the Adhering Party provided that it has duly executed this Adherence Form which is fully consistent with the template provided under Annex II to the MLA

**NOW THEREFORE THE ADHERING PARTY AGREES AND COMMITS TOWARDS THE PARTIES AS FOLLOWS:**

**1. Adherence to the MLA**

- 1.1 The Adhering Party agrees to adhere to the MLA accepting all the terms and conditions thereby provided, with no exclusion whatsoever.
- 1.2 Pursuant to art. 4 of the MLA, it is understood that the Parties agree to the adherence of the Adhering Party without that any further acceptance must be formalized following the execution of this Adherence Form.

**2. Acknowledgement by the Adhering Party**

Upon signature of this Adherence Form, the Adhering Party declares to be fully aware of, all obligations of the MLA having received by the Parties full and complete access to the relevant documentation

### **3. Entry into force and termination**

- 3.1 Pursuant to art. 4.1 of the MLA, this Adherence form shall enter into force as of the date on which all the Parties have received the signed Adherence Form by electronic mail to e-mail addresses listed in Attachment 1. An original hard copy of this Adherence Form duly signed by the Adhering Party shall be sent to each of the Parties for record purposes.
- 3.2 This Agreement is entered into for the duration of the MLA as set forth under art 10.2 of the MLA. For the avoidance of any doubt, should the MLA be earlier terminated, this agreement shall be terminated accordingly.

### **3 Miscellaneous**

- a. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- b. Any change to this Adherence Form can only be validly agreed upon in writing, duly signed by the legal representative of the Adhering Party and of all the Parties.
- c. If one or more of the provisions of this Adherence Form is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Adherence Form is not affected in any material manner adverse to any Party. In such event, the the Adhering Party and of all the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- d. The Parties agree that the working language for all notifications and for all matters relating to this Adherence Form shall be English, to the extent compatible with the applicable provisions of mandatory law, if any. Any term used in this Adherence Form with capital letter and not otherwise defined herein, shall have the same meaning ascribed to it in the MLA.
- e. The Attachments and the recitals to this Adherence Form form an integral part thereof and any reference to this Adherence Form shall include a reference to the Attachments and vice versa.
- f. In case of contradiction or discrepancy between this Adherence Form and the MLA and/or any of their respective annexes the precedence shall be
  1. Main text of the MLA;
  2. Annexes to the MLA;
  3. Main body of this Adherence Form;
- g. The Adhering Party may not assign or transfer this Adherence Form, partially or as a whole.

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- h. The present Adherence Form is governed by and construed with Belgian laws without regard to the conflict of laws principles of it.
- i. Any dispute arising out of or in connection with this Agreement shall be settled in accordance with art 9 of the MLA.

Date and Place, same as the one indicated in the heading]

**COMPANY NAME**

Signature(s)

Name(s)

Title(s)

**ATTACHMENT 1 TO THE ADHERENCE FORM – CONTACTS**

For EPEX SPOT SE

[Redacted contact information for EPEX SPOT SE]

For GME

[Redacted contact information for GME]

For OMIE

[Redacted contact information for OMIE]

For Nord Pool EMCO AS

[REDACTED]  
[REDACTED]

For OTE

[REDACTED]  
[REDACTED]

ATTACHMENT 2 TO THE ADHERENCE FORM – MLA IN FORCE

**Part B**

**FULL MULTI - LATERAL LIABILITY AGREEMENT**

This Multi - Lateral Liability Agreement (the “Agreement”) is made by and between, on one hand:

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway (“**Nord Pool**”);
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]

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6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3<sup>rd</sup> District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;
8. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

and:

1. .... a company incorporated under the laws of ..... in the form of ..... (limited liability company), with its principal place of business at ....., and registered at District Court of ..... under registration n° ..... and VAT n° ....., hereto represented by ..... duly authorized to act on the company’s behalf for the present agreement (hereafter “.....” or “**Serviced PX**”).

WHEREAS:

- i. The PCR Parties have entered into a cooperation for the implementation of the PCR Market Coupling (as defined under art. 1.1) as a single European day - ahead price coupling of power regions by entering into the PCR Cooperation Agreement (as defined under art. 1.1) and PCR Co - ownership Agreement (as defined under art. 1.1) .
- ii. Under the terms and conditions of the PCR Agreements (as defined under art. 1.1), the PCR Parties are coowners of all intellectual property rights pertaining to the assets required for the matching solution used in the PCR Market Coupling as listed in the PCR Agreements (together referred to as the “**PCR Assets**”).
- iii. PCR Parties may provide services through the use of the PCR Assets according to the terms and conditions set forth in Article 6 of the PCR Co - ownership agreement to PXs (as defined under art. 1.1) which are not parties to the PCR Agreements.
- iv. Under the relevant confidentiality obligations entered into for the benefit of the PCR Parties, the Serviced PXs have been informed about the structure and functioning of the PCR Market Coupling and have received full access to all relevant PCR documentation and in particular the PCR Agreements. The Serviced PXs participating via the Servicing PXs in PCR Operations (as defined under art. 1.1) are aware of and understand the content of such relevant PCR documentation, in particular of the PCR Agreements, and the manner in which the PCR Parties agreed to operate the PCR Market Coupling. The Serviced PXs thus acknowledge that:

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- a) PCR Market Coupling's operations are based on a decentralized model (as specifically described in article 6 and in particular in articles 6.1, 6.2, 6.3, 6.4, 6.5, 6.8 and 6.9 of PCR Cooperation Agreement);
  - b) each Servicing PX has the right to check, accept or reject the Market Coupling Results (as defined under art. 1.1) produced by the PCR Market Coupling also for its Served PX and is entitled to Decouple in accordance with Article 6.1.4 and 6.1.5 of PCR Cooperation Agreement. For the purpose of this Agreement and the PCR Agreements, all actions, obligations and tasks under the Common PCR Operations (as defined under art. 1.1) are - or are deemed to have been - performed by the Servicing PX on behalf of the Served PX and only the actions performed by the Servicing PX are relevant for Common PCR Operations, irrespective of any possible conflicting bilateral arrangements between the Servicing PX and the Served PX.
  - c) Decoupling (as defined under art. 1.1) is considered by all PCR Parties as an acceptable fall - back solution not in itself leading to any liability claim between PCR Parties;
  - d) the PCR Parties have, taking into account the foregoing and especially the decentralised model, agreed upon and implemented a specific liability scheme between them, according to which the PCR Parties waive between each other the right to claim for compensation of damages deriving from any Operational Breach (as defined under art. 1.1).
- v. To ensure that this specific liability scheme between the PCR Parties is also applicable reciprocally towards and between all PXs involved in the PCR MC, the PCR Parties wish to enter into a specific agreement with the Served PXs so as to establish appropriate waivers of liability between on the one hand each Served PX and on the other hand the Non - Servicing PXs with respect to: (i) the use by a Served PX of the PCR Assets; and (ii) the carrying out of PCR Operations in accordance with the terms of the PCR Agreements.
  - vi. The Served PXs have been also explicitly informed and acknowledge that the PCR Assets have been developed by the PCR Parties, without any mutual warranty of commercialization or fitness for a particular use and shall not be used for rendering services to third parties in reliance upon any collective warranty (without prejudice to the individual commitments that the Servicing PX may bilaterally establish).
  - vii. The Parties now wish to enter into this Agreement to establish appropriate waiver of liability arrangements as described in Recital E above.

NOW THEREFORE, THE PARTIES HEREBY AGREE AS FOLLOWS:

### **CLAUSE 1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement, the following words and phrases shall have the following meanings:

**Annex** means any attachment to this Agreement;

**Best Efforts** means performing an obligation with the highest degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced person engaged in the same line of business under

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the same circumstances and conditions, without guaranteeing the achievement of a specific result (“middelenverbintenis” / “obligation de moyens”).

**Bid** means a binding order to deliver or take off electricity against payment, including but not exclusively, hourly orders, block orders, MIC orders, MPC orders or PUN orders, as further defined in the PX market rules applicable to the concerned PX;

**Bidding Area** means the geographical area where the delivery or take off of electricity, resulting from the matched Bid(s), takes place;

**Business Day** means any day other than a Saturday and a Sunday in which banks are open to the public for general business in the city of the registered office of the recipient Party.

**Business Hours** means 9 am to 5 pm on any Business Day.

**Clause** means a clause of this Agreement;

**Common PCR Operations** means the performance of the PCR Market Coupling within the MRC by a Party. Any PX shall be considered as in Common PCR Operations when the capacity is implicitly allocated between at least one of the Bidding Areas it operates and the Bidding Areas of MRC, via its Servicing PX if this PX is a Serviced PX.

**Day - ahead Operations Agreement or DAOA** means the agreement of that name dated 22 April 2014 and made between AFFÄRSVERKETSVENSKAKRAFTNÄT, AMPRION GMBH, BRITNED DEVELOPMENT LIMITED, CREOS, ENERGINET.DK, ELIA SYSTEM OPERATOR, FINGRID OYJ, NATIONAL GRID INTERCONNECTORS LIMITED, RTE RESEAU DE TRANSPORT D’ELECTRICITE , STATNETT SF, TENNET TSO B.V., TENNET TSO GMBH, TRANSNETBW GMBH, 50Hertz TRANSMISSION GMBH, APX POWER B.V., APX COMMODITIES LTD., BELPEX SA, EPEX SPOT SE, NORD POOL EMCO AS, RED ELECTRICA DE ESPAÑA S.A.U., REDE ELECTRICA NACIONAL, EPEX SPOT SE, RTE and OMIE POLO ESPAÑOL as such agreement may be subsequently amended, updated or replaced from time to time.

**Defaulting Party** means the Party that has committed a breach of any of its obligations under this Agreement;

**Dispute** shall have the meaning given to that word in Clause 9;

**Disputing Parties** shall have the meaning given to that phrase in Clause 9;

**Dispute Settlement Request** shall have the meaning given to that phrase in Clause 9;

**DS Chairman** shall have the meaning given to that phrase in Clause 9;

**DS Failure Notice** shall have the meaning given to that phrase in Clause 9;

**DSR Notice** shall have the meaning given to that phrase in Clause 9;

**Market Coupling Results** means the results of the PCR Market Coupling, calculated in accordance with the PCR Cooperation Agreement

**Multiregional Price Coupling or “MRC”**

refers to the PCR Market Coupling as integrated with the pre and post coupling processes, where the market clearing prices and the net positions are determined in the day - ahead timeframe in a single step

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using physical hourly ATC and/or flow Based capacities between CWE Region, Nordic - /Baltic Region, Great Britain, SWE and any further Bidding Area(s) coupled to the previous ones.

**Non - Servicing PX** with respect to each Serviced PX, means any PCR Party other than the Servicing PX of such Serviced PX.

**Operational Breach** shall have the meaning given in the PCR Cooperation Agreement.

**Operational Liability Claim** means:

- any claim for compensation of damages of a Serviced PX toward a PCR Party for any damage caused by a PCR Party to Serviced PX related to Common PCR Operations, *inter alia* pursuant to an alleged Operational Breach, or
- any claim for compensation of damages by a PCR Party towards a Serviced PX for any damage caused by such Serviced PX to a PCR Party in relation to or in the framework of the Common PCR Operations;

**Party** means any party to this Agreement, being either a PCR Party or Serviced PX, and **"Parties"** will mean any group of two or more PCR Parties and/or Serviced PXs as appropriate.

**PCR Agreements** means the PCR Cooperation Agreement and PCR Co - ownership Agreement

**PCR Assets** shall have the meaning given to that phrase in Recital B;

**PCR Cooperation Agreement** means the agreement of that name dated 12th June 2012, as subsequently amended and supplemented, signed between the PCR Parties which establishes the terms and conditions in respect of their cooperation for the implementation and operation of PCR Market Coupling.

**PCR Co - ownership Agreement** means the agreement of that name dated 12th June 2012, as subsequently amended and supplemented, signed between the PCR Parties which establishes the terms and conditions in respect of their cooperation in the ownership of PCR Assets.

**PCR Market Coupling** means the day - ahead Market Coupling as described in the PCR Cooperation Agreement and in the PCR Co - Ownership Agreement

**PCR Operations** means the performance of coupling operations based on the use of at least one of the PCR Assets including the performance of such coupling operations by a PCR Party on behalf of a Serviced PX and any act or omission of a Serviced PX in this respect or with this purpose (whether for operating a market or for testing or simulation).

**PCR Party** means any party to the PCR Agreements , including any party adhering to the PCR Agreements after the entry into force of this Agreement.

**PX** means a power exchange, a company that organizes directly, or through services of a third party, wholesale trade of electricity, to be delivered in a certain Bidding Area, or of electricity related products

**Services Agreement** an agreement freely negotiated and entered into by one or more PCR Parties with one or more Serviced PXs for the provision, *inter alia*, of the services described under Article 6.1.3 of the PCR Coownership agreement;

**Servicing PX** a PCR Party which provides services to one or more Serviced PXs consistently with the PCR Agreement;

## **1.2 Interpretation**

In this Contract:

- i) words importing a singular number include the plural and vice versa where the context requires;
- ii) words importing one gender include the other gender where the context requires;
- iii) the insertion of headings is for convenience only and does not affect the interpretation of the Contract;
- iv) references to statutory provisions shall be construed as references to those provisions as replaced, amended, or re - enacted from time to time (whether before or after the entry into force of this Contract) and shall include any provisions of which they are re - enactments (whether with or without modification) and any subordinate legislation made under such provisions.
- v) the references to provisions of the PCR Agreements are construed as references to those provisions as replaced or amended from time to time by the PCR Parties (whether before or after the entry into force of this Contract).
- vi) capitalised terms used in this Agreement which are otherwise not defined shall have the meaning attributed to them in the PCR Agreements.
- vii) This Agreement comprises the recital section, the main body of this Agreement and the annexes as attached to this Agreement.

## **CLAUSE 2. GENERAL PRINCIPLES**

The Parties agree:

- a) that nothing in this Agreement shall be understood or have as effect to grant a Serviced PX any right towards a PCR Party based upon or deriving from the PCR Agreements in respect of which such Serviced PX remains a third party. The services provided by a Servicing PX to such Serviced PX are provided under the sole responsibility of such Servicing PX; hence, any claim for damages in relation to the services provided to a Serviced PX in respect of the PCR Market Coupling is to be issued by the Serviced PX solely against the Servicing PX of such Serviced PX pursuant to the terms and conditions of the Services Agreement entered into between them;
- b) that nothing in this Agreement shall be understood or have as effect to grant a PCR Party any right towards a Serviced PX based upon or deriving from the PCR Agreements; any claim for damages in relation to the services provided to the Serviced PX in respect of the PCR Market Coupling is, to the extent permitted pursuant to the PCR Agreements, to be issued solely against the Servicing PX and the Non - Servicing PXs remain a third party towards the Services Agreement entered into between a Serviced PX and its Servicing PX;
- c) that a Servicing PX and a Serviced PX may agree on a different liability regime applicable solely amongst them under the respective Services Agreement. Nothing in a Services

Agreement shall have an effect on the rights and obligations provided under this Agreement concerning the relationship between the Non Servicing PXs and the Serviced PXs.

### **CLAUSE 3. WAIVERS**

#### **3.1 Waivers by the Serviced PXs**

##### **3.1.1. Operational Liability Claims**

Each Serviced PX in Common PCR Operations hereby explicitly waives any Operational Liability Claim towards any Non Servicing PX participating in Common PCR Operations, including in the case of gross negligence.

##### **3.1.2. Claims related to the malfunctioning of the PCR Assets**

Each Serviced PX hereby explicitly waives any right to claim compensation towards any Non Servicing PX for any damage directly or indirectly related to usage, malfunctioning, of the PCR Assets such as, but not limited to:

- a. interruption of operations caused by PCR Assets, or
- b. errors in the development of the PCR Assets, or
- c. no correspondence to local requirements; or
- d. no fitness to particular purposes of the Serviced PX.

For the avoidance of doubt, this Clause 3.1.2 is applicable to each Serviced PX irrespective whether such Serviced PX takes part in Common PCR Operations or not.

##### **3.1.3 First use of PCR assets**

Clause 3.1.2 shall be effective between a Serviced PX and the Non Servicing PXs from the first use of the PCR assets in the context of the service provision (whether for operating a market or for testing or simulation)

#### **3.2 Waiver by Non Servicing PXs**

In consideration of the waiver provided under Clause 3.1.1, each Non - Servicing PX participating in Common PCR Operations hereby explicitly waives any Operational Liability Claim towards any Serviced PX participating in Common PCR Operations, including in the case of gross negligence.

#### **3.3 Scope of the waivers for Operational Liability Claims**

For the sake of clarity, the waivers for Operational Liability Claims set forth under Clauses 3.1.1 and 3.2 shall apply, in particular, but not limited to, for damages arising in relation to :

- a. The production of Market Coupling Results ,
- b. The provision of information and data (e.g. network features and Bids) requested under art 6.1.5 of PCR Cooperation Agreement
- c. The absence of Market Coupling Results
- d. Wrongful act or omission by a Party under the Coordinator, Hot Backup Coordinator or Operator role as set forth in Article 6;
- e. Decoupling,
- f. Any decision taken within the PCR Operational Call (art.6.1.7 of PCR Cooperation Agreement).

#### **3.4 Non - application of the waivers**

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The waivers provided under Clauses 3.1 and 3.2 apply only to the extent these are not prohibited by public order or mandatory law and they are not applicable in case of wilful misconduct nor fraud (*"faute intentionnelle"*).

### **3.5. DAOA**

Without prejudice to PCR Agreements, the Parties that are also parties to the DAOA agree that in the cases in which this Agreement is applicable amongst them, the relevant clauses of this Agreement shall apply and exclude the application of DAOA.

### **CLAUSE 4. ADHERENCE**

- 4.1 All Parties accept the adherence of any PX provided that the adhering PX has duly signed the Adherence Form. The Adherence Form which shall be sent by adhering PX to the other Parties via electronic mail. The Adherence Form shall enter into force and the adhering PX shall be considered as a new PCR Party or Serviced PX, as the case may be, as of the date on which all Parties have received the signed Adherence Form by electronic mail.
- 4.2 It is understood that upon the adherence of a new Party to the PCR Agreements, the waivers provided under clause 3 above shall apply also to such new Party.

### **CLAUSE 5. CONFIDENTIALITY**

The content of this Agreement or of the information exchanged between the Parties related to this Agreement is confidential and is governed:

- a. in respect of the Serviced PX, by the relevant confidentiality obligations entered into by each Serviced PX with the PCR Parties;
- b. between the PCR Parties, by the PCR Agreements However, by way of exception, each Party is entitled to disclose to any PX, TSO or to any public authority/body, at its own initiative, the existence and the content of this Agreement, provided that the recipient PX, TSO or public authority/ body shall not further use or disclose the information provided unless authorized by the relevant national legislation.

### **CLAUSE 6. AMENDMENTS AND ENFORCEABILITY**

6.1 Amendments of this Agreement, or its Annexes, shall only be valid, if approved unanimously in writing and signed by all Parties. If no different procedure is approved by the Parties, any amendment to this Agreement is subject to the same signing process applied by the Parties for its first signature. The consent of a Party to a modification proposal shall not be withheld without justification. In deviation of the foregoing, Annex I (Contacts) may be amended by way of notification by the concerned Party and the adherence of a new Party shall follow the procedure provided under Clause 4.

6.2 It is understood that, if amendments of the PCR Agreements occur that affect the execution of the Agreement in such a way that it needs to be amended, the Parties commit themselves to amend accordingly the Agreement, or its Annexes. The Parties expressly agree to review this Agreement if relevant modifications to Legal Provisions that require a change of this Agreement should emerge.

### **CLAUSE 7. SEVERABILITY**

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- 7.1 If any provision of this Agreement is determined by a court and/or tribunal to be invalid, illegal or unenforceable, or becomes invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provisions eliminated.
- 7.2 In the event mentioned under Clause 7.1, the Parties shall immediately commence good faith negotiations to remedy such invalidity either through (i) an amendment which reflects as nearly as possible the purpose of the original provision and, in any case, best adhere to the overall intent of the Parties on the date hereof or (ii) a deletion where such modification is not practicable. The remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.
- 7.3 The Parties expressly agree that each provision of this Agreement, which provides for a waiver of liability, limitation of liability, disclaimer of warranties or exclusion of damages is intended to be severable and independent from any other provision and to be enforced as such.

### **CLAUSE 8. LAW AND INTERPRETATION**

- 8.1 This Agreement will be governed by and construed in accordance with the Belgian law, to the exclusion of the provisions on conflict of laws thereof .
- 8.2 Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail. The use of the English language is however without prejudice to the fact that legal concepts in this Agreement are to be understood as civil law concepts of Belgian Law (and not as common law concepts).

### **CLAUSE 9. DISPUTE RESOLUTION**

- 9.1 Any dispute arising under, in connection to or in the framework of this Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties (a “**Dispute**”) shall be subject to this Clause 9.
- 9.2 In the event of a Dispute arising between two or more Parties (the “**Disputing Parties**”), such Dispute shall first be subject to amicable settlement between the Disputing Parties, each represented by their Chief Executive Officers or any other Person with power of representation appointed to this aim by each of the concerned Disputing Party (the dispute settlement representative, hereafter “**DSR**”). To this aim the most diligent Disputing Party shall notify a written request (“**Dispute Settlement Request**”) to the other Disputing Parties containing the following information:
- a. a description of the Dispute; and
  - b. the identification of the Disputing Parties ; and
  - c. the scope of the demand(s) or claim(s) of the Disputing Parties; and
  - d. the legal basis of the demand(s) or claim(s).
- 9.3 Within two (2) weeks of the Dispute Settlement Request, the DSRs of the Disputing Parties shall jointly appoint between them a chairman responsible for organizing and leading the amicable dispute

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settlement procedure (the “**DS Chairman**”) who shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) by sending a written notice indicating the date, location and time of the meetings (“**DSR Notice**”). The DSRs of the Disputing Parties shall in first instance hear the positions of the Parties in Dispute and subsequently attempt to resolve the Dispute amicably. The DSRs of the Disputing Parties may hear and/or appoint technical experts provided that they are bound by confidentiality obligations at least equivalent to those in this Agreement. In view of achieving an amicable settlement the DSRs of the Disputing Parties shall:

- a) assess the facts and identify the claims of each Disputing Party;
- b) in case of damage use their Best Efforts to:
  - i) Determine which Party(ies) suffered damage;
  - ii) Estimate the damage (and its nature and extent);
  - iii) Determine which Party(ies) is(are) liable for the damage; and
  - iv) Determine the extent and modalities of indemnification;
- c) assess the interests of the Disputing Parties in light of the objectives of this Agreement; and
- d) formulate a proposal for settlement.

