





Commission Regulation establishing a Guideline on Capacity Allocation and Congestion Management (“CACM”), that provides the responsibility of all NEMOs to develop, maintain and operate a price coupling algorithm for day ahead coupling and also for the accuracy and efficiency of results produced by the single price coupling algorithm and at the same time, allows for the delegation of a NEMO of task assigned to it under CACM, but remaining responsible for ensuring compliance with its obligations.

- J) The Parties acknowledge that EPEX Spot has entered into a services agreement with each of OPCOM, OKTE and HUPX, all qualified as Serviced PXs, for the provision of coupling services for the 4MMC Project prior to the entry into force of this Second Amendment and that NPS has entered into a services agreement with TGE, IBEX and CROPEX. In order to cope with these exceptional specific cases, the Parties have agreed to offer any Servicing PX rendering services based on an agreement entered into prior to this Second Amendment, an alternative option to the waiver of liability, being namely an undertaking by each Servicing PX to hold harmless obligation the Non-Servicing PXs against claims from its Serviced PXs. However, all Parties recognise that this is an additional alternative solution granted has been agreed only due to the specific conditions of the later cases, exceptional and in the specific cases referred to above and that it is not foreseen nor acceptable in the future since such cases cannot recur in the future.

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

**1 OBJECT OF THE AGREEMENT**

- 1.1** With the signature of this Amendment Agreement the Parties amend the PCR Co-Ownership Agreement as specifically set forth under Article 2 and Article 3 below.
- 1.2** This Amendment Agreement should be read in conjunction with the PCR Co-Ownership Agreement and the First Amendment. Except as expressly set out in this Amendment Agreement, the Co-Ownership Agreement remains unamended and in full force and effect. The Parties undertake to comply with all the terms and conditions of the PCR Co-Ownership Agreement as amended and supplemented by the First Amendment and this Amendment Agreement.

**2 AMENDMENTS TO THE MAIN TEXT OF THE PCR CO-OWNERSHIP AGREEMENT**

- 2.1** Parties agree to add the following definitions:

**“Adherence Fee”** *shall have the meaning set forth in Annex VIII.*

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

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<b>“Common PCR Operations”</b>	<i>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.</i>
<b>“Group”</b>	<i>shall have the meaning set forth in Article 24.1.</i>
<b>“Group Member”</b>	<i>shall have the meaning set forth in Article 24.1.</i>
<b>“Group Member Exit Date”</b>	<i>shall have the meaning set forth in Article 24.4.1.</i>
<b>“Licensing Party”</b>	<i>means a PCR Party which enters into a License with a Third Party.</i>
<b>“Non-Servicing Party”</b>	<i>with respect to each Serviced PX, means any PCR Party other than the Servicing Party of such Serviced PX.</i>
<b>“Restricted Party”</b>	<i>shall have the meaning set forth in Article 24.4.1.</i>
<b>“Restricted Period”</b>	<i>Shall have the meaning set forth in Article 24.4.2</i>
<b>“Serviced PX”</b>	<i>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.</i>
<b>“Servicing Party”</b>	<i>means a PCR Party which provides services based on the Use of the Co-owned Assets to one or more Serviced PXs.</i>

**2.2** Parties agree to delete the following definition and all its references within 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

**2.3** The Parties agree to delete Article 5.1 in its entirety and replace it with the following:

**“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

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2.5 The Parties agree to delete Article 11.6 in its entirety and replace it with the following:

*"11.6 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*

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upon in writing, it being understood that the Group Members in respect of such compensation, are to be considered as one Party.”

**2.6** The Parties agree to delete Article 11.7 in its entirety and replace it with the following:

*“11.7 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”*

**2.7** The Parties agree to delete Article 12 in its entirety and replace it with the following

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

*The Agreement is open to the adherence of other PX(s). The adherence of other PX(s) 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 an adherence agreement, and*
- c) Payment of the Adherence Fee*

*The adherence to this Agreement shall become effective at date of signature of the adherence agreement between the Parties and the adhering PX provided that the payment by such PX of the Adherence Fee is made.”*

**2.8** The Parties agree to delete Article 15.1 in its entirety and replace it with the following:

*“15.1 In case of a breach (whether by act or omission) by a Party(ies) to comply with any of its obligations under this Agreement the Party(ies) shall be entitled to claim compensation for losses, damages, charges, fees or expenses, arising out, or resulting from such breach , only to the extent that such breach qualifies as fraud (“bedrog”/“fraude”), intentional misconduct (“opzettelijke fout”/“faute intentionnelle”) or gross misconduct (“groeve fout”/“faute grave”) committed by the liable Party(ies). By way of exception, the breach of art 6.1.3 iv) and 6.3 letter d) shall not entitle to any compensation or indemnification under this art 15, which may be claimed only pursuant to the PCR Cooperation Agreement.”*

**2.9** The Parties agree to delete Article 15.2 in its entirety and replace it with the following:

*“15.2 Within the limits of their indemnification obligations as set forth in this Article, the defaulting Party(ies), shall hold harmless the other Party(ies) against and indemnify them for all claims raised by Third Parties, such as but not limited to Serviced PXs, which are directly related to the failure to comply with any of its obligations under the Agreement”*

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**2.10** The Parties agree to delete Article 15.6 in its entirety and replace it with the following:

*“15.6 The Parties are responsible for any action or conduct of their Internal Representatives, External Representatives assistants, consultants, contractors and/or agents, provided that the conditions required under this Article are met. The Parties are responsible for any action or conduct of their Licensee and Serviced PX, except if the Serviced PX has entered into the specific agreements provided under Articles 6.1.3 iv) and 6.3 letter d) and the damage caused is covered by such specific agreements..”*

**2.11** The Parties agree to delete Article 15.7 in its entirety and replace it with the following:



**2.12** The Parties agree to delete Article 15.8 in its entirety and replace it with the following:

*“15.8 The liability limitations contained in this Article 15 shall not apply:*  
*a) In the event of fraud (“bedrog”/“fraude”) and intentional misconduct (“opzet”/“faute intentionnelle”); and*  
*b) In case of delay or default in payments of any amount due under the Agreement*  
*c) in any case of breach of art 6.1.2 (Granting of a License)*  
*d) to the hold harmless obligation set out under 6.1.3 v) and 6.3 letter e)”*

**2.13** The Parties agree to delete Article 15.12 in its entirety and replace it with the following:

*“15.12 Without prejudice to the Group Member principle set forth in Article 24, any compensation due by the Original Owners to the other Parties in connection with the warranty set forth in Article 3.1.2 shall be shared equally between the Original Owners.”*

**2.14** The Parties agree to add the following Article 15.13



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**2.15** The Parties agree to delete Article 17.4.2 in its entirety and replace it with the following:

**“17.4.2** *In the event the participation in 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 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. The above paragraph shall not apply to the termination of a Group Member’s participation in the PCR Cooperation Agreement. In such event the share of the terminating Group Member in the Co-Owned Assets shall remain owned (jointly) by the other Group Member(s) of its Group without prejudice to Article 17.4.3. It is understood however that all Group Members of this Group, including the terminating Group Member remain jointly and severally liable for any act or omission giving rise to a claim under the terms of the Agreement at time of such termination.”*

**2.16** The Parties agree to delete Article 18.1 in its entirety and replace it with the following:

**“18.1** *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 Cooperation 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.”*

**2.17** The Parties agree to delete Article 18.2 in its entirety and replace it with the following:

**“18.2** *A Party wishing to terminate its participation to the Co-ownership may at any time do so exclusively by transferring in equal parts to the other Parties its Co-ownership. Such transfer by the transferring Party shall be accepted by the other Parties in a written agreement between all Parties. As of the date of the transfer, the transferring Party shall have no rights anymore in respect of the Co-Owned Assets and this Agreement shall terminate in its respect. Payment obligations and liabilities arising out of or in relation to an event that occurred prior to the time of transfer remain payable by the transferring Party.*

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*The above paragraph shall not apply to the termination of a Group Member’s participation to the Co-ownership. In such event the share of the terminating Group Member in the Co-Owned Assets shall remain owned (jointly) by the other Party Group Member(s) of its Group without prejudice to Article 17.4.3. It is understood however that all Group Members of this Group, including the terminating Group Member remain jointly and severally liable for any obligation that is due and claimable at time of such termination.”*

**2.18** The Parties agree to delete Article 18.4 in its entirety and replace it with the following:

**18.4** *“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 ”.*

**2.19** The Parties agree to add the following Article 24:

**“Art. 24 - Participation as Group Member to the Agreement**

**24.1. 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:*

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- 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 15.11, 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 the purpose of calculating the limits to the indemnification obligations set forth in Article 15.7 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 15.5.*
- 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.*

**24.2.** *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 24.1 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 15.7 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 15.5.*
  - 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*

**24.3.** *Should the Parties decide to review the voting principles of the Agreement, the Parties will also review the provisions of this Article 24.*

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**24.4. Restrictions on a Group Member leaving its Group**

**24.4.1** Subject to Article 24.4.4, 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 24.1 shall no longer apply to the Restricted Party with effect from the Group Member Exit Date.

**24.4.2** 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.

**24.4.3** 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.

**24.4.4** 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).

**24.4.5** 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.

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#### **24.5. 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 simultaneous adherence to the PCR Cooperation Agreement and the fulfilment of the conditions mentioned under Article 12 (a) and (b)."*

### **3 AMENDMENTS TO THE ANNEXES OF THE PCR CO-OWNERSHIP AGREEMENT**

**3.1** The Parties agree to replace the list of annexes of the PCR Co-Ownership Agreement with the following list:

- "ANNEX I:**      *Co-Owned Assets' List*
- ANNEX II:**      *Confidentiality Declaration - standard form*
- ANNEX III:**     *Adherence Agreement*
- ANNEX IV:**      *Contacts*
- ANNEX V:**       *Exit License*
- ANNEX VI:**     *Standard Licenses*
- ANNEX VII:**    *TSO license*
- ANNEX VIII:**   *Financial aspects of the PCR Cooperation"*

**3.2** In light of Article 3.1 above, the Parties further agree to:

- (i) replace the current Annex I (*Co-Owned Assets' List*) with the new Annex I (*Co-Owned Assets' List*) attached hereto as Attachment 1
- (ii) replace the current Annex III (*List of permitted access holders - (NOT APPLICABLE ANYMORE)*) with the new Annex III (*Adherence Agreement standard form*) attached hereto as Attachment 2;
- (iii) replace the current Annex VI (*Standard License*) with the new Annex VI (*Standard License*) attached hereto as Attachment 3;
- (IV) replace the current Annex VIII: *Remuneration Scheme: remuneration due in respect of Co-Owned Assets* with the new Annex VIII *Financial aspects of the PCR Cooperation* attached hereto as Attachment 4

### **4 MISCELLANEOUS**

**4.1** No provision of this Amendment Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision.

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- 4.2** Changes to this Amendment Agreement can only be made in writing, signed by all Parties.
- 4.3** This Amendment Agreement constitutes an integral part of the PCR Co-Ownership Agreement and only amends, replaces or deletes those provisions of the latter which have been described above, it being understood that all of the others shall remain unchanged.
- 4.4** In the event of any ambiguity or inconsistency between this Amendment Agreement and the PCR Co-ownership Agreement in force previously to the entering into force of this Amendment, the text of this Amendment Agreement shall prevail.
- 4.5** In the event of any ambiguity or inconsistency between the main text of this Amendment Agreement and its Annexes, the main text of the Amendment Agreement shall prevail over the Annexes. The Parties agree that Attachment 5 (consolidated version of the PCR Co-ownership Agreement) is hereby attached only for illustrative purposes and shall have no binding effect.
- 4.6** This Amendment Agreement will enter into force on the 1st of October 2015 provided that the signature by all Parties to it is duly completed and shall remain into force for the duration of the PCR Cooperation Agreement, unless Parties expressly agree in writing to have this Amendment Agreement replaced by another written agreement.
- 4.7** For the avoidance of doubt, this Amendment Agreement is governed and shall be construed in accordance with Belgian law, to the exclusion of the provisions of conflict of laws thereof and the UN Convention on Contracts for the International Sale of Goods (1980). In case of dispute between the Parties, arising out of or in relation with this Amendment Agreement, the dispute procedure assessed in Article 22 of the PCR Co-Ownership Agreement shall apply.

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This Amendment Agreement has been made in eight (8) originals, one for each of the undersigned parties.

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**APX Power B.V.**



**BELPEX NV**



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



**OMI– Polo Español S.A.**



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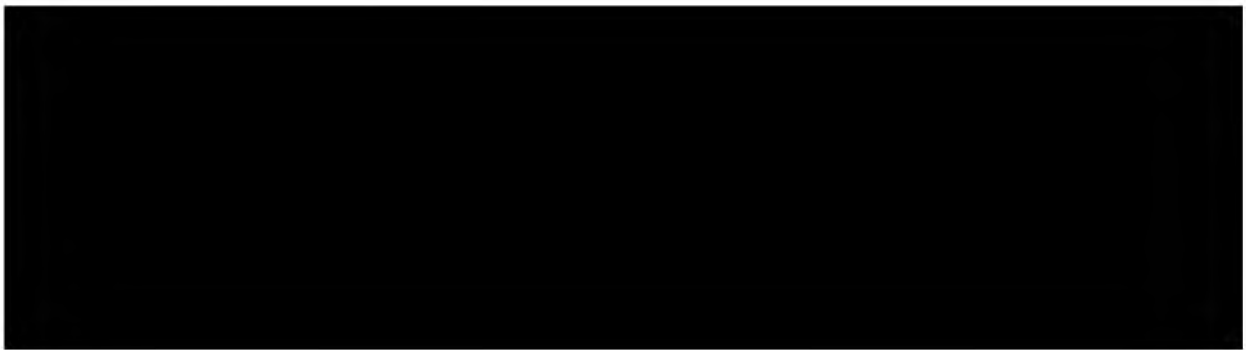
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**OTE A.S.**