9.1 In the event that the DSRs of the Disputing Parties fail to appoint a DS Chairman or fail to achieve an amicable settlement within one (1) month of the DSR Notice, or within any other timeframe agreed between the Parties, the DSRs of the Disputing Parties shall solicit ACER for a non - binding legalregulatory opinion on the Dispute (hereafter the “**Opinion**”). Upon receipt of the Opinion, the DSRs of the Disputing Parties will use their Best Efforts to achieve an amicable settlement based on the Opinion.

9.2 In the event that:

- a) The DSRs of the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt; or
- b) ACER 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 subject to a mediation procedure under the guidance of an external duly certified independent mediator. In such event the most diligent Disputing Party shall inform the other Parties hereof (“**DS Failure Notice**”). The external independent mediator shall be chosen, within one (1) month of the DS Failure Notice, by unanimous written consent of the non Disputing Parties or by the unanimous written consent of the DSRs of the Disputing Parties in case all Parties are involved in the Dispute, amongst a list of names of four (4) external independent mediator’s proposed by each Disputing Party. The external independent mediator to be chosen must i) be committed to the European Code of Conduct for Mediators and ii) have experience in the electricity and/or the Information and Communication Technologies sector. The Disputing Parties shall pay an equal share of the mediator fees and expenses, unless otherwise agreed in writing.

9.3 If no amicable settlement is reached through the mediator within two (2) months of the DS Failure Notice or in the event that no agreement is reached on the appointment of a mediator within one (1) month of the DS Failure Notice, the Dispute shall be exclusively and finally settled by arbitration under the International Chamber of Commerce (“**ICC**”) Rules of Arbitration. Any Party in the Dispute

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shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have (3) three 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. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the Information and Communication Technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.

- 9.4 Any amicable settlement reached pursuant to this 9 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.
- 9.5 Nothing in this Clause shall preclude the Parties from applying for interim or conservatory measures or any other injunctive relief in summary proceedings before the competent courts of Brussels, Belgium. The application of a Party to a judicial authority for such measures or for the implementation of any interim or conservatory measures ordered by the arbitration tribunal shall not be deemed as an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitration tribunal. Any order or provision issued by the judicial authority must be notified without delay to the arbitrators.
- 9.6 For the purposes hereof, the Parties elect domicile at the addresses given herein, or at a different address as may be designated by written notice.

### **CLAUSE 10. ENTRY INTO FORCE AND TERMINATION**

**10.1** This Agreement shall enter into force when duly signed by all the Parties. Should not all Parties sign on the same date, the trigger date for this entry into force will be the date of the last Party's signature. It is understood that the waiver provided under art 3.1 and 3.2 shall be effective as of the date of the first use of the PCR Assets even if a claim relates (in whole or in part) to a period prior to the signature of this Agreement.

**10.2** This Agreement is entered into for the following duration:

- i) in respect of the PCR Parties, as long as the PCR Cooperation Agreement or PCR Co - ownership Agreement is in force
- ii) In respect of a Serviced PX, as long as such Serviced PX is provided with services by a Servicing Party for PCR Operations.

**10.3** To the extent the early termination is valid under the relevant Service Agreement, a Serviced PX shall be entitled to early terminate this Agreement only provided that:

- a) such Serviced PX is no more provided with services by a PCR Party as stated by a joint declaration of the Serviced PX together with its Servicing PX and
- b) such Serviced PX provides the Non Servicing Parties with a declaration through which it waives any future claims.

### **CLAUSE 11. MISCELLANEOUS**

#### **11.1 Relationship**

Each Party acknowledges and agrees that this Agreement shall not constitute, create or give effect to a joint venture, pooling arrangement, principal/agency relationship, partnership or formal *business*

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organisation of any kind and that neither Party shall have the right to bind the other without that Party's prior express written consent.

### **11.2 No Waiver**

No waiver of any term, provision or condition of this 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 this Agreement shall operate as a waiver by it of any right to exercise it in future or of any other of its rights under this 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 this Agreement shall not prevent its later enforcement.

### **11.3 Notices**

- 11.3.1 All notices and correspondence under this Agreement shall be in writing and shall be delivered, previously anticipated by e - mail, by personal service, express courier using an internationally recognized courier company, or registered mail, return receipt requested, to the following addresses, or at such different address as maybe designated by such party by written notice to the other party from time to time. 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 email provided that, in either case, where delivery occurs outside Business Hours, notice shall be deemed to have been received at the start of Business Hours on the next following Business Day.
- 11.3.2 The addresses, e - mails and phone numbers of the Parties for the purpose of this Agreement are indicated in Annex I (Contacts) and each Party may update such references by means of a written notice of its Reference Coordinator.
- 11.3.3 The Parties agree that the working language for all notifications and for all matters relating to their cooperation under this Agreement shall be English, to the extent compatible with the applicable Legal Provisions, if any.

### **11.4 Survival**

Notwithstanding any valid termination of this Agreement for whatever reason Clauses 5 (Confidentiality), 8 (Law and Interpretation), 9 (Dispute Resolution) and 10 (Entry into force and Termination) shall survive such termination of the Agreement.

### **11.5 Inequitable clauses - Entire Agreement**

The Parties agree that the Agreement, in all its part, has been specifically discussed and negotiated and agreed upon and supersedes any and all prior agreements, understandings, documents and arrangements, whether oral or written, between the Parties relating to the subject matters hereof on which this Agreement is based.

### **11.6 Amendment Request**

Any Party to this Agreement is entitled to request an amendment of the Agreement without any limitation whatsoever.

### **11.7 Records**

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 this Agreement and each Party shall retain such records for a period as required under the applicable Legal Provisions applicable to it, with a minimum of three (3) years unless in conflict with the applicable Legal Provisions. On another Party's first motivated request,

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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.

**11.8 Remedies provided by law**

The rights and remedies under this Agreement are exclusive of any rights and remedies provided by law.

\_\_\_\_\_

This Agreement has been duly executed in nine (9) original copies, one for each of the undersigned parties.

For: **BSP**

By: .....  
Function: .....  
Date: .....

For: **Nord Pool EMCO AS**

By: .....  
Function: .....  
Date: .....  
Signature

For: **EPEX Spot SE**

By: .....  
Function: .....  
Date: .....

For: **GME**

By: .....  
Function: .....  
Date: .....  
Signature

For: **OTE**

By: .....  
Function: .....  
Date: .....  
Signature

For: **OTE**

By: .....  
Function: .....  
Date: .....  
Signature

For: **OMI - Polo Español, S.A.**

By: .....  
Function: .....  
Date: .....  
Signature

Annex I – PCR SC Letter dated [\_\_\_\_]

Annex II – Adherence Form

Annex III - Contacts

ANNEX II

**Adherence Form to become a Party to the**

**Multi-Lateral Liability Agreement**

**(MLA)**

This adherence form (hereinafter Adherence Form) is made on [SAME DATE OF THE SIGNATURE] by

**[company name]**, a company duly organized and existing under the laws of ....., with registered office in ....., registered with National Court register in ..... under the number ....., duly represented by....., hereafter called “**Adhering Party**”,

towards

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris,

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registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;

2. **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;
3. **Nord Pool EMCO AS**, a company incorporated and existing under the laws of the Kingdom of Norway with company number 984 058 098, having its registered office at Lilleakerveien 2A, 0283 Oslo, Norway ("**Nord Pool**");
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. ("HEEx")**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED];
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale "OPCOM" S.A. ("OPCOM")**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev, 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: I 8/13;
8. **Towarowa Giełda Energii S.A. ("TGE")**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

### Whereas

- A. On the 3<sup>rd</sup> of February 2015, the Parties have entered into the Multi-Lateral Liability Agreement, hereby enclosed as Attachment 2(hereinafter "**MLA**")
- B. On the 22nd of June 2015, the Adhering Party has expressed to the PCR SC its wish to adhere to the MLA.
- C. Always on the 22nd of June 2015, the Adhering Party has been provided with a copy of the MLA.

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- D. According to Article 4.1 of the MLA, all Parties accept the adherence to the MLA of the Adhering Party provided that it has duly executed this Adherence Form which is fully consistent with the template provided under Annex II to the MLA.
- E. 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 ADHERING PARTY AGREES AND COMMITS TOWARDS THE PARTIES AS FOLLOWS:**

#### **1. Adherence to the MLA**

- 1.1 The Adhering Party agrees to adhere to the MLA accepting all the terms and conditions thereby provided, with no exclusion whatsoever.
- 1.2 Pursuant to art. 4 of the MLA, it is understood that the Parties agree to the adherence of the Adhering Party without that any further acceptance must be formalized following the execution of this Adherence Form.

#### **2. Acknowledgement by the Adhering Party**

Upon signature of this Adherence Form, the Adhering Party declares to be fully aware of, all obligations of the MLA having received by the Parties full and complete access to the relevant documentation

#### **3. Entry into force and termination**

- 3.1 Pursuant to art. 4.1 of the MLA, this Adherence form shall enter into force as of the date on which all the Parties have received the signed Adherence Form by electronic mail to e-mail addresses listed in Attachment 1. An original hard copy of this Adherence Form duly signed by the Adhering Party shall be sent to each of the Parties for record purposes.
- 3.2 This Agreement is entered into for the duration of the MLA as set forth under art 10.2 of the MLA. For the avoidance of any doubt, should the MLA be earlier terminated, this agreement shall be terminated accordingly.

**4. Miscellaneous**

- 4.1 No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 4.2 Any change to this Adherence Form can only be validly agreed upon in writing, duly signed by the legal representative of the Adhering Party and of all the Parties.
- 4.3 If one or more of the provisions of this Adherence Form is declared to be invalid, illegal or unenforceable in any respect under any applicable rule of law or public policy, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of this Adherence Form is not affected in any material manner adverse to any Party. In such event, the the Adhering Party and of all the Parties shall immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.
- 4.4 The Parties agree that the working language for all notifications and for all matters relating to this Adherence Form shall be English, to the extent compatible with the applicable provisions of mandatory law, if any. Any term used in this Adherence Form with capital letter and not otherwise defined herein, shall have the same meaning ascribed to it in the MLA.
- 4.5 The Attachments and the recitals to this Adherence Form form an integral part thereof and any reference to this Adherence Form shall include a reference to the Attachments and vice versa.
- 4.6 In case of contradiction or discrepancy between this Adherence Form and the MLA and/or any of their respective annexes the precedence shall be
1. Main text of the MLA;
  2. Annexes to the MLA;
  3. Main body of this Adherence Form;
- 4.7 The Adhering Party may not assign or transfer this Adherence Form, partially or as a whole.
- 4.8 The present Adherence Form is governed by and construed with Belgian laws without regard to the conflict of laws principles of it.
- 4.9 Any dispute arising out of or in connection with this Agreement shall be settled in accordance with art 9 of the MLA.

Date and Place, same as the one indicated in the heading]

**COMPANY NAME**

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Signature(s)

Name(s)

Title(s)

ATTACHMENT 1 TO THE ADHERENCE FORM – CONTACTS

For EPEX SPOT SE

[Redacted]

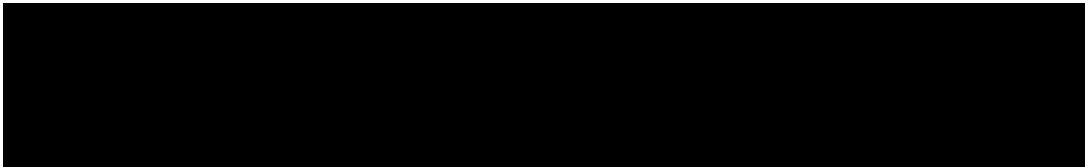
For GME

[Redacted]

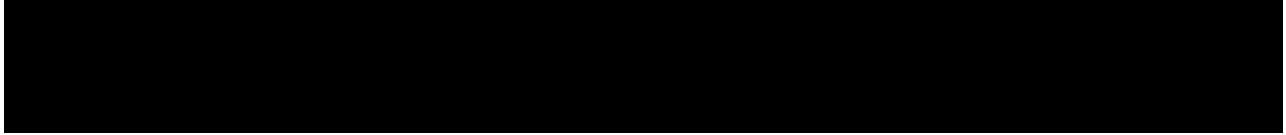
For OMIE

[Redacted]

For European Market Coupling Operator AS



For OTE



ATTACHMENT 2 TO THE ADHERENCE FORM – MLA IN FORCE

**ANNEX XII**

**License templates**

**PART A**

**TSO LICENSES**

**License Agreement**

**BETWEEN ON THE ONE HAND**

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS, (“Nord Pool”)**, 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,
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;
8. **Towarowa Giełda Energii S.A. (“TGE”)**, a company incorporated under the laws of the Republic of Poland, with V.A.T. number PL 5272266714, having its registered office at Książęca 4, 00-498 Warszawa, Poland and registered in the commercial register at National Court Register under number 0000030144 with the share capital paid in full in an amount of 14.500.000,00 PLN;

hereafter collectively referred to as the “**Licensors**”;

**AND ON THE OTHER HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], registered with the Commercial Register, n° [INSERT COMMERCIAL REGISTER NUMBER], VAT N°..... hereby duly represented by [INSERT NAME AND FUNCTION ], hereafter referred to as the “**Licensee**”;

the Licensors and the Licensee hereafter individually also referred to as a “**Party**” and collectively also as the “**Parties**”.

**WHEREAS:**

1. The Licensors concluded a cooperation agreement, which entered into force on 13<sup>th</sup> June 2012 and which sets forth the terms and conditions of the cooperation between the Licensors in respect of the performance and operation of PCR Market Coupling and of the development, testing and maintenance of, amongst others, co-owned assets used for PCR Market Coupling (hereafter the **“PCR Market Coupling Cooperation”**);
2. [IF APPLICABLE] NAME of PXS involved in the regional project] and the Licensee have entered into a cooperation in respect of the regional implementation of PCR Market Coupling in XXX [ADD REGIONAL PROJECT];
3. In the context of the PCR Market Coupling Cooperation, the Licensors developed the Licensed Material (as defined hereafter).
4. The Licensors have entered into a co-ownership agreement, which entered into force on 13<sup>th</sup> June 2012, (hereafter the **“PCR Co-ownership Agreement”**) according to which a co-ownership is vested between them in respect of the Licensed Material;
5. The Licensors wish to grant to the Licensee a license to use the Licensed Material;
6. This License Agreement sets forth the terms and conditions under which the Licensors grant the Licensee a license to use the Licensed Material according to the terms and conditions stipulated below, and for the purposes and the applications as set below;

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

**Table of contents**

<b>ARTICLE 1</b>	<b>INTERPRETATION .....</b>	<b>138</b>
<b>ARTICLE 2</b>	<b>SUBJECT MATTER .....</b>	<b>144</b>
<b>ARTICLE 3</b>	<b>LICENSE.....</b>	<b>144</b>
<b>ARTICLE 4</b>	<b>DELIVERY .....</b>	<b>148</b>
<b>ARTICLE 5</b>	<b>LICENSE FEE, INVOICING AND PAYMENT CONDITIONS.....</b>	<b>148</b>
<b>ARTICLE 6</b>	<b>WARRANTY.....</b>	<b>149</b>
<b>ARTICLE 7</b>	<b>TITLE AND (INTELLECTUAL) PROPERTY RIGHTS .....</b>	<b>149</b>
<b>ARTICLE 8</b>	<b>CONFIDENTIALITY .....</b>	<b>150</b>
<b>ARTICLE 9</b>	<b>LIABILITY.....</b>	<b>152</b>
<b>ARTICLE 10</b>	<b>ENTRY INTO FORCE, DURATION AND TERMINATION .....</b>	<b>154</b>
<b>ARTICLE 11</b>	<b>GOVERNING LAW AND DISPUTES.....</b>	<b>155</b>
<b>ARTICLE 12</b>	<b>MISCELLANEOUS .....</b>	<b>156</b>

**ANNEX I: STANDARD FORM OF CONFIDENTIALITY DECLARATION**

**ANNEX II: LICENSED MATERIAL**

**ANNEX III: INVOICING AND PAYMENTS INFORMATION**

**ANNEX IV: CONTACT INFORMATION**

**ANNEX V: LIST OF PERMITTED ACCESS HOLDERS**

**1 Interpretation**  
**1.1 Definitions**

The capitalized terms and expressions in the License Agreement shall have the following meanings:

- Annex:** means any schedule to this License Agreement;
- Anticipated Scope of PCR:** means the geographical area of the bids to be matched within the PCR Market Coupling Cooperation, which corresponds to the bidding areas of EU countries (or a part thereof) and any electrically connected country. For the avoidance of any doubt:
- the expression “*electrically connected country*” refers to a country connected, directly or through one or several intermediate non-EU countries, to a EU country via an interconnection between their electricity grids;
  - the geographical area of the Anticipated Scope of PCR is regardless of the physical location of the PCR Market Coupling System requested for the implementation and operation of the PCR Market Coupling Cooperation;
- Article:** means any article of this License Agreement;
- Bidding Area:** means the geographical area where the delivery or take off of electricity, resulting from the matched bid(s), takes place;
- Business Day:** means any day except Saturday, Sunday and except any day on which banks located in the respective place of the registered office of the Party(ies) concerned are not open for normal banking business;
- Confidential Information:** shall have the meaning set forth in Article 8 of this License Agreement;
- Co-Owned Assets:** means the assets that are co-owned by the Parties under the PCR Co-Ownership Agreement;

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<b>Documentation:</b>	means the supporting documentation, and information necessary to use the Licensed Material as listed in Annex II;
<b>External Representative:</b>	Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;
<b>ICC:</b>	shall have the meaning set forth in Article 23 of this License Agreement;
<b>Intellectual Property Rights (“IPR”):</b>	means any intellectual property rights or other (property) rights throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under statutory or common law, contract, or otherwise, and whether or not registered, registrable or perfected, including (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trademarks, service marks, trade names, internet domain names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other confidential information; (g) design rights, whether registered or unregistered; and (h) rights analogous to those in this definition and any and all other proprietary rights relating to intangible property;
<b>Internal Representative:</b>	Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;
<b>Legal Provision:</b>	

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	means any type of mandatory legal provision of public order, proclaimed by any competent authority;
<b>License</b>	shall have the meaning set forth in Article 3 of this License Agreement.
<b>License Agreement:</b>	shall mean this License agreement;
<b>License Fee:</b>	means the remuneration to be paid by the Licensee for the License as set forth in Article 5 of this License Agreement;
<b>Licensed Material:</b>	means the Co-owned Assets as listed in Annex IX.
<b>License Term:</b>	means the term for which the License is granted as set forth in Article 3.3 of this License Agreement;
<b>License Territory:</b>	means the territory for which the License is granted as set forth in Article 3.4 of this License Agreement;
<b>Licensee:</b>	means the Party to this License Agreement as identified in the parties' description at the beginning of this License Agreement, to whom is granted this License;
<b>Licensor:</b>	means any of the Parties to this License Agreement as identified in the parties' description at the beginning of this License Agreement, who grants this License;
<b>Market Coupling:</b>	means a coordinated day-ahead electricity implicit auction mechanism, performing the matching of the supply and demand curves of different power exchanges, taking into account the cross border capacity made available by the TSOs, using a software application embedding a matching algorithm; for the avoidance of doubt, for the purpose of this License Agreement, the term "Market Coupling" includes the concept known as Market Splitting;
<b>Market Splitting:</b>	means a type of Market Coupling where the matching of the supply and demand curves of different power exchanges, taking into

*Execution Version*

account the cross-border capacity made available by the TSOs, is performed by one power exchange instead of several;

**Modification:**

means any change to the Licensed Material, including any amendment of the Source Code, or any other update, upgrade or modification of the Licensed Material carried out by or on behalf of the Licensor;

**“NRA”:** means the national regulating authority designated at national level on the basis of article 35 of Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC or, for countries not covered by the aforementioned Directive, on the basis of national law as authority designated for supervising the energy market;

**PCR Market Coupling:**

means the day-ahead Market Coupling based on implicit auction and on a decentralized price coupling model which is (to be) implemented within the Anticipated Scope of PCR, as described in the PCR Market Coupling Cooperation;

**PCR Market Coupling Algorithm:**

means the matching algorithm developed to perform PCR Market Coupling and all Documentation and Confidential Information related thereto [IF APPLICABLE] as further described in Annex IX;

**PCR Market Coupling Cooperation:**

shall have the meaning set forth in recital 7 of this License Agreement;

**PCR Market Coupling Executable Software:**

means the industrialized software, application or computer program in executable form embedding the PCR Market Coupling Algorithm, to be used to perform PCR Market Coupling, as jointly developed by the Licensors, including its Source Code[IF APPLICABLE] as further described in Annex IX;

**PCR Market Coupling System:**

means the data processing environment (software and hardware) that will be used to calculate the PCR Market Coupling results and that is composed of amongst others the

## *Execution Version*

	PCR Market Coupling Algorithm and other assets co-owned by the Licensors;
<b>Permitted Use:</b>	means exploiting the Licensed Material as authorized in Article 3.2 of this License Agreement;
<b>Reference Coordinator:</b>	shall have the meaning set forth in Article 24.4;
<b>Simulation Facility</b>	shall have the meaning set forth in Annex IX,;
<b>Data set:</b>	means a set of anonymous data to be used [IF APPLICABLE] as further described in Annex IX;
<b>Source Code:</b>	means the software, or computer program provided in human readable form in such a manner that it enables to recreate and maintain the software or computer program including all updates and corrections to these;
<b>Transfer:</b>	means any transfer, assignment, or any other disposal of an asset, right or obligation by a Party, for value or gratuitous, in whatever form, including, but not limited to merger, demerger, transfer or contribution of universality or business divisions (whether or not by virtue of automatic transfer rules), exchanges or public sales, especially following an attachment or pledge;
<b>TSO:</b>	means a transmission system operator participating into any project to implement PCR Market Coupling.

### **1.2 Interpretation**

- 1.2.1** No provision of the License Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 1.2.2** Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- 1.2.3** The headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation.
- 1.2.4** Any reference to any rule, enactment, Legal Provision, regulation or code 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.

- 1.2.5** All references to Articles or Annex refer to the corresponding Articles or Annexes of this License Agreement as amended, supplemented or modified from time to time, in accordance with Article 12.2 of this License Agreement unless otherwise specified.
- 1.2.6** Any recitals or Annex referred to in this License Agreement forms an integral and inseparable part of this License Agreement, being therefore binding upon the Parties. Any reference to the License Agreement includes a reference to its Annexes and vice versa.
- 1.2.7** In case of any discrepancy or contradiction between the provisions in the main body of this License Agreement and the contents of the Annexes, the wording of the main body shall prevail.
- 1.2.8** The rights conferred in Article 3 of this License Agreement to the Licensee shall be interpreted restrictively.

## **2 Subject-matter**

This License Agreement sets forth the terms and conditions under which the Licensors grant to the Licensee certain limited rights to use the Licensed Material

## **3 License**

### **3.1 Granted License**

- 3.1.1** Subject to the terms and conditions of this License Agreement, the Licensors grant the Licensee a [IF APPLICABLE, to be motivated should the License be freely granted] onerous, territorially limited, revocable, non-exclusive, non-sublicensable and non-transferable license to use the Licensed Material for the Permitted Use during the License Term and within the License Territory (hereafter the “**License**”).
- 3.1.2** The Licensee acknowledges that the use of the License may require additional software. This additional software is not covered by this License Agreement and shall be purchased separately by the Licensee.

### **3.2 Permitted Use of the Licensed Material**

- 3.2.1** Upon payment of the License Fee and subject to the conditions set forth in this License Agreement, the License granted by the Licensors entitles the Licensee, to:
- a) use the Licensed Material to the extent necessary to perform analysis for internal purposes, with the functionalities as further specified in Annex II,. [IF APPLICABLE In particular, the Licensee is entitled to access and use the Source Code, including the relevant mathematical formulas, the PCR Market Coupling Executable Software and/or any other Licensed Material to the extent necessary to perform analysis with the functionalities further specified in Annex II,.]
  - b) use the Licensed Material for explanatory purposes to NRAs or market participants provided that such an explanation is necessary to comply with a legitimate request, pursuant to a mandatory Legal Provision from which the Licensee cannot deviate, and subject to the conditions set forth in Article 3.2.2 of this License Agreement.

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3.2.2 With regards to the Licensed Material the Licensee undertakes to:

- a. Refrain from making any further copies or reproductions of the Licensed Material, whether in full or only in parts, except as necessary for the Permitted Use under this License Agreement (including for back up or archival purposes) in which case such copies or reproductions shall in all respects be subject to the terms hereof; and
- b. Refrain from distributing, commercializing or operating Market Coupling with the Licensed Material;
- c. Assure that all copies of the Licensed Material carry the same credits and copyright warning as the original from which the copy was made;
- d. Refrain from translating, decompiling, doing any reverse engineering adapting, arranging or in any way changing the Licensed Material or doing any modification/enhancement. Any modification/enhancement of the Licensed Material which may be needed by the Licensee shall therefore be requested by Licensee to Licensors being the latter, for the avoidance of any doubt, not obliged to fulfill such request.;
- e. Consistently with the following art. 8.5, assure that the Permitted Use of the Licensed Material is limited to a maximum of 10 (ten) people whether Internal or External Representatives.
- f. Use the Licensed Material only internally and not allow it to be placed, even only partially, at any third party's disposal under no condition in whatever way, directly or indirectly, for remuneration or free of charge, save for what differently permitted under Article 8.4 and 8.5;
- g. Not disclose, sublicense, rent, assign, lease or transfer under any form the Licensed Material to any third party, even only partially, and, more generally, not take any action that would limit Licensors' right to sell, Transfer, license or use of the Licensed Material and/or its Modifications, save for what differently permitted under Article 8.5;
- h. Not disclose or publish any qualitative analysis or performance/benchmark test run results in respect of the Licensed Material without the prior express written consent of the Licensors, save for what differently permitted under Article 8.5;
- i. Install the Licensed Material only on devices and make use of ancillary software, which comply with the specifications as described in the Documentation. In any case, the Licensee acknowledges and commits itself to use only the Licensed Material on equipment satisfying with the specifications as described in the Documentation, and the Licensee shall not claim any compensation from the Licensors for any damage arising out of the use of the Licensed Material on/with such non-compliant software and devices;
- j. Not use the Licensed Material in a way that infringes the Intellectual Property Rights of any third party or the Licensors or violates any Legal Provision (including, but not limited to the laws and regulations governing export/import control, unfair competition) nor to impair the institutional or corporate identity and reputation of the Licensor;
- k. Make aware its Internal Representatives and External Representative accessing Confidential Information, about the commitments contained into this License Agreement and make the best efforts to guarantee their enforcement subject to compliance with Article 8 of this License Agreement. For the avoidance of any doubt, the Licensors expressly permit the Licensee to employ or involve External Representatives for the performance of the License Agreement being agreed that such External

## *Execution Version*

Representatives shall by no means access the Source Code. In any case, the Licensee shall be held responsible for any breach caused by such Internal and/or External Representatives as under Article 9 hereafter;

- l. Give immediate notice to each of the Licensors of (1) any proven or potential infringement of this License Agreement by its employees, agents, consultants, (sub-)contractors and/or other representatives, including affiliate and subsidiary companies and (2) any taken interim or conservatory measures, judicial order or decision necessary to make such infringements cease;
- m. Ensure that the Licensed Material is protected at all times from access, use or misuse (including any possible modification), damage and destruction by any person not legitimately authorized according to the terms and conditions of this License Agreement;
- n. Give immediate notice to the Licensor of any proven or potential unauthorized use of the Licensed Material, or portions thereof, and related IPR by any third party;
- o. Immediately inform the Licensors in writing about any claim or demand, even if only merely threatened, regarding the Licensed Material and/or related IPR. If legal proceedings against the Licensee and directly or indirectly concerning to the Licensed Material and/or related IPR occur, the Licensors shall be entitled at their own choice to (i) assume any legal proceeding in their own name with the full assistance of the Licensee, each Party bearing their own costs or (ii) assist the Licensee in their defense and bear the related expenses of this assistance, being understood that these expenses shall be taken into account for the calculation of the liability cap mentioned under Article 9. In any case, the Licensee shall not acknowledge any right of a third party on the Licensed Material without the Licensors prior written approval;
- p. Not rely on any representation made by the Licensors, which has not been cited or defined expressly in this License Agreement; and
- q. Submit explanations to regulators or market players of the Licensee concerning issues regarding the Licensed Material only upon such regulators or market players request and subject to a prior written approval of the Licensors on the content of such explanations.

3.2.3 The Licensors reserve all rights not explicitly granted to the Licensee under the present Article. For the avoidance of any doubt, any exploitation of the Licensed Material and/or related IPR other than the Permitted Use, must be priory and expressly authorised in writing by the Licensors.

3.2.4 Parties acknowledge that, the characteristics as described in Annex II are specific to the PCR Market Coupling Algorithm and the PCR Market Coupling Executable Software. The mere demonstration that another software, application or calculation engine than the PCR Market Coupling Executable Software uses any element of this selection method, shall be deemed sufficient proof of unpermitted reuse of PCR Market Coupling Algorithm or the PCR Market Coupling Executable Software and unpermitted disclosure of the PCR Market Coupling Algorithm or the PCR Market Coupling Executable Software unless it is proven that such reuse and disclosure is compliant with this License Agreement.

### **3.3 License Term**

The License is granted for the term of this Agreement as specified in Article 10.

### 3.4 License Territory

The Permitted Use of the Licensed Material is limited to the Anticipated Scope of PCR.

### 3.5 Modifications

- 3.5.1 The Licensors shall in due time notify the Licensee of any Modification. Access to any Modification shall be provided by the Licensors to the Licensee after having received a written request thereto of the Licensee and subject to the fulfilment of the conditions set forth in this Article 3.4 except where such conditions are not compatible with mandatory Legal Provision, from which deviation is not possible, as reasonably proven by the Licensee.
- 3.5.2 The Licensors shall extend the present License to the Modifications, such as, but without limitation to, future versions of the Licensed Material [IF APPLICABLE 1) free of charge or 2) against an increase of the License Fee equal to [cost related + administrative cost].
- 3.5.3 Any extension of the License shall be evidenced in a written document to be signed by all Parties and attached to this License Agreement, stipulating amongst others the payment modalities and payment term for the payment of the agreed upon additional license fee, if any.
- 3.5.4 Any Modifications shall be delivered to the Licensee in accordance with the provisions of Article 4 of this License Agreement, which apply *mutatis mutandis*, it being understood that in the event no additional license fee is due by the Licensee in accordance with Article 3.5.2. of this License Agreement, the delivery shall take place within ten (10) Business Days from the signature date of the written document referred to in the previous Article 3.5.3..
- 3.5.5 The Licensors have the sole and exclusive right to carry out Modifications, except as permitted under Article 3.2.1. Moreover, the Parties agree that any modification to the Licensed Material, even if in breach of the License Agreement, shall remain the sole property of the Licensors. Therefore, the Licensee shall have no interest in such modification and no whereas - at any title - shall be due to the Licensee for such modification.

## 4 Delivery

- 4.1 The Licensors shall deliver the Licensed Material, in accessible format within ten (10) Business Days of receipt by all Licensors of the payment of the License Fee.
- 4.2 The Documentation shall be in English.
- 4.3 The PCR Market Coupling Algorithm and the Source Code of the PCR Market Coupling Executable Software shall be delivered to the Internal Representatives only subject to the receipt by each Licensor of the signed original confidentiality declaration referred to in Article art. 8.5, letter f) of this License Agreement.
- 4.4 The Licensors are not responsible for the installation of the PCR Market Coupling Executable Software on the IT environment of the Licensee.

## *Execution Version*

**4.5** The Licensee shall acknowledge receipt of the Licensed Material by sending a notice to this effect as soon as possible after delivery. In absence of such a notice within twenty (20) Business Days after receipt of payment of the License Fee, the Licensed Material shall be deemed duly delivered.

### **5 [IF APPLICABLE] License Fee, invoicing and payment conditions**

**5.1** The Licensee shall pay the License Fee in accordance with Annex III. In particular, each Licensor shall invoice its share in the License Fee to the Licensee according to modalities/conditions set forth in Annex III to this License Agreement. Payment of the License Fee by the Licensee shall take place by wire transfer to the bank account number of the concerned Licensor as indicated in Annex III, within the term thereof indicated

**5.2** The License Fee is due by the Licensee to each Licensor in accordance with the sharing key communicated by the Licensors. Any delays in payments shall entitle the Licensors to immediately terminate this License Agreement as under Article 22.

**5.3** The Articles 5.1, 5.2 and 5.3 of this License Agreement shall apply *mutadis mutandis* to the payment of any additional License Fee which may be requested for the Permitted Use of any Modification, pursuant to Article 3.5.2 of this License Agreement.

### **6 Warranty**

**6.1** [IF APPLICABLE The Licensee acknowledges that the PCR Market Coupling Executable Software embeds the PCR Market Coupling Algorithm which has, prior to the entry into force of this License Agreement, been evaluated by XXX [refer to TSO assessment?]. In addition, the Licensee agrees that, within the scope of this License Agreement, the Licensed Material is being provided by the Licensors to the Licensee “as is” and without any warranty, whether express or implied, including but not limited to:

- (i) any warranty with regards to infringement of any third party rights, except as indicated in Article 6.2.
- (ii) any warranty of merchantability nor fitness of the Licensed Material for a particular purpose;
- (iii) any warranty nor commitment regarding the functioning or defects of the Licensed Material; or
- (iv) any warranty nor commitment that the applications contained in the Licensed Material will meet the Licensee’s business requirements.

**6.2** The Licensors represent that at the time of entry into this License Agreement, the Licensors are co-owners of the rights, title and interest pertaining to the Licensed Material and that to the best of their knowledge, no third party has filed a claim in respect of the Licensed Material, in its then current state, for infringement of its (Intellectual) Property Rights. The Licensors also warrant that, to the best of their knowledge, they have, as co-owners of the Licensed Material, full right to grant this License to the Licensee under this License Agreement.

### **7 Title and (Intellectual) Property Rights**

**7.1** The Licensee agrees and acknowledges that the Licensors are the joint owners of the Intellectual Property Rights pertaining to the Licensed Material, and that it acquires no title,

## *Execution Version*

right or interest in the Licensed Material or in any Modification other than the License granted by this License Agreement.

- 7.2 The Licensors shall remain the joint owners of the title, Intellectual Property Rights and all other proprietary rights related to the Licensed Material and Modifications, and all parts and copies thereof. This License Agreement shall not be construed as entailing a Transfer to the Licensee of ownership in any way.
- 7.3 The Licensee shall not remove any trademark, trade name, or copyright notice (if any) from the Licensed Material and Modifications or copies thereof received under this License Agreement and from any back-up copy.
- 7.4 In the event the Licensed Material is in the Licensors' reasonable opinion likely to become subject of a claim based on the infringement of Intellectual Property Rights, Licensors shall inform the Licensee thereof and the Licensee shall cooperate in good faith in respect of the measures to be taken to mitigate as much as possible any damage.
- 7.5 The Contractor will ensure that its Internal Representatives and External Representatives also comply with the obligation under this Article 7.

## **8 Confidentiality**

- 8.1 The Licensee acknowledges and agrees that the content of this License Agreement, the Licensed Material and any information in whatsoever form and of whatsoever nature in relation thereto or exchanged between the Parties pursuant to this License Agreement or before or after this Agreement is entered into force as well as the content of this License Agreement (**hereafter "Confidential Information"**) are to be considered as (proprietary) business secrets, which must be appropriately protected against any disclosure to third parties.
- 8.2 In particular the Licensee undertakes to:
  - i) Hold in strict confidence and not to divulge nor disclose, at any time, any Confidential Information to any third party, unless permitted under Articles 8.3 and 8.4 of this License Agreement;
  - ii) Safeguard any Confidential Information which has been disclosed to it 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 same, in particular (without being limited to) by keeping any copies thereof secure in such way so as to prevent unauthorized access by any third party. In this respect, the Licensee warrants that it has sufficient procedures and protections in place in order to enforce and maintain confidentiality and to prevent unauthorised use and unauthorised disclosure of such Confidential Information;
  - iii) Use Confidential Information for the exercise of its rights and obligations under this License Agreement only and not to use or exploit it in any way which is or may be detrimental to the interests of the Licensors (whether directly or indirectly);
  - iv) Immediately inform the Licensors at the moment it discovers that a third party has (had) or is suspected to have (had) access to Confidential Information in its possession or that such

## *Execution Version*

information has been or is suspected to be disclosed to a third party. All reasonable measures shall be taken to minimise the effect of the disclosure and to prevent further disclosure; and

- v) At no time to cause or to allow Confidential Information to be sent, carried or transmitted to any foreign state which is not a party either to the Universal Copyright Convention or to the Bern Convention.

**8.3** Article 8.2 of this License Agreement shall apply to all Confidential Information except to Confidential Information in respect of which the Licensee can demonstrate:

- i) That it was known publicly at the time of disclosure to it; or
- ii) That it became publicly known subsequently other than as a result of a breach of this License Agreement; or
- iii) That it had prior written consent of an authorized representative of the Licensors to disclose the Confidential Information to a third party.

In cases of doubt, confidentiality shall be maintained until written confirmation has been obtained from the Licensors that one of the above exclusions applies.

**8.4** Article 8.1 and 8.2 of this License Agreement shall not prohibit the Licensee to disclose Confidential Information to any judicial, administrative, governmental or regulatory authority or body requiring such disclosure provided that: (a) such disclosure is required pursuant to a valid applicable law or regulation or pursuant to a valid, effective and final order issued by a competent judicial, administrative, governmental or regulatory authority or body, (b) the Licensee notifies such judicial, administrative, governmental or regulatory authority or body that the information is confidential; (c) the Licensee diligently endeavours, prior to submission of such Confidential Information to the judicial, administrative, governmental or regulatory authority or body, to obtain an appropriate protective order regarding the disclosure of the Confidential Information and such additional confidential treatment of such information as may be available under applicable law or regulations; and (d) if permitted under the applicable mandatory Legal Provisions, the Licensee notifies prior to such disclosure, the Licensors promptly of the required disclosure and provides them an opportunity to participate in the endeavour to obtain a protective order.

**8.5** The Licensee shall be entitled to disclose Confidential Information to i) its directors, members of management, officers, employees, and to legal representatives of companies under its Control or of companies that Control such Party (hereafter the “**Internal Representative**”), and to ii) subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (hereafter the “**External Representative**”), only if the following conditions are met:

- a) Access to the Confidential Information may only be given to the Internal Representatives or External Representatives that have been indicated in the list of permitted access holders, indicated in Annex [●] to this Licence Agreement;
- b) No access to the Source Code is given to External Representatives;
- c) The Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be strictly related to the

*Execution Version*

performance of this Licence Agreement. The Licensee shall directly assume full responsibility for any acts of its Internal Representative or External Representative related to the disclosed Confidential Information;

- d) For an Internal Representative the Licensee shall inform, prior to any disclosure, the Licensors in writing (including by e-mail) of the identity of the Internal Representative;
- e) The Internal Representative is informed by the Licensee of the confidential nature of the Confidential Information and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this Licence Agreement;
- f) The [Internal Representatives only for SOURCE CODE or] External Representatives to whom access is granted to Confidential Information, must prior to any access have signed a confidentiality declaration substantially similar to the standard form attached to this Licence Agreement as Annex [●];
- g) The Licensee undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal Representatives and External Representatives to whom Confidential Information is disclosed.
- h) The necessary procedures and protections must have been put into place by the Licensee so as to prevent disclosure and further use of such Confidential Information in the event such natural or legal person is no longer an Internal Representative or External Representative;
- i) The Licensee is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations.

The Licensee may decide to add, replace or remove its Internal Representative and External Representative mentioned on the list of permitted access holders provided that the conditions of this Article are complied with. In such event the Licensee shall provide the Licensor with a new list of permitted access holders which shall amend Annex [V].

**8.6** The confidentiality obligations contained in this Article 20 shall survive the termination of this License Agreement for a period of ten (10) years.

**9 Liability**

**9.1 Licensors' liability**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**9.2 Licensee's liability**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**9.3 General**

**9.3.1** The Parties are responsible for any action or conduct of their Representatives.

**9.3.2** If a breach of this License Agreement occurs, all Parties shall take reasonable steps to mitigate the damages caused by such breach.

## **10 Entry into force, duration and termination**

**10.1** This License Agreement shall enter into force on the date it has been signed by all Parties. Should the Parties not sign it on the same date, the date of the last signature shall be considered as the date that this Licence Agreement comes into force.

**10.2** This License Agreement shall remain into force for [IF APPLICABLE] an indefinite term.

**10.3** Each Party shall be entitled to terminate the License subject to a three (3) months prior notice. without any motivation, any court intervention and without any compensation being due

**10.4** Without any prior notice, court intervention and without any compensation being due, the Licensor is entitled to terminate the License Agreement, with immediate effect in the following cases:

- (i) in the event of any breach of this Agreement or any action materially adverse to the Licensor's rights to the Licensed Material by the Licensee that is not remedied within twenty (20) days from the receipt of a written performance request or as of the date in which the breach occurs if the breach cannot be remedied. For the avoidance of any doubt, the Licensors shall be then entitled to immediately, without any court intervention or notice, terminate the agreement in writing only following the expiry of the twentieth day from the receipt of such written performance request.;
- (ii) in the event that any of the Licensed Material shall become subject of a claim on the infringement of Intellectual Property Rights,.

**10.5** To the extend compatible with applicable mandatory Legal Provision and without any court intervention and without any compensation being due each of the Parties shall be entitled to terminate by registered letter with acknowledgement of receipt this License Agreement with immediate effect in respect to the Party which:

- i) enters into compromise and settlement with its creditors; or
- ii) enters into an agreement or judicial order is made for the liquidation of the other party; or
- iii) has a receiver or administrative receiver or administrator or similar official appointed over all or part of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of thirty (30) days.

**10.6** In case of termination of the present License Agreement all obligations under this License Agreement shall become immediately due and payable to the extent that such performance is reasonably feasible. In case of delay or default in payment obligations due by the Licensee to the Licensors under this License Agreement, performance is always deemed feasible.

**10.7** Upon termination of this License Agreement, the Licensee shall immediately cease the use of the Licensed Material and related IPR. Within thirty (30) days after any termination, the Licensee shall deliver to the Licensors or destroy all copies of the Licensed Material and related IPR in every form. The Licensee agrees to certify in writing that it has performed the abovementioned delivery or destruction obligation within the above mentioned term.

**10.8** The provisions which expressly or by their nature are intended to remain into force following the termination, shall survive the termination of the License Agreement, such as but not limited to [TO

BE CONFIRMED Articles 1, 7, 8 (as indicated therein), 9, 10, 11 and 12] of this License Agreement and without prejudice to the right of a Party to settle any dispute arising after termination out of or in connection with this License Agreement in accordance with all the provisions of the License Agreement.