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**APX Commodities Ltd.**



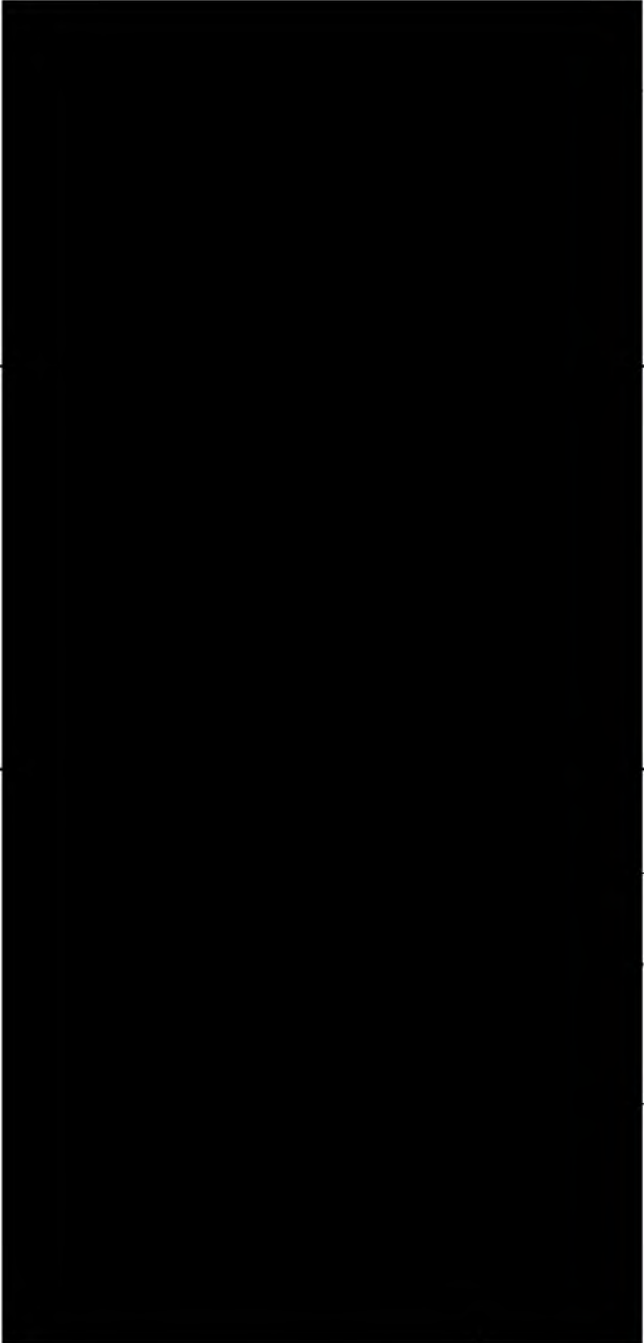



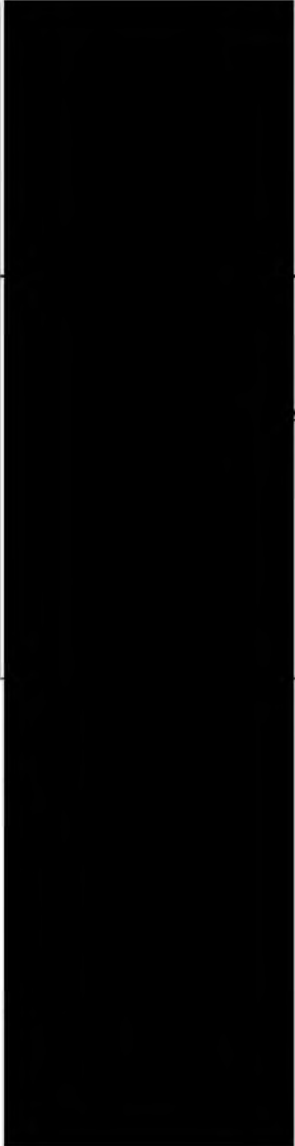
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**ATTACHMENT 1****PCR Co-ownership Agreement****ANNEX I****Asset list**

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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Assets	Joint PX assets	Individual PX assets		Clarification
PCR Algorithm				
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PCR Systems				

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE











**ATTACHMENT 2**

**PCR Co-ownership Agreement**

**ANNEX III**

**Adherence Agreement**

**APX POWER B.V.**

**- and -**

**BELPEX NV**

**- and -**

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

**- and -**

**OMI POLO ESPAÑOL S.A.**

**- and -**

**EPEX SPOT SE**

**- and -**

**NORD POOL SPOT AS**

**-and-**

**OTE, A.S.**

**-and-**

**APX COMMODITIES LTD**

**And**

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

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Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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This adherence agreement (hereafter the “**Agreement**”) is entered into by and between:

1. **APX Power B.V.**, a company organised and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360, hereby duly represented by APX Holding B.V. which, in turn, is duly represented by [.....], in his capacity [.....] and [.....], in his capacity of [.....], hereafter called “**APX**”,
2. **Belpex NV**, a company organised and existing under the laws of Belgium, having its registered office at 66 Boulevard de l’Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602, hereby duly represented by [.....], in his capacity of [.....]and [.....], in his capacity of [.....], hereafter called “**BELPEX**”,
3. **Gestore dei Mercati Energetici S.p.A.**, a company organised and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilsudski, 122/124 00197 Rome, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**GME**”,
4. **OMI Polo Español, S.A. (OMIE)**, a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**OMIE**”;
5. **EPEX Spot SE**, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereby duly represented [.....], in his capacity of [.....], hereafter called “**EPEX**”;
6. **Nord Pool Spot AS**, a company incorporated and existing under the laws of Norway with company number 984 058 098 and VAT n° 984 058 098 and having its registered office at Vollsveien 17B, 1366 Lysaker, 0219 Bærum, Norway, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**NPS**”,
7. **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, hereby duly represented by [.....], in his capacity of [.....]and [.....]in his capacity of [.....], hereafter called “**OTE**”,

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

8. **APX Commodities Ltd.**, a company incorporated under the laws of England, having its registered office at Ergo Building Mere Way, Ruddington Fields Ruddington, Nottingham, Nottinghamshire, NG116JS, UK, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented by [REDACTED], hereafter called “**APX UK**”,

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

And

**Name of Adhering Party**..... a company duly organized and existing under the laws of ....., with registered office in ....., registered with National Trade Register Office under number ....., duly represented by Mr. .... in his capacity of ....., hereafter called "**Adhering Party**"

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

**WHEREAS:**

- (1) On the 13th of June 2012, APX, Belpex, EPEX Spot, GME, OMIE and NPS have signed the PCR Cooperation Agreement and the PCR Co-Ownership Agreement (the “**PCR Agreements**”) and, therefore, have 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 the 28<sup>th</sup> of February 2013 OTE entered into with the other PCR PXs an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement, and has joined PCR Cooperation as of the 1st of March 2013.
- (3) On the 4th of February 2014 APX UK entered into with the other PCR PXs an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement, and has retroactively joined PCR Cooperation as of the 1st of February 2014.
- (4) On the ....., the Adhering Party has signed the Associate Member’s Confidentiality Declaration and the status of Associated Member was granted to the Adhering Party by a decision of the Steering Committee dated [●].
- (5) The Adhering Party has expressed its interest in the participation in the PCR Cooperation. Following such first expression of interest, the Adhering Party has formally requested to adhere to the PCR Cooperation by letter to the Steering Committee dated [●].

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

- (6) On ....., PCR Steering Committee representing all PCR PXs has agreed to the adherence of the Adhering Party;
- (7) The Adhering Party fully acknowledges the content of the PCR Agreements and 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. APX, BELPEX, GME, EPEX, NPS, OTE, APX UK and OMIE 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] if the following conditions are duly fulfilled:
  - a) full payment of the Adherence fee (hereinafter the “**Fee**”) in accordance with the terms and conditions provided in Annex I, and
  - 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.
- 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. In particular, PCR PXs declare that the Adhering Party has received full and complete access to the documentation, commonly filed by PCR PXs, concerning the current status of the ongoing negotiations between the PCR PXs in respect of the PCR Co-ownership Agreement.
- 2.3 Conversely, the Adhering Party declares that it is fully aware of the current status of the ongoing negotiations between the PCR PXs in respect of the PCR Co-ownership Agreement as accessible through the documentation disclosed by to the PCR PXs.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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### 3. Entry into force and termination

- 3.1 This Agreement shall enter into force on [DATE], 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.

### 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.
- 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 liability 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.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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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;

4.8 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)*

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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In witness thereof, the Parties have caused their duly authorised representatives to execute the present Agreement in nine (9) original copies and each Party acknowledges having received its original copy.

**For APX POWER B.V.**

Name:

Name:

Function:

Function:

Date:

Date:

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

**For BELEPX N.V.**

Name:

Name:

Function:

Function:

Date:

Date:

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

**For APX COMMODITIES LTD.**

Name:

Name:

Function:

Function:

Date:

Date:

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

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

Name:

Function:

Date:

Signature:  
  
\_\_\_\_\_**For OMI POLO ESPAÑOL S.A.**

Name:

Function:

Date:

Signature:  
  
\_\_\_\_\_**For EPEX SPOT SE**

Name:

Function:

Date:

Signature:  
  
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Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**For NORD POOL SPOT AS**

Name:

Function:

Date:

Signature:

\_\_\_\_\_

**For OTE A.S.**

Name:

Function:

Date:

Signature:

\_\_\_\_\_

**For (Adhering Party)**

Name:

Function:

Date:

Signature:

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Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**Annex 1**

**ADHERENCE FEE**

**1. Amount of the Fee**

In accordance with article 12 of PCR Co-ownership Agreement and with section 3.1 of Annex VIII of the PCR Co-ownership Agreement as supplemented by Annex 2, the Fee to be paid by the Adhering Party for obtaining PCR membership is [REDACTED]

[REDACTED]

[REDACTED]

**2. Proof of past common costs**

Historical proof of the Common Costs, will be based on the monthly common cost expenses sheets managed by the PCR Project Management Office, and approved by the competent body of PCR. When the date of signature of this Agreement shall be fixed, the PCR Project Management Office shall set up an ad hoc common cost expense sheet (hereinafter the "Expense Sheet",) which shall include all past costs until and including the last complete calendar month prior to date of signature of this Agreement. The Expense Sheet shall be approved by the PCR SC at the latest by the signature of the Agreement and attached as Annex 2.

Following the receipt of the invoices sent by the PCR PXs according to the below section 3, (... fraction number) of the Common Costs reported in the Expense Sheet will have to be paid by the Adhering Party to the PCR PXs within the term set forth under section 3 below.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

### **3. Invoicing and payment**

Within 5 (five) working days from the entering into force of this Agreement, the above mentioned six (6) PCR PXs will each invoice their share of the Common Costs to the Adhering Party, based on the approved Expense Sheet.

Each of the six (6) PCR PX shall first send pro-forma invoices via e-mail to the Adhering Party. Subsequently, the regular invoices will be sent within 5 (5) working days by regular mail after approval by the Adhering Party of the pro-forma invoice.

Invoices must be understandable and verifiable, duly compliant with EU VAT regulation in force and must in particular indicate banking information (swift / iban).

The invoices sent by the PCR Parties will be payable by the Adhering Party as of the 14 (fourteenth) calendar day from the reception date of each invoice. Payments due on a day other than a working day shall be made on the first following working day. Payments shall be made in Euro by wire transfer to the bank account indicated by the PCR PX(s) on the invoice.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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Annex 2HISTORICAL COSTS

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

**ATTACHMENT 3  
ANNEX VI**

**STANDARD LICENSE**

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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## 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**”.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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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:**

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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*THE ABOVE PARAGRAPH SHALL NOT APPLY TO THE TERMINATION OF A GROUP MEMBER’S PARTICIPATION TO THE CO-OWNERSHIP. IN SUCH EVENT THE SHARE OF THE TERMINATING GROUP MEMBER IN THE CO-OWNED ASSETS SHALL REMAIN OWNED (JOINTLY) BY THE OTHER PARTY GROUP MEMBER(S) OF ITS GROUP WITHOUT PREJUDICE TO ARTICLE 17.4.3. IT IS UNDERSTOOD HOWEVER THAT ALL GROUP MEMBERS OF THIS GROUP, INCLUDING THE TERMINATING GROUP MEMBER REMAIN JOINTLY AND SEVERALLY LIABLE FOR ANY OBLIGATION THAT IS DUE AND CLAIMABLE AT TIME OF SUCH TERMINATION.”* .....12

**“ART. 24 - PARTICIPATION AS GROUP MEMBER TO THE AGREEMENT** .....12

THE LICENSE IS GRANTED AGAINST PAYMENT OF A LICENSE FEE EQUAL TO EUR XXX [INSERT AMOUNT], EXCLUDING VAT. ....64

- 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**

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**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 bematched 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;

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**ICC:** shall have the meaning set forth in Article 11 of this License Agreement;

**Intellectual Property Rights (“IPR”):** 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 land/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;

**Internal Representative** Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;

**Legal Provision:** means any type of legal provision of public order, proclaimed by any competent authority;

**License:** shall have the meaning set forth in Article 3 of this License Agreement;

**License Agreement:** shall mean this license agreement;

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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<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;
<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

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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the Licensor's IPR;

<b>Other Co-Owners:</b>	shall have the meaning set forth in recital 4 of this License Agreement;
<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;

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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- Transfer:** 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), 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.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**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”).

**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;

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- 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;
- 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

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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 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

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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 consideration – 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.
- 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:

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- (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:

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- 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.

**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

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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;
- 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

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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

- 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.

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**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.

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- 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 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.

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**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;
- 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.

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**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 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

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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.