## **11 Governing law and disputes**

- 11.1** This License Agreement shall be governed by and shall be construed in accordance with the laws of Belgium without regard to any of its conflict of law provisions.
- 11.2** Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail to the extent compatible with Legal Provisions. The use of the English language is however without prejudice to the fact that legal concepts in this License Agreement are to be understood as civil law concepts of Belgian Law (and not as common law concepts).
- 11.3** In the event of a dispute, disagreement, claim or difference of any nature between the Parties arising under or in connection with this License Agreement (including its validity) the dispute, disagreement, claim or difference shall in first instance be subject to amicable settlement between the Parties through intervention of a representative of the daily management of the Licensors and the Licensee. The disputes which cannot be settled amicably within a period of thirty (30) Business Days shall finally be settled by arbitration in Brussels under the rules of arbitration of the ICC. The arbitration tribunal will be composed of three (3) arbitrators, one (1) to be appointed jointly by the Licensors, one (1) to be appointed by the Licensee, and the third arbitrator to be appointed by the two arbitrators (2) appointed by respectively the Licensors jointly and the Licensee. The proceedings shall be held in the English language. The award of the arbitration shall be final and binding upon the Parties concerned.
- 11.4** For the purposes hereof, the Parties elect domicile at the addresses set forth herein, or at a different address as may be designated by written notice.
- 11.5** Nothing in this Article 11 shall preclude the Parties from applying for injunctive relief in summary proceedings ("*kort geding*" / "*procédure en référé*") before the competent courts of Brussels, Belgium.

## **12 Miscellaneous**

### **12.1 Notices**

- 12.1.1** Except as provided otherwise, all notices, requests, demands, instructions or other communications under this License Agreement shall be in writing and served by fax or e-mail.
- 12.1.2** Service of notices requests, demands, instructions or other communications shall be deemed effective:
- a. at the time of delivery, if delivered by hand, registered post or courier;
  - b. in the case of notices sent by fax, on the date that transmission is received by the recipient in legible form (with the burden of proving receipt being upon the sender, by means of a regular fax transmission report issued by the dispatching fax machine);

## *Execution Version*

c. in the case of notices to be recorded by e-mail, at the time when the e-mail is indicated to the sender as delivered to the recipient and/or the recipient acknowledges the receipt thereof;

provided that, if the notice is received on a Business Day after 5 p.m. or on a date which is not a Business Day, the notice shall be deemed given and effective on the first following day that is a Business Day.

**12.1.3** In the event of difficulty in using fax or electronic means to send notices or other communications under this License Agreement, notices may be served in writing and delivered in person or by courier or by post, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

**12.1.4** All notices and communications shall be addressed to the respective addresses of the Parties set forth in Annex IV.

**12.1.5** Any change of address of a Party must be notified by e-mail or fax to the other Parties, the new address being considered the official address of this License Agreement as from the third (3<sup>rd</sup>) Business Day following the sending of such e-mail or fax.

### **12.2 Modification of the Agreement**

**12.2.1** Except if explicitly stipulated otherwise in this License Agreement, no amendment or modification hereof shall be effective and binding unless evidenced in writing and signed by all Parties.

**12.2.2** Should measures and/or decisions taken by an administrative or other public authority (including NRAs) – as far as within the competence of these authorities – require an amendment or modification of this License Agreement or of any other document having an influence on this License Agreement, the Parties agree to examine together the possibilities and/or conditions for the amendment or modification of this License Agreement, at the request of the most diligent Party. If the Parties do not reach an agreement on such amendment or modification within a period of two (2) months of the above mentioned request, the Licensors may decide to terminate this License Agreement with twenty (20) Business Days prior written notice to the Licensee.

**12.2.3** Any modification of this License Agreement shall include the Annexes and vice versa.

### **12.3 Severability**

**12.3.1** If one or more of the provisions of this License Agreement are declared to be invalid, illegal or unenforceable in any respect under any applicable Legal Provision, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of the present License Agreement is not affected in any material manner adverse to any Party. In such event the Parties shall use their reasonable

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efforts to immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.

- 12.3.2** If no agreement on such provision has been reached within a period of two (2) months of such provision being declared invalid, illegal or unenforceable, the Parties can decide to terminate this License Agreement with twenty (20) Business Days prior written notice to all Parties.

### **12.4 Reference Coordinator**

The Licensors, on one side, and the Licensee, on the other side, will appoint each a formal Reference Coordinator (hereinafter: "RC") within ten (10) days from the entry into force of this License Agreement. The RC will be considered the reference person for all issues connected with the performance and the general implementation of the Licensed Material and related IPR, consistently with the respective commitments of the Licensors, on one side, and the Licensee, on the other side. Licensors, on one side, and the Licensee, on the other side, can replace the relevant RC at any time. The replacing party shall then inform the other counterparty via e-mail providing all relevant operational references of the new RC.

### **12.5 Waiver**

- 12.5.1** No failure or delay of any Party to exercise any right or remedy under this License Agreement shall be considered a final waiver thereof, nor shall any single or partial exercise or any right or remedy preclude any other or further exercise thereof.

- 12.5.2** The rights and remedies provided under this License Agreement are cumulative and not exclusive of any rights or remedies provided by law.

### **12.6 Entire Agreement**

This License Agreement, the Annexes and the documents referred to herein, contain the entire agreement of the Parties hereto with respect to the subject matter hereof, and therefore replaces and supersedes all previous understandings, arrangements, agreements or negotiations, whether oral or in writing, between the Parties relating to the same subject matter.

### **12.7 Transfer of rights and obligations**

This License Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assignees. The Licensee shall not be entitled to Transfer its rights and/or obligations arising out of this License Agreement, except with the prior written consent of all the Licensors.

### **12.8 Relationship**

No agency, partnership or joint venture relationship is created between the Parties as a result of this License Agreement.

### **12.9 No Joint and Several Liability**

The Licensors shall be responsible for their individual commitments only and do not bear any joint and several liability under this License Agreement.

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**IN WITNESS WHEREOF**, the parties hereto have caused their duly authorized representatives to execute this License Agreement in eight (8) original copies on \_\_\_\_\_ 2012. Each party acknowledges having received its copy.

For: HENEX By: Function: Signature:	For: OPCOM By: Function: Signature:
For: EPEX By: Function: Signature :	For: Nord Pool By: Function: Signature:
For : OMIE By : Function : Signature :	For: GME By: Function: Signature:
For: OTE By: Function: . Signature:	For: TGE... By: ... Function: .... Signature:
For: [TSO] By: Function: . Signature:	

**Annex I: template confidentiality declaration**

**Confidentiality Declaration**

**[External representative legal entity : ]**

with registered office in [ ] with company register number [ ], hereafter “the Undersigned” represented by [ ]

**[External representative natural person: ]**

[ ], with domicile at [ ] with the passport/ID number [ ] with domicile at [ ]  
[ ], hereafter “the Undersigned”

Hereby represents and agrees, to the benefit of:

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS, (“Nord Pool”)**, 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,
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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

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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: 8/13;

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

And

to any future Adhering party to the PCR Co-ownership Agreement, as defined below,

hereinafter individually also referred to as a "PCR Power Exchange" and collectively as the "PCR Power Exchanges".

1. it has been personally and specifically informed of the content of the confidentiality obligations of the PCR Power Exchanges contained in the PCR Co-Ownership Agreement signed between them on 13<sup>th</sup> of June 2012 (the "**PCR Co-Ownership Agreement**") and in particular (but not limited to) of the scope of the confidentiality obligations and obligations in respect of use of Confidential Information as defined in the PCR Co-Ownership Agreement, the PCR Power Exchanges are those persons that are party to the PCR Co-Ownership Agreement;
2. it acknowledges that the term "**Confidential Information**" used in this confidentiality declaration has the meaning set forth in the PCR Co-Ownership Agreement, that it has full understanding of the content of this term and its scope and that this Confidential Information contains business secrets and commercially sensitive know-how;
3. it shall not disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to any other persons not being an employee of the Company, without the express, prior written consent of the Company;
4. **[only to legal entities]**[it shall only disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to its "**Internal representative**" meaning the directors, members of management, officers, employees and legal representatives of the Company to the extent (i) such Internal representative has been entitled by the Company to use the Confidential Information and has a definite need to know such information for the execution of its assignment in that respect; (ii) such Internal representative has been informed by the Company of the confidential nature of the Confidential Information; (iii) such Internal representative(s) is bound towards *Undersigned* by confidentiality obligations substantially similar to those in force pursuant to this Confidentiality Declaration. The Undersigned shall provide evidence of such confidentiality obligations upon request of any PCR Power Exchange.]
5. it shall take the necessary measures to ensure strict compliance with this Confidentiality Declaration **[only to legal entities]** and shall be liable and hold the PCR Parties harmless against any claim (including third party claims) resulting from or in connection with a breach of this Confidentiality Declaration including any breach by its Internal representatives,

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6. it shall not use any Confidential Information for any other purpose than for the execution of its assignment and only to the extent necessary for such assignment and for the term it has been entitled to by the Company (hereafter the “**Assignment**”); For the avoidance of doubt, the Undersigned hereby represents and agrees that the Assignment is strictly related to [\_\_\_\_\_]
7. In case of a breach by the Undersigned, included but not limited to its employees, advisors and subcontractors ("Defaulting Party") of any of its obligations under this Agreement, any Party [SHOULD BE ADAPTED TO FIT IN THE CD] suffering damage ("Damaged Party") by the breach shall be entitled to cease immediately the disclosure of any further Confidential Information to the Defaulting Party and to claim full compensation from the Defaulting Party for all losses, damages, charges, fees or expenses, expected and unexpected, which can be considered as a direct damage arising out, or resulting from, a breach of the terms of this Confidentiality Declaration. Indirect or consequential damages are excluded. This exclusion of liability for any indirect or consequential damages does not apply in the event of fraud or intentional breach.
8. In the event of any breach of this Confidentiality Declaration by any Defaulting Party, the Damaged Party shall notify in writing the Defaulting Party without undue delay setting out the details of such breach and the Defaulting Party shall immediately cease such breach or make such breach undone within five business days to the extent possible. The Defaulting Party shall immediately forfeit a lump sum indemnification of EUR [TO BE DETERMINED] for any such breach, which shall be immediately payable to the Damaged Party and which shall not have any prejudice over the Damaged Party's right to seek full compensation of all damages incurred as a result of, or in connection with, such breach as set forth in Article 1 of this Agreement.
9. The indemnification obligations of the Defaulting Party under this Agreement shall at all times be limited to a cap of EUR [TO BE DETERMINED] per calendar year, except in the event of fraud or intentional breach by a Party in which cases the indemnification obligations shall be uncapped. Should a Party have already forfeited a lump sum indemnification of EUR [TO BE DETERMINED], such lump sum shall be offset of the final indemnification granted to a Party under this article.
10. it shall not make reference to the Confidential Information or its Assignment in any technical, commercial or other publication or presentation without all the PCR Power Exchanges' explicit prior written consent;
11. it undertakes to promptly stop using the Confidential Information and destroy or return to the Company all documents and other material in its possession, custody or control which bear or incorporate Confidential Information upon termination of its Assignment or of the PCR Co-Ownership Agreement;
12. it undertakes to comply with this Confidentiality Declaration throughout the entire period of its Assignment and for ten (10) years after its expiry or termination, it being understood that this article takes effect on the date that this Confidentiality Declaration is signed;
13. a copy of this Confidentiality Declaration will be provided to each PCR Power Exchanges;

*Execution Version*

14. this Confidentiality Declaration is governed by Belgian law and any dispute arising out of or in connection with this Confidentiality Declaration is subject to the exclusive competence of the courts of Brussels, Belgium.

Signed in seven originals, in \_\_\_\_\_, on \_\_\_\_\_.

[\_\_\_\_\_]

Signature :

**Annex II: LICENSED MATERIAL**

**Section**

- a. **PCR Market Coupling Executable Software Documentation**
- b. **Description of the functionalities of the PCR Market Coupling Executable Software for analysis purposes**
- c. **Essential Characteristics of the PCR Market Coupling Algorithm and of the PCR Market Coupling Executable Software**
- d. **Data Set**
- e. **Simulation Facility**

**Options**

**f. [IF APPLICABLE] Annex III: Invoicing and Payment**

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**PART B  
STANDARD LICENSE**

**License Agreement**

**BETWEEN ON THE ONE HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], registered with the Commercial Register in [INSERT CITY], under n° [INSERT COMMERCIAL REGISTER NUMBER AND VAT], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter referred to as the “**Licensor**”;

**AND ON THE OTHER HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], registered with the Commercial Register in [INSERT CITY], under n° [INSERT COMMERCIAL REGISTER NUMBER AND VAT], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter referred to as the “**Licensee**”;

the Licensor and the Licensee hereafter individually also referred to as “**Party**” and collectively also as the “**Parties**”.

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**WHEREAS:**

1. XXX [ADD DESCRIPTION OF LICENSEE];
2. XXX [ADD DESCRIPTION OF LICENSOR];
3. In the context of a cooperation in respect of the implementation and operation of PCR Market Coupling (hereafter the "**PCR Market Coupling Cooperation**"), the Licensor developed together with XXX [ADD NAME OF PARTIES] the Licensed Material (as defined hereafter) as well as other assets;
4. Following a co-ownership agreement entered into by the Licensor with XXX [ADD NAME OF PARTIES TO THE CO-OWNERSHIP AGREEMENT AT TIME OF SIGNING THIS LICENSE AGREEMENT WITH THE EXCEPTION OF THE LICENSOR] (hereafter the "**Other Co-Owners**") which entered into force on 13<sup>th</sup> June 2012 a co-ownership has been vested in respect of the Licensed Material as well as the Intellectual Property Rights (as defined hereafter) pertaining thereto;
5. The Licensor wishes to grant to the Licensee a license to entitle the Licensee to use the Licensed Material under certain conditions and for the purposes of XXX [ADD DESCRIPTION];
6. This License Agreement sets forth the terms and conditions under which the Licensor grants the Licensee such a license.

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

**Table of contents**

<b>ARTICLE 1</b>	<b>INTERPRETATION .....</b>	<b>5</b>
<b>ARTICLE 2</b>	<b>SUBJECT MATTER .....</b>	<b>9</b>
<b>ARTICLE 3</b>	<b>LICENSE .....</b>	<b>9</b>
<b>ARTICLE 4</b>	<b>DELIVERY .....</b>	<b>13</b>
<b>ARTICLE 5</b>	<b>LICENSE FEE, INVOICING AND PAYMENT CONDITIONS .....</b>	<b>13</b>
<b>ARTICLE 6</b>	<b>WARRANTY .....</b>	<b>13</b>
<b>ARTICLE 7</b>	<b>TITLE AND (INTELLECTUAL) PROPERTY RIGHTS .....</b>	<b>14</b>
<b>ARTICLE 8</b>	<b>CONFIDENTIALITY .....</b>	<b>14</b>
<b>ARTICLE 9</b>	<b>LIABILITY .....</b>	<b>16</b>
<b>ARTICLE 10</b>	<b>ENTRY INTO FORCE, DURATION AND TERMINATION .....</b>	<b>17</b>
<b>ARTICLE 11</b>	<b>GOVERNING LAW AND DISPUTES .....</b>	<b>18</b>
<b>ARTICLE 12</b>	<b>MISCELLANEOUS .....</b>	<b>18</b>

**ANNEX I: SCOPE OF THE LICENSE**

**ANNEX II: DOCUMENTATION CONCERNING THE LICENSED MATERIAL**

**ANNEX III: LICENSE FEE, INVOICING AND PAYMENT**

**ANNEX IV: CONTACT INFORMATION**

**ANNEX V: DECLARATION OF LEGITIMACY**

**ANNEX VI: TEMPLATE CONFIDENTIALITY DECLARATION**

**ANNEX VII: LIST OF PERMITTED ACCESS HOLDERS**

**ARTICLE 1** Interpretation

**1.1** Definitions

The capitalized terms and expressions in this License Agreement shall have the following meanings:

**Annex:** means any schedule to this License Agreement;

**Anticipated Scope of PCR:** means the geographical area of the Bids to be matched within the PCR Cooperation, which corresponds to the Bidding Areas of EU countries (or a part thereof) and any electrically connected country. For the avoidance of any doubt:

the expression electrically connected country refers to a country connected, directly or through one or several intermediate non-EU countries, to a EU country via an interconnection between their electricity grids;

the geographical area of the Anticipated Scope of PCR is regardless of the physical location of the PCR Market Coupling System requested for the implementation and operation of PCR Cooperation;

**Article:** means any article of this License Agreement;

**Bidding Area:** means the geographical area where the delivery or take off of electricity, resulting from the matched bid(s), takes place;

**Business Day:** means any day except Saturday, Sunday and except any day on which banks located in the respective place of the registered office of the Party(ies) concerned are not open for normal banking business;

**Confidential Information:** shall have the meaning set forth in Article 8 of this License Agreement;

**Documentation:** means the supporting documentation, and information necessary to use the Licensed Material as described in Annex II;

**External Representative** Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;

**ICC:** shall have the meaning set forth in Article 11 of this License Agreement;

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<b>Intellectual Property Rights (“IPR”):</b>	means any intellectual property rights or other (property) rights throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under statutory or common law, contract, or otherwise, and whether or not registered, registrable or perfected, including (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trademarks, service marks, trade names, internet domain names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other confidential information; (g) design rights, whether registered or unregistered; and (h) rights analogous to those in this definition and any and all other proprietary rights relating to intangible property;
<b>Internal Representative</b>	Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;
<b>Legal Provision:</b>	means any type of legal provision of public order, proclaimed by any competent authority;
<b>License:</b>	shall have the meaning set forth in Article 3 of this License Agreement;
<b>License Agreement:</b>	shall mean this license agreement;
<b>License Fee:</b>	means the remuneration to be paid by the Licensee in accordance with Article 5 and Annex III of this License Agreement;

*Execution Version*

<b>Licensed Material:</b>	shall have the meaning as set forth in Annex I, section II;
<b>License Term:</b>	means the term for which the License is granted as set forth in Article 3.3 of this License Agreement;
<b>License Territory:</b>	means the territory for which the License is granted as stipulated in Article 3.4 and further described in Annex I, section IV of this License Agreement;
<b>Licensee:</b>	means the Party to this License Agreement as identified in the parties' description at the beginning of this License Agreement, to whom is granted this License;
<b>Licensor:</b>	means the Parties to this License Agreement as identified in the parties' description at the beginning of this License Agreement, who grants this License;
<b>Market Coupling:</b>	means a coordinated day-ahead electricity implicit auction mechanism, performing the matching of the supply and demand curves of different power exchanges taking into account the cross border capacity made available by the TSOs, using a software application embedding a matching algorithm; for the avoidance of doubt, for the purpose of this License Agreement, the term Market Coupling includes the concept known as Market Splitting;
<b>Market Splitting:</b>	means a type of Market Coupling where the matching of the supply and demand curves of different power exchanges, taking into account the cross border capacity made available by the TSOs, is performed by one power exchange instead of several;
<b>Modification:</b>	means any change to the Licensed Material, including any amendment of the Source Code, or any other update, upgrade of the Licensed Material carried out by the Licensor or by any third party through the Licensor's tools and/or the Licensor's IPR;
<b>Other Co-Owners:</b>	shall have the meaning set forth in recital 4 of this License Agreement;

*Execution Version*

<b>Own Market:</b>	means a day-ahead and/or intraday electricity auction market directly managed/operated, in its own name and on its own behalf, by the Licensee or its wholly owned subsidiary, i.e. a market place for which participants have signed with the Licensee, or such subsidiary an agreement according to which the Licensee or such subsidiary is responsible for matching the bids of participants in those Bidding Area(s) according to predefined rules or a market for which the Licensee or such subsidiary has been designated by law (including international treaties) or regulatory deed as operating this market;
<b>PCR Market Coupling:</b>	means the day-ahead Market Coupling based on implicit auction and on a decentralized price coupling model, implemented within the EU countries (or a part thereof) and any electrically connected country; for the avoidance of any doubt, the expression electrically connected country refers to a country connected, directly or through one or several intermediate non EU countries, to an EU country via an interconnection between their electricity grids;
<b>PCR Market Coupling Cooperation:</b>	shall have the meaning set forth in recital 3 of this License Agreement;
<b>Permitted Use:</b>	means exploiting the Licensed Material as authorized pursuant to Article 3.2 and further described in Annex I, section IV of this License Agreement;
<b>Reference Coordinator</b>	shall have the meaning set forth in Article 12.4 of this License Agreement;
<b>Source Code:</b>	means the software, or computer program provided in human readable form in such a manner that it enables to recreate and maintain the software or computer program including all updates and corrections to these;
<b>Transfer:</b>	means any transfer, assignment, or any other disposal of any asset, right or obligation by a Party, for value or gratuitous, in whatsoever form, including, but not limited to merger, demerger, transfer or contribution of universality or business divisions (whether or not by virtue of automatic transfer rules),

## *Execution Version*

exchanges or public sales, especially following an attachment or pledge;

**TSO:** means a transmission system operator participating into any project to implement PCR Market Coupling.

**Use:** means using the processing, calculation or any other functions of the Licensed Material, and more generally load, run, access, employ (including by embedding in other systems), display, process the Licensed Material and/or make available its own data or data to which it has lawfully access through the Licensed Material.

## **1.2 Interpretation**

- 1.2.1** No provision of the License Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 1.2.2** Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- 1.2.3** The headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation.
- 1.2.4** Any reference to any rule, enactment, Legal Provision, regulation or code 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.
- 1.2.5** All references to Articles or Annexes refer to the corresponding Articles or Annexes of this License Agreement as amended, supplemented or modified from time to time, in accordance with Article 12.2 of this License Agreement unless otherwise specified.
- 1.2.6** Any recitals or Annex referred to in the License Agreement forms an integral and inseparable part of this License Agreement being therefore binding upon the Parties. Any reference to the License Agreement includes a reference to its Annexes and vice versa.
- 1.2.7** In case of any discrepancy or contradiction between the provisions in the main body of this License Agreement and the contents of the Annexes, the wording of the main body shall prevail.
- 1.2.8** The rights conferred in Article 3 of the License Agreement to the Licensee shall be interpreted restrictively.

### **ARTICLE 2** Subject matter

This License Agreement sets forth the terms and conditions under which the Licensor grants to the Licensee certain limited rights to use the Licensed Material.