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**Annex II: Licensed Material Documentation**

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**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 5.2 the License Fee shall be paid according to the following modalities: XXX [INSERT PAYMENT MODALITIES]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**Annex IV: Contact information**

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**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]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

**Annex VI: 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) APX Power B.V., a company organized and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360,
- (2) Belpex NV, a company organized and existing under the laws of Belgium, having its registered office at 66 Boulevard de l’Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602, ,
- (3) Gestore dei Mercati Energetici S.p.A., a company organized and existing under the laws of Italy, having its registered office at Largo Giuseppe Tartini, 3/4, 00198 Rome, Italy, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, ,
- (4) OMI Polo Español, S.A. (OMIE), a company organized and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558,;
- (5) EPEX Spot SE, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501,;
- (6) Nord Pool Spot AS, a company incorporated and existing under the laws of Norway, having its registered office at Granfos Næringspark, Vollsveien 17B, 1366 Lysaker, Norway and registered with the commercial register in Norway under the number 984 058 098 and VAT n° 984 058 098 ,
- (7) 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

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE



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 set off against 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;

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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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 :

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**Annex VII: List Permitted Access Holders**

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

## ATTACHMENT 4

### Co-ownership Agreement

#### ANNEX VIII

#### Financial aspects of the PCR Cooperation

1. GENERAL
2. PCR COSTS
  - 2.1 Co-Owned Assets: maintenance and support costs
  - 2.2 Common PCR administrative costs
  - 2.3 Operations Fee
  - 2.4 Costs of changes to Co-Owned Assets
3. PCR INCOME
  - 3.1 Adherence of a new Party
  - 3.2 Licensing of First Class Co-Owned Assets and service provision using First Class Co-Owned Assets
  - 3.3 Yearly Upgrade Fee
  - 3.4 Services provisions by PCR Parties to third parties
4. INVOICING AND PAYMENTS OF PCR INCOME AND PCR COSTS
5. BUDGETING
6. STANDARD MAN DAY TARIFF

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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**2.1. Co-Owned Assets: maintenance and support costs**



**2.1.1. Co-Owned Assets: common maintenance and support costs (off-line)**



**2.1.2. Co-Owned Assets: Online maintenance and support costs**



Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**2.2. Common PCR administrative costs**

[Redacted]

**2.3. Operations Fee**

[Redacted]

[Redacted]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**2.4. Costs of changes to Co-Owned Assets**

[Redacted]

[Redacted]

[Redacted]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE





[Redacted text block]

[Redacted text block]

**3.2.1. Granting of a License for the PCR Algorithm EUPHEMIA to TSOs within the Anticipated Scope of PCR**

[Redacted text block]

[Redacted text block]

**3.2.2. Granting of a License for the Co-Owned Assets outside the Anticipated Scope of PCR**

[Redacted text block]

[Redacted text block]

**3.2.3. Granting of a License to PXs for the First Class Co-Owned Assets inside the Anticipated Scope of PCR**

[Redacted text block]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE





[Redacted]

[Redacted]

**3.2.5. Granting of a License or Service Provision by an Original Owner using the Pre-Existing Assets outside the Anticipated scope**

[Redacted]

**3.3. Yearly Upgrade Fee**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

[Redacted]

[Redacted]

[Redacted]

**3.4. Services provisions by PCR Parties to third parties**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE



3. based on the amounts fixed in the document provided by the Secretary of the SC, the Parties shall issue and send the invoices, exclusively by email, within the end of the month in which the Quarterly Balance is approved by the SC. It is understood that the Quarterly Balance shall be attached to the relevant invoices. The invoice shall indicate which amounts are to be considered as Operational Costs and Development Costs as identified by the yearly approved budget.
4. Each Party shall pay the invoiced amounts within thirty (30) days from the receipt of the relative invoice(s), if duly compliant with EU VAT regulation in force. All payment(s) shall be made by wire transfer to the bank account indicated in the invoice(s).
5. Regarding the costs described under section 2.4 (changes to Co-Owned Assets), each Co-founder of the past change sends an invoice to the new user of it for an equal share in the reimbursed costs, according to the indications provided by the Secretary of the SC. Before using a feature developed in a past change request, a new user shall pay all invoices to the original Co-founders, according to the indications provided by the Secretary of the SC.

Each SC representative will inform the Secretary of the SC and SC of the payment process status.

#### **4.2.2. Invoicing and payment of PCR costs by Servicing/ Licensing Parties**

##### **A) One Time Amount Fee or Simulation Facility One-off Fee**

The Licensing or Servicing Party will receive from each of the other Parties/Original Owners a pro rata invoice of the One Time Amount Fee or Simulation Facility One-off Fee within the first month in which the License has been entered into or Servicing Party starts the service provision between the Licensing or Servicing Party and the Third Party PX. The invoices are required to be duly compliant with EU VAT regulation in force and must indicate banking information (swift / iban) and address of the bank(s), to be used for the bank transfer.

The invoices will be paid by the Licensing or Servicing Party within thirty (30) calendar days from the reception date of each invoice. Payments due on a day other than a working day shall be made on the first following working day. Payments shall be made in Euro by wire transfer to the bank account indicated by the PCR PX(s) on the invoice.

##### **B) Yearly Upgrade Fee**

YUF is computed on a calendar year basis, according to the provisions set forth in Article 2.3. The invoicing and payments process of the YUF shall follow the procedure set forth in Article 4.2.1.

##### **C) Installation and testing cost**

The invoicing and payment of the installation and testing cost, due pursuant to Article 3.2.4 ii) let. b), is set forth under paragraph 4.2.1.

##### **D) Yearly fee due for the Use of Euphemia by the Party(-ies) providing services for the operation of the Simulation Facility to one or more TSO or Serviced PX**

The invoicing and payment of the Yearly fee due for the Use of Euphemia by the Party(-ies) providing services for the operation of the Simulation Facility to one or more TSO or Serviced PX, due pursuant to Article 3.2.4.iii, is set forth under paragraph 4.2.1.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

## 5. BUDGETING

Except for unforeseeable costs associated with changes to Co-Owned Assets, which are budgeted ad hoc, the budget of all PCR costs is approved by the SC each year during the third quarter upon proposal of the Secretary of the SC. In the third quarter of year X, the budget figures for year X+1 are budgeted on the basis of cost forecast for the next year X+1.

Cost shares of the Contributors for which the Traded Volumes are applicable can be estimated on the basis of the traded volumes recorded for the period year X-1

The budgeting of the Administrative Costs shall be consistent with Attachment 3 to Annex IX of PCR Cooperation Agreement.

The budget of all PCR costs shall define the percentage share of each costs item attributable to Development Cost and Operational Cost

## 6. STANDARD MAN DAY TARIFF

The Standard Man Day Tariff is decided yearly by the SC, ideally at the moment of budgeting in July. In case of combination of roles (i.e. a WG leader may take also simultaneously a position of representative of the company (s)he is representing ) during WG calls or meetings, only half the time spent in the concerned WG call/meeting shall be remunerated.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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## Attachment 1 – Definition list

“Adherence Fee”	Shall have the meaning set forth in Section 3.1
“Adhering Party”	means any Third Party PX being subject to adherence process of PCR Cooperation and Co-ownership Agreement as described in Article 8 of the PCR Cooperation Agreement and Article 12 of the PCR Co-ownership Agreement
“Co-funders”	means Party (ies) which have paid relevant costs of the change request or new development according to Article 9.5 of PCR Co-ownership Agreement
“Contributor”	means a Party or a Licensed TSO participating through direct payment in PCR costs according to the Sharing Key
“Development Cost”	means the cost bared by the Parties concerning the development of the Co-owned Assets as described in the yearly approved PCR budget
“Governance Guidelines”:	means the governance guidelines for single day-ahead coupling and single intra-day coupling (to be) adopted in accordance with article 18 of the Regulation (EC) N° 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross border exchanges in electricity and repealing Regulation (EC) N° 1228/2003;
Historical Costs:	<p>means all the PCR Costs incurred by the Parties since the 27<sup>th</sup> of April 2011 up to the signature date of the Adherence Agreement of the relevant Adhering Party with the exception of:</p> <ul style="list-style-type: none"> <li>i) the Operations Fee described under section 2.3 of this Annex and</li> <li>ii) on line maintenance costs described under section 2.1.2 of this Annex</li> </ul>
“Isolated Mode”	<p>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:</p> <ul style="list-style-type: none"> <li>i) 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>ii) 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>iii) or a project is effectively launched to fulfil the above ii).</li> </ul>
“Licensed PX”	means a Third Party PX granted with a License by a Licensing Party in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

“Licensed TSO”	PCR Co-ownership Agreement means any TSO granted with a License by all Parties in accordance with Article 6.1.2.2 of the PCR Co-ownership Agreement
“Licensing Party”	means any Party granting a License to a Third Party in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the PCR Co-ownership Agreement
“One Time Amount Fee”	means a lump sum amount, as further described in Section 3.2 of this Annex, to be paid by the Servicing/Licensing Party for the right to Use Co-Owned Assets for the benefit of Serviced PX or Licensee with the exception of the Simulation Facility.
“Simulation Facility One-off Fee”	means the lump sum amount described in Section 3.2.4 n. iii) letter a) of this Annex, to be paid by the Servicing Party for the right to Use the Simulation Facility for the benefit of Serviced PX or TSO outside the scope of the PCR Common Operation
“Yearly Upgrade Fee” or YUF	means a yearly fee in Euro per TWh Traded Volumes, related to relevant First Class Co-Owned Assets, as further stipulated in Section 3.3 of this Annex, to be paid by Servicing/Licensing Party and Licensed TSO
“Operations Fee”	means the costs of the Coordinator and Hot Backup Coordinator roles in the Common PCR Operations and any other cost item that will be included in this category by the SC.
“Operational Costs”	means the cost bared by the Parties concerning the use of the Co-owned Assets as described in the yearly approved PCR budget
“PCR Costs”	Are the cost items listed under section 2 of this Annex
“PCR Matcher & Broker”	means the IT system which enables exchange of anonymized orders and area-to-area transmission capacities among the power exchanges to calculate market coupling result with the use of PCR Algorithm
“Quarterly Balance”	Shall have the meaning set forth in Section 4.2.1
“Serviced PX”	Means a Third Party PX being provided with services by a Servicing Party in accordance with Article 6.1.3 and 6.3 of the PCR Co-ownership Agreement
“Servicing Party”	means any Party providing services to a Third Party PX in accordance with Article 6.1.3 and 6.3 of the PCR Co-ownership Agreement
“Sharing Key”	means a key determining the contribution share of Parties and Licensed TSOs on the respective PCR costs. Sharing Key is not identical for all PCR costs and is represented by the specific formula/criteria in each chapter referring to the relevant PCR costs.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

“Standard Man Day Tariff”

Standard Day Tariff means the amount defined in section 6

“Traded Volume”

means the sum of submitted volume which has been accepted by the matching of Bids. In the case of the Italian market, where OTC orders are included in the matching process, this definition excludes the matched OTC orders. This definition differs from as “market clearing volume” (MCV) being usually defined as the maximum of the local supply and demand whereas “traded volume” is the sum of the local supply and demand.  
 Eg. hour with 50 MW local supply matched and 100 MW local demand  
 MCV = 100 MW for this period and area  
 Traded volume=150 MW

“Third Party PX”

means a PX other than a Party to the PCR Co-ownership Agreement.

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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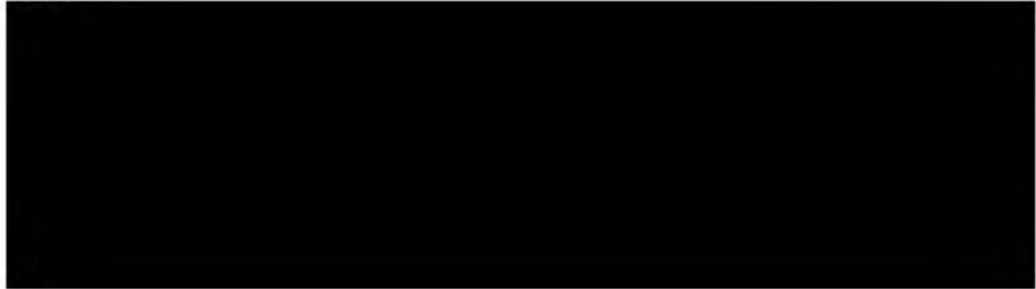




- EPEX



- OTE



- Structure of the invoice

On every invoice, a split is made between the Operational costs, Development costs and Yearly Upgrade Fee (YUF) of the first class co-owned assets:

- **Operational Costs**

“PCR Operations common costs for the period ... -with reference to PCR\_Monthly Cost Overview dated.....” consists of XX EUR

- **Development Costs**

“PCR common costs invoiced by supplier XXXXX for the period ... -with reference to PCR\_Monthly Cost Overview dated.....” consists of XX EUR

- **YUF**

- Specific constraint for invoicing, required by the article 226 of the Directive 2006/112/CE, e.g. indication of the reference to the applicable provision of the Directive where the supply of services are subject to the VAT reverse charge procedure.

- Information to THE SECRETARY OF THE SC

- Information that amounts have been invoiced must be provided to THE SECRETARY OF THE SC in order to maintain the updated status (invoiced/to be invoiced) on each expenses; This info can be sent by email to the following contacts which are in charge of all invoicing matters:

- **For EPEX Spot SE:**



- **For APX Power B.V:**



- **For GME**



Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE

- **For OMIE:**  
 [Redacted]  
 [Redacted]  
 [Redacted]  
 [Redacted]
  
- **For Nord Pool Spot AS**  
 [Redacted]
  
- **For OTE, a.s.**  
 [Redacted]
  
- **Email addresses for Project Board (SC) & Project Manager (THE SECRETARY OF THE SC):**
  - For Belpex: [Redacted]
  - For APX Power B.V: [Redacted]
  - For OMIE [Redacted]
  - For GME [Redacted]
  - For EPEX Spot [Redacted]
  - For Nord Pool Spot AS [Redacted]
  - For OTE, a.s. [Redacted]
  - For THE SECRETARY OF THE SC: [Redacted]

Initial APX Commodities	Initial APX Power	Initial Belpex	Initial EPEX	Initial GME	Initial NPS	Initial OMIE	Initial OTE
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## ATTACHMENT 5

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

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

- (1) **Nord Pool Spot AS**, a company incorporated and existing under the laws of Norway, with registered office at Vollsveien 17B, 1366 Lysaker, Norway, and registered with the Commercial Register in Norway under n° 984 058 098 and VAT n° 984 058 098 MVA, hereby duly represented [REDACTED] hereinafter “**NPS**”);
- (2) **EPEX Spot SE**, a European Company (Societas Europaea) incorporated and existing under the laws of France, with registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with the Commercial Register in Paris under n° 508 010 501 and VAT n° FR 10508010501, hereby duly represented [REDACTED] (hereinafter “**EPEX Spot**”);
- (3) **OMI Polo Español S.A. (OMIE)**, a company incorporated and existing under the laws of Spain, with registered office at Alfonso XI n° 6, 28014 Madrid, Spain, and registered with the Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558, hereby duly represented [REDACTED] (hereinafter “**OMIE**”);
- (4) **APX Power B.V.**, a limited liability company incorporated and existing under the laws of the Netherlands, with registered office at Hoogoorddreef 7, 1101 BA Amsterdam, the Netherlands, and registered with the Commercial Register in Amsterdam under n° 34153887 and VAT n° NL 809684639, hereby duly represented by represented by APX Holding B.V. which, in turn, is duly represented by [REDACTED] (hereinafter “**APX**”);
- (5) **Belpex NV**, a limited liability company, incorporated and existing under the laws of Belgium, with registered office at Boulevard de l’Impératrice 66, 1000 Brussels, Belgium, and registered with the Registry of Enterprises (RPR Brussels) under n° 874978602 and VAT n° BE 0874 978 602, hereby duly represented [REDACTED] (hereinafter “**Belpex**”);
- (6) **Gestore dei Mercati Energetici S.p.A.**, a company incorporated and existing under the laws of Italy, with registered office at Largo Giuseppe Tartini ¾, Rome, Italy, and registered with the Companies’ Register of Rome n° RM 953866, Italian tax code and VAT n° 06208031002, hereby duly represented [REDACTED] (hereinafter “**GME**”);

**AND:**

- (7) **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, hereby duly represented [REDACTED] (hereafter “**OTE**”).

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

**WHEREAS:**

1. The Parties have entered into a collaboration regarding technical assessment concerning a European day ahead Price Coupling of Regions cooperation (hereafter the “**PCR Cooperation**”). This PCR Cooperation has been formalized by:
  - i) a Letter of Intent dated 18 June 2009 (hereafter the “**Lol**”) signed by NPS, 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 NPS, EPEX Spot and OMEL;
  - 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 Lol and of the Data Sharing Agreement may be disclosed to APX, Belpex and GME in the context of their adherence to the PCR Cooperation;
  - iv) an adherence letter to the Lol (hereafter the “**Adherence Letter**”) and an amendment to the Data Sharing Agreement (hereafter the “**First Amendment Agreement**”) of 23 of February 2010, between the Parties by which APX, Belpex and GME have adhered to the Lol and to the Data Sharing Agreement;
  - v) a second amendment agreement to the Data Sharing Agreement between the Parties 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 Parties 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 Parties entered into force on the 23th of February 2012 (hereafter the “**Extension Agreements**”).
2. In the context of the PCR Cooperation and 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, amongst which the algorithm and simulations working group.

3. Based on the results of the algorithm and simulations working group, the Parties have elaborated a document describing the Starting Point Selection (as defined hereafter) in order to fix the procedure 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 current co-owners of the selected algorithm they submitted, wish to transfer an equal undivided share of their rights in respect of the matching algorithm they submitted to each of the other Parties, who accept 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 and which purpose is 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. The Parties have jointly drafted a term sheet establishing the general principles in respect of the Co-ownership to be established between them regarding the selected matching algorithm and any Commonly Developed Assets (as defined hereafter) as basis for a Co-ownership agreement between the Parties and now wish to enter into this Agreement which shall replace and supersede any other agreement entered into between the Parties or a subset of the Parties governing co-ownership on Co-Owned Assets.
7. On the 28th of February 2013, OTE signed an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement, thus formally joining the PCR Cooperation as of the 1st of March 2013

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

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## 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:

<b>“ACER”:</b>	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;
<b>“Adherence Fee”</b>	shall have the meaning set forth in Annex VIII <sup>1</sup> ;
<b>“Adherence Letter”:</b>	shall have the meaning set forth in Consideration 1;
<b>“Agreement”:</b>	means this PCR Co-Ownership Agreement entered into by the PXs;
<b>“Annex”:</b>	means any attachment to this Agreement;
<b>“Anticipated Scope of PCR”:</b>	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: <ul style="list-style-type: none"> <li>- 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</li> <li>- 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;</li> </ul>
<b>“Belpex Spot Market”:</b>	means the day-ahead and intraday spot electricity markets operated by Belpex;
<b>“Best Efforts”:</b>	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 (“ <i>middelenverbintenis</i> ” / “ <i>obligation de moyen</i> ”);
<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;

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<sup>1</sup> New definition introduced by the Second Amendment



- “Change Control Procedure”:** means the procedure set forth in Annex V of the PCR Cooperation Agreement;
- “Concerned Party”:** means any Party (not being the Defendant Party) which may be under an obligation to hold harmless and indemnify a Defendant Party<sup>2</sup>;
- “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<sup>3</sup>;
- “Commonly Developed Assets”:** means any Co-Owned Asset jointly developed by the Parties with or without joint funding of the Parties (it being understood that APX and Belpex shall, as long as Belpex is a Wholly Owned Subsidiary, count as one Party in respect of such funding);
- “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;
- “Consideration”:** means the considerations that have lead the Parties to enter into this Agreement as described after the word “whereas” on p. 2 and p. 3 of this Agreement;
- “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

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<sup>2</sup> New definition introduced by the Second Amendment

<sup>3</sup> New definition introduced by the Second Amendment

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 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;
- “Co-Owned Assets List”:** means Annex I in which the Co-Owned Assets are described;
- “Co-ownership”:** 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;
- “CWE”:** means the Central Western European Region;
- “CWE Market Coupling”:** 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;
- “Data Sharing Agreement”:** shall have the meaning set forth in Consideration A);
- “Dispute”:** shall have the meaning set forth in Article 22.1;
- “Disputing Parties”:** shall have the meaning set forth in Article 22.2;
- “Dispute Settlement Request”:** shall have the meaning set forth in Article 22.2;
- “DS Chairman”:** shall have the meaning set forth in Article 22.3;
- “DS Failure Notice”:** shall have the meaning set forth in Article 22.5;
- “DSR Notice”:** shall have the meaning set forth in Article 22.3;
- “Exit License”:** means the right to Use granted to a Party that has terminated its participation to the PCR Cooperation Agreement;
- “Exit Version”:** means, in respect of a Party that has terminated its participation to the PCR Cooperation Agreement, the version of a Co-Owned Asset as existing at the date such Party has terminated its participation to the

	PCR Cooperation 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 Consideration A);
<b>“External Representative”:</b>	shall have the meaning set forth in the Article 13.2.2;
<b>“First Amendment Agreement”:</b>	shall have the meaning set forth in Consideration A);
<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 16;
<b>“Group”</b>	shall have the meaning set forth in Article 24.1 <sup>4</sup> ;
<b>“Group Member”</b>	shall have the meaning set forth in Article 24.1 <sup>5</sup> ;
<b>“Group Member Exit Date”</b>	shall have the meaning set forth in Article 24.4.1 <sup>6</sup> ;
<b>“ICC”:</b>	shall have the meaning set forth in Article 22;
<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 those in this definition and any and all other proprietary rights relating to intangible property;

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<sup>4</sup> New definition introduced by the Second Amendment

<sup>5</sup> New definition introduced by the Second Amendment

<sup>6</sup> New definition introduced by the Second Amendment

<b>“Internal Representative”:</b>	shall have the meaning set forth in the Article 1.2.1.13.2.2;
<b>“Legal Provision”:</b>	means any type of mandatory legal provision of public order, proclaimed by any competent authority;
<b>“License”:</b>	means the right to Use granted to a Third Party;
<b>“Licensee”:</b>	means the Third Party or the Party to whom a License is granted pursuant to this Agreement;
<b>“Licensing Party”:</b>	means a PCR Party which enters into a License with a Third Party <sup>7</sup> ;
<b>“Lol”:</b>	shall have the meaning set forth in Consideration A);
<b>“Market Coupling”:</b>	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;
<b>“Market Splitting”:</b>	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;
<b>“MIC”:</b>	means the minimum income condition;
<b>“Minimal TSO License”:</b>	means the license referred to in Annex VII;
<b>“Modification”:</b>	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;
<b>“MPC”:</b>	means the maximum payment condition;
<b>“NDA”</b>	shall have the meaning set forth in Consideration A);
<b>“Non-Servicing Party”</b>	with respect to each Serviced PX, means any PCR Party other than the Servicing Party of such Serviced PX <sup>8</sup> ;

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<sup>7</sup> New definition introduced by the Second Amendment

<sup>8</sup> New definition introduced by the Second Amendment

- “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 22.4;
- “Original Owner”:** 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;
- “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 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;
- “PCR”:** means price coupling of regions;
- “PCR Algorithm”:** means the matching algorithm software embedding the Pre-Existing Asset enhanced with Commonly Developed Assets developed in accordance with the PCR Cooperation Agreement, 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;
- “PCR Cooperation”:** shall have the meaning set forth in Consideration A);
- “PCR Cooperation Agreement”:** means the agreement entered into by the Parties, which contains the terms and conditions in respect of their cooperation for PCR Market Coupling. For the avoidance of doubt, the Parties to this Agreement must be Party to the PCR Cooperation Agreement except where Parties agree otherwise in writing or except in the event an Original Owner terminates its participation to the PCR Cooperation Agreement, in which case it remains a Party to this contract but only as concerns the Pre-Existing Assets;
- “PCR Market Coupling”:** means the day-ahead Market Coupling as described in this Agreement and in the PCR 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;
<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;
<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>“Restricted Party”:</b>	shall have the meaning set forth in Article 24.4.1 <sup>9</sup> ;
<b>“Restricted Period”:</b>	Shall have the meaning set forth in Article 24.4.2 <sup>10</sup> ;
<b>“Simulation Facility”:</b>	is the First Class Co-owned Asset consisting of a web based data processing environment (software) embedding the PCR Algorithm which allows i) the simulation of Market Coupling sessions, based on anonymous historical data and/or artificial input data, as well as ii) the reporting on the output of these simulations The Simulation Facility is installed on hardware operated and controlled by PCR Party(ies).”
<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 <sup>11</sup> ;
<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 <sup>12</sup> ;

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<sup>9</sup> New definition introduced by the Second Amendment

<sup>10</sup> New definition introduced by the Second Amendment

<sup>11</sup> New definition introduced by the Second Amendment

<sup>12</sup> New definition introduced by the Second Amendment

<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;
<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>“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>13</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.

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<sup>13</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;

- 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.
- 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**

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

- 3.1.1. 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.
- 3.1.2. 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.



3.1.3.

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**3.2. Co-ownership of Commonly Developed Assets**

**3.2.1.** 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.

**3.2.2.** 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.

**3.3. 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.

**3.4. 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.** [REDACTED]

[REDACTED]



## 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 of all Parties is necessary, and such decisions shall be taken on the basis of unanimity unless otherwise provided.<sup>14</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 Agreement.
- 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.

<sup>14</sup> Art. 5.1 modified by the Second Amendment. Original text:

*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).*



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**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 the PCR Cooperation 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 Cooperation 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**

An Original Owner whose participation to the PCR Cooperation 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 Cooperation 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 Cooperation 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



[REDACTED]

[REDACTED]

[REDACTED]

**ARTICLE 10 FILING FOR INTELLECTUAL PROPERTY RIGHTS**

- 10.1. 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.
- 10.2. 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.
- 10.3. 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 Cooperation Agreement has terminated shall not participate in the sharing of the registration costs if it is not included as beneficiary of the registration.

**ARTICLE 11 INFRINGEMENTS/THIRD PARTY CLAIMS**

- 11.1. 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.

- 11.2.** 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.
- 11.3.** In the event set forth under Article 11.2 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.
- 11.4.** 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.
- 11.5.** Consistently with Article 22.8, 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.
- 11.6.** 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>20</sup>.
- 11.7.** 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>21</sup>.

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<sup>20</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>21</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 12 ADHERENCE OF NEW POWER EXCHANGES<sup>22</sup>**

The Agreement is open to the adherence of other PX(s). The adherence of other PX(s) 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 an adherence agreement, and
- c) Payment of the Adherence Fee

The adherence to this Agreement shall become effective at date of signature of the adherence agreement between the Parties and the adhering PX provided that the payment by such PX of the Adherence Fee is made.

## **ARTICLE 13 CONFIDENTIALITY**

### **13.1. Obligations in respect of Confidential Information**

**13.1.1.** 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 8.4 unless such obligation conflicts with other Legal Provisions;
- b) Without prejudice to Article 13.1.4 , 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;

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22Modified by the second Amendment. Previous wording:

*"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 a) above in accordance with the modalities agreed upon by the Parties and the adhering PX."*

- 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.

**13.1.2.** 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.

**13.1.3.** 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.

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

**13.1.5.** 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.

**13.1.6.** In the case of a breach by a Party of any of its confidentiality obligations under this Agreement, the other Parties 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 15.

**13.1.7.** In accordance with Article 15.2, the other Parties shall have no liability towards Third Parties with respect to the use by a Party of any Confidential Information, unless otherwise expressly agreed in a separate written and signed agreement between the Party using the Confidential Information and the other Parties.

**13.1.8.** The rights a Party may have against Third Parties pursuant to any other confidentiality agreement shall in no event restrict a Party's right to claim damages under Article 15 from the breaching Party (to the extent that such damages have not yet been recovered by the claiming Party with the Third Party).

## **13.2. Permitted disclosure of Confidential Information**

**13.2.1.** Notwithstanding Article 13.1 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;
- 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;

**13.2.2.** 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:

- 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.

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<sup>23</sup> Article 13.2.2 modified by First Amendment. Original Text:

*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.*



- 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 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 III;
- 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 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.
- 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.

**13.2.3.** 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.

**13.2.4.** 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.

**13.3. 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).

**13.4. 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.

**13.5.** 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 14 PRIVACY AND DATA PROTECTION**

The Parties and co-owners undertake to comply in all respects with their national Legal Provisions implementing the Directive 95/46/EC, as amended or replaced from time to time, and all other applicable personal data protection Legal Provisions which may be applicable in relation with this Agreement.

**ARTICLE 15 LIABILITY**

**15.1.** In case of a breach (whether by act or omission) by a Party(ies) to comply with any of its obligations under this Agreement the Party(ies) shall be entitled to claim compensation for losses, damages, charges, fees or expenses, arising out, or resulting from such breach, only to the extent that such breach qualifies as fraud (“bedrog”/”fraude”), intentional misconduct (“opzettelijke fout”/”faute intentionnelle”) or gross misconduct (“grote fout”/”faute grave”) committed by the liable Party(ies). <sup>24</sup>By way of exception, the breach of art 6.1.3 iv) and 6.3 letter d) shall not entitle

<sup>24</sup> Modified by the Second Amendment. Previous text:

to any compensation or indemnification under this art 15, which may be claimed only pursuant to the PCR Cooperation Agreement.

**15.2.** Within the limits of their indemnification obligations as set forth in this Article, if any, the defaulting Party(ies), shall hold harmless the other Party(ies) against and indemnify them for all claims raised by Third Parties, such as but not limited to Serviced PXs, which are directly related to the failure to comply with any of its obligations under the Agreement.<sup>25</sup>

**15.3.** The Party(ies) shall not be liable for any incidental, indirect, special, punitive or consequential damages including, but not limited, to loss of opportunity, loss of goodwill, loss of business, loss of profit, reputation damage or any cost or expense in connection with or arising out the Agreement.

**15.4.** In no event a Party shall be liable for damages incurred by another Party as a result of the installation of the PCR Software on devices or the use of ancillary software, which is not compliant with the technical instructions indicated by the Parties.

**15.5.** [Redacted]

**15.6.** [Redacted]

**15.7.** [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**15.8.** The liability limitations contained in this Article 15 shall not apply:

- a) In the event of fraud ("*bedrog*" / "*fraude*") and intentional misconduct ("*opzet*" / "*faute intentionnelle*");
- b) In case of delay or default in payments of any amount due under the Agreement;
- c) in any case of breach of art 6.1.2 (Granting of a License); and
- d) to the hold harmless obligation set out under 6.1.3 v) and 6.3 letter e)<sup>29</sup>.

**15.9.** If a breach of this Agreement may occur, the Parties shall take reasonable steps to mitigate the negative consequences of such breach.

**15.10.** The Parties acknowledge that any breach of this Agreement may cause irreparable harm, and agree, consistently with the Article 22.8, that a Party shall be entitled, in the event of such a breach, to apply for injunctive relief to enforce obligations under this Agreement in addition to any other rights and remedies it may have by law or contractual arrangement, to the fullest extent permitted by law. For the avoidance of doubt the liability provisions set forth in the PCR Cooperation Agreement are not applicable to this Agreement.