### **ARTICLE 3** License

#### **3.1** Granted License

- 3.1.1** Subject to the terms and conditions of this License Agreement, the Licensor grants the Licensee, a revocable, non-exclusive, non-sub licensable and non-transferable license to use the Licensed Material for the Permitted Use during the License Term and within the License Territory (hereafter the "License").

## *Execution Version*

- 3.1.2** The Licensee acknowledges that the use of the License may require additional software. This additional software is not covered by this License Agreement and shall be purchased separately by the Licensee.
- 3.1.3** The Parties will provide to the Other Co-Owners proof of the signature of this agreement signing a written declaration in the terms of the Standard Form, attached as Annex V.

### **3.2 Permitted Use**

**3.2.1** The License granted by the Licensor entitles, upon payment of the License Fee (if any), the Licensee to use the Licensed Material for the Permitted Use as further specified in Annex I, section III, and in accordance with the provisions of this License Agreement.

**3.2.2** The Licensee undertakes to:

- a. Refrain from making further copies or reproductions of the Licensed Material, except as necessary for the Permitted Use under this License Agreement (including for back up or archival purposes) in which case such copies or reproductions shall in all respects be subject to the terms hereof;
- b. Refrain from distributing, commercializing or operating Market Coupling with the Licensed Material, except as permitted under the Permitted Use;
- c. Assure that all copies of Licensed Material carry the same credits and copyright warning as the original from which the copy was made;
- d. Refrain from translating, decompiling, doing any reverse engineering adapting, arranging or in any way changing or doing any Modification to the Licensed Material nor try to access/nor to be granted access to the Source code;
- e. Use the Licensed Material only internally and not allow it to be placed at any third party's disposal under no condition in whatever way, directly or indirectly, whether for remuneration or free of charge;
- f. Not disclose, sublicense, rent, assign, lease or transfer under any form the Licensed Material to any third party and, more generally, not take any action that would limit the Licensor's right to sell, transfer, license or use the Licensed Material and /or any of its Modifications;
- g. Not disclose nor publish any qualitative analysis or performance/benchmark test run results in respect of the Licensed Material without the express prior written consent of the Licensor;
- h. Install the Licensed Material only on such devices and make use of such ancillary software which comply with the specifications as described in the Documentation. In any case, the Licensee acknowledges and commits itself to use only the Licensed Material on equipment satisfying with the specifications as described in the Documentation and the Licensee shall not claim any compensation from the
- i. The Licensor for any damage arising out of the use of the Licensed Material on/with such non-compliant software and devices;

*Execution Version*

- j. Not use the Licensed Material in a way that infringes the Intellectual Property Rights of any third party or of the Licensor or violates any Legal Provision (including, but not limited to the laws and regulations governing export/import control, unfair competition) nor to impair the institutional or corporate identity and reputation of the Licensor;
  - k. Make aware its employees, agents, consultants, (sub-)contractors and other representatives, including affiliate and subsidiary companies about the commitments contained into this License Agreement and make the best efforts to guarantee their enforcement without prejudice of Article 8 of this License Agreement. For the avoidance of any doubt, the Licensor expressly permits the Licensee to employ or involve assistants, consultants, (sub-)contractors and/or agents for the performance of the License Agreement being agreed that the Licensee shall be held responsible for any breach caused by such persons as under Article 9 hereafter;
  - l. Give immediate notice to the Licensor of (1) any proven or potential infringement of this License Agreement by its employees, agents, consultants, (sub-)contractors and other representatives, including affiliate and subsidiary companies and (2) any taken interim or conservatory measures, judicial order or decision necessary to make such infringements cease;
  - m. Ensure that the Licensed Material is protected at all times from access, use or misuse, damage and destruction by any person not legitimately authorized according to the terms and conditions of this License Agreement;
  - n. Give immediate notice to the Licensor of any proven or potential unauthorized use of the Licensed Material, or portions thereof, and related IPR by any third party;
  - o. Immediately inform the Licensor in writing about any claim or demand, even if only merely threatened, regarding the Licensed Material and related IPR. If legal proceedings against the Licensee and directly or indirectly concerning to the Licensed Material and related IPR occur, the Licensor shall be entitled at its own choice to (i) assume any legal proceeding in its own name with the full assistance of the Licensee, each Party bearing its own costs or (ii) assist the Licensee in its defense and bear the related expenses of this assistance, being understood that these expenses shall be taken into account for the calculation of the liability cap mentioned under Article 9. In any case, the Licensee shall not acknowledge any right of a third party on the Licensed Material without the Licensor prior written approval.
  - p. Not rely on any representation made by the Licensor which has not expressly been cited or defined in this License Agreement.
  - q. Submit explanations to regulators or market players of the Licensee concerning issues regarding the Licensed Material only upon such regulators or market players request and subject to a prior written approval of the Licensor on the content of such explanations.
- 3.2.3** The Licensor reserves all rights not explicitly granted. For the avoidance of any doubt, any exploitation of the Licensed Material and related IPR other than the Permitted Use, must be expressly authorized in writing.
- 3.2.4** Parties acknowledge that the characteristics described in Annex V are specific to the Licensed Material. The mere demonstration that another software, application or calculation engine than the Licensed Material uses any element of this selection method, shall be deemed sufficient proof

## Execution Version

of unpermitted reuse of the Licensed Material and unpermitted disclosure of the Licensed Material unless it is proven that such reuse and disclosure is compliant with this License Agreement.

### 3.3 License Term

The License is granted for the term of this Agreement as specified in Article 10.

### 3.4 License Territory

The License is granted for the geographical scope as described in Annex I, section IV.

### 3.5 Modifications

- 3.5.1 The Licensor shall in due time notify to the Licensee any Modification. Access to any Modification shall be provided by the Licensor to the Licensee after having received a written request thereto of the Licensee and subject to the fulfilment of the conditions set forth in this Article 3.5 except where such conditions are not compatible with a mandatory Legal Provision, from which deviation is not possible.
- 3.5.2 The Licensor shall extend the present License to the Modifications, such as, but without limitation to future versions of the Licensed Material, against payment of [XXX INSERT AMOUNT] EUR or [against payment of the additional License Fee, if any, indicated by the Licensor].
- 3.5.3 Any extension of the License shall be evidenced in a written document to be signed by the Parties and attached to this License Agreement, stipulating amongst others the payment modalities and payment term for the payment of the agreed upon additional License Fee, if any.
- 3.5.4 Any Modification shall be delivered to the Licensee in accordance with the provisions of Article 4 of this License Agreement, which apply *mutatis mutandis*.
- 3.5.5 The Licensor has the sole and exclusive right to carry out Modifications. Moreover, The Parties agree that any modification to the Licensed Material, even if in breach of the License Agreement, shall remain the sole property of the Licensor. Therefore, the Licensee shall have no interest in such modification and no whereas – at any title – shall be due to the Licensee for such modification.

## ARTICLE 4 Delivery

- 4.1 The Licensor shall deliver the Licensed Material in accessible format within ten (10) Business Days of receipt of the payment of the License Fee.
- 4.2 The Documentation shall be in English.
- 4.3 The Licensor is not responsible for the installation of the Licensed Material on the IT environment of the Licensee.
- 4.4 The Licensee shall acknowledge receipt of the Licensed Material by sending a notice to this effect as soon as possible after delivery. In absence of such a notice within twenty (20) Business Days after receipt of payment of the License Fee, the Licensed Material shall be deemed duly delivered.

## ARTICLE 5 License Fee, invoicing and payment conditions

- 5.1 The License shall be remunerated by the Licensee by means of a License Fee equal to the amount mentioned in Annex III.

## *Execution Version*

- 5.2 The Licensor shall invoice the License Fee to the Licensee according to the modalities set forth in Annex III to this License Agreement. Payment of the License Fee by the Licensee shall take place by wire transfer to the bank account number of the Licensor as indicated in Annex III within the term indicated therein.
- 5.3 Any delays in payments shall entitle the Licensor to immediately terminate this License Agreement as under Article 3 above. The License shall only become effective upon payment of the License Fee according to Annex III.
- 5.4 The Articles 5.2 and 5.3 shall apply *mutatis mutandis* to the payment of any additional License Fee to be paid for new version releases of the Licensed Material pursuant to Article 3.5
- 5.5 Any cost/expense in connection with or arising out of this present License Agreement shall be for the account of each Party individually.

### **ARTICLE 6   Warranty**

- 6.1 The Licensee acknowledges that, within the scope of this License Agreement, the License in respect of the Licensed Material is provided by the Licensor to the Licensee “*as is*” without any covenant nor warranty, whether express or implied except as indicated in Article 6.2. By way of example and without limitation this License Agreement shall thus not be interpreted as providing:
  - (i) any warranty with regards to infringement of any third party rights, except as indicated in Article 6.2,
  - (ii) any warranty of merchantability nor fitness of the Licensed Material for a particular purpose,
  - (iii) any warranty nor commitment regarding the functioning or defects of the Licensed Material
  - (iv) any warranty nor commitment that the applications contained in the Licensed Material will meet the Licensee’s business requirements.
- 6.2 The Licensor represents that at the time of entry into this License Agreement, the Licensor is a co-owner of the rights, title and interest pertaining to the Licensed Material and that to the best of its knowledge, no third party has filed a claim in respect of the Licensed Material, in its then current state, for infringement of its (Intellectual) Property Rights. The Licensor also warrants that, to the best of its knowledge, the Licensor has, as co-owner of the Licensed Material, full right to grant this License to the Licensee under this License Agreement.
- 6.3 The Licensee expressly permits the Licensor to employ or involve assistants, consultants, (sub-)contractors and/or agents for the performance of the License Agreement.

### **ARTICLE 7   Title and (Intellectual) Property Rights**

- 7.1 The Licensee agrees and acknowledges that the Licensor is a joint owner together with the Other Co-Owners of the (Intellectual) Property Rights pertaining to the Licensed Material, and that it acquires no title, right nor interest on the Licensed Material or on any Modification other than the License granted by this License Agreement.
- 7.2 The Licensor shall together with the Other Co-Owners remain the joint owner of the title, Intellectual Property Rights and all other proprietary rights related to the Licensed Material, and all

parts and copies thereof. This License Agreement shall not be construed as entailing a Transfer to the Licensee of ownership in any way.

- 7.3** The Licensee shall not remove any trademark, trade name, or copyright notice (if any) from the Licensed Material or copies thereof received under this License Agreement and from any back-up copy.
- 7.4** In the event the Licensed Material is in Licensor's reasonable opinion likely to become the subject of a claim based on the infringement of Intellectual Property Rights, Licensor shall inform Licensee thereof and the Licensee shall cooperate in good faith in respect of the measures to be taken to mitigate as much as possible any damage.

## **ARTICLE 8 Confidentiality**

**8.1** The Licensee acknowledges and agrees that the content of this License Agreement, the Licensed Material and any information in whatsoever form and of whatsoever nature in relation thereto or exchanged between the Parties pursuant to this License Agreement or before or after this Agreement is entered into force (hereafter "**Confidential Information**") are to be considered as (proprietary) business secrets, which must be appropriately protected against any disclosure to third parties.

**8.2** In particular the Licensee undertakes to:

- i) hold in strict confidence and not to divulge nor disclose, at any time, any Confidential Information to any third party, unless expressly permitted under Articles 8.3 and 8.4 of this License Agreement;
- ii) safeguard any Confidential Information which has been disclosed to it using the same degree of care that it applies to safeguard its own respective confidential and proprietary information and at least to take all necessary measures to prevent unauthorized or accidental disclosure of the same, in particular (without being limited to) by keeping any copies thereof secure in such way so as to prevent unauthorized access by any third party. In this respect, the Licensee warrants that it has sufficient procedures and protections in place in order to enforce and maintain confidentiality and to prevent unauthorised use and unauthorised disclosure of such Confidential Information;
- iii) use Confidential Information for the exercise of its rights and obligations under this License Agreement only and not to use or exploit it for any other purpose nor in any way which is or may be detrimental to the interests of the Licensor (whether directly or indirectly);
- iv) immediately inform in writing the Licensor at the moment it discovers that a third party has (had) or is suspected to have (had) access to Confidential Information in its possession or that such information has been or is suspected to be disclosed to a third party. All reasonable measures shall be taken by the Licensee to prevent such disclosure or at least to minimise the effect of the disclosure and to prevent further disclosure;
- v) comply with the provisions of Article 10.6 also with regards to Confidential information;
- vi) and at no time to cause or to allow Confidential Information to be sent, carried or transmitted to any foreign state which is not a party either to the Universal Copyright Convention or to the Bern Convention.

*Execution Version*

**8.3** Article 8.2 of this License Agreement shall apply to all Confidential Information except to Confidential Information in respect of which the Licensee can demonstrate:

- i) that it was known publicly at the time of disclosure to it; or
- ii) that it became publicly known subsequently other than as a result of a breach of this License Agreement; or
- iii) that it had prior written consent of an authorized representative of the Licensor to disclose the Confidential Information to a third party.

In cases of doubt, confidentiality shall be maintained until written confirmation has been obtained from the Licensor that one of the above exclusions applies.

**8.4** Article 8.1 and 8.2 of this License Agreement shall not prohibit the Licensee to disclose Confidential Information to any judicial, administrative, governmental or regulatory authority or body requiring such disclosure provided that: (a) such disclosure is required pursuant to a valid applicable law or regulation or pursuant to a valid, effective and final order issued by a competent judicial, administrative, governmental or regulatory authority or body, (b) the Licensee notifies such judicial, administrative, governmental or regulatory authority or body that the information is confidential; (c) the Licensee diligently endeavors, prior to submission of such Confidential Information to the judicial, administrative, governmental or regulatory authority or body, to obtain an appropriate protective order regarding the disclosure of the Confidential Information and such additional confidential treatment of such information as may be available under applicable law or regulations; and (d) if permitted under the applicable mandatory Legal Provisions,, the Licensee notifies prior to such disclosure, the Licensor promptly of the required disclosure and provides the Licensor an opportunity to participate in the endeavor to obtain a protective order.

**8.5** The Licensee shall be entitled to disclose Confidential Information to i) its directors, members of management, officers, employees, and to legal representatives of companies under its Control or of companies that Control such Party (hereafter the “**Internal Representative**”), and to ii) subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (hereafter the “**External Representative**”), only if the following conditions are met:

- a) Access to the Confidential Information may only be given to the Internal Representatives or External Representatives that have been indicated in the list of permitted access holders, indicated in Annex VII (List of Permitted Access Holders) to this License Agreement;
- b) The Internal Representative or External Representative has a definite need to know such information for the execution of its assignment which must be strictly related to the performance of this License Agreement. The Licensee shall directly assume full responsibility for any acts of its Internal Representative or External Representative related to the disclosed Confidential Information;
- c) For an Internal Representative the Licensee shall inform, prior to any disclosure, the Licensor in writing (including by e-mail) of the identity of the Internal Representative(s);
- d) The Internal Representative is informed by the Licensee of the confidential nature of the Confidential Information and is bound to respect the confidential nature of the Confidential Information under terms at least equivalent to the terms of this License Agreement;

## Execution Version

- e) The External Representatives to whom access is granted to Confidential Information, must prior to any access have signed a confidentiality declaration substantially similar to the standard form attached to this License Agreement as Annex VI (Template confidentiality declaration)
- f) The Licensee undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal Representatives and External Representatives to whom Confidential Information is disclosed.
- g) The necessary procedures and protections must have been put into place by the Licensee so as to prevent disclosure and further use of such Confidential Information in the event a natural or legal person is no longer an Internal Representative or External Representative of the disclosing Party;
- h) The Licensee is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations.

The Licensee may decide to add, replace or remove its Internal Representative and External Representative mentioned on the list of permitted access holders provided that the conditions of this Article are complied with. In such event the Licensee shall provide the Licensor with a new list of permitted access holders which shall amend Annex IV (Contacts).

- 8.6** The confidentiality obligations contained in this Article 8 shall survive the termination of this License Agreement for a period of ten (10) years.

## **ARTICLE 9 Liability**

### **9.1 Liability of the Licensor**

- 9.1.1** The Licensor is only liable for damage resulting from breaches of this License Agreement that qualify as gross negligence, wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraude ("*bedrog*" / "*fraude*") and that are attributable to the Licensor.
- 9.1.2** Except in the event of wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraude ("*bedrog*" / "*fraude*"), the Licensor shall in no case be liable for incidental, indirect, special, punitive or consequential damages (including, but not limited to, loss of opportunity, loss of goodwill, loss of revenue or profit, loss of business, reputational or immaterial damage, loss of programs or data, any attorney's costs, legal fees and court costs, third party claims or any other incidental damages of any kind incurred by the Licensee) arising out of breach of contract, negligence, or any other course of action.
- 9.1.3** Except in the event of wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraude ("*bedrog*" / "*fraude*"), the aggregate liability of the Licensor arising out of any breach of this License Agreement or any other course of action, including gross negligence ("*grove fout*" / "*faute grave*"), shall not exceed the License Fee paid by the Licensee for the year during which the related damaging event has occurred or exceed the amount of XXX EUR, in the event no License Fee is due.
- 9.1.4** The Licensee waives any recourse it may have against the Other Co-Owners in respect of the use of the Licensed Material.

### **9.2 Liability of the Licensee**

## *Execution Version*

- 9.2.1** The Licensor shall be entitled to claim full compensation for any and all damage, loss, costs and expenses, whatever their nature (material, physical or immaterial, direct or indirect), including but not limited to loss of opportunity, loss of goodwill, loss of revenue or profit, loss of business, reputational damage, loss of programs or data, any attorney's costs, legal fees and court costs, incurred as a result of a contractual breach, a fault or negligence by the Licensee in the context of the License Agreement.
- 9.2.2** In case of a breach by the Licensee, included but not limited to its employees, advisors and subcontractors of any of its obligations under this License Agreement, the Licensee shall immediately forfeit a lump sum indemnification of EUR [**TO BE DETERMINED**] for any such breach, which shall be immediately payable to the Licensor and which shall not have any prejudice over Licensor's right to seek full compensation of all damages incurred as a result of, or in connection with, such breach as set forth in Article 9 of this License Agreement.
- 9.2.3** The Licensee shall hold the Licensor and the Other Co-Owners harmless for all claims raised by third parties, which are directly or indirectly related to the failure of the Licensee to comply with any of its obligations under this License Agreement.
- 9.3** General
- 9.3.1** The Parties are responsible for any action or conduct of their employees, assistants, consultants, contractors and/or agents, provided the conditions required under this Article 9 are met.
- 9.3.2** If a breach of this License Agreement occurs, both Parties shall take reasonable steps to mitigate the damages caused by such breach.

## **ARTICLE 10** Entry into force, duration and termination

- 10.1** Under the condition provided in Article 5.3 this License Agreement shall enter into force on the date it has been signed by the Parties. Should the Parties not sign it on the same date, the date of the last signature shall be considered as the date that this License Agreement comes into force.
- 10.2** The License is granted for an indefinite term as of its entry into force in accordance with Article 10.1.
- 10.3** Each Party shall be entitled to terminate the License subject to a three (3) months prior notice. Without any motivation, any court intervention and without any compensation being due
- 10.4** Without any court intervention and without any compensation being due, the Licensor is entitled to terminate the License Agreement, with immediate effect in the following cases:
- (i) in the event of breach by the Licensee, without any prior notice;
  - (ii) in the event that any of the Licensed Material shall become subject of a claim on the infringement of Intellectual Property Rights, without any prior notice.
- 10.5** To the extent compatible with applicable mandatory Legal Provision and without any court intervention and without any compensation being due, each of the Parties shall be entitled to terminate by registered letter with acknowledgement of receipt this License Agreement with immediate effect in respect to the Party which:
- i) enters into compromise and settlement with its creditors;
  - ii) enters into an agreement or judicial order is made for the liquidation of the other party;  
or
  - iii) has a receiver or administrative receiver or administrator or similar official appointed over all or part of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of thirty (30) days.
- 10.6** In case of termination of the present License Agreement all obligations under this License Agreement become immediately due and payable to the extent that such performance is

## *Execution Version*

reasonably feasible. In case of delay or default in payment obligations due by the Licensee to the Licensor under this License Agreement performance is always deemed feasible.

- 10.7** Upon termination of this License Agreement, the Licensee shall immediately cease the use of the Licensed Material and related IPR. Within thirty (30) days after any termination, the Licensee shall deliver to the Licensor or destroy all copies of the Licensed Material and related IPR in every form. The Licensee agrees to certify in writing that it has performed the abovementioned delivery or destruction obligation within the above mentioned term.
- 10.8** The provisions which expressly or by their nature are intended to remain into force following the termination, shall survive the termination of the License Agreement, such as but not limited to Articles 1, 6, 7, 8 (as indicated therein), 9, 10, 11 and 12 of this License Agreement and without prejudice to the right of a Party to settle any dispute arising after termination out of or in connection with this License Agreement in accordance with all the provisions of the License Agreement.

### **ARTICLE 11 Governing law and disputes**

- 11.1** This License Agreement shall be governed by and shall be construed in accordance with the laws of Belgium without regard to any of its conflict of law provisions.
- 11.2** Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail to the extent compatible with mandatory Legal Provisions. The use of the English language is however without prejudice to the fact that legal concepts in this License Agreement are to be understood as civil law concepts of Belgian law (and not as common law concepts).
- 11.3** In the event of a dispute, disagreement, claim or difference of any nature between the Parties arising under or in connection with this License Agreement (including its validity) the dispute, disagreement, claim or difference shall in first instance be subject to amicable settlement between the Parties through intervention of a representative of the daily management of the Licensor and the Licensee. The disputes which cannot be settled amicably within a period of thirty (30) Business Days as of the submission to the management shall be settled by arbitration in Brussels under the rules of arbitration of the ICC. The arbitration tribunal will be composed of three (3) arbitrators, one (1) to be appointed by the Licensor, one (1) to be appointed by the Licensee, and the third arbitrator to be appointed by the two arbitrators (2) appointed by respectively the Licensor and the Licensee. The proceedings shall be held in the English language. The award of the arbitration shall be final and binding upon the Parties concerned.
- 11.4** For the purposes hereof, the Parties elect domicile at the addresses set forth herein, or at a different address as may be designated by written notice.
- 11.5** Nothing in this Article 11 shall preclude the Parties from applying for injunctive relief in summary proceedings ("*kort geding*" / "*procédure en référé*") before the competent courts.

### **ARTICLE 12 Miscellaneous**

#### **12.1 Notices**

- 12.1.1** Except as provided otherwise, all notices, requests, demands, instructions or other communications under this License Agreement shall be in writing including fax or e-mail.
- 12.1.2** Service of notices requests, demands, instructions or other communications shall be deemed effective:
- a. at the time of delivery, if delivered by hand, registered post or courier;

## *Execution Version*

- b. in the case of notices sent by fax, on the date that transmission is received by the recipient in legible form (with the burden of proving receipt being upon the sender, by means of a regular fax transmission report issued by the dispatching fax machine);
- c. in the case of notices to be recorded by e-mail, at the time when the e-mail is indicated to the sender as delivered to the recipient and/or the recipient acknowledges the receipt thereof;

provided that, if the notice is received on a Business Day after 5 p.m. or on a date which is not a Business Day, the notice shall be deemed given and effective on the first following day that is a Business Day.

**12.1.3** In the event of difficulty in using fax or electronic means to send notices or other communications under this License Agreement, notices may be served in writing and delivered in person or by courier or by post, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

**12.1.4** All notices and communications shall be addressed to the respective addresses of the Parties set forth in Annex IV.

**12.1.5** Any change of address of a Party must be notified by e-mail or fax to the other Party, the new address being considered the official address of this License Agreement as from the third (3<sup>rd</sup>) Business Day following the sending of such e-mail or fax.

### **12.2 Modification of the Agreement**

**12.2.1** Except if explicitly stipulated otherwise in this License Agreement, no amendment or modification hereof shall be effective and binding unless evidenced in writing and signed by the Parties. Notwithstanding the foregoing, Annex IV – Contact Information- may be amended by way of notification by the concerned Party.

**12.2.2** Should Legal Provision require an amendment or modification of this License Agreement or of any other document having an influence on this License Agreement, the Parties agree to examine together the possibilities and/or conditions for the amendment or modification of this License Agreement, at the request of the most diligent Party. If the Parties do not reach an agreement on such amendment or modification within a period of two (2) months as of the above mentioned request, the Licensor may terminate this License Agreement upon twenty (20) Business Days prior written notice to the Licensee. In this event the Licensor shall determine the possibilities and/or conditions for the eventual reimbursement of the License Fee taking into account the remaining time of the License Term.

**12.2.3** Any modification of this License Agreement shall include the Annexes and vice versa.

### **12.3 Severability**

**12.3.1** If one or more of the provisions of this License Agreement are declared to be invalid, illegal or unenforceable in any respect under any applicable mandatory Legal Provision the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of the present License Agreement is not affected in any material manner adverse to

*Execution Version*

any Party. In such event the Parties shall use their reasonable efforts to immediately and in good faith negotiate a legally valid replacement provision with the same economic effect.

**12.3.2** If no agreement on such provision has been reached within a period of two (2) months of such provision being declared invalid, illegal or unenforceable, the Parties can decide to terminate this License Agreement with twenty (20) Business Days prior written notice to the other Party.

**12.4 Reference Coordinator.**

The Parties will appoint a formal Reference Coordinator (hereinafter: “**RC**”) within ten (10) days from the entry into force of this License Agreement. The RC will be considered the reference person for all issues connected with the performance and the general implementation of the Licensed Material and related IPR. Each Party can replace the RC at any time. The replacing Party shall then inform the other counterparty via e-mail providing all relevant operational references of the new RC.

**12.5 Waiver**

**12.5.1** No failure or delay of any Party to exercise any right or remedy under this License Agreement shall be considered a final waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof.

**12.5.2** The rights and remedies provided under this License Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**12.6 Entire Agreement**

This License Agreement, the Annexes and the documents referred to herein, contain the entire agreement of the Parties hereto with respect to the subject matter hereof, and therefore replaces and supersedes all previous understandings, arrangements, agreements or negotiations, whether oral or in writing, between the Parties relating to the same subject matter.

**12.7 Relationship.**

No agency, partnership or joint venture relationship is created between the Parties as a result of this License Agreement.

**12.8 Transfer of rights and obligations**

This License Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assignees. The Licensee shall not be entitled to Transfer its rights and/or obligations arising out of this License Agreement, except with the prior written consent of the Licensor.

**12.9 No Joint and Several Liability**

The Parties are each liable for their individual commitments only and do not bear any joint and several liability under this License Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this License Agreement in two (2) original copies on \_\_\_\_\_. Each party acknowledges having received its copy.

**Annex I: Scope of the License**

**I. Licensed Material**

*Comment: according to the co-ownership agreement (execution version of 13/06/12) only licenses in respect of First Class Co-Owned Assets fall within the obligation to sign this Agreement. Licensing of Second and Third Class Co-Owned Assets fall outside the scope of the obligation to sign the Standard License (see art. 6). The description of the Licensed Material will have to be drafted on a case by case basis taking into account the type of First Class Co-Owned Asset or if applicable at the Licensors own choice, any other Class Co-owned asset, in respect of which a License is to be granted.*

The Licensed Material consists of:

[ XXX ADD DESCRIPTION]

*This list will include the description of the functionalities of the Licensed Material (list of the licensed functionalities also for the purposes of the computation of the Yearly Upgrade Fee - Annex VIII Co-own which is paid by the Licensing Party)*

**III. Permitted Use**

*Comment: according to the co-ownership agreement (execution version of 13/06/2012) the permitted use varies depending on whether the License is granted for use inside or outside the Anticipated Scope of PCR. We have formulated a standard formulation for the possible options. Depending on the type of license one or the other formulation must be chosen.*

<b>Type of Permitted Use</b>	<b>Standard formulation</b>
<p><i>Use within the Anticipated Scope of PCR (as defined in the co-ownership agreement) for operation by Licensee of its own electricity market in isolated mode (art. 6.1.2.1):</i></p> <p><i>It will be the responsibility of each party granting a license to make sure that the concerned markets fall within the Anticipated Scope of PCR (as defined in the co-ownership agreement)</i></p>	<p>[in accordance with Article 3.2.1 of the License Agreement, the Licensee is entitled to Use the Licensed Material, , to operate the following Own Market in isolated mode : [XXX];</p>
<p><i>Use outside the Anticipated Scope of PCR (as defined in the co-ownership agreement) for any purpose other than matching Bids that are related to the Anticipated Scope of PCR:</i></p> <p><i>It will be the responsibility of each party granting a license to make sure that the concerned markets fall outside the Anticipated Scope of PCR (as defined in the co-ownership agreement).</i></p>	<p>[in accordance with Article 3.2.1 of the License Agreement, the Licensee is entitled to Use the Licensed Material, to: [XXX];</p> <p><i>The Licensee is not entitled to Use the Licensed Material for a purpose in connection to matching Bids that are related to the Anticipated Scope of PCR.</i></p>

[INSERT OPTION]

#### **IV. License Territory**

*Comment: the co-ownership agreement (execution version of 13/06/2012) makes a distinction between a License granted within the Anticipated Scope of PCR and a License granted outside the Anticipated Scope of PCR. The text hereunder provides a standard formulation for both cases to be further filled out.*

[The License is granted for the Permitted Use in [XXX INDICATE GEOGRAPHICAL AREA].

*Please note that it will be the responsibility of each party granting a license to make sure that the concerned geographical area falls within or outside the Anticipated Scope of PCR (as defined in the co-ownership agreement).*

**Annex II: Licensed Material Documentation**

**Annex III: License Fee, Invoicing and Payment**

The License is granted against payment of a License Fee equal to EUR XXX [INSERT AMOUNT], excluding VAT.

In accordance with Article 5 the License Fee shall be paid according to the following modalities: XXX [INSERT PAYMENT MODALITIES]

**Annex IV: Contact information**

**Annex V: Declaration of legitimacy**

**BETWEEN ON THE ONE HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], registered with the Commercial Register in [INSERT CITY], under n° [INSERT COMMERCIAL REGISTER NUMBER AND VAT], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter referred to as the “**Licensor**”;

**AND ON THE OTHER HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], registered with the Commercial Register in [INSERT CITY], under n° [INSERT COMMERCIAL REGISTER NUMBER AND VAT], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter referred to as the “**Licensee**”;

The Licensor and the Licensee hereafter referred to collectively also as the “**Parties to the PCR Standard License Agreement**”.

The Parties to the PCR Standard License Agreement hereby represent to the benefit of the Parties to the PCR Co-ownership Agreement:

1. That they have entered into a license agreement with [*licensee*] for the use of [*describe the licensed material and permitted use*] in [*indicate geographical scope*].

The Licensor hereby represents to the benefit of the Parties to the PCR Co-ownership Agreement:

1. That the text of such license agreement corresponds to the Standard License Agreement attached to the PCR Co-ownership Agreement as Annex VI and/or has been unanimously approved by the PCR Parties.
2. That the licensed material, permitted use and territory of the License are compliant with the PCR Co-ownership Agreement.

Signed in ...(n...) originals, in \_\_\_\_\_, on \_\_\_\_\_.

[Company name]

[Company name]

\_\_\_\_\_

\_\_\_\_\_

[Name]  
[Title]

[Name]  
[Title]

**PART C**  
**Exit License**

**EXIT LICENSE AGREEMENT**

**BETWEEN ON THE ONE HAND**

1. INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], VAT no..... registered with the Commercial Register, n° [INSERT COMMERCIAL REGISTER NUMBER], hereby duly represented by [INSERT NAME AND FUNCTION],

2. INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], VAT no..... registered with the Commercial Register, n° [INSERT COMMERCIAL REGISTER NUMBER], hereby duly represented by [INSERT NAME AND FUNCTION],

3. INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], VAT no..... registered with the Commercial Register, n° [INSERT COMMERCIAL REGISTER NUMBER], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter collectively referred to as the “Licensors”;

**AND ON THE OTHER HAND**

[INSERT COMPANY NAME + LEGAL FORM], a company incorporated and existing under the laws of [INSERT COUNTRY OF RESIDENCE], having its registered offices at [INSERT ADDRESS OF RESIDENCE], VAT no..... registered with the Commercial Register, n° [INSERT COMMERCIAL REGISTER NUMBER], hereby duly represented by [INSERT NAME AND FUNCTION],

hereafter referred to as the “Licensee”;

The Licensors and the Licensee hereafter individually also referred to as a “Party” and collectively also as the “Parties”;

**WHEREAS:**

- A) The Parties entered into the following agreements PCR Co-Ownership Agreement, organising for a co-ownership between the Parties in respect of Co-Owned Assets and setting forth the terms



**ARTICLE 1 Interpretation**  
**1.1 Definitions**

The capitalized terms and expressions in this License Agreement shall have the following meaning:

- Annex:** means any schedule to this License Agreement;
- Anticipated Scope of PCR:** means the geographical area of the Bids to be matched within the PCR Cooperation, which corresponds to the Bidding Areas of EU countries (or a part thereof) and any electrically connected country. For the avoidance of any doubt:
- the expression electrically connected country refers to a country connected, directly or through one or several intermediate non-EU countries, to a EU country via an interconnection between their electricity grids
- the geographical area of the Anticipated Scope of PCR is regardless of the physical location of the PCR Market Coupling System requested for the implementation and operation of PCR Cooperation;
- Article:** means any article of this License Agreement;
- Best Efforts:** means performing an obligation with the degree of diligence, prudence and foresight reasonably and ordinarily exercised by an experienced Person engaged in the same line of business under the same circumstances and conditions, without guaranteeing the achievement of a specific result ("*middelenverbintenis*" / "*obligation de moyen*");
- Bid:** means a binding order to deliver or take off electricity against payment, including but not exclusively, hourly orders, block orders, MIC orders MPC orders or PUN orders, as further defined in the PX market rules applicable to the concerned PX;
- Bidding Area:** means the geographical area where the delivery or take off of electricity resulting from the matched Bid(s), takes place;
- Business Day:** means any day other than a Saturday and a Sunday on which banks are open to the public

*Execution Version*

for general business in the country or city of the registered office of the Party in charge with the performance of the relevant obligation;

**Confidential Information:**

means the information contained in the documents listed in Annex I as First Class Licensed Material and Second Class Licensed Material and any business secrets related to the Licensed Material relating to the assets;

**Control:**

means the situation where a company:

- directly or indirectly owns a fraction of the capital in another company that gives a majority of the voting rights at such company's general meetings;
- holds alone a majority of the voting rights in a company by virtue of an agreement entered into with other partners or shareholders and this is not contrary to such company's interests;
- effectively determines the decisions taken at a company's general meetings through the voting rights it holds;
- has the power to appoint or dismiss the majority of the members of company's administrative, management or supervisory structures;
- directly or indirectly holds a fraction of the voting rights above 40% of a company and no other partner or shareholder directly or indirectly holds a fraction larger than this participation;

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

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

**Co-Owned Assets:**

means all assets that are co-owned between the parties to the Co-Ownership Agreement pursuant to that agreement;

**Co-Ownership Agreement:**

shall have the meaning set forth in whereas A;

*Execution Version*

<b>Dispute:</b>	shall have the meaning set forth in Article 10.3;
<b>Disputing Parties:</b>	shall have the meaning set forth in Article 10.4;
<b>DS Chairman:</b>	shall have the meaning set forth in Article 10.5;
<b>DS Failure Notice:</b>	shall have the meaning set forth in Article 10.5;
<b>DS Notice:</b>	shall have the meaning set forth in Article 10.4;
<b>DSR:</b>	shall have the meaning set forth in Article 10.5;
<b>Dispute Settlement Request:</b>	shall have the meaning set forth in Article 10.4;
<b>Exit Version:</b>	means the version of a Co-Owned Asset as existing at the date the participation of the Licensee to the Cooperation Agreement terminated;
<b>External Representative:</b>	shall have the meaning as set forth in Article 7.2.3
<b>First Class Licensed Material:</b>	the Licensed Material that qualifies as first class Co-Owned Assets under the Co-Ownership Agreement at the time the participation of the Licensee to the Cooperation Agreement terminated, as further described in Annex I to this License Agreement ;
<b>ICC:</b>	shall have the meaning set forth in Article 10.8;
<b>Intellectual Property Rights (“IPR”):</b>	means any intellectual property rights or other (property) rights throughout the world, in all media, now existing or created in the future, for all versions and elements, in all languages, and for the entire duration of such rights, arising under statutory or common law, contract, or otherwise, and whether or not registered, registrable or perfected, including (a) rights in all inventions, discoveries, utility models, patents, reissues of and re-examined patents, or patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing or hereafter filed, issued or acquired; (b) rights associated with works of authorship, including database rights, copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, applications and registrations; (c) rights in

*Execution Version*

computer software and programs, source codes, or business methods; (d) rights in materials; (e) rights associated with trade marks, service marks, trade names, internet domain names, logos, trade dress and the applications for registration and the registrations thereof; (f) rights relating to the protection of trade secrets, know-how and/or other confidential information; (g) design rights, whether registered or unregistered; and (h) rights analogous to those in this definition and any and all other proprietary rights relating to intangible property;

<b>Internal Representative:</b>	shall have the meaning as set forth in Article 7.2.3;
<b>Legal Provision:</b>	means any type of mandatory legal provision of public order, proclaimed by any competent authority;
<b>License:</b>	shall have the meaning set forth in Article 3.1.1. of this License Agreement;
<b>License Agreement:</b>	shall mean this license agreement;
<b>Licensed Material:</b>	shall mean the Exit Version of the Co-owned Assets licensed by the Licensors to the Licensee as listed and described in Annex I;
<b>License Term:</b>	means the term for which the License is granted to the Licensee as set forth in Article 3.3 of this License Agreement;
<b>License Territory:</b>	means the territory for which the License is granted to the Licensee as provided by Article 3.8;
<b>Licensee:</b>	means the Party to this License Agreement as identified in the Parties' description at the beginning of this License Agreement, to whom is granted this License;
<b>Licensor:</b>	means any Party to this License Agreement as identified in the Parties' description at the beginning of this License Agreement, who grants this License;
<b>Market Coupling:</b>	means a coordinated day-ahead electricity implicit auction mechanism, performing the matching of the supply and demand curves of

## *Execution Version*

different PXs, taking into account the cross border capacity made available by the TSOs, using a software application embedding a matching algorithm; for the avoidance of doubt, for the purpose of the License Agreement, the term Market Coupling includes the concept known as Market Splitting;

### **Market Splitting:**

means a type of Market Coupling where the matching of the supply and demand curves of different PXs, taking into account the cross border capacity made available by the TSOs, is performed by one power exchange instead of by several;

### **MIC:**

means the minimum income condition;

### **Modification:**

means any change, any derivative work, any new version release or any other update, upgrade of the Licensed Material;

### **MPC:**

means the maximum payment condition;

### **NRA:**

means the national regulating authority designated at national level on the basis of article 35 of Directive 2009/72/EC of the European Parliament and the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC or, for countries not covered by the aforementioned Directive, on the basis of national law as authority designated for supervising the energy market;

### **Opinion:**

shall have the meaning set forth in Article 10.6;

### **Original Owner:**

means APX, Belpex or EPEX Spot, i.e. each of these parties to the Co-Ownership Agreement which each owned, by virtue of a co-ownership, an undivided share in the co-ownership rights on the Pre-Existing Asset which by virtue of the Co-Ownership Agreement have been contributed to a co-ownership between the parties to the Co-Ownership Agreement;

### **Own Market:**

means a day-ahead and/or intraday electricity auction market directly managed/operated, in its own name and on its own behalf, by a Party or its wholly owned subsidiary, i.e. a market place for which participants have signed with such Party or such subsidiary an agreement

*Execution Version*

according to which the Party or such subsidiary is responsible for matching the Bids of participants in those Bidding Area(s) according to predefined rules or a market for which a Party or such subsidiary has been designated by law (including international treaties) or regulatory deed as operating this market; for the purpose of the License Agreement the Belpex Spot Market is to be considered an Own Market of APX;

**PCR:** means price coupling of regions;

**PCR Algorithm:** means the matching algorithm software embedding the Pre-Existing Assets enhanced with common developments in accordance with the PCR Cooperation Agreement, that is to be used to perform PCR Market Coupling, including its Source Code, its mathematical expression and all documentation and Confidential Information related thereto. The essential characteristics of the PCR Algorithm are described in Annex IX to this License Agreement;

**PCR Cooperation:** means the collaboration regarding the implementation and operation of PCR Market Coupling;

**PCR Market Coupling:** means Market Coupling as described in the Co-Ownership Agreement and in the Cooperation Agreement;

**PCR Market Coupling System:** means the data processing environment (software and hardware) that will be used to calculate the PCR Market Coupling results and that is composed of amongst others the PCR Algorithm and other Co-Owned Assets;

**PCR Software:** means the PCR Algorithm and any other software necessary for performing the PCR Market Coupling which has been jointly developed and/or jointly funded by all Parties;

**Permitted Use:** means exploiting the Licensed Material as authorized in Article 3.2 of this License Agreement;

**Person:** means any individual, company, entity, business, partnership, joint venture or other person whatsoever, in the broadest meaning of the word;

*Execution Version*

<b>Pre-Existing Asset:</b>	means the COSMOS matching software as existing in June 2011 and in described Annex I, i.e. its mathematical expression, its specifications, related documentation, the executable software embedding COSMOS and its Source Code and all the rights (including Intellectual Property Rights) pertaining to it.;
<b>Pre-Existing Market Coupling:</b>	means a Market Coupling different from PCR Market Coupling in operation for the Licensee at the time of entering into the Co-ownership Agreement , as listed in Annex I.
<b>PUN:</b>	means the Italian uniform purchase price;
<b>PX:</b>	means a power exchange, a company that organizes directly, or through services of a Third Party, wholesale trade of electricity, to be delivered in a certain Bidding Area, or of electricity related products;
<b>Reference Coordinator</b>	shall have the meaning set forth in Article 11.5;
<b>Second Class Licensed Material:</b>	the Licensed Material that qualifies as second class Co-Owned Assets under the Co-Ownership Agreement at the time the participation of Licensee to the Cooperation Agreement terminated, as further described in Annex I to this License Agreement;
<b>Source Code:</b>	means in respect of a software such software provided in a written computer programming language, usually technically designated as source code or source listings that would enable a Party to recreate and maintain the software including all updates and corrections;
<b>Sub-License:</b>	means the license granted by the Licensee to a Third Party in accordance with Article 3.2 and 3.3 and further determined in Annex II of this License Agreement;
<b>Sub-License Fee:</b>	the fee to be paid by the Licensee to the Licensors in the event of granting of a Sub-License to a Third Party, as set forth in Article 4.1;

## *Execution Version*

<b>Third Class Licensed Material:</b>	the Licensed Material that qualifies as third class Co-Owned Assets under the Co-Ownership Agreement at the time the participation of Licensee to the Cooperation Agreement terminated, as further described in Annex I to this License Agreement ;
<b>Third Party:</b>	means a natural or legal person other than a Party to this License Agreement;
<b>Third Party's Market:</b>	means an individual electricity market which cannot be qualified as an Own Market of the any of the Parties;
<b>Transfer:</b>	means any transfer, assignment, or any other disposal of an asset, a right or obligation by a Party, for value or gratuitous, in whatever form, including, but not limited to merger, demerger, transfer or contribution of universality or business divisions (whether or not by virtue of automatic transfer rules), exchanges or public sales, especially following an attachment or pledge;
<b>TSO:</b>	means a transmission system operator;
<b>Use:</b>	means using the processing, calculation or any other functions of the Licensed Material and more generally load, run, access, employ (including by embedding in other systems), display, process the Licensed Material and/or make available its own data or data to which it has lawfully access through the Licensed Material ;
<b>Working Hours:</b>	means 9 am to 5 pm CET on each Business Day.