**15.11.** The Parties are each liable for their individual commitments only and do not bear any joint and several liability under this Agreement.

**15.12.** Without prejudice to the Group Member principle set forth in Article 24, any compensation due by the Original Owners to the other Parties in connection with the warranty set forth in Article 3.1.2 shall be shared equally between the Original Owners<sup>30</sup>.

### **15.13. Third party claims**

#### **15.13.1.**

<sup>28</sup> Modified by the Second Amendment. Previous text:

*The indemnification obligations of each Party arising out of this Article 15 shall at all times (including in the event of gross misconduct) be limited to an amount equal to hundred thousand Euro (100,000,00 €) per breach.*

<sup>29</sup> Modified by the Second Amendment. Previous text:

*The liability limitations contained in this Article 15 shall not apply:*

- a) *In the event of fraud ("*bedrog*" / "*fraude*") and intentional misconduct ("*opzet*" / "*faute intentionnelle*"); and*
- b) *In case of delay or default in payments of any amount due under the Agreement.*

<sup>30</sup> Modified by the Second Amendment. Previous text:

*Any compensation due by the Original Owners to the other Parties in connection with the warranty set forth in Article 3.1.2 shall be shared equally between the Original Owners, it being understood that APX and Belpex, in respect of such compensation, are to be considered as one Party, as long as Belpex is a Wholly Affiliated Undertaking.*

15.13.2

**ARTICLE 16 FORCE MAJEURE**

- 16.1.** 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 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.
- 16.2.** 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.
- 16.3.** 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.

- 16.4. 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.
- 16.5. The Party, which invokes Force Majeure, shall use its Best Efforts to limit the consequences and duration of the Force Majeure.

#### **ARTICLE 17 ENTRY INTO FORCE AND TERMINATION**

- 17.1. This Agreement enters into force as of the date of its signature by all Parties or, should not all Parties sign on the same date, on the date of the last Party's signature, provided the PCR Cooperation Agreement has been signed.
- 17.2. 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)
- 17.3. the agreement governing the co-ownership between the Original Owners in respect of the Co-Owned Assets and ii) the agreement referred to under Consideration E).
- 17.4. 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.
- 17.5. **Early termination in the event of termination of the participation to the PCR Cooperation Agreement**
  - 17.5.1. In the event of termination of the PCR Cooperation Agreement by mutual agreement of the Parties thereto, for any reason whatsoever, the Agreement shall continue to be in force, unless differently agreed in writing by the Parties. In such event, in accordance with Article 19.2, the Parties shall immediately commence good faith negotiations in order to review the Agreement, or/and its Annexes.
  - 17.5.2. In the event the participation in 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 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.

The above paragraph shall not apply to the termination of a Group Member's participation in the PCR Cooperation Agreement. In such event the share of the terminating Group Member in the Co-Owned Assets shall remain owned (jointly) by the other Group Member(s) of its Group without prejudice to Article 17.4.3. It is understood however that all Group Members of this Group, including the terminating Group Member remain jointly and severally liable for any act or omission giving rise to a claim under the terms of the Agreement at time of such termination.<sup>31</sup>

**17.5.3.** In the event the participation to the PCR Cooperation Agreement of an Original Owner is terminated (for any reason whatsoever):

- 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, 9.4, 9.6,c), 10, 11, 15 to 23 (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, 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, without any remuneration being due, the Exit License set forth in Annex V for the use of the Exit Version of the Co-Owned Assets other than the Pre-Existing Assets. The Original Owner whose participation to the PCR Cooperation Agreement was terminated accepts hereby such Exit License.

## ARTICLE 18 ASSIGNMENT AND CONTINUITY

**18.1.** 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 Cooperation Agreement.

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<sup>31</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 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.*

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<sup>32</sup>

**18.2.** A Party wishing to terminate its participation to the Co-ownership may at any time do so exclusively by transferring in equal parts to the other Parties its Co-ownership. Such transfer by the transferring Party shall be accepted by the other Parties in a written agreement between all Parties. As of the date of the transfer, the transferring Party shall have no rights anymore in respect of the Co-Owned Assets and this Agreement shall terminate in its respect. Payment obligations and liabilities arising out of or in relation to an event that occurred prior to the time of transfer remain payable by the transferring Party.

The above paragraph shall not apply to the termination of a Group Member's participation to the Co-ownership. In such event the share of the terminating Group Member in the Co-Owned Assets shall remain owned (jointly) by the other Party Group Member(s) of its Group without prejudice to Article 17.4.3. It is understood however that all Group Members of this Group, including the terminating Group Member remain jointly and severally liable for any obligation that is due and claimable at time of such termination<sup>33</sup>

**18.3.** 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 joiner agreement to this Agreement and the adherence to the PCR Cooperation Agreement.

**18.4.** 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

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<sup>32</sup> Modified by the Second Amendment. Previous text:

*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 required under the applicable Legal Provisions. If the intended assignee or transferee is i) a subsidiary whose share capital is wholly owned by one or more Parties 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 Third Party assignee or transferee shall concomitantly adhere to the PCR Cooperation Agreement. Such consent is not required when this assignment or transfer of the Agreement is made between Parties.*

<sup>33</sup> Modified by the Second Amendment. Previous text:

*A Party wishing to terminate its participation to the Co-ownership may at any time do so exclusively by transferring in equal parts to the other Parties its Co-ownership. Such transfer by the transferring Party shall be accepted by the other Parties in a written agreement between all Parties. As of the date of the transfer, the transferring Party shall have no rights anymore in respect of the Co-Owned Assets and this Agreement shall terminate in its respect. Payment obligations and liabilities arising out of or in relation to an event that occurred prior to the time of transfer remain payable by the transferring Party.*



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>34</sup>.

- 18.5.** 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 19 AMENDMENTS AND ENFORCEABILITY

- 19.1.** 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 IV 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.<sup>35</sup>

- 19.2.** It is understood that, if amendments of the PCR Cooperation Agreement that affect the execution of the Agreement may occur, 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 impact this Agreement should emerge.

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<sup>34</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;*
- 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.*

<sup>35</sup> Modified by the First Amendment. Original text:

*“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 and IV may be amended by way of notification by the concerned Party.”*

## ARTICLE 20 SEVERABILITY

- 20.1.** 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.
- 20.2.** In the event mentioned under Article 20.1, 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.
- 20.3.** If no agreement on the amendment or deletion regarding such provision shall be reached between the Parties within three (3) months, Article 22 applies.
- 20.4.** 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.

## ARTICLE 21 LAW AND INTERPRETATION

- 21.1.** 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).
- 21.2.** 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 22 DISPUTE RESOLUTION

- 22.1.** 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 22.
- 22.2.** 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).

**22.3.** 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;
- c) Assess the interests of the Disputing Parties in light of the objectives of this Agreement; and
- d) Formulate a proposal for settlement.

**22.4.** 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.

**22.5.** 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.

- 22.6.** 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.
- 22.7.** Any amicable settlement reached pursuant to this Article 22 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.
- 22.8.** 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.
- 22.9.** 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 23 MISCELLANEOUS**

### **23.1. 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.

### **23.2. 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.

### **23.3. Notices and invoices**

**23.3.1.** 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.

**23.3.2.** 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.

**23.3.3.** 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.

### **23.4. 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.

### **23.5. 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.

### **23.6. 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.

### 23.7. 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.

### 23.8. 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>36</sup>ART. 24 - PARTICIPATION AS GROUP MEMBER TO THE AGREEMENT

### 24.1. 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 15.11, 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 the purpose of calculating the limits to the indemnification obligations set forth in Article 15.7 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 15.5.

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<sup>36</sup> Art 24 has been added by the Second Amendment

- 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.

**24.2.** 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 24.1 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 15.7 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 15.5.
  - 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

**24.3.** Should the Parties decide to review the voting principles of the Agreement, the Parties will also review the provisions of this Article 24.

**24.4. Restrictions on a Group Member leaving its Group**

**24.4.1** Subject to Article 24.4.4, 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 24.1 shall no longer apply to the Restricted Party with effect from the Group Member Exit Date.

**24.4.2** 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.

**24.4.3** 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.

**24.4.4** 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).

**24.4.5** 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.

**24.5. 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 simultaneous adherence to the PCR Cooperation Agreement and the fulfilment of the conditions mentioned under Article 12 (a) and (b).”

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This PCR Co-ownership Agreement has been duly executed in six (6) original copies, one for each of the undersigned parties.

**APX**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**BELPEX**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**GME**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**OMIE**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**EPEX Spot**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**NPS**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**OTE**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**APX UK**

Name:  
Function  
Date  
Signature

Name:  
Function  
Date  
Signature

**List of Annexes:**

- ANNEX I:**      *Co-Owned Assets' List*
- ANNEX II:**    *Confidentiality Declaration - standard form*
- ANNEX III:**   *Adherence Agreement*
- ANNEX IV:**    *Contacts*
- ANNEX V:**     *Exit License*
- ANNEX VI:**    *Standard Licenses*
- ANNEX VII:**   *TSO licenses*
- ANNEX VIII:** *Financial aspects of the PCR Cooperation*

**PCR Co-ownership Agreement**

**ANNEX I**

**Asset list<sup>37</sup>**

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<sup>37</sup> Modified and replaced by the Second Amendment

Assets	Joint PX assets	Individual PX assets	Asset Class	Clarification
PCR Algorithm				
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

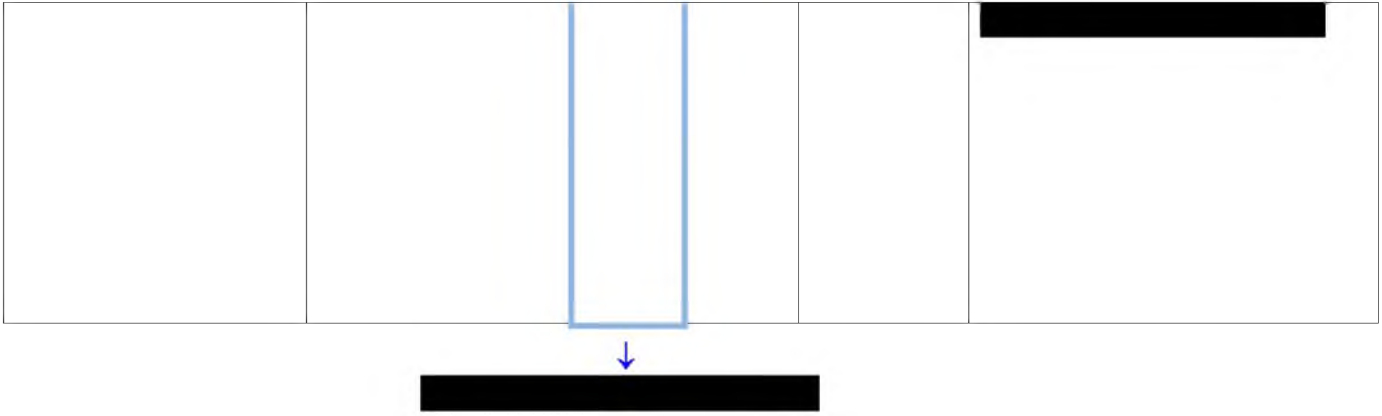
<p>[REDACTED]</p>				<p>[REDACTED]</p>
<p>[REDACTED]</p>				<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>			<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>			<p>[REDACTED]</p>
<p>[REDACTED]</p>		<p>[REDACTED]</p>		
<p>[REDACTED]</p>	<p>[REDACTED]</p>			<p>[REDACTED]</p>



<p>[REDACTED]</p>				
<p>[REDACTED]</p>	<p>[REDACTED]</p>			<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>			
<p>[REDACTED]</p>	<p>[REDACTED]</p>			
<p>[REDACTED]</p>	<p>[REDACTED]</p>			
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>
<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>	<p>[REDACTED]</p>







**PCR Co-ownership Agreement**

**ANNEX II**

**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 passeport/ID number [\_\_\_\_] with domicile at [\_\_\_\_] [\_\_\_\_], hereafter “the Undersigned”

Hereby represents and agrees, to the benefit of:

- (1) APX Power B.V., a company organised and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360,
- (2) Belpex NV, a company organised and existing under the laws of Belgium, having its registered office at 66 Boulevard de l’Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602,
- (3) Gestore dei Mercati Energetici S.p.A., a company organised and existing under the laws of Italy, having its registered office at Largo Giuseppe Tartini, 3/4, 00198 Rome, Italy, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, ,
- (4) OMI Polo Español, S.A. (OMIE), a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558,;
- (5) EPEX Spot SE, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501,;
- (6) Nord Pool Spot AS, a company incorporated and existing under the laws of Norway, having its registered office at Granfos Næringspark, Vollsveien 17B, 1366 Lysaker, Norway and registered with the commercial register in Norway under the number 984 058 098 and VAT n° 984 058 098 ,
- (7) 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,

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 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 :



**PCR Co-ownership Agreement**

**ANNEX III**

**Adherence Agreement<sup>38</sup>**

**APX POWER B.V.**

- and -

**BELPEX NV**

- and -

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

- and -

**OMI POLO ESPAÑOL S.A.**

- and -

**EPEX SPOT SE**

- and -

**NORD POOL SPOT AS**

-and-

**OTE, A.S.**

-and-

**APX COMMODITIES LTD**

**And**

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

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<sup>38</sup> New Annex introduced by the Second Amendment which has replaced the previous Annex III named “*List of permitted access holders - (NOT APPLICABLE ANYMORE)*”

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

1. **APX Power B.V.**, a company organised and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360, hereby duly represented by APX Holding B.V. which, in turn, is duly represented by [.....], in his capacity [.....] and [.....], in his capacity of [.....], hereafter called “**APX**”,
2. **Belpex NV**, a company organised and existing under the laws of Belgium, having its registered office at 66 Boulevard de l’Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602, hereby duly represented by [.....], in his capacity of [.....]and [.....], in his capacity of [.....], hereafter called “**BELPEX**”,
3. **Gestore dei Mercati Energetici S.p.A.**, a company organised and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilsudski, 122/124 00197 Rome, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**GME**”,
4. **OMI Polo Español, S.A. (OMIE)**, a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4ª planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**OMIE**”;
5. **EPEX Spot SE**, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501, hereby duly represented [.....], in his capacity of [.....], hereafter called “**EPEX**”;
6. **Nord Pool Spot AS**, a company incorporated and existing under the laws of Norway with company number 984 058 098 and VAT n° 984 058 098 and having its registered office at Vollsveien 17B, 1366 Lysaker, 0219 Bærum, Norway, hereby duly represented by [.....], in his capacity of [.....], hereafter called “**NPS**”,
7. **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, hereby duly represented by [.....], in his capacity of [.....]and [.....]in his capacity of [.....], hereafter called “**OTE**”,
8. **APX Commodities Ltd.**, a company incorporated under the laws of England, having its registered office at Ergo Building Mere Way, Ruddington Fields Ruddington, Nottingham, Nottinghamshire, NG116JS, UK, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented by [REDACTED]  
[REDACTED]