### **1.2 Interpretation**

- 1.2.1** No provision of this License Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.
- 1.2.2** Words denoting the singular shall include the plural and vice versa. Words denoting one gender shall include another gender.
- 1.2.3** The headings of Articles or Annexes are inserted for convenience only and do not affect their interpretation.
- 1.2.4** Any reference to any rule, enactment or statutory provision 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.

## *Execution Version*

- 1.2.5** All references to Articles or Annexes refer to the corresponding Articles or Annexes of this License Agreement as amended, supplemented or modified from time to time, in accordance with Article 12.2 unless otherwise specified.
- 1.2.6** Any recital, Annex referred to in this License Agreement forms an integral and inseparable part of this License Agreement. Any reference to the License Agreement includes a reference to its Annexes and vice versa.
- 1.2.7** In case of any discrepancy between the provisions in the main body of this License Agreement and the contents of the Annexes, the wording of the main body shall prevail.
- 1.2.8** The rights conferred in Article 3 of the Licensee shall be interpreted restrictively.

### **ARTICLE 2 Subject matter**

This License Agreement sets forth the terms and conditions under which the Licensors grant to the Licensee certain limited rights to use the Licensed Material.

### **ARTICLE 3 License**

#### **3.1 Granted License**

- 3.1.1** Subject to the terms and conditions of this License Agreement, the Licensors grant the Licensee a non-exclusive, non-sub-licensable (except as indicated in Article 3.2.2), and non-transferable license to exploit the Licensed Material for the Permitted Use during the License Term and within the License Territory (hereafter the “**License**”).
- 3.1.2** To the extent that the use of the Licensed Material pursuant to this License Agreement may require additional software licenses, these additional licences are not covered by this License Agreement and shall be purchased separately by the Licensee.

#### **3.2 Permitted Use Within the Anticipated Scope of PCR**

##### **3.2.1 Own Use of the First Class Licensed Material**

Upon signature of this License Agreement the Licensee has the non-exclusive right to Use within the Anticipated Scope of PCR:

- a) The PCR Algorithm for analysis purposes; or
- b) Any First Class Licensed Material to operate its Own Market(s) in decoupled mode; or
- c) Any First Class Licensed Material to perform Pre-Existing Market Coupling(s); or
- d) The PCR Algorithm for calculating additional reference prices. For the avoidance of doubt, reference prices other than area prices may be calculated with the bids/offers in the Bidding Areas submitted by the PX that is calculating the reference price, including the flow in/out of the given PX Bidding Areas towards the other PX's Bidding Areas given from the PCR Market Coupling, while usage of bids/offers and capacities in and between other PX's Bidding Areas may only be used for calculation of such a reference price if explicit consent is given from the PX(s) concerned; or

- e) To grant its TSO a non-exclusive, non-transferable license for analysis purposes.

### **3.2.2 Use of Second Class Licensed Material and Third Class Licensed Material**

Within the Anticipated Scope of PCR, the Licensee has the non-exclusive right to Use, grant a Sub-License on or to Use in the context of a service provision the Second Class Licensed Material and Third Class Licensed Material to the fullest extent possible, provided that:

- a) The Licensee notifies the Licensors promptly, in writing, of its plans to Use the Second Class Licensed Material and Third Class Licensed Material for such purpose; and
- b) The Sub-License is non-exclusive, non-transferable and non-sub-licensable; and
- c) The Licensee and the Third Party enter into a sub-license agreement substantially in the form of the standard agreement to be attached as Annex VII and proof thereof is provided to the Licensors e.g. by a written declaration.

### **3.3 Rights of use the Licensed Material outside the Anticipated Scope of PCR**

Upon signature of the License Agreement the Licensee has the non-exclusive right to use, employ, benefit from and dispose of the Licensed Material (all classes) for any purpose other than the matching of Bids that are related to the Anticipated Scope of PCR to the fullest extent possible (use for own markets, granting licenses, rendering a service), provided that in case of a license or Use in the context of a service provision:

- a) The Licensee notifies the Licensors promptly, in writing, of its plans to grant (a) Sub-License(s) to Use the Licensed Material for such purpose; and
- b) The Licensee has paid the Sub-License Fee to the Licensors in accordance with Article 4 ; and
- c) The Sub-License is non-exclusive, non-transferable and non-sub-licensable; and
- d) Access to the Source Code and, generally, to any mathematical formulae related to the First Class Licensed Material is excluded; and
- e) The Licensee and the Third Party enter into the standard License agreement to attached as Annex VII and proof thereof is provided e.g. by a written declaration.

### **3.4 Modifications to the Licensed Material**

The Licensee is not entitled to make any Modificafations to the Licensed Material.

### **3.5 Obligations of the Licensee**

- 3.5.1 The Licensee shall use the Licensed Material only in accordance with the Permitted Use and in accordance with the provisions of this License Agreement.

*Execution Version*

3.5.2 The Licensee shall:

- a. Refrain from exploitation for the Permitted Use as described in Articles 3.2 if it concerns or is related to the implementation within the Anticipated Scope of PCR of a Market Coupling other than PCR Market Coupling or the Pre-existing Market Coupling(s), which has a similar purpose as PCR Market Coupling and/or a potential detrimental effect in respect of the latter, unless prior written consent of all the Licensors has been obtained for this exploitation;
- b. Refrain from making further copies or reproductions of the Licensed Material, except as necessary for the Permitted Use under this License Agreement (including for back up or archival purposes) in which case such copies or reproductions shall in all respects be subject to the terms hereof;
- c. Refrain from distributing, commercializing or operating Market Coupling with the Licensed Material, except as permitted under the Permitted Use;
- d. Assure that all copies of Licensed Material carry the same credits and copyright warning as the original from which the copy was made;
- e. Not sublicense, rent, assign, lease or Transfer under any form the Licensed Material to any Third Party, other than as permitted under this License Agreement and, more generally, not take any action that would limit the Licensors' right to sell, Transfer, license or use of the Licensed Material or its Modifications;
- f. Not publish any qualitative analysis or performance/benchmark test run results in respect of the Licensed Material without the express written consent of the Licensors.
- g. Install the Licensed Material only on devices and make use of ancillary software compliant with the specifications communicated by the Licensors. For the avoidance of any doubt, the Licensee acknowledges and commits itself to use the Licensed Material on equipment satisfying with the specifications communicated by the Licensors.
- h. To refrain from translating, decompiling, doing any reverse engineering adapting, arranging or in any way changing the Licensed Material;
- i. Not use the Licensed Material in a way that (1) infringes the IPR of any Third Party or a Licensor; (2) violates the License Agreement or any statutory provisions; (3) impairs the institutional or corporate identity and reputation of a Licensor;
- j. Hold harmless and indemnify Licensors against/for any claim for damages of Third Parties resulting from the Use, granting of a Sub-License by Licensee or the use by Licensee in the context of the provision of a service;
- k. Not use the Licensed Material (such as, amongst others, know-how including all documentation and Confidential Information related thereto), in the context of developments to assets which fall outside the scope of this License Agreement;
- l. Ensure that the Licensed Material is protected at all times from access, use or misuse, damage and destruction by any Person not legitimately authorised according to the terms and conditions of this License Agreement;

## *Execution Version*

- m. In accordance with Article 8, give immediate notice to the Licensors of any infringement by its employees, agents, contractors and associates, including affiliated and subsidiary firms, corporations and other organizations and about any eventual interim or conservatory measures, judicial order or decision following such infringements;
- n. Immediately inform the Licensor about any claim or demand, even if only merely threatened, regarding the Licensed Material and related IPR. If legal proceedings against the Licensee directly or indirectly referred to the Licensed Material and related IPR occur, the Licensors shall be informed thereof and be entitled to participate in the defense. Any settlement shall be subject to the Licensors prior approval;
- o. Not rely on any representation made by the Licensor which has not been cited or defined expressly in the License Agreement;
- p. Submit explanations to regulators or participants concerning issues common to the Parties and regarding the Licensed Material to prior consultation with and approval of the Licensor(s).

3.6 The Licensors reserve all rights not explicitly granted.

### **3.7 License Term**

3.7.1 an unlimited period of time, which shall not in any case exceed the longest duration of the Intellectual Property Rights pertaining to Co-Owned Assets under applicable law.

3.7.2 The Licensors may immediately, without any court intervention, revoke or suspend the License:

i) In the event any of the Licensed Material should become the subject of a claim based on the infringement of Intellectual Property Rights;

and

ii) In the event the Licensee breaches any of its commitments set forth in this License Agreement or takes any action materially adverse to the Licensors' rights to the Licensed Material.

### **3.8 License Territory**

The License is granted worldwide.

## **ARTICLE 4 Fee and payment conditions**

4.1 The granting of a Sub-License or the Use in the context of providing a service as set forth in Article 3.2.2 and 3.3 is subject to payment by the Licensee of the Sub-License Fee set forth in Annex II. The Sub-License Fee shall be due by the Licensee to each Licensor in accordance with the sharing key indicated by the Licensors.

4.2 Each Licensor shall invoice its share of the Sub License Fee to the Licensee within ten (10) Business Days of the signature of this License Agreement. Payment of the Sub-License Fee by the Licensee shall

## *Execution Version*

take place by wire transfer to the bank account number of each Licensor as indicated in Annex III to the License Agreement not later than one (1) month following receipt of this invoice.

### **ARTICLE 5 Warranty**

The Licensee acknowledges and agrees that within the scope of this License Agreement, the Licensed Material is provided by the Licensors to the Licensee "as is" without any warranty, express or implied, including warranty for infringement of third party rights and warranties of merchantability and fitness for a particular purpose, whether express or implied. In particular, the Licensors do not warrant (i) that the Licensed Material will function uninterruptedly or that it will be free from defects or errors and exploitation or use (in the broadest sense of the word) is at Licensee's own risk; (ii) that the applications contained in the Licensed Material are designed to meet all of Licensee's business requirements.

### **ARTICLE 6 Title and (Intellectual) Property Rights**

- 6.1 The Licensee agrees and acknowledges that the Licensors are the joint owners of the rights (including the Intellectual Property Rights) pertaining to the Licensed Material, and that it acquires no title, right or interest in the Licensed Material other than the License granted by this License Agreement.
- 6.2 The Licensors shall remain the joint owners of the title, Intellectual Property Rights and all other proprietary rights in the Licensed Material, and all parts and copies thereof. This License Agreement shall not be construed as entailing a Transfer to the Licensee of ownership in any way.
- 6.3 The Licensee shall not remove any trademark, trade name, or copyright notice (if any) from the Licensed Material or copies thereof received under this License Agreement and from any back-up copy.

### **ARTICLE 7 Confidentiality**

#### **7.1 Confidentiality obligations**

**7.1.1** The Licensee hereby expressly undertakes that it shall:

- a) Not disclose, convey or transfer to any individual or entity other than a Licensor Confidential Information in any form whatsoever without the express, prior written consent (including email) of the Licensor; the Licensors shall not unreasonably withhold, delay or condition such consent in the context of the Licensee's transparency obligation under Legal Provisions unless such obligation conflicts with other Legal Provisions;
- b) Without prejudice to Article 7.1.4, which regulates the event of publication, not use the Confidential Information in any way or for any purpose other than the Permitted Use as indicated in Article 3.2 of this License Agreement, unless such other use is previously and specifically authorized in writing (including email) by the Licensors;
- c) Not incorporate Confidential Information into data, documents, databases, or any other support other than necessary for the Permitted Use as indicated in Article 3.2 of this License Agreement unless the other Licensors, by a duly authorized Person, has given its prior written explicit consent (including e-mail) to this incorporation;

## *Execution Version*

- d) Not copy or reproduce Confidential Information in any form whatsoever except as may be strictly necessary for the Permitted Use as indicated in Article 3.2 of this License Agreement;
- e) At no time cause or allow Confidential Information to be sent, carried or transmitted to any foreign state which is not a party either to the Universal Copyright Convention or to the Bern Convention.

**7.1.2** The Licensee furthermore expressly undertakes that it shall:

- a) Immediately notify the Licensors in writing (including email) in the event of any unauthorized use or disclosure of Confidential Information and take all reasonable steps to mitigate any harmful effects the Licensors may sustain or incur as a result of such a breach of this License Agreement; and
- b) Indemnify the Licensors in accordance with the License Agreement.

**7.1.3** The Parties agree that the obligations assessed by this Article shall survive the termination for any reason whatsoever of this License Agreement for a term of five (5) years.

**7.1.4** Confidential Information shall only be published after formal approval of the Licensors.

**7.1.5** The Licensee in its communication with Third Parties about the Licensed Material, to the extent such communication is permitted under the present Article, shall always refer to the co-ownership in respect of the Licensed Material between the Licensors.

**7.1.6** In the case of a breach by the Licensee of any of its confidentiality obligations under this License Agreement, the Licensors shall be entitled to cease immediately the disclosure of any further Confidential Information and to claim full compensation for any damage occurred, according to Article 8.

**7.1.7** The rights a Licensee may have against Third Parties pursuant to any other confidentiality agreement shall in no event restrict a Licensor's right to claim damages under the Article 8 from the Licensee (to the extent that such damages have not yet been recovered by the Licensors with the Third Party).

## **7.2 Permitted disclosure of Confidential Information**

**7.2.1** Notwithstanding Article 7.1, the Licensee may disclose Confidential Information in respect of which the Licensee can demonstrate by written evidence:

- a) That it was known publicly at the time of disclosure to it; or
- b) Became publicly known subsequently other than as a result of a breach of this License Agreement, or any other applicable non-disclosure commitment by the Licensee; or
- c) That it had prior written consent of an authorized representative of the Licensors to disclose the Confidential Information to a Third Party; or

*Execution Version*

- d) to the extent the disclosed information only consists of a high level description of the Confidential Information without revealing any information that would allow for reproduction or illegal copy of the Confidential Information or the Licensed Material itself.

In cases of doubt, confidentiality shall be maintained until written confirmation has been obtained from the Licensors that one of the above exclusions applies.

**7.2.2** Notwithstanding Article 7.2.2 of this License Agreement the Licensee may disclose Confidential Information if it is requested to disclose all or any part of the received Confidential Information pursuant to an applicable Legal Provision or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or if a Licensee considers itself to be under a legal obligation to disclose all or part of the Confidential Information, in which case the Licensee undertakes to:

- a) Immediately and in any case prior to proceeding with any disclosure (and to the extent lawful), notify the Licensors of the existence, terms and circumstances surrounding such request or legal obligation;
- b) If consistent with the terms assigned by law or public authority to disclose the Confidential Information, consult with the Licensors on the advisability of taking available legal steps to resist or narrow such request or legal obligation and/or permit the Licensors to take such legal steps itself, and to agree on the content and form of the Confidential Information to be disclosed; and
- c) If disclosure of such Confidential Information is required, exercise its Best Efforts to obtain an order or other reliable assurance, if such order or reliable assurance can be obtained, that confidential treatment shall be accorded to such portion of the Confidential Information to be disclosed.

**7.2.3** The Licensee shall be entitled to disclose Confidential Information to i) its directors, members of management, officers, employees, and to legal representatives of companies under its Control or of companies that Control such Party (hereafter “**Internal Representative**”), and to ii) subcontractors, agents, professional advisors, external consultants and insurers and attorneys-at-law (hereafter “**External Representative**”), only if the following conditions are met:

- a) Access to Confidential Information in respect of the First Class Licensed Material may only be given to the Internal Representatives or External Representative of the Licensee that have been indicated in the list of permitted access holders, as attached to this License Agreement as Annex IV;
- b) The Internal Representative or External Representative has a definite need to know such Confidential Information for the execution of its assignment which must be strictly related to the performance of this License Agreement. The Licensee shall directly assume full responsibility for any acts of such Internal Representative or External Representative;
- c) For an External Representative the Party shall inform the Licensors in writing (including by e-mail) prior to any disclosure of the identity of the External Representative;
- d) The Internal Representative or an External Representative is informed by the Licensee of the confidential nature of the Confidential Information and is bound to respect the

*Execution Version*

confidential nature of the Confidential Information under terms at least equivalent to the terms of this License Agreement;

- e) The Internal Representatives or External Representatives to whom access is granted to Confidential Information in respect of the First Class Licensed Material must prior to any access have signed a confidentiality declaration substantially similar to the standard form attached to this License Agreement as Annex VI the Licensors in respect of such Confidential Information shall receive a copy of the signed confidentiality declaration;
- f) The necessary procedures and protections must have been put into place by the Licensee of such Confidential Information so as 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 Licensee;

Consistently with Article 8 of this License Agreement, the Licensee is and shall at all times remain fully liable for any breach by an Internal Representative or External Representative of the confidentiality obligations; and

The Licensee undertakes to have sufficient procedures and protections in place in order to enforce and maintain confidentiality and prevent any unauthorized use and/or disclosure of such Confidential Information by its Internal and External Representatives to whom Confidential Information is disclosed.

The Licensee may decide to replace its Internal Representative and External Representative mentioned on the list of permitted access holders provided that the conditions of this Article 7.2.3 are complied with and provided that the names of the replacing Internal Representatives or External Representatives of such Party are communicated beforehand to the Licensors.

**7.2.4.** Notwithstanding Article 7.1 and Article 7.2.2, the Parties agree that the disclosure of Confidential Information concerning, exclusively, the Second Class Licensed Material is permitted subject to prior notification to the other Parties and to the extent covered by confidentiality obligations to following entities:

- a) NRAs within the Anticipated Scope of PCR;
- b) ACER;
- c) PXs operating a market for trading electricity within the Anticipated Scope of PCR;
- d) TSOs operating the electricity transmission grid for transport of electricity to be delivered within the Anticipated Scope of PCR.

**ARTICLE 8 Liability**

**4.1 Licensors' liability**

**8.1.1**

[REDACTED]

[REDACTED]

8.1.2 [REDACTED]

[REDACTED]

8.1.3 [REDACTED]

**4.2 Licensee's liability**

8.2.1 [REDACTED]

8.2.2 [REDACTED]

8.2.3 [REDACTED]

8.2.4 [REDACTED]

8.2.5 [REDACTED]

**ARTICLE 9 Entry into force, duration and termination**

- 9.1 This License Agreement enters into force on the date it has been signed by all Parties (should the Parties not sign it on the same date, the date of the last signature shall be considered as the date that this License Agreement comes into force). As of that date Licensee is no longer a Party to the Co-Ownership Agreement.
- 9.2 This License Agreement shall remain into force for the duration of the License as set forth in Article 3.7 The License Agreement shall not be tacitly renewed unless expressly agreed in writing by the Parties.
- 9.3 To the extent compatible with applicable mandatory Legal Provisions each of the Parties shall without any court intervention and without any compensation being due, be entitled to terminate by registered letter with acknowledgement of receipt the License Agreement with immediate effect in respect to the Party which:
- a) enters into compromise and settlement with its creditors;
  - b) enters into an agreement or a judicial order is made for its liquidation;
  - c) is subject to an insolvency procedure; or
  - d) has a receiver or administrative receiver or administrator or similar official appointed over all or part of its assets and such receiver or administrative receiver or administrator or similar official is not discharged within a period of thirty (30) days.

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- 9.4 In case of termination of the present License Agreement all obligations under this License Agreement become immediately due and payable to the extent that such performance is reasonably feasible. In case of delay or default in payment obligations due by the Licensee to the Licensors under this License Agreement performance is always deemed feasible.
- 9.5 Upon termination of this License Agreement, the Licensee and all of its Internal Representatives and External Representatives shall immediately cease the use of the Licensed Material and related IPR. Within thirty (30) days after any termination, the Licensee and all of its Internal Representatives shall deliver to the Licensors or destroy all copies of the Licensed Material in every form. The Licensee agrees to certify in writing that it self and all of its Internal Representatives and External Representatives have performed the abovementioned delivery or destruction obligation within the above mentioned term

### **ARTICLE 10 Governing law and disputes**

- 10.1 This License Agreement shall be governed by and shall be construed in accordance with the laws of Belgium without regard to any of its conflict of law provisions (except where mandatory).
- 10.2 Notwithstanding any translations that may be made, whether signed or not, the English version shall always prevail to the extent compatible with Legal Provisions. The use of the English language is however without prejudice to the fact that legal concepts in this License Agreement are to be understood as civil law concepts of Belgian law (and not as common law concepts).
- 10.3 Any dispute arising under, in connection to or in the framework of the License Agreement (including, for the avoidance of doubt, related to the conclusion of it and its validity) between one or more Parties (a “**Dispute**”) shall be subject to this Article 10.
- 10.4 In the event of a Dispute arising between two or more Parties (the “**Disputing Parties**”), such Dispute shall first be subject to amicable settlement between the Disputing Parties, each represented by their Chief Executive Officers or any other Person with power of representation appointed to this aim by each of the concerned Disputing Party (the dispute settlement representative, hereafter the “**DSR**”). To this aim the most diligent Disputing Party shall notify a written request (“**Dispute Settlement Request**”) to the other Disputing Party(ies) containing the following information:
- a) A description of the Dispute; and
  - b) The identification of the Disputing Parties in dispute; and
  - c) The scope of the demand(s) or claim(s) of the Disputing Parties; and
  - d) The legal basis of the demand(s) or claim(s).
- 10.5 Within two (2) weeks of the Dispute Settlement Request, the DSRs of the Disputing Parties shall jointly appoint amongst them a chairman responsible of organizing and leading the amicable dispute settlement procedure (the “**DS Chairman**”) who shall invite the Parties to participate to at least two (2) physical meetings (unless the Dispute is solved in the meantime) by sending a written notice indicating the date, location and time of the meetings (“**DSR Notice**”). The DSRs of the Disputing Parties shall in first instance hear the positions of the Parties in Dispute and subsequently attempt to resolve the Dispute amicably. The DSRs of the Disputing Parties may hear and/or appoint technical experts provided that they are bound by confidentiality obligations at least equivalent to those in the License Agreement. In view of achieving an amicable settlement the DSRs of the Disputing Parties shall:
- a) Assess the facts and identify the claims of each Disputing Party;
  - b) In case of damage use their Best Efforts to:
    - i) Determine which Party(ies) suffered damage;

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- ii) Estimate the damage (and its nature and extent);
  - iii) Determine which Party(ies) is (are) liable for the damage; and
  - iv) Determine the extent and modalities of indemnification;
- c) Assess the interests of the Disputing Parties in light of the objectives of the License Agreement; and
- d) Formulate a proposal for settlement.

10.6 In the event that the DSRs of the Disputing Parties fail to appoint a DS Chairman or fail to achieve an amicable settlement within one (1) month of the DSR Notice, or within any other timeframe agreed between the Parties, the DSRs of the Disputing Parties shall solicit ACER for a non-binding legal-regulatory opinion on the Dispute (hereafter the “**Opinion**”). Upon receipt of the Opinion, the DSRs of the Disputing Parties will use their Best Efforts to achieve an amicable settlement based on the Opinion.

10.7 In the event that:

- a) The DSRs of the Disputing Parties do not achieve a settlement based on the Opinion within one (1) month of its receipt; or
- b) ACER 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 subject to a mediation procedure under the guidance of an external duly certified independent mediator. In such event the most diligent Disputing Party shall inform the other Parties hereof (“**DS Failure Notice**”).

The external independent mediator shall be chosen, within one (1) month of the DS Failure Notice, by unanimous written consent of the non-Disputing Parties or by unanimous written consent of the DSRs of the Disputing Parties in case all Parties are involved in the Dispute, amongst a list of names of four (4) external independent mediator’s proposed by each Disputing Party. The external independent mediator to be chosen must i) be committed to the European Code of Conduct for Mediators and ii) have experience in the electricity and/or the Information and Communication Technologies sector. The Disputing Parties shall pay an equal share of the mediator fees and expenses, unless otherwise agreed in writing.

10.8 If no amicable settlement is reached within two (2) months of the DS Failure Notice or in the event that no agreement is reached on the appointment of a mediator within one (1) month of the DS Failure Notice, the Dispute shall be exclusively and finally settled by arbitration under the International Chamber of Commerce (“**ICC**”). Rules of Arbitration Any Party in the Dispute shall thereto be entitled to submit the Dispute to such arbitration. The arbitral tribunal shall have (3) three 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. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the Information and Communication Technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations. The place of arbitration shall be Brussels and all procedures shall be in English. The award of the arbitration will be final and binding upon the Parties concerned.

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**10.9** Any amicable settlement reached pursuant to this Article 10 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.

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

10.11 For the purposes hereof, the Parties elect domicile at the addresses set forth herein, or at a different address as may be designated by written notice.

**ARTICLE 11 Miscellaneous**

**11.1 Notices**

**11.1.1** Except as provided otherwise, all notices, requests, demands, instructions or other communications under this License Agreement shall be in writing and served by fax or e-mail. Service of notices requests, demands, instructions or other communications shall be deemed effective:

- a. At the time of delivery, if delivered by hand, registered post or courier;
- b. In the case of notices sent by fax, on the date that transmission is received by the recipient in legible form (with the burden of proving receipt being upon the sender, by means of a regular fax transmission report issued by the dispatching fax machine);
- c. In the case of notices to be recorded by e-mail, at the time when the e-mail is indicated to the sender as delivered to the recipient and/or the recipient acknowledges the receipt thereof;

provided that, if the notice is received on a Business Day after 5 p.m. or on a date which is not a Business Day, the notice shall be deemed given and effective on the first following day that is a Business Day.

**11.1.2** In the event of difficulty in using fax or electronic means to send notices or other communications under this License Agreement, notices may be served in writing and delivered in person or by courier or by post, with such service deemed effective on the date of receipt, unless that date is not a Business Day in which case the notice shall be deemed given and effective on the first following day that is a Business Day.

**11.1.3** All notices and communications shall be addressed to the respective addresses of the Parties set forth in Annex VI.

**11.1.4** Any change of address of a Party must be notified by e-mail or fax to the other Party, the new address being considered the official address of this License Agreement as from the third (3<sup>rd</sup>) Business Day following the sending of such e-mail or fax.

## **11.2 Modification of the License Agreement**

- 11.2.1** Except if explicitly stipulated otherwise in this License Agreement, no amendment or modification hereof shall be effective and binding unless evidenced in writing and signed by the Parties.
- 11.2.2** Should a Legal Provision including, but not limited to, measures and/or decisions (including modification of laws and regulations) taken by an administrative or other public authority (including any competent regulator) – as far as within the competence of these authorities – require an amendment or modification of this License Agreement or of any other document having an influence on this License Agreement, the Parties agree to examine together the possibilities and/or conditions for the amendment or modification of this License Agreement, at the request of the most diligent Party. If the Parties do not reach an agreement on such amendment or modification within a period of two (2) months of the above mentioned request, the Licensors can decide to terminate this License Agreement with twenty (20) Business Days prior written notice to the Licensee.
- 11.2.3** Any modification of this License Agreement shall include the Annexes and vice versa.

## **11.3 Severability**

- 11.3.1** If one or more of the provisions of this License Agreement are declared to be invalid, illegal or unenforceable in any respect under any Legal Provision the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected and these provisions shall remain in full force and effect as long as the economic or legal substance of the present License Agreement is not affected in any material manner adverse to any Party. In such event the Parties shall use their reasonable efforts to immediately and in good faith negotiate a legally valid replacement provision with the same economic effect. For the avoidance of doubt, if any provision of the License Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be:
- a. Modified to be made valid, enforceable and legal in such a manner as to best effectuate the intent of the Parties on the date hereof or
  - b. Eliminated where such modification is not practicable.
- The remainder of the License Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.
- 11.3.2** If no agreement on such provision has been reached within a period of two (2) months of such provision being declared invalid, illegal or unenforceable, the Parties can decide to terminate this License Agreement with twenty (20) Business Days prior written notice to the other Party.
- 11.3.3** The Parties expressly agree that each provision of the License Agreement which provides for a limitation of liability, disclaimer of warranties or exclusion of damages is intended to be severable and independent from any other provision and to be enforced as such.

## **11.4 Waiver**

- 11.4.1** No failure or delay of any Party to exercise any right or remedy under the License Agreement shall be considered a final waiver thereof, nor shall any single or partial exercise or any right or remedy preclude any other or further exercise thereof.

11.4.2 The rights and remedies provided under this License Agreement are cumulative and not exclusive of any rights or remedies provided by law.

**11.5 Reference Coordinator**

The Parties will appoint a formal Reference Coordinator (hereinafter: "RC") within ten (10) days from the entry into force of the License Agreement. The RC will be considered the reference subject for all issues connected with the running and the general implementation of the Licensed Material and related IPR, consistently with the respective commitments of each party. Each Party can replace the RC at any time. The replacing Party shall inform the other counterparty via e-mail providing all relevant operational references of the new RC.

**11.6 Survival**

In the event of termination of the License Agreement for whatever reason the provisions which expressly or by their nature are intended to remain into force following the termination shall survive the termination of License Agreement, such as but not limited to Article 7 (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 License Agreement in accordance with all the provisions of License Agreement.

**11.7 Entire Agreement**

The License Agreement, the Schedules and the documents referred to herein, contain the entire agreement of the Parties hereto with respect to the subject matter hereof, and therefore replaces and supersedes all previous understandings, arrangements, agreements or negotiations, whether oral or in writing, between the Parties relating to the same subject matter.

**11.8 Relationship**

No agency, partnership or joint venture relationship is created between the Parties as a result of License Agreement. The Parties are each liable for their individual commitments only and do not bear any joint and several liability under License Agreement.

**11.9 Inequitable clauses**

The Parties agree that License Agreement, in all its part, has been specifically discussed and negotiated and agreed upon and supersedes any and all prior agreements, understandings, documents and arrangements, whether oral or written, between the Parties relating to the subject matters hereof on which License Agreement is based.

**11.10 Transfer of rights and obligations**

The License Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assignees. The Licensee shall not be entitled to Transfer its rights and/or obligations arising out of the License Agreement, except with the prior written consent of the Licensors.

**IN WITNESS WHEREOF**, the Parties hereto have caused their duly authorized representatives to execute this License Agreement in [XXX INSERT NUMBER] original copies on \_\_\_\_\_. Each Party

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acknowledges having received its copy.

For: By: Function: Signature:	For: By: Function: Signature:
For: By: Function: Signature	
For: By: Function: Signature:	For: By: Function: Signature:
For: By: Function: Signature:	

**ANNEX I: LIST OF LICENSED MATERIAL**

**A. First Class Licensed Material**

**B. Second Class Licensed Material**

**C. Third Class Licensed Material**

**ANNEX II: FEE FOR THE GRANTING OF A SUB-LICENSE OR THE USE IN THE CONTEXT OF PROVIDING A SERVICE**

Take part of remuneration scheme

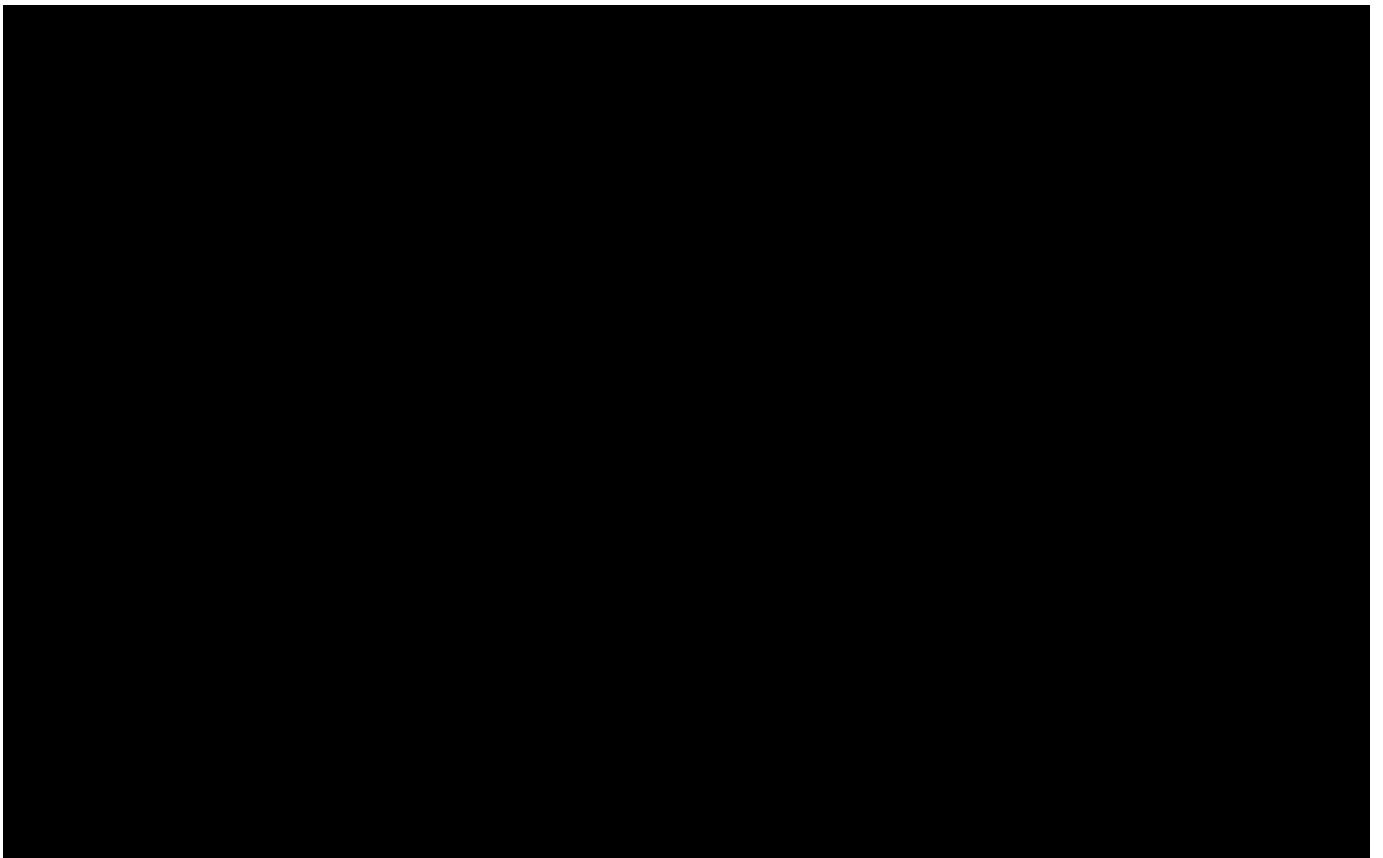
**Exit License:**

**Remuneration for the granting of a sub-license or for the use in the context of providing a service**

**1. General**

- 1.1.** Capitalised terms used in this Annex shall have the meaning set forth in Article 1 of the Exit License Agreement.
- 1.2.** The costs and benefits described in this Annex are paid by the Licensee to the Licensors and are shared on an equal basis between the Licensors until otherwise decided by the Parties, consistently with Article 4.1 of the Exit License Agreement.
- 1.3.** All fees indicated hereafter are to be shared among all the Licensors, it being understood however that APX and Belpex are, for the purpose of the payment and collecting of the fees, to be considered as one Party.

**2. Structure of the fees**



**ANNEX III: INVOICING AND PAYMENTS REFERENCES**

**ANNEX IV: PERMITTED ACCESS HOLDERS**

**ANNEX V: STANDARD FORM OF CONFIDENTIALITY DECLARATION**

Name + Surname: \_\_\_\_\_, employed by the following company: \_\_\_\_\_, with registered office in \_\_\_\_\_ and with company number / commercial register number: \_\_\_\_\_ (hereafter the “**Company**”),

hereafter referred to as “**the Undersigned**”,

hereby represents and agrees, to the benefit of the Company, to the following:

1. it has been personally and specifically informed of the content of the Exit License Agreement entered into between the Company and APX BV, Belpex NV, EPEX Spot SE, Nord Pool EMCO AS and OMI Polo Español S.A., Gestore dei Mercati Energetici S.p.A. (hereafter together “**the Licensors**”) on \_\_\_\_\_ (hereafter the “**License Agreement**”), and in particular (but not limited to) of the scope of the granted license and of the confidentiality obligations contained in the License Agreement;
2. it acknowledges that the term “**Confidential Information**” used in this Confidentiality Declaration has the meaning set forth in the License Agreement, that it has full understanding of the content of this term and its scope and that this Confidential Information contains business secrets and commercially sensitive know-how;
3. it shall not disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to any other persons not being an employee of the Company, without the express, prior written consent of the Company;
4. it shall only disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to another employee of the Company to the extent (i) such employee has been entitled by the Company to use the Confidential Information and has a definite need to know such information for the execution of its assignment in that respect; (ii) such employee has been informed by the Company of the confidential nature of the Confidential Information; (iii) such employee has signed a confidentiality declaration substantially in the form and with the content of this Confidentiality Declaration, and; (iv) such disclosure and a copy of the Confidentiality Declaration duly executed by the relevant employee is notified to the Licensors;
5. it shall take the necessary measures to ensure strict compliance with this Confidentiality Declaration;
6. it shall not use any Confidential Information for any other purpose than for the execution of its assignment and only to the extent necessary for such assignment and for the term it has been entitled to by the Company (hereafter the “**Assignment**”);
7. it shall not make reference to the Confidential Information or its Assignment in any technical, commercial or other publication or presentation without all the Licensors’ explicit prior written consent;
8. it undertakes to promptly stop using the Confidential Information and destroy or return to the Company all documents and other material in its possession, custody or control which bear or

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incorporate Confidential Information upon termination of its Assignment or of the aforementioned License Agreement;

9. it undertakes to comply with this Confidentiality Declaration throughout the entire period of its Assignment and for ten (10) years after its expiry or termination, it being understood that this Article takes effect on the date that this Confidentiality Declaration is signed;
10. a copy of this Confidentiality Declaration will be provided to the Licensors;
11. this Confidentiality Declaration is governed by Belgian law and any dispute arising out of or in connection with this Confidentiality Declaration is subject to the exclusive competence of the courts of Brussels, Belgium.

Signed in two originals, in \_\_\_\_\_, on \_\_\_\_\_.

Name:

Function:

**ANNEX VI: CONTACT INFORMATION**

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**ANNEX XIII**  
**Confidentiality Declaration - standard form**

## Confidentiality Declaration

**[External representative legal entity : ]**

with registered office in [\_\_\_\_\_] with company register number [\_\_\_\_], hereafter “the Undersigned” represented by [\_\_\_\_]

**[External representative natural person: ]**

[\_\_\_\_], with domicile at [\_\_\_\_] with the passport/ID number [\_\_\_\_] with domicile at [\_\_\_\_]  
[\_\_\_\_], hereafter “the Undersigned”

Hereby represents and agrees, to the benefit of:

1. **EPEX SPOT SE (“EPEX”)**, a company incorporated and existing under the laws of France in the form of a *societas europeae*, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register of Paris (R.C.S. Paris) under the number 508 010 501 and VAT n° FR 10508010501;
2. **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;
3. **Nord Pool EMCO AS, (“Nord Pool”)**, 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,
4. **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, 4<sup>th</sup> floor, 28014 Madrid, Spain, and registered in the commercial register of Madrid under section 8, Sheet: M-506799 and VAT n° A86025558;
5. **HELLENIC ENERGY EXCHANGE S.A. (“HEEx”)**, a company incorporated under the laws of Greece, with V.A.T. number 801001623, having its registered office at 110, Athinon Avenue, 10442, Athens, Greece, registered in the commercial register at General Commercial Registry under number 146698601000 as it is legally represented by its Chief Executive Officer [REDACTED]
6. **Operatorul Pieței de Energie Electrică și de Gaze Naturale “OPCOM” S.A. (“OPCOM”)**, a company incorporated and existing under the laws of Romania, having its registered office at 16-18 Bd. Hristo Botev , 3rd District, Bucharest, CP.030236, Romania, and registered with the commercial register under the number J40/7542/2000 and VAT n° RO13278352;
7. **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: 8/13;

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

And

to any future adhering party to the PCR Co-ownership Agreement, as defined below,

hereinafter individually also referred to as a "PCR Power Exchange" and collectively as the "PCR Power Exchanges".

1. it has been personally and specifically informed of the content of the confidentiality obligations of the PCR Power Exchanges contained in the PCR Co-Ownership Agreement signed between them on 13<sup>th</sup> of June 2012 (the "**PCR Co-Ownership Agreement**") and in particular (but not limited to) of the scope of the confidentiality obligations and obligations in respect of use of Confidential Information as defined in the PCR Co-Ownership Agreement, the PCR Power Exchanges are those persons that are party to the PCR Co-Ownership Agreement;
2. it acknowledges that the term "**Confidential Information**" used in this confidentiality declaration has the meaning set forth in the PCR Co-Ownership Agreement, that it has full understanding of the content of this term and its scope and that this Confidential Information contains business secrets and commercially sensitive know-how;
3. it shall not disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to any other persons not being an employee of the Company, without the express, prior written consent of the Company;
4. **[only to legal entities]**[it shall only disclose, convey or transfer any of the Confidential Information in any form whatsoever, to which it may be privy to or to which it may have access, to its "**Internal representative**" meaning the directors, members of management, officers, employees and legal representatives of the Company to the extent (i) such Internal representative has been entitled by the Company to use the Confidential Information and has a definite need to know such information for the execution of its assignment in that respect; (ii) such Internal representative has been informed by the Company of the confidential nature of the Confidential Information; (iii) such Internal representative(s) is bound towards *Undersigned* by confidentiality obligations substantially similar to those in force pursuant to this Confidentiality Declaration. The Undersigned shall provide evidence of such confidentiality obligations upon request of any PCR Power Exchange.
5. it shall take the necessary measures to ensure strict compliance with this Confidentiality Declaration and] [It] shall be liable and hold the PCR Parties harmless against any claim (including third party claims) resulting from or in connection with a breach of this Confidentiality Declaration [including any breach by its Internal representatives],
6. it shall not use any Confidential Information for any other purpose than for the execution of its assignment and only to the extent necessary for such assignment and for the term it has

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been entitled to by the Company (hereafter the “**Assignment**”); For the avoidance of doubt, the Undersigned hereby represents and agrees that the Assignment is strictly related to [ ]

7. In case of a breach by the Undersigned, included but not limited to its employees, advisors and subcontractors ("Defaulting Party") of any of its obligations under this Agreement, any Party [SHOULD BE ADAPTED TO FIT IN THE CD] suffering damage ("Damaged Party") by the breach shall be entitled to cease immediately the disclosure of any further Confidential Information to the Defaulting Party and to claim full compensation from the Defaulting Party for all losses, damages, charges, fees or expenses, expected and unexpected.
8. In the event of any breach of this Confidentiality Declaration by any Defaulting Party, the Damaged Party shall notify in writing the Defaulting Party without undue delay setting out the details of such breach and the Defaulting Party shall immediately cease such breach or make such breach undone within five business days to the extent possible.
9. it shall not make reference to the Confidential Information or its Assignment in any technical, commercial or other publication or presentation without all the PCR Power Exchanges' explicit prior written consent;
10. it undertakes to promptly stop using the Confidential Information and destroy or return to the Company all documents and other material in its possession, custody or control which bear or incorporate Confidential Information upon termination of its Assignment or of the PCR Co-Ownership Agreement;
11. This Confidentiality Declaration enters into force as of the date of its signature by the Undersigned. In respect of any adhering party to the PCR Co-ownership Agreement, this Confidentiality Declaration shall enter into force as of the date in which such PCR Power Exchange shall inform in writing (including e-mail) the Undersigned about the completion of its adherence process to the PCR Co-ownership Agreement.
12. It undertakes to comply with this Confidentiality Declaration throughout the entire period of its Assignment and for ten (10) years after its expiry or termination, it being understood that this article takes effect on the date that this Confidentiality Declaration is signed;
13. a copy of this Confidentiality Declaration will be provided to each PCR Power Exchanges;
14. this Confidentiality Declaration is governed by Belgian law and any dispute arising out of or in connection with this Confidentiality Declaration is subject to the exclusive competence of the courts of Brussels, Belgium.

Signed in seven originals, in \_\_\_\_\_, on \_\_\_\_\_.

[ ]

Signature :

**ANNEX XIV  
Controller Information Clause**

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

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

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

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

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

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

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

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

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

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

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