[REDACTED] hereafter called “APX UK”,

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

And

**Name of Adhering Party**..... a company duly organized and existing under the laws of ....., with registered office in ....., registered with National Trade Register Office under number ....., duly represented by Mr. .... in his capacity of ....., hereafter called "**Adhering Party**"

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

**WHEREAS:**

- (1) On the 13th of June 2012, APX, Belpex, EPEX Spot, GME, OMIE and NPS have signed the PCR Cooperation Agreement and the PCR Co-Ownership Agreement (the “**PCR Agreements**”) and, therefore, have 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 the 28<sup>th</sup> of February 2013 OTE entered into with the other PCR PXs an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement, and has joined PCR Cooperation as of the 1st of March 2013.
- (3) On the 4th of February 2014 APX UK entered into with the other PCR PXs an adherence agreement to the PCR Co-ownership Agreement and an adherence agreement to the PCR Cooperation Agreement, and has retroactively joined PCR Cooperation as of the 1st of February 2014.
- (4) On the ....., the Adhering Party has signed the Associate Member’s Confidentiality Declaration and the status of Associated Member was granted to the Adhering Party by a decision of the Steering Committee dated [●].
- (5) The Adhering Party has expressed its interest in the participation in the PCR Cooperation. Following such first expression of interest, the Adhering Party has formally requested to adhere to the PCR Cooperation by letter to the Steering Committee dated [●].
- (6) On ....., PCR Steering Committee representing all PCR PXs has agreed to the adherence of the Adhering Party;
- (7) The Adhering Party fully acknowledges the content of the PCR Agreements and 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. APX, BELPEX, GME, EPEX, NPS, OTE, APX UK and OMIE 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] if the following conditions are duly fulfilled:
  - a) full payment of the Adherence fee (hereinafter the “**Fee**”) in accordance with the terms and conditions provided in Annex I, and
  - 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.
- 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. In particular, PCR PXs declare that the Adhering Party has received full and complete access to the documentation, commonly filed by PCR PXs, concerning the current status of the ongoing negotiations between the PCR PXs in respect of the PCR Co-ownership Agreement.
- 2.3 Conversely, the Adhering Party declares that it is fully aware of the current status of the ongoing negotiations between the PCR PXs in respect of the PCR Co-ownership Agreement as accessible through the documentation disclosed by to the PCR PXs.

**3. Entry into force and termination**

3.1 This Agreement shall enter into force on ....., 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 nigh (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.

#### **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.

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 liability 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;

4.8 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)*

In witness thereof, the Parties have caused their duly authorised representatives to execute the present Agreement in nine (9) original copies and each Party acknowledges having received its original copy.

<p><b>For APX POWER B.V.</b></p> <p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>	<p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>
<p><b>For BELEPX N.V.</b></p> <p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>	<p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>
<p><b>For APX COMMODITIES LTD.</b></p> <p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>	<p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>
<p><b>For GESTORE DEI MERCATI ENERGETICI S.P.A.</b></p> <p>Name:</p> <p>Function:</p> <p>Date:</p>	

Signature:  _____	
<b>For OMI POLO ESPAÑOL S.A.</b>  Name:  Function:  Date:  Signature:  _____	
<b>For EPEX SPOT SE</b>  Name:  Function:  Date:  Signature:  _____	
<b>For NORD POOL SPOT AS</b>  Name:  Function:  Date:  Signature:  _____	



<p><b>For OTE A.S.</b></p> <p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>	<p>Name:</p> <p>Function:</p> <p>Date:</p> <p>Signature:</p> <p>_____</p>
<p>For (Adhering Party)</p>	

**Annex 1**

**ADHERENCE FEE**

**1. Amount of the Fee**

In accordance with article 12 of PCR Co-ownership Agreement and with section 3.1 of Annex VIII of the PCR Co-ownership Agreement as supplemented by Annex 2, the Fee to be paid by the Adhering Party for obtaining PCR membership is [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2. Proof of past common costs**

Historical proof of the Common Costs, will be based on the monthly common cost expenses sheets managed by the PCR Project Management Office, and approved by the competent body of PCR. When the date of signature of this Agreement shall be fixed, the PCR Project Management Office shall set up an ad hoc common cost expense sheet (hereinafter the “Expense Sheet”,) which shall include all past costs until and including the last complete calendar month prior to date of signature of this Agreement. The Expense Sheet shall be approved by the PCR SC at the latest by the signature of the Agreement and attached as Annex 2.

Following the receipt of the invoices sent by the PCR PXs according to the below section 3, (... fraction number) of the Common Costs reported in the Expense Sheet will have to be paid by the Adhering Party to the PCR PXs within the term set forth under section 3 below.

### **3. Invoicing and payment**

Within 5 (five) working days from the entering into force of this Agreement, the above mentioned six (6) PCR PXs will each invoice their share of the Common Costs to the Adhering Party, based on the approved Expense Sheet.

Each of the six (6) PCR PX shall first send pro-forma invoices via e-mail to the Adhering Party. Subsequently, the regular invoices will be sent within 5 (5) working days by regular mail after approval by the Adhering Party of the pro-forma invoice.

Invoices must be understandable and verifiable, duly compliant with EU VAT regulation in force and must in particular indicate banking information (swift / iban).

The invoices sent by the PCR Parties will be payable by the Adhering Party as of the 14 (fourteenth) calendar day from the reception date of each invoice. Payments due on a day other than a working day shall be made on the first following working day. Payments shall be made in Euro by wire transfer to the bank account indicated by the PCR PX(s) on the invoice.

Annex 2

HISTORICAL COSTS

**PCR Co-ownership Agreement**

**ANNEX IV**

**Contacts**

For Belpex

[REDACTED]

[REDACTED]

For APX Power B.V

[REDACTED]

[REDACTED]

For EPEX SPOT SE

[REDACTED]

For GME

[REDACTED]

For OMIE

[REDACTED]

For Nord Pool Spot AS

[REDACTED]

For OTE

[REDACTED]

**Contacts for invoicing and payment**

For Belpex

[REDACTED]

For EPEX SPOT SE:

[REDACTED]

For APX Power B.V

[REDACTED]

For GME

[REDACTED]

For OMIE

[REDACTED]

For Nord Pool Spot AS

[REDACTED]

For OTE

[REDACTED]



**PCR Co-Ownership Agreement**

**ANNEX V**

**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:

- a PCR Co-Ownership Agreement, organising for a co-ownership between the Parties in respect of Co-Owned Assets and setting forth the terms and conditions of this co-ownership, which entered into force on [XXX INSERT DATE] (hereafter the “**Co-Ownership Agreement**”); and
- a PCR Cooperation Agreement setting forth the terms and conditions of the cooperation between the Parties in respect of the performance and operation of PCR Market Coupling and of the development, testing and maintenance of Co-Owned Assets used for PCR Market Coupling, which entered into force on [XXX INSERT DATE] (hereafter the “**Cooperation Agreement**”).

- B) On [XXX INSERT DATE] Licensee's participation to the Cooperation Agreement terminates.
- C) Article [17.4] of the Co-Ownership Agreement provides the following in the event of termination of the participation to the Cooperation Agreement:

**17.4. Early termination in the event of termination of the participation to the PCR Cooperation Agreement**

*17.4.1. In the event of termination of the PCR Cooperation Agreement by mutual agreement of the Parties thereto, for any reason whatsoever, the Agreement shall continue to be in force, unless differently agreed in writing by the Parties. In such event, in accordance with Article 19.2., the Parties shall immediately commence good faith negotiations in order to review the Agreement, or/and its Annexes.*

*17.4.2. 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 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.*

*17.4.3. In the event the participation to the PCR Cooperation Agreement of an Original Owner is terminated (for any reason whatsoever):*

- c) 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, 9.4, 9.6 c, 10, 11, 15 to 23 (included); such Original Owner thus remains Party to this Agreement for the purpose of application of the aforementioned Articles.*
- d) 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, 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, without any remuneration being due, the Exit License set forth in Annex V for the use of the Exit Version of the Co-Owned Assets other than the Pre-Existing Assets. The Original Owner whose participation to the PCR Cooperation Agreement was terminated accepts hereby such Exit License.*
- D) Pursuant to Article [17.4] of the Co-Ownership Agreement Parties thus wish to enter into this License Agreement, which sets forth the rights and obligations of the Licensors and the Licensee

in respect of the Exit License to be granted to the Licensee on the Exit Version of the Co-Owned Assets.

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

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**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 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;
- Consideration:** means the considerations that have lead the Parties to enter into this License Agreement as described after the word “whereas” on p. 2;
- 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;

**Cooperation Agreement:** shall have the meaning set forth in Consideration A);

**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 Consideration A);

**Dispute:** shall have the meaning set forth in Article 10.3;

**Disputing Parties:** shall have the meaning set forth in Article 10.4;

**DS Chairman:** shall have the meaning set forth in Article 10.5;

**DS Failure Notice:** shall have the meaning set forth in Article 22.5;

**DS Notice:** shall have the meaning set forth in Article 10.5;

**DSR:** shall have the meaning set forth in Article 10.4;

**Dispute Settlement Request:** shall have the meaning set forth in Article 10.4;

**Exit Version:** means the version of a Co-Owned Asset as existing at the date the participation of the Licensee to the Cooperation Agreement terminated;

**External Representative:** shall have the meaning as set forth in Article 7.2.3

**First Class Licensed Material:** 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 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 3.6 of this License Agreement;
<b>License Territory:</b>	means the territory for which the License is granted to the Licensee as provided by Article 3.7;
<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 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;
<b>Market Splitting:</b>	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;
<b>MIC:</b>	means the minimum income condition;
<b>Modification:</b>	means any change, any derivative work, any new version release or any other update, upgrade of the Licensed Material;
<b>MPC:</b>	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 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 3.2.1 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;
- Pre-Existing Asset:** 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.;
- Pre-Existing Market Coupling:** 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.
- PUN:** means the Italian uniform purchase price;
- 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;

<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 4.1 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;
<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;

- TSO:** means a transmission system operator;
- 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 ;
- Working Hours:** 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.
- 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



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

### **3.4 Obligations of the Licensee**

3.4.1 The Licensee shall use the Licensed Material only in accordance with the Permitted Use and in accordance with the provisions of this License Agreement.

3.4.2 The Licensee shall:

- a. Refrain from exploitation for the Permitted Use as described in Articles 3.2.1 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;
- 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).



**3.5** The Licensors reserve all rights not explicitly granted.

**3.6 License Term**

[REDACTED]

3.6.2 The Licensors may immediatly, 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.

**3.7 License Territory**

The License is granted worldwide.

**ARTICLE 4 Fee and payment conditions**

[REDACTED]

[REDACTED]

## **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 3.2.1 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 3.2.1 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;
- 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 3.2.1 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
- 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 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**

### **8.1 Licensors' liability**

**8.1.1** Except in the event of wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraud ("*bedrog*" / "*fraude*"), the Licensors 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, loss of programs or data, any cost/expense in connection with or arising out of this present Agreement, 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 in connection with or arising out the License Agreement.

**8.1.2**





**8.1.3** If a breach of this License Agreement occurs, the Licensor shall take reasonable steps to mitigate the damages caused by such breach.

**8.2 Licensee’s liability**



**8.2.2** Except in the event of wilful misconduct (*“opzettelijke fout”/ “faute intentionnelle”*) or fraud (*“bedrog”/ “fraude”*), the Licensee shall only be liable for a maximum amount of hundred thousand 100,000.00 EUR per breach.

**8.2.3** The Licensee shall hold harmless the Licensors against and indemnify them for all claims raised by Third Parties, which are related to the exploitation by the Licensee of the Licensed Material. Such claims expressly include any cause of action raised by participants to the market(s) for which the Licensee exploits the Licensed Material.

**8.2.4** The Licensee is responsible for any action or conduct of their employees, assistants, consultants, contractors and/or agents.

**8.2.5** If a breach of this License Agreement occurs, the Licensee shall take reasonable steps to mitigate the damages caused by such breach.

**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 3.6. 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.

**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;
  - 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.

**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 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**

[REDACTED]

[REDACTED]

[REDACTED]

**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**

**2.1. Granting of a Sub-License**

**2.1.1. Granting of a Sub-License for the First Class Licensed Material to TSOs within the Anticipated Scope of PCR**

[REDACTED]

**2.1.2. Granting of a Sub-License for the First Class Licensed Material inside or outside the Anticipated Scope of PCR**

[REDACTED]

**2.2. *Service Provision using the First Class Licensed Material***

**2.2.1.** For the case services are rendered using the First Class Licensed Material:

- a) a fixed fee equal to 100.000EUR for using the algorithm as part of the service
- b) a fixed fee equal to 20.000 EUR for using the matcher, broker and helper application as part of the service.

**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 Spot 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

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**

**ANNEX VII: STANDARD LICENSE**

**PCR Co-Ownership Agreement**

**ANNEX VI**

**STANDARD LICENSE<sup>39</sup>**

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<sup>39</sup> Modified and replaced by the Second Amendment

## 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**”.

**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:**

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**ANNEX I: SCOPE OF THE LICENSE**

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**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 bematched 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;

<b>ICC:</b>	shall have the meaning set forth in Article 11 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 land/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;

**Licensed Material:** shall have the meaning as set forth in Annex I, section II;

**License Term:** means the term for which the License is granted as set forth in Article 3.3 of this License Agreement;

**License Territory:** 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;

**Licensee:** 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;

**Licensor:** means the Parties to this License Agreement as identified in the parties' description at the beginning of this License Agreement, who grants this License;

**Market Coupling:** 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;

**Market Splitting:** 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;

**Modification:** 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;
<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), 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”).
- 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;
- 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 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 consideration – 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**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**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.

**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;
- 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

- 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 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;
  - 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 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 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 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**

[REDACTED]

[REDACTED]

[REDACTED]

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

[INSERT OPTION]

**IV. License Territory**

[REDACTED]

[REDACTED]

[REDACTED]

**Annex II: Licensed Material Documentation**

**Annex III: License Fee, Invoicing and Payment**

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**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]

**Annex VI: 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) APX Power B.V., a company organized and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360,
- (2) Belpex NV, a company organized and existing under the laws of Belgium, having its registered office at 66 Boulevard de l’Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602, ,
- (3) Gestore dei Mercati Energetici S.p.A., a company organized and existing under the laws of Italy, having its registered office at Largo Giuseppe Tartini, 3/4, 00198 Rome, Italy, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, ,
- (4) OMI Polo Español, S.A. (OMIE), a company organized and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558,;
- (5) EPEX Spot SE, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501,;
- (6) Nord Pool Spot AS, a company incorporated and existing under the laws of Norway, having its registered office at Granfos Næringspark, Vollsveien 17B, 1366 Lysaker, Norway and registered with the commercial register in Norway under the number 984 058 098 and VAT n° 984 058 098 ,
- (7) 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,
- (8) APX Commodities Ltd., a company incorporated under the laws of England, having its registered office at Ergo Building Mere Way, Ruddington Fields Ruddington, Nottingham, Nottinghamshire, NG116JS, UK, registered in the commercial register at 03751681 and VAT n° GB728415527, hereby duly represented [REDACTED]

“APX UK”,

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,
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 set off against 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;
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.

**Annex VII: List Permitted Access Holders**

Signed in seven originals, in \_\_\_\_\_, on \_\_\_\_\_.

[\_\_\_\_\_]

Signature :

**PCR Co-Ownership Agreement**

**ANNEX VII**

**TSO LICENSES**

## License Agreement

### BETWEEN ON THE ONE HAND

- (1) **Nord Pool Spot AS**, a company incorporated and existing under the laws of Norway, with registered office at Vollsveien 17B, 1366 Lysaker, Norway and registered with the Commercial Register in Norway n° 984 058 098 and VAT n° 984 058 098 MVA, hereby duly represented by [INSERT NAME AND FUNCTION] (hereinafter “**NPS**”);

And

- (2) **EPEX Spot SE**, a European Company (Societas Europaea) incorporated and existing under the laws of France, with registered office at 5 Boulevard Montmartre, 75002 Paris, France, and registered with the Commercial Register in Paris under n° 508 010 501 and VAT n° FR 10508010501, hereby duly represented by [INSERT NAME AND FUNCTION] (hereinafter “**EPEX Spot**”);

And

- (3) **OMI Polo Español S.A. (OMIE)**, a company incorporated and existing under the laws of Spain, with registered office at Alfonso XI n° 6, 28014 Madrid, Spain, and registered with the Commercial Register in Madrid under Section 8, Hoja: M-506799, VAT N° ESA86025558, hereby duly represented by [INSERT NAME AND FUNCTION] (hereinafter “**OMIE**”);

And

- (4) **APX Power B.V.**, a limited liability company incorporated and existing under the laws of the Netherlands, with registered office at Hoogoorddreef 7, 1101 BA Amsterdam, the Netherlands, and registered with the Commercial Register in Amsterdam under n° 34153887 and VAT n° NL 809684639, hereby duly represented by [INSERT NAME AND FUNCTION] and by [INSERT NAME AND FUNCTION] (hereinafter “**APX**”);

And

- (5) **Belpex NV**, a limited liability company, incorporated and existing under the laws of Belgium, with registered office at Boulevard de l’Impératrice 66, 1000 Brussels, Belgium, and registered with the Registry of Enterprises (RPR Brussels) under n° 874978602 and VAT n° BE 0874 978 602, hereby duly represented by [INSERT NAME AND FUNCTION] and by [INSERT NAME AND FUNCTION] (hereinafter “**Belpex**”);

- (6) **Gestore dei Mercati Energetici S.p.A.**, a company incorporated and existing under the laws of Italy, with registered office in Largo Giuseppe Tartini, 3/4, Rome, Italy, and registered with the Companies' Register of Rome n° RM 953866, Italian tax code and VAT n° 06208031002, hereby duly represented by [INSERT NAME AND FUNCTION] (hereinafter “**GME**”);

And

- (7) **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, hereby duly represented by [INSERT NAME AND FUNCTION] (hereafter “**OTE**”);

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:**

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**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:

<b>Annex:</b>	means any schedule to this License Agreement;
<b>Anticipated Scope of PCR:</b>	<p>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:</p> <ul style="list-style-type: none"> <li>□ the expression “<i>electrically connected country</i>” 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;</li> <li>□ 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;</li> </ul>
<b>Article:</b>	means any article of this License Agreement;
<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 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;
<b>Confidential Information:</b>	shall have the meaning set forth in Article 8 of this License Agreement;
<b>Co-Owned Assets:</b>	means the assets that are co-owned by the Parties under the PCR Co-Ownership Agreement;
<b>Documentation:</b>	means the supporting documentation, and information necessary to use the Licensed

Material as listed 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 23 of this License Agreement;

**Intellectual Property Rights (“IPR”):**

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;

**Internal Representative:**

Shall have the meaning ascribed to it under Article 8.5 of this License Agreement;

**Legal Provision:**

means any type of mandatory legal provision of public order, proclaimed by any

<b>License</b>	competent authority;  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 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 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.



## 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 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 priority 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 consideration - 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.

**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**

[REDACTED]

[REDACTED]

[REDACTED]

**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,

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

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 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**

- 9.1.1** The Licensors are liable only for damage resulting from breaches of this License Agreement that qualify as gross negligence, wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraud ("*bedrog*" / "*fraude*") and that are directly attributable to the Licensors.

**9.1.2**



  
**9.1.3** **9.2 Licensee's liability**

- 9.2.1** The Licensors shall be entitled to claim full compensation for any and all damages, losses, 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** A breach (including a breach as a result of gross negligence ("*grove fout*" / "*faute grave*"), wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraud ("*bedrog*" / "*fraude*")) by the Licensee of its commitments under Article 15, Article 19 of this License Agreement shall give rise to the payment of a lump sum indemnification to be paid by the Licensee to the Licensors equal to EUR XXX per breach, it being understood however that in the event of a breach of its confidentiality obligations under Article 20 of this License Agreement the lump sum indemnification to be paid by the Licensee to the Licensors will be equal to EUR XXX per breach . The lump sum indemnifications set forth in this Article 21.2.2 are without prejudice to the Licensors' right to claim indemnification for all damages incurred in excess of the lump sum due to a breach by the Licensee.
- 9.2.3** Except in the event of wilful misconduct ("*opzettelijke fout*" / "*faute intentionnelle*") or fraud ("*bedrog*" / "*fraude*"), the aggregate liability of the Licensee arising from breach of warranty, breach of contract, negligence, or any other course of action shall not, including in the event of gross negligence ("*grove fout*" / "*faute grave*"), exceed the amount of [1.000.000 €] per breach.
- 9.2.4** The Licensee shall hold harmless the Licensors for all claims raised by third parties, which are directly related to the failure 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 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);
- 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 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.

**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: APX By: Function: Signature:	For: BELPEX By: Function: Signature:
For: EPEX By: Function: Signature :	For: NPS By: Function: Signature:
For : OMIE By : Function : Signature :	For: GME By: Function: Signature:
For: OTE 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) APX Power B.V., a company organised and existing under the laws of The Netherlands, having its registered office at Hoogoorddreef 7, 1101 BA Amsterdam, The Netherlands, and registered with Commercial Register in Amsterdam under the number 50969390 and VAT n° NL822972360,
- (2) Belpex NV, a company organised and existing under the laws of Belgium, having its registered office at 66 Boulevard de l'Impératrice, 1000 Brussels, Belgium, and registered with the Crossroads Bank for Enterprises RPR under the company number 0874 978 602 Court of Brussels and VAT n° BE 0874 978 602, ,
- (3) Gestore dei Mercati Energetici S.p.A., a company organised and existing under the laws of Italy, having its registered office at Viale Maresciallo Pilsudski, 122/124, 00197 Rome, Italy, registered with Companies Register of Rome under the number RM 953866 under Italian tax code and VAT n° IT 06208031002, ,
- (4) OMI Polo Español, S.A. (OMIE), a company organised and existing under the laws of Spain, having its registered office at Alfonso XI n° 6, 4a planta, 28014 Madrid, Spain, and registered with Commercial Register in Madrid under Section 8, Hoja: M-506799 and VAT n° ESA86025558,;
- (5) EPEX Spot SE, an European Company (Societas Europae) incorporated and existing under the laws of France, having its registered office at 5 Boulevard Montmartre, 75002 Paris, France and registered with the Commercial Register in Paris under the number 508 010 501 and VAT n° FR 10508010501,;
- (6) Nord Pool Spot AS, a company incorporated and existing under the laws of Norway, having its registered office at Granfos Næringspark, Vollsveien 17B, 1366 Lysaker, Norway and registered with the commercial register in Norway under the number 984 058 098 and VAT n° 984 058 098 ,  
1.
- (7) 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,

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,
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;
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**
- f. **Options**

[IF APPLICABLE] **Annex III: Invoicing and Payment**

**Annex IV: Contact information**

**Annex V: List of Permitted Access Holders**

## Co-ownership Agreement

### ANNEX VIII

#### Financial aspects of the PCR Cooperation<sup>40</sup>

1. GENERAL
2. PCR COSTS
  - 2.1 Co-Owned Assets: maintenance and support costs
  - 2.2 Common PCR administrative costs
  - 2.3 Operations Fee
  - 2.4 Costs of changes to Co-Owned Assets
3. PCR INCOME
  - 3.1 Adherence of a new Party
  - 3.2 Licensing of First Class Co-Owned Assets and service provision using First Class Co-Owned Assets
  - 3.3 Yearly Upgrade Fee
  - 3.4 Services provisions by PCR Parties to third parties
4. INVOICING AND PAYMENTS OF PCR INCOME AND PCR COSTS
5. BUDGETING
6. STANDARD MAN DAY TARIFF

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<sup>40</sup> New Annex introduced by the Second Amendment which has replaced the previous Annex III named “Remuneration Scheme: remuneration due in respect of Co-Owned Assets”

**1. GENERAL**

Capitalised terms used in this Annex shall have the meaning set forth in Article 1 of the PCR Co-Ownership or PCR Cooperation Agreement or in Attachment 1.

The scope of this Annex is to describe and set the terms and conditions applicable to the financial aspects (costs of the common activities, PCR income as well as the sharing of such common income and cost and the invoicing, payments and settlements modalities) of the PCR Cooperation.

The costs and benefits described in this Annex are shared on an equal basis between the co-owners except otherwise decided by the Parties, consistently with Article 5.1 of the PCR Co-ownership Agreement.

The Parties shall send this Annex and its subsequent modifications to ACER for information purposes. The parties shall assure the consistency of this Annex with the Governance Guidelines, as the case may be.

**2. PCR COSTS**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

**2.1. Co-Owned Assets: maintenance and support costs**

[Redacted]

**2.1.1. Co-Owned Assets: common maintenance and support costs (off-line)**

[Redacted]

**2.1.2. Co-Owned Assets: Online maintenance and support costs**

[Redacted]

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41 [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

**2.2. Common PCR administrative costs**

[Redacted]

**2.3. Operations Fee**

[Redacted]

[Redacted]

[Redacted]

[Redacted]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2.4. Costs of changes to Co-Owned Assets**

[REDACTED]

- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

[REDACTED]

**2.4.1. Cost sharing**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**2.4.2. Retribution to PCR Parties**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**3. PCR INCOME**

PCR income is formed by:

- a) the historical cost paid by the Adhering Parties,
- b) the amounts due for the licensing of First Class Co-Owned Assets and for the service provision using First Class Co-Owned Assets including the amounts due for providing benefits of upgrades and developments of First Class Co-Owned under licensing or service provision,
- c) the amounts due for the rendering of certain services by all PCR Parties to third parties, whether PXs, TSOs, regulators, etc. Such services could *inter alia* consist in simulation, testing, support or training services.

The SC shall set forth the terms and conditions applicable to any PCR income not foreseen by this section 2.

**3.1. Adherence of a new Party**

A Power exchange aiming at Adhering to the PCR Co-ownership agreement and to the PCR Cooperation agreement (“Adhering Party”) shall pay the Adherence Fee pursuant to Article 12 of the PCR Co-ownership Agreement and Article 8.3 n. ii) of the PCR Cooperation Agreement. The amount of the

Adherence Fee corresponding to the Adhering Party's share of the Historical Costs is the remuneration due to the Parties for the granting of the Co-ownership to the Adhering Party.

The amount of the Adherence Fee is calculated as:

- A) the sum of:
  - 1) a proportionate share of the Historical Costs, equal to  $1/x$  of the Historical Costs where  $x$  is the number of existing Parties plus the relevant Adhering Party.
  - 2) a possible pre-estimated fee (fix amount plus variable amount) by the other co-owners for the inclusion of this Adhering Party in PCR Market Coupling (eg. costs for integration tests etc.) as further described in to Annex Adherence Agreement.
  
- B) less all the amounts that contributed to the Historical Costs (See definition) already paid by the Licensing/Service Party for the Adhering Party ( ex Licensed/Service PX ), should the Adhering Party previously have been a Licensed/Service PX according to Section 3.2.

Should the inclusion of this Adhering Party in PCR Market Coupling (eg. costs for integration tests, physical workshops for familiarization etc.) determine a cost for the other Parties, such cost shall be bared by the Adhering Party if confirmed by the SC.

Unless differently decided by the Steering Committee, the Adherence process(es) shall be planned in order to assure, consistently with the terms and conditions of the adherence agreement, that the Adhering Party(ies) completes the relevant Adherence processes(es) at the beginning of each quarter of calendar year.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

The remuneration due by the Licensed TSO pursuant to Article 6.1.2.2.c) of the PCR Co-Ownership Agreement shall be equal to the PCR Costs as further described in Section 2 of this Annex and the Yearly Upgrade Fee. For the avoidance of any doubt, no One Time Amount Fee shall be due by the Licensed TSO(s).

**3.2.2. Granting of a License for the Co-Owned Assets outside the Anticipated Scope of PCR**

[REDACTED]

[REDACTED]

**3.2.3. Granting of a License to PXs for the First Class Co-Owned Assets inside the Anticipated Scope of PCR**

[REDACTED]

[REDACTED]

[REDACTED]

**3.2.4. Service Provision using the First Class Co-owned Assets within or outside the Anticipated Scope of PCR**

[REDACTED]

**i. Services for the operation of a Serviced PX's market in Isolated Mode**

[REDACTED]

[REDACTED]

[Redacted]

ii. Services for including a Serviced PX's market in the PCR Market Coupling.

[Redacted]

[Redacted]

[Redacted]

[Redacted]

iii. Services for the operation of the Simulation Facility

[Redacted]

[Redacted]

3.2.5. Granting of a License or Service Provision by an Original Owner using the Pre-Existing Assets outside the Anticipated scope

[Redacted]

3.3. Yearly Upgrade Fee

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**3.4. Services provisions by PCR Parties to third parties**

The Parties may decide, by ways of a decision of the PCR SC, to jointly render certain services to third parties, whether PXs, TSOs, regulators, etc. Such services could *inter alia* consist in simulation, testing, support or training services.

The price and the terms and conditions of payment of such services will be decided by the PCR SC on a case-by-case basis. As regards the terms and conditions of invoicing and payment, the PCR SC will choose one of the below mentioned options:

1) Power of attorney

One of the Parties will be appointed by the PCR SC as Special Point of Contact (“SPOC”) and enter into

- i) a services agreement with the third party on behalf and for the account of all the Parties. This agreement will provide the terms and conditions under which the SPOC will invoice and receive payment of the price by the third party in compliance with the decision of the PCR SC and item ii)
- ii) a power of attorney signed with all Parties substantially similar to the template provided in Annex 10 to the PCR Cooperation Agreement. These agreement will provide the terms and conditions under which the Parties will invoice to the SPOC their own costs incurred for the service provision in accordance with below Articles 4.2.1 and 6.

2) Common services provision

All Parties will enter into a services agreement with the third party. This agreement will provide the terms and conditions under which each Party will invoice and receive payment by the third party of its costs, without application of Article 4.2.1 and 6, except decided otherwise by the PCR SC.

#### **4. INVOICING AND PAYMENTS OF PCR INCOME AND PCR COSTS**

##### **4.1. Invoicing and payments of PCR Income**

PCR incomes are invoiced to and paid by either the Adhering Party or the Licensing/Service Party or the Licensed TSO.

Regarding the Adhering Party, the relevant invoicing and payment process is governed by Annex I of Annex III to PCR Co-ownership Agreement (Adherence Fee).

Regarding the Licensing/Service Party, the relevant invoicing and payment process is governed by section 4.2.2 below.

Regarding the Licensed TSOs, the invoicing and payments shall be set forth in the relevant License Agreement.

Invoicing procedure applicable to TSO Licenses will be provided as soon as PCR will provide the first License to any requesting TSOs.

##### **4.2. Invoicing and payments of PCR costs**

###### **4.2.1. Invoicing and payment of PCR costs by Parties**

The invoicing and payment of PCR costs shall be performed quarterly according to the following procedure:

1. within the 20th working day after the end of each quarter, the Secretary of the SC will send via e-mail to each SC member, a timesheet providing the quarterly costs overview particularly allocated to Operational Costs and Development Costs as identified by the yearly approved budget, based on the Standard Day Tariff, should the cost be related to a Party's internal resources, or on an approved fee, should the cost be related to a Third Party's service provision.
2. In case no objection to the such timesheet is raised by any of the SC members within 10 working days after its reception, the SC will approve, on the subsequent working day (i.e. 11<sup>th</sup> working day following the reception of the timesheet by the SC members), a document (Quarterly

Balance) prepared by the Secretary of the SC which shall list the overall quarterly amount(s). This document shall indicate, at least:

- a. the amounts, valued in euro, to be issued by each Party with a clear identification of the various cost items
- b. the amounts, valued in euro, to be paid by each Party with a clear identification of the various cost items, and also respecting market which is serviced/licenced.
- c. the cumulative common costs from the start of the PCR project (historical cost)
- d. the practical details for invoicing (see attachment 2)
- e. any invoicing constraint (see attachment 2)

All of the amounts valued in EUR and costs mentioned above shall be also summed to Operational Costs and Development Costs as identified by the yearly approved budget.

3. based on the amounts fixed in the document provided by the Secretary of the SC, the Parties shall issue and send the invoices, exclusively by email, within the end of the month in which the Quarterly Balance is approved by the SC. It is understood that the Quarterly Balance shall be attached to the relevant invoices. The invoice shall indicate which amounts are to be considered as Operational Costs and Development Costs as identified by the yearly approved budget.
4. Each Party shall pay the invoiced amounts within thirty (30) days from the receipt of the relative invoice(s), if duly compliant with EU VAT regulation in force. All payment(s) shall be made by wire transfer to the bank account indicated in the invoice(s).
5. Regarding the costs described under section 2.4 (changes to Co-Owned Assets), each Co-founder of the past change sends an invoice to the new user of it for an equal share in the reimbursed costs, according to the indications provided by the Secretary of the SC. Before using a feature developed in a past change request, a new user shall pay all invoices to the original Co-founders, according to the indications provided by the Secretary of the SC.

Each SC representative will inform the Secretary of the SC and SC of the payment process status.

#### **4.2.2. Invoicing and payment of PCR costs by Servicing/ Licensing Parties**

##### **A) One Time Amount Fee or Simulation Facility One-off Fee**

The Licensing or Servicing Party will receive from each of the other Parties/Original Owners a pro rata invoice of the One Time Amount Fee or Simulation Facility One-off Fee within the first month in which the License has been entered into or Servicing Party starts the service provision between the Licensing or Servicing Party and the Third Party PX. The invoices are required to be duly compliant with EU VAT regulation in force and must indicate banking information (swift / iban) and address of the bank(s), to be used for the bank transfer.

The invoices will be paid by the Licensing or Servicing Party within thirty (30) calendar days from the reception date of each invoice. Payments due on a day other than a working day shall be made on the first following working day. Payments shall be made in Euro by wire transfer to the bank account indicated by the PCR PX(s) on the invoice.

##### **B) Yearly Upgrade Fee**



YUF is computed on a calendar year basis, according to the provisions set forth in Article 2.3. The invoicing and payments process of the YUF shall follow the procedure set forth in Article 4.2.1.

C) Installation and testing cost

The invoicing and payment of the installation and testing cost, due pursuant to Article 3.2.4 ii) let. b), is set forth under paragraph 4.2.1.

D) Yearly fee due for the Use of Euphemia by the Party(-ies) providing services for the operation of the Simulation Facility to one or more TSO or Serviced PX

The invoicing and payment of the Yearly fee due for the Use of Euphemia by the Party(-ies) providing services for the operation of the Simulation Facility to one or more TSO or Serviced PX, due pursuant to Article 3.2.4.iii, is set forth under paragraph 4.2.1.

## **5. BUDGETING**

Except for unforeseeable costs associated with changes to Co-Owned Assets, which are budgeted ad hoc, the budget of all PCR costs is approved by the SC each year during the third quarter upon proposal of the Secretary of the SC. In the third quarter of year X, the budget figures for year X+1 are budgeted on the basis of cost forecast for the next year X+1.

Cost shares of the Contributors for which the Traded Volumes are applicable can be estimated on the basis of the traded volumes recorded for the period year X-1

The budgeting of the Administrative Costs shall be consistent with Attachment 3 to Annex IX of PCR Cooperation Agreement.

The budget of all PCR costs shall define the percentage share of each costs item attributable to Development Cost and Operational Cost

## **6. STANDARD MAN DAY TARIFF**

The Standard Man Day Tariff is decided yearly by the SC, ideally at the moment of budgeting in July.

In case of combination of roles (i.e. a WG leader may take also simultaneously a position of representative of the company (s)he is representing ) during WG calls or meetings, only half the time spent in the concerned WG call/meeting shall be remunerated.

## Attachment 1 – Definition list

“Adherence Fee”	Shall have the meaning set forth in Section 3.1
“Adhering Party”	means any Third Party PX being subject to adherence process of PCR Cooperation and Co-ownership Agreement as described in Article 8 of the PCR Cooperation Agreement and Article 12 of the PCR Co-ownership Agreement
“Co-funders”	means Party (ies) which have paid relevant costs of the change request or new development according to Article 9.5 of PCR Co-ownership Agreement
“Contributor”	means a Party or a Licensed TSO participating through direct payment in PCR costs according to the Sharing Key
“Development Cost”	means the cost bared by the Parties concerning the development of the Co-owned Assets as described in the yearly approved PCR budget
“Governance Guidelines”:	means the governance guidelines for single day-ahead coupling and single intra-day coupling (to be) adopted in accordance with article 18 of the Regulation (EC) N° 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross border exchanges in electricity and repealing Regulation (EC) N° 1228/2003;
Historical Costs:	means all the PCR Costs incurred by the Parties since the 27 <sup>th</sup> of April 2011 up to the signature date of the Adherence Agreement of the relevant Adhering Party with the exception of: <ul style="list-style-type: none"> <li>i) the Operations Fee described under section 2.3 of this Annex and</li> <li>ii) on line maintenance costs described under section 2.1.2 of this Annex</li> </ul>
“Isolated Mode”	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>i) 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>ii) 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>iii) or a project is effectively launched to fulfil the above ii).</li> </ul>
“Licensed PX”	means a Third Party PX granted with a License by a Licensing

	Party in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the PCR Co-ownership Agreement
“Licensed TSO”	means any TSO granted with a License by all Parties in accordance with Article 6.1.2.2 of the PCR Co-ownership Agreement
“Licensing Party”	means any Party granting a License to a Third Party in accordance with Article 5.4 and 6.1.2.1 and 6.3 of the PCR Co-ownership Agreement
“One Time Amount Fee”	means a lump sum amount, as further described in Section 3.2 of this Annex, to be paid by the Servicing/Licensing Party for the right to Use Co-Owned Assets for the benefit of Serviced PX or Licensee with the exception of the Simulation Facility.
“Simulation Facility One-off Fee”	means the lump sum amount described in Section 3.2.4 n. iii) letter a) of this Annex, to be paid by the Servicing Party for the right to Use the Simulation Facility for the benefit of Serviced PX or TSO outside the scope of the PCR Common Operation
“Yearly Upgrade Fee” or YUF	means a yearly fee in Euro per TWh Traded Volumes, related to relevant First Class Co-Owned Assets, as further stipulated in Section 3.3 of this Annex, to be paid by Servicing/Licensing Party and Licensed TSO
“Operations Fee”	means the costs of the Coordinator and Hot Backup Coordinator roles in the Common PCR Operations and any other cost item that will be included in this category by the SC.
“Operational Costs”	means the cost bared by the Parties concerning the use of the Co-owned Assets as described in the yearly approved PCR budget
”PCR Costs”	Are the cost items listed under section 2 of this Annex
“PCR Matcher & Broker”	means the IT system which enables exchange of anonymized orders and area-to-area transmission capacities among the power exchanges to calculate market coupling result with the use of PCR Algorithm
“Quarterly Balance”	Shall have the meaning set forth in Section 4.2.1
“Serviced PX”	Means a Third Party PX being provided with services by a Servicing Party in accordance with Article 6.1.3 and 6.3 of the PCR Co-ownership Agreement
“Servicing Party”	means any Party providing services to a Third Party PX in accordance with Article 6.1.3 and 6.3 of the PCR Co-ownership Agreement
“Sharing Key”	means a key determining the contribution share of Parties and Licensed TSOs on the respective PCR costs. Sharing Key is not

“Standard Man Day Tariff”

identical for all PCR costs and is represented by the specific formula/criteria in each chapter referring to the relevant PCR costs.

“Traded Volume”

Standard Day Tariff means the amount defined in section 6 means the sum of submitted volume which has been accepted by the matching of Bids. In the case of the Italian market, where OTC orders are included in the matching process, this definition excludes the matched OTC orders. This definition differs from as “market clearing volume” (MCV) being usually defined as the maximum of the local supply and demand whereas “traded volume” is the sum of the local supply and demand.

Eg. hour with 50 MW local supply matched and 100 MW local demand

MCV = 100 MW for this period and area

Traded volume=150 MW

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Third Party PX

means a PX other than a Party to the PCR Co-ownership Agreement.

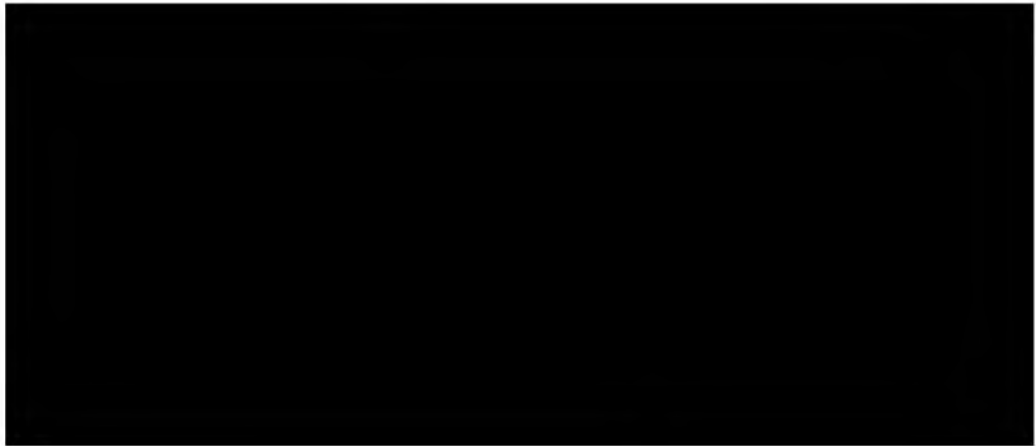
**Attachment 2: Practical details for invoicing**

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

- GME



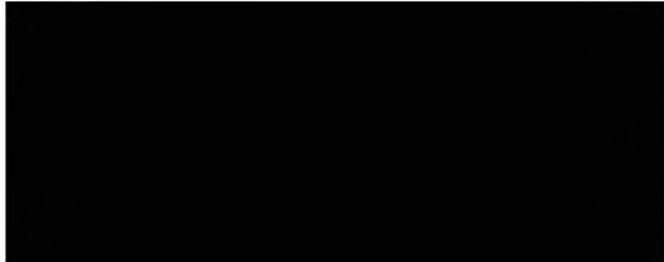
- APX



- OMIE



- NordPool



- EPEX









- OTE



- Structure of the invoice

On every invoice, a split is made between the Operational costs, Development costs and Yearly Upgrade Fee (YUF) of the first class co-owned assets:

- **Operational Costs**  
 “PCR Operations common costs for the period ... -with reference to PCR\_Monthly Cost Overview dated.....” consists of XX EUR
  - **Development Costs**  
 “PCR common costs invoiced by supplier XXXXX for the period ... -with reference to PCR\_Monthly Cost Overview dated.....” consists of XX EUR
  - **YUF**
- Specific constraint for invoicing, required by the article 226 of the Directive 2006/112/CE, e.g. indication of the reference to the applicable provision of the Directive where the supply of services are subject to the VAT reverse charge procedure.
  - Information to THE SECRETARY OF THE SC  
 Information that amounts have been invoiced must be provided to THE SECRETARY OF THE SC in order to maintain the updated status (invoiced/to be invoiced) on each expenses; This info can be sent by email to the following contacts which are in charge of all invoicing matters:
    - **For EPEX Spot SE:**  
 e-mail: 
    - **For APX Power B.V:**  

    - **For GME**  

    - **For OMIE:**  




- **For Nord Pool Spot AS**



- **For OTE, a.s.**



- **Email addresses for Project Board (SC) & Project Manager (THE SECRETARY OF THE SC):**

- For Belpex:

- For APX Power B.V:

- For OMIE

- For GME

- For EPEX Spot

- For Nord Pool Spot AS

- For OTE, a.s.

- For THE SECRETARY OF THE SC: