

Second TCDA Amendment – Annex 1: Consolidated version of the main body TSO COOPERATION AGREEMENT FOR SINGLE DAY-AHEAD COUPLING with the First TCDA Amendment and Second TCDA Amendment provisions  
Confidential

**Annex 1 to the Second TCDA Amendment:**

**Consolidated version of the main body TSO COOPERATION AGREEMENT FOR SINGLE DAY-AHEAD COUPLING with the First TCDA Amendment and Second TCDA Amendment**

**TSO COOPERATION AGREEMENT FOR SINGLE DAY-AHEAD  
COUPLING  
(TCDA)**

**Consolidated version with the First Amendment and Second  
Amendment provisions**

**This Agreement is entered into between:**

- 1.** AFFÄRSVERKET SVENSKA KRAFTNÄT ("**SVENSKA KRAFTNÄT**"), a Swedish state utility, with V.A.T. number SE202100428401, having its registered office at Svenska kraftnät, P.O. Box 1200, SE-172 24 Sundbyberg, Sweden, registered under number 202100-4284;
- 2.** AMPRION GmbH ("**AMPRION**"), a company incorporated under the laws of Germany, with V.A.T. number DE813761356, having its registered office at Robert-Schuman-Straße 7, D-44263 Dortmund, Germany, registered in the commercial register at the Amtsgericht Dortmund under number HRB 15940;
- 3.** AS "Augstsprieguma tīkls" ("**AST**"), a company incorporated and validly existing under the laws of the Republic of Latvia, with V.A.T. number LV40003575567, having its registered office at Darzciema Street 86, Riga, LV-1073, Latvia, and registered with the Commercial Register of the Republic of Latvia with the registration number 40003575567;
- 4.** AUSTRIAN POWER GRID AG ("**APG**"), a company incorporated under the laws of Austria in the form of an AG, with V.A.T. number ATU46061602, with registered office at IZD Tower, Wagramer Str.19, 1220 Wien, Austria, registered with Commercial Court in Vienna with number FN 177696v;
- 5.** Baltic Cable AB ("**Baltic Cable**"), a company incorporated under the laws of Sweden, having its registered office at Gustav Adolfs Torg 47, SE-211 39 Malmö, Sweden, registered under the number 556420-6026;
- 6.** ČEPS, a.s. ("**ČEPS**"), a company incorporated under the laws of Czech Republic, with V.A.T. number CZ25702556, having its registered office at Elektrárenská 774/2, 101 52 Praha 10, Czech Republic, and incorporated in the Commercial Register kept by the

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- Municipal Court in Prague, Section B, Entry 5597, with the Company Identification No. 25702556;
7. CREOS Luxembourg S.A. ("**CREOS**"), a public limited liability company incorporated under the laws of Luxembourg, with V.A.T. number LU10320554, having its registered office at 105, rue de Strassen in L-2555 Luxembourg, registered in the commercial register at Luxembourg under number B. 4513;
  8. Croatian Transmission System Operator Plc. ("**HOPS**"), a company incorporated under the laws of Croatia, with V.A.T. number 13148821633, having its registered office at Kupska 4, 10 000 Zagreb, Croatia, registered in the commercial register at Commercial Court in Zagreb under number 080517105;
  9. EIRGRID plc ("**EIRGRID**"), a company incorporated under the laws of the Republic of Ireland, with V.A.T. number IE6358522H, having its registered office at the Oval, 160 Shelbourne Road, Ballsbridge, Dublin 4, Ireland, registered in the under the number 338522;
  10. ELECTRICITY SYSTEM OPERATOR EAD ("**ESO**"), a company incorporated under the laws of BULGARIA, in the form of an EAD (sole-owner joint stock company), having its registered office at 201, Tsar Boris III Blvd., 1618 Sofia, Bulgaria, registered with the General Commercial Register under the number 175201304, with VAT identification number BG 175201304;
  11. ELERING AS ("**Elering**"), a company incorporated under the laws of Estonia, with V.A.T. number EE100889639, having its registered office at Kadaka tee, 42, 12915 Tallinn, Estonia, registered in the commercial register at Estonia under number 11022625;
  12. ELES, Ltd., Electricity Transmission System Operator ("**ELES**"), a company incorporated under the laws of Slovenia, with V.A.T. number SI20874731, having its registered office at Hajdrihova, Ulica 2, 1000 Ljubljana, Slovenia, registered at the District Court of Ljubljana under entry number 1-09227-00 and registration number 5427223000;
  13. ELIA TRANSMISSION BELGIUM SA/NV ("**ELIA**"), a company incorporated under the laws of Belgium, with V.A.T. number BE731.852.231, having its registered office at Boulevard de l'Empereur, 20, 1000 Brussels, Belgium, registered in the commercial register at Brussels under number 0731.852.231 (legal successor of ELIA SYSTEM OPERATOR SA/NV);
  14. Energinet Systemansvar A/S ("**Energinet**"), a company incorporated under the laws of Denmark, with V.A.T. number 39314959, having its registered office at Tonne Kjærsvvej 65, 7000

- Fredericia, registered in the commercial register at Commercial Register in the Danish Business Authority under number 39314959;
15. FINGRID OYJ ("**FINGRID**"), a company incorporated and existing under the laws of Finland, with V.A.T. number FI10728943, having its registered office at Lökkisepöntie 21, P.O.Box 530, FI-00101 Helsinki, with Commercial Register in Helsinki no 1072894-3;
  16. Independent Power Transmission Operator S.A. ("**ADMIE**" or "**IPTO**"), a company incorporated under the laws of Greece, registered in the General Commercial Registry under number 4001001000, the head offices of which are located at 89 Dyrachiou & Kifisou Str. 10443, Athens – Greece, with EU Community VAT identification number: EL 099877486;
  17. Kraftnät Åland Ab ("**Kraftnät Åland**"), a company organised and existing under the laws of Finland, having its registered office at Dalvägen 3, 22150 Jomala, Finland, and registered with Patent- och registerstyrelsen under the number 1068562-1 and VAT n° 1068562-1;
  18. LITGRID AB ("**Litgrid**"), a limited liability company, incorporated under the laws of the Republic of Lithuania, with V.A.T number LT 100005748413, having its registered offices at Karlo Gustavo Emilio Manerheimos st. 8, 05131 Vilnius, Lithuania, having the registration number 302564383 in the Register of Legal Entities;
  19. MAVIR Hungarian Independent Transmission Operator Company Ltd. ("**MAVIR**"), a company incorporated under the laws of Hungary, with V.A.T. number HU12550753, having its registered office at 1031 Budapest, Anikó u. 4., Hungary, registered in the commercial register at the Hungarian Company Registry Court of Budapest-Capital Regional Court under number 01-10-044470;
  20. National Power Grid Company Transelectrica S.A. ("**Transelectrica**"), a company incorporated under the laws of Romania, with V.A.T. number RO13328043, having its registered office at 33 General Gheorghe Magheru Blvd., 1st District, Bucharest, registered in the commercial register at the Bucharest Trade Registry under number J40/8060/2000;
  21. Polskie Sieci Elektroenergetyczne S.A. ("**PSE**"), a company incorporated under the laws of Poland, with V.A.T. number PL5262748966, having its registered office at Warszawska 165, 05- 520 Konstancin-Jeziorna, Poland, registered in the commercial register at District Court for the Capital City of Warsaw, 14th Commercial Department of the National Court Register under

number KRS 0000197596 and the share capital of 9.605.473.000,00 PLN paid in full amount;

22. Red Eléctrica de España, S.A.U. ("**REE**") a company incorporated under the laws of Spain, with V.A.T. number ESA85309219, having its registered office at Paseo Conde de los Gaitanes, 177, La Moraleja, 28109 Alcobendas (Madrid), Spain, registered in the Commercial Register at Madrid under Sheet M-452031, Section 8, Page 195, Volume 25097;
23. REN – Rede Eléctrica Nacional, S.A. ("**REN**"), a company incorporated under the laws of Portugal, with V.A.T. number PT507866673, having its registered office at Avenida dos Estados Unidos da América, 55, 1749-061 Lisboa - Portugal, registered in the commercial register at Lisbon under number 507 866 673;
24. RTE Réseau de Transport d'Electricité ("**RTE**"), a company incorporated under the laws of France, with V.A.T. number FR19444619258, having its registered office at Immeuble WINDOW – 7C Place du Dôme - 92 073 PARIS LA DEFENSE Cedex, France, registered in the commercial register at Nanterre under number 444 619 258;
25. Slovenská elektrizačná prenosová sústava, a.s. ("**SEPS**") with its registered office at Mlynské nivy 59/A, 824 84 Bratislava, Slovak Republic, incorporated in the Commercial Register kept by the District Court in Bratislava I, Section Sa, Entry 2906/B, with Company Identification No. 35829141;
26. SONI Limited ("**SONI**"), a company incorporated in Northern Ireland, with V.A.T. number GB945676869, having its registered office at 12 Manse Road, Belfast, Co Antrim, BT6 9RT. SONI with registered number NI38715;
27. STATNETT SF ("**STATNETT**"), a state owned enterprise (statsforetak), incorporated under the laws of Norway, with V.A.T. number NO962986633, having its registered office at Nydalen Allé 33, P.O. Box 4904 Nydalen, 0423 Oslo, Norway, with registration no. 962 986 633;
28. TENNET TSO B.V. ("**TenneT**"), a company incorporated under the laws of the Netherlands, with V.A.T. number NL815310456B01, having its registered office at Arnhem, Utrechtseweg 310, P.O. Box 718, 6800 AS, the Netherlands, registered in the commercial register of the Chamber of Commerce under number 09155985;
29. TENNET TSO GmbH ("**TTG**"), a company incorporated under the laws of Germany, with V.A.T. number DE815073514, having its registered office at Bernecker Str. 70, 95448 Bayreuth, Germany,

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registered in the commercial register at Bayreuth under number HRB 4923;

30. TERNA - Rete Elettrica Nazionale S.p.A. ("**TERNA**"), a company incorporated under the laws of Italy, with tax code and V.A.T. number 05779661007, registered at the Rome Register of Companies, with registered office at Viale Egidio Galbani 70 - 00156 Roma, Italy;
31. TRANSNET BW GmbH ("**TransnetBW**"), a limited liability company (GmbH) incorporated under the laws of Germany, with V.A.T. number DE191008872, having its registered office at PariserPlatz, Osloer Str. 15-17, 70173 Stuttgart, Germany, registered with the commercial register of Stuttgart under number HRB 740510;
32. 50Hertz Transmission GmbH ("**50Hertz**"), a company incorporated under the laws of Germany, with V.A.T. number DE813473551, having its registered office at Heidestraße 2, 10557 Berlin, Germany, registered under the number HRB 84446 B (Amtsgericht Charlottenburg);

Each referred to individually as a "**TSO**" or "**Party**" and/or collectively referred to as the "**TSOs**" or the "**Parties**"

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## **PREAMBLE**

### **WHEREAS**

- A. Within the framework of the energy strategy of the European Commission to create a single electricity market throughout the EU and adjacent regions, also enacted in the Regulation (EC) 714/2009, several day-ahead market initiatives were launched;
- B. Some of the Parties have in this connection signed the TSO COOPERATION FOR OPERATION AND EXTENSION OF PRICE COUPLING AGREEMENT dated October 28, 2013 (the "**TCOA**"), which was underlying an agreement entered into with some NEMOs, the MRC DAOA of 30 January 2015 (including a further amendment with retroactive entry into force date of 04 February 2016) setting forth the main terms and conditions under which these Parties cooperated to operate the MRC Price Coupling (the "**MRC DAOA**");
- C. In the meantime, CACM entered into force in August 2015;
- D. Within this framework, the Parties have entered with NEMOs into the Single Day-Ahead Coupling Operations Agreement (the "**DAOA**") in order to regulate their cooperation in respect of the operation and further development of the Single Day-Ahead Coupling;
- E. The TSOs also decided to enter into a cooperation agreement between themselves, the TSO Cooperation Agreement for Single Day-Ahead Coupling (hereafter the "**Agreement**" or "**TCDA**"), to regulate their cooperation between TSOs only in respect of the operation and further development of the Single Day-Ahead Coupling (the "**Cooperation**") (it being understood that the NEMOs are entering into their own cooperation agreement, being the "**ANDOA**"). The relevant and already applicable CACM provisions were taken into account by the Parties while drafting the Agreement;
- F. Since the original signing of the Agreement, several new Parties have adhered to it (ElecLink and NGIFA2) and several Parties exited the



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- Agreement (BRITNED, ElecLink, NemoLink, NGIFA2 and NATIONAL GRID);
- G. The Agreement (and its equivalent for SIDC, being the TSO COOPERATION AGREEMENT FOR SINGLE INTRADAY COUPLING or “**TCID**”) was amended a first time (second for the TCID) (the “**First TCDA Amendment**”) to implement various changes following a first amendment to the DAOA entered into with the NEMOs, with the main aim to implement a joint governance mechanism together with the signatories of the IDOA for the market coupling cooperation under SIDC and SDAC with a view to increasing efficiency and synergies (the “**Joint Governance**”);
- H. The Agreement was amended a second time (hereafter the “**Second TCDA Amendment**”) to implement the so-called qualified majority voting mechanism (hereafter the “**QMV**”), as provided in Article 4;
- I. For information purposes only, PSE hereby declares that it has the status of a large enterprise, as defined in Article 4 (6) of the Polish Act on counteracting excessive delays in commercial transactions (Dz.U. [Journal of Laws] from 2020, item 935, 1086, as amended). This status is also defined in Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty on the Functioning of the European Union (OJ EU L 187, 26 June 2014, as amended).

**IN CONSIDERATION OF THE ABOVE, THE PARTIES HEREBY AGREE, UNDER THE TERMS AND CONDITIONS OF THE AGREEMENT, AS FOLLOWS:**

## **Article 1–Definitions and contractual documents**

### **1.1 Definitions**

Capitalised terms used in this TCDA have the meaning set forth in Appendix A.

### **1.2 Contractual documents**

1.2.1. This TCDA is composed of the main text of the Agreement and its Appendixes.

1.2.2. All Appendixes referred to in this TCDA form an integral and inseparable part thereof. Any reference to the TCDA includes the Appendixes and vice versa.

1.2.3. The list of Appendixes at the date of signature of the Agreement are the following:

Appendix A: Definitions

Appendix B: Parties' contact and invoicing details

Appendix C: Accession Form

Appendix D: Rules of Internal Order (RIO)

Appendix E: Cost sharing, monitoring and settlement

Appendix F: List of SLAs

Appendix G: Controller Information Clause

Appendix H: Statistical data to be used for the calculation of the voting share

### **1.3 Interpretation**

In the event of any contradiction between terms set out in an Appendix, and terms set out in the Agreement, the terms set out in the Agreement shall prevail.

#### 1.4 **CACM Compliance**

The Agreement, including its Appendix(es), shall at all times be in compliance with CACM, and with the terms, conditions, plans and methodologies developed and approved by the NRAs under CACM, that shall all prevail over the Agreement. In case of non-compliance, Article 17.6 shall apply (it being understood that the application of Article 17.6 does not prevent Parties from proposing changes to the terms, conditions, plans and methodologies under CACM).

#### **Article 2–Purpose and scope**

The scope of this Agreement is to set forth the rights and obligations of the Parties in respect of TSOs-only aspects of the cooperation set forth under the DAOA, being i) the implementation of CACM with respect to the SDAC that requires the cooperation of TSOs and NEMOs at European level, including the common operation and further development of the SDAC, and ii) the performance of the Joint Governance (hereafter, collectively, the “Cooperation”).

The purpose of this TCDA is to:

- i) set forth the general principles for the Cooperation, including to specify the general terms, conditions, rights and obligations thereunder;
- ii) facilitate, support and implement the SDAC in accordance with the actions, tasks or obligations imposed on the TSOs jointly by CACM and DAOA;
- iii) set forth the governance structure for the Cooperation and organize the various’ TSOs alignment necessary to achieve the Joint Governance;

- iv) set forth the rules on financial management (including cost sharing) of the Cooperation;
- v) set forth the general principles to subcontract or delegate certain obligations as set forth in this Agreement, or in the DAOA towards the TSOs jointly, to a third party.

### **Article 3–Principles of cooperation**

#### **3.1 General principles of Cooperation:**

##### **3.1.1. No partnership or joint venture**

This Agreement will in no event be considered as a partnership or joint venture or other association between the TSOs, nor will any TSO be considered to be the agent of another TSO.

##### **3.1.2. Good faith cooperation**

The Parties undertake to cooperate in good faith and to comply with the terms and conditions hereunder with a view of achieving the purpose mentioned under Article 2 and shall seek to adopt a fair and loyal treatment of the other Parties concerned, taking into account a spirit of amicable cooperation, and bearing in mind the multilateral spirit of the Cooperation, according to which all Parties should be treated in a non-discriminatory manner. In this respect, it is understood that any decision regarding the implementation of the Agreement shall be taken giving due consideration to any applicable Legal Provision (including, but not limited to, provisions regarding procurement of goods and/or services).

##### **3.1.3. Best Efforts undertakings**

The commitments of the Parties under the TCDA are Best Efforts undertakings, unless explicitly otherwise specified in writing. Compliance with any hold harmless and indemnification obligations under the Agreement shall be result obligations.

3.1.4. Efficient task allocation

The Parties have allocated and shall allocate work and tasks in the most efficient manner.

3.1.5. Mutual assistance

Given that the success of the SDAC depends on the well-functioning of the different Parties' components, on interactions between these components and on interactions between the Parties, the Parties shall cooperate actively in this respect with a view to realising the purposes of the Agreement, especially in case of unexpected difficulty.

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

3.2 **State of the art performance:**

Each Party undertakes:

- i) that its performance hereunder shall comply with all the terms and conditions hereunder (in particular of any Appendix detailing its provisions), all applicable laws and regulations, any specific specifications and requirements decided upon by the TSO MCSC, good practice and current professional standards, applicable for this type of obligations;
- ii) to use, where appropriate, suitable materials and/or equipment and trained and competent staff for the execution of its obligations under this Agreement;
- iii) to have the necessary licence and authorisations to enter into this Agreement;
- iv) that at the time when each of its obligations hereunder is performed, it has the knowledge, experience and human

and technical competence necessary for the satisfactory performance of its obligations in accordance with this Agreement;

- v) to provide each other with all reasonably necessary information in case of regulatory inquiry related to the purpose as mentioned under 0.

## **Article 4–Governance of the cooperation of the TSOs**

### **4.1 Governance Structure**

- 4.1.1. The Parties agree to implement a joint governance for TSOs cooperation and decision-making processes under SDAC and SIDC as a result of which the TSO governance of the SDAC and SIDC shall be carried out by means of TSO MCSC as further detailed below (and in the TCID).

The TSO MCSC is the main decision-making body of this Agreement competent to take decisions in respect of the TSO governance of SDAC and Joint Matters. For the avoidance of any doubt, decisions on matters that relate to TSO governance of SIDC only shall be governed by the TCID.

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

- 4.1.2. The governance of the Cooperation shall be carried out by the following decision-making bodies:
  - i) the “**TSO High Level Meeting**” or “**TSO HLM**” comprising all Parties’ (and, as the case may be, the signatories of the TCID) Voting Members Chief Executive Officers or their representatives with all necessary power and authority to take decisions binding upon their respective organization concerning any aspects of the Cooperation, it being understood that the TSO HLM’s only

purpose and role is to serve as an escalation step from the TSO MCSC in case the TSO MCSC cannot agree on blocking issues. For the avoidance of doubt, everywhere where the TSO MCSC is mentioned as decision making body under the Agreement, such reference shall also comprise the TSO HLM in case of escalation.

- ii) for the avoidance of any doubt, the chair of the TSO HLM will be designated, and replaced as the case may be, by unanimous consent of the members of the TSO HLM.
- iii) the “**TSO Market Coupling Steering Committee**” or “**TSO MCSC**” will, as far as the SDAC is concerned, comprise representatives of each Party. The TSO MCSC Members must have all necessary power and authority to take decisions binding upon their respective organization.
- iv) the chair of the TSO MCSC will be designated, and replaced as the case may be, by unanimous consent of the members of the TSO MCSC.

#### 4.2 **The TSO MCSC role and responsibility (and reaching the TSO Vote as under the DAOA)**

The TSO MCSC is empowered to and responsible for discussing and deciding any matter related to the TSOs-only management, operation and adaptations of the SDAC, including:

- i) All DAOA and Joint Governance matters relevant to the TSOs, comprising reaching the collective TSO vote as provided under article 12.5 of the DAOA and article 3.2 of its annex 4 (rules of internal order of DAOA) (the “TSO Vote”);

In this connection, it is expressly agreed that the rules set forth hereunder and under Appendix D (Rules of Internal Order) on decision-making (*e.g.*, quorum, voting

rights, etc.) are valid for reaching any decision of the TSO MCSC, including the pre-aligned TSO Vote as under article II. 3.3 of annex 4 of DAOA, but are also valid and apply, *mutatis mutandis*, for the reaching of the TSO Vote in the discussions of the MCSC provided for under article II. 3.5 of such Annex 4 of DAOA. In this connection, any reference to the TSO MCSC reaching a decision shall also be understood, as the case may be, as referring to the TSOs reaching their TSO Vote during a MCSC discussion;

- ii) Reporting to the meetings of the “all TSOs” as described in CACM;
  
- iii) Any other matter for which it is expressly made competent pursuant to any other provision of the Agreement, in accordance with the Rules of Internal Order (RIO), as set forth in Appendix D.

#### 4.3 **New bodies**

- 4.3.1. The TSOs acknowledge that the TSO MCSC may decide to create additional bodies or working groups, which may be granted delegated authority by the TSO MCSC. In such event, the TSO MCSC determines the composition and the modalities of the functioning of such subcommittee or working group.
  
- 4.3.2. The Parties recognise the further development of EU legislation and the work done at ENTSO-E level regarding the future day-ahead governance structure. The governance structure set forth in this Agreement may therefore have to be modified in order to be in compliance with future legislation and the agreements made within ENTSO-E.



#### 4.4 **General decision-making principles**

- 4.4.1. Decisions of the TSO HLM and of the TSO MCSC, and of any other decision making bodies created pursuant to Article 4.3 entitled to take decisions, shall be binding on all Parties if taken in accordance with the provisions of this Article and in particular with the voting rules set forth in Article 4.6. For the avoidance of doubt, decisions to be taken under article 9 CACM are not governed by this Article 4.
- 4.4.2. All Voting Members shall be duly represented at all TSO MCSC and TSO HLM meetings.
- 4.4.3. Parties shall exercise their voting rights in the TSO HLM and TSO MCSC in accordance with Article 3.1.2. Except in case of non-compliance with Article 3.1.2 of the Agreement, the fact that the TSO HLM and/or TSO MCSC cannot make a unanimous decision cannot be considered as a breach of the contract, and therefore not be basis for any legal dispute or proceeding (litigation or arbitration).
- 4.4.4. For the remainder, the decision-making process for TSO MCSC and TSO HLM is described in the RIO, set forth in Appendix D.

#### 4.5 **Voting members**

- 4.5.1. The rules below set forth which Party shall be considered as Voting Member at a meeting of the TSO MCSC, the TSO HLM, or of any other body created by the TSO MCSC pursuant to Article 4.3, or to reach the TSO Vote.
- 4.5.2. Any decision to be taken by the Voting Members shall fall under one of the following categories:
  - i) **“Governance and Development Decisions”** shall refer to any decision in the context of the Agreement with the exception of Operational Decisions. With respect to

Governance and Development Decisions all Parties shall be considered as Voting Members; or

- ii) **“Operational Decisions”** shall refer to decisions or actions taken in the day to day operation of the SDAC, needed for the well-functioning of the operations and/or having an impact on such operations. As regards Operational Decisions, only Operational Parties shall be considered as Voting Members.

#### 4.6 **Voting Rules**

- 4.6.1. The rules below set forth the principle voting rules for adopting decisions of the TSO MCSC and the TSO HLM. These voting rules are further detailed and supplemented by Appendix D (Rules of Internal Order) and Appendix H (Statistical data to be used for the calculation of the voting share).
- 4.6.2. Operational Decisions will be adopted with unanimity of the votes of the respective Voting Members.
- 4.6.3. Governance and Development Decisions are also subject to unanimity of the votes of the respective Voting Members. If i) unanimity cannot be achieved, ii) the point is discussed in the meeting and iii) a new proposal of decision is made following such discussion, then such new proposal of decision shall be again subject to unanimity of the votes of the respective Voting Members.

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

- i) if the following thresholds, calculated applying Appendix H (Statistical data to be used for the calculation of the voting share), are cumulatively met:
- a) TSOs representing together at least 55% of all EU Member States falling under CACM, Norway and Northern Ireland (hereinafter referred to as "Member States") approve the proposed decision; and
- b) TSOs representing together Member States comprising at least 65% of the population of the Member States approve the proposed decision;
- ii) if the QMV thresholds under i) are not met, the QMV shall nevertheless be deemed attained if there is no blocking minority pursuant to article II.3.3.2 of Appendix D (Rules of Internal Order).

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

- If the QMV thresholds set under 4.6.3 i) have been achieved the decision is considered taken (even if there is a blocking minority);
- If the QMV thresholds set under 4.6.3 i) have not been achieved and there is a blocking minority, the proposed decision is considered rejected;
- If the QMV thresholds set under 4.6.3 i) have not been achieved and there is no blocking minority, the proposed decision is considered taken.

4.6.4. For the calculation of the voting share by individual TSO, the rules set forth in article II.3.3.1 of Appendix D (Rules of Internal Order) shall apply.

#### 4.7 **Protection of the interests of the Non-Operational Parties**

4.7.1. In the event that a decision of the Operational Parties made pursuant to Article 4.5.2.ii) and 4.6 has or is likely to have a



Minutes shall be provided to all Parties regardless whether Voting Member or not, in accordance with the Appendix D (Rules of Internal Order).

### **Article 5–Subcontracting or delegation of tasks – SLAs**

- 5.1 The Parties or a subset thereof can, following notification to the TSO MCSC, subcontract or delegate to one or several of the Parties any of the TSO joint obligations set forth in this Agreement or DAOA provided the conditions of article 81 CACM and article 4.4 of DAOA are complied with mutatis mutandis.
- 5.2 The Parties or a subset thereof can, following decision of the TSO MCSC, enter into Service Level Agreements with third parties (“**SLAs**”) to subcontract or delegate any of the TSO joint obligations set forth in this Agreement or DAOA to a third party provided the conditions of article 81 CACM and article 4.4 of DAOA are complied with mutatis mutandis.
- 5.3 The overview of relevant agreements according to Article 5.1 and SLAs according to Article 5.2 at the time of entry into force of the Agreement, can be found in Appendix F. This list will be kept up to date by TSO MCSC Secretary.

### **Article 6–Financial Management of the Cooperation**

#### **6.1 Scope of costs**

The rules set forth below govern the management of the SDAC TSOs-Only Common Costs under the Cooperation, as defined under Article 6.3 and Appendix E.

#### **6.2 General Principles**

- 6.2.1. For the avoidance of doubt, only the SDAC TSOs-Only Common Costs categories defined under Article 6.3 or following from

Article 5, duly budgeted and agreed upon in advance by the TSO MCSC, will be shared between the Parties under this Agreement in accordance with CACM.

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

### 6.3 **SDAC TSOs-Only Common Costs**

6.3.1. SDAC TSOs-Only Common Costs includes at the time of entry into force of this Agreement the costs as defined in Appendix E.

6.3.2. Additional SDAC TSOs-Only Common Costs can be agreed upon by decision of the TSO MCSC in accordance with CACM.

6.3.3. The modalities of cost sharing, settlement and invoicing shall be set forth in Appendix E.

## **Article 7–Confidentiality**

The Parties shall maintain confidentiality as set forth in the Global NDA.

## **Article 8–External communications**

### 8.1 **Scope**

Without prejudice to (i) Article 7, (ii) Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, and (iii) Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets, the principles under this Article 8 shall apply to external communication in all forms relating to any subject in the framework of this Agreement or related to TSOs-only SDAC.

The Parties may deviate from this Article 8 only if necessary to comply with applicable mandatory laws and regulations.

## 8.2 **General Principle**

The Parties shall be free to express written or oral positions or opinions about all TSOs-only SDAC related matters in their own name, provided that they do not prejudice or negatively affect the collective and/or individual interests or the reputation of the other Parties.

The Parties shall not express positions or opinions in the name of one or more other Party(ies) unless they have been explicitly mandated to do so in writing.

The Parties shall communicate at all times correct and accurate information.

In the event a communication by a Party does not comply with this Article, the other Parties are entitled to request such Party to publicly correct its communication, without prejudice to any other rights or remedies under this Agreement or by law (such as but not limited to its right to claim compensation in accordance with Article 12). Upon receipt of such valid request, such Party shall forthwith correct its communication publicly in accordance with the request.

## 8.3 **Joint Communication**

The TSO MCSC shall decide on the channel via which joint communications (i.e. communications made by or in the name of all the Parties) are made to the public and to the market participants. Joint communications shall only take place after approval by the TSO MCSC of the content of the communication. The TSO MCSC shall also agree, for any joint communication, on the date and hour at which the joint communication is effective.

A Party may communicate individually to third parties on the issues which are subject to joint communication if such individual communication is urgently needed.

## **Article 9–Entry into force, duration, proof and termination**

### **9.1 Entry into force and proof**

The Agreement entered into force on 28<sup>th</sup> March 2019. Any amendment which requires a written signature of all Parties through an amendment agreement as mentioned in Article 17.6, shall enter into force at the date mentioned in the respective amendment agreement, provided the amendment agreement has been signed by all Parties.

Parties agree that the Agreement, including its appendixes, can be validly proven by the respective original versions signed by all Parties.

Parties agree that the First TCDA Amendment and any further formal amendment can also be validly proven by the respective original versions signed by all Parties.

### **9.2 Duration**

This Agreement shall remain in force for an indefinite period of time, until it is decided unanimously by the Parties to terminate it. Should the DAOA be terminated, the TSO MCSC shall assess the need to review, adapt or terminate this Agreement.

### **9.3 Termination of the participation of one or several TSO(s) upon decision of the TSO MCSC**

9.3.1. Participation of one or several TSO(s) may be terminated upon decision of the TSO MCSC by unanimous consent of the other TSOs in case the participation of such TSO(s) to the DAOA is (are) terminated.

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

9.3.3. In such case, the TSO MCSC shall prepare an exit plan that is aligned with exit plan following from articles 17.4 and 17.5 of DAOA, setting forth the actions and measures to be taken to



ensure continuity under this Agreement (the “**Exit Plan**”). The TSO MCSC will propose the Exit Plan to the Exiting Party for its consent. If the Exiting Party does not consent to the Exit Plan, the Parties are considered in dispute. If the Exiting Party has expressed its consent to the Exit Plan, it will be submitted to the TSO MCSC for formal approval. If the TSO MCSC does not consent to the Exit Plan, the Parties are considered in dispute. The Exit Plan shall set forth the consequences of the Exit, including, but not limited to, the following:

- i) assessment of the changes to be made, for pursuing the SDAC without the Exiting Party(ies);
- ii) assessment of the cost related to such Exit and allocation thereof;
- iii) measures for ensuring continuity of the SDAC;
- iv) the Exit shall be as smooth as possible, with the aim of reducing the risk of possible disruptions for the remaining Parties; and
- v) the exact date on which the Exit shall become effective.

9.3.4. The Exiting Party shall, in accordance with this Exit Plan, assist the remaining Parties to enable continuity of the SDAC and to enable migration of the services it performs or the documentation/information it provides.

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

9.3.6. Until the Exit becomes effective, the Exiting Party shall have the right to vote on all matters having financial impact on itself and (if the Exiting Party is an Operational Party) all matters related to

daily operations on the agenda of the TSO MCSC or of the sub-committees. For other matters, the Exiting Party shall not be entitled to vote unless the TSO MCSC decides otherwise or unless the vote has direct consequences for the Exiting Party.

9.3.7. In case of Exit, all Parties are authorized to communicate about this Exit with their NRA (and ACER as the case may be) without this constituting a breach confidentiality.

#### 9.4 **Termination of the participation of one or several TSOs without any reason**

Each TSO may terminate its participation in this Agreement if it terminates its participation to the DAOA, under the same notice periods to be given by written notice to all other TSOs by registered letter with acknowledgement of receipt. The provisions on the consequences of exit, Exit Plan as set forth in Article 9.3 shall apply mutatis mutandis.

### **Article 10–New Parties**

The Parties accept that new party(ies) can enter into this Agreement subject to:

- i) being a TSO;
- ii) a decision of the TSO MCSC to extend of the Cooperation to this(ese) new party(ies); and
- iii) the new party(ies) signing the accession document as substantially set forth in Appendix C (it being understood that the new party(ies) will also have to sign the DAOA, and the necessary SLAs with the respective third parties as further set forth in Appendix F).

### **Article 11–Observer status**

11.1.1. Any TSO, either within or outside the scope of application of CACM, can, upon written request to the TSO MCSC, be granted

the status of Observer for the purpose of acceding at a later stage to the Agreement, either by:

- i) a TSO MCSC decision acknowledging the Observer status in case of a TSO within the scope of application of CACM, provided the non-disclosure agreement mentioned in this Article is signed (such non-disclosure agreement being the only condition required); or
- ii) a decision of the TSO MCSC, if the TSO requesting the status of Observer has its registered office in a third party country outside the scope of application of CACM, in which case the TSO MCSC can subject the status of Observer to further conditions to the extent compatible with applicable Legal Provisions or intergovernmental agreements in addition to the signing of the non-disclosure agreement mentioned in this Article.

11.1.2. The granting of the status of Observer is subject to the signature of the Global NDA or of a confidentiality agreement with substantially similar terms and conditions as the Global NDA by the TSO requesting the status of Observer.

11.1.3. The TSO that has been granted the status of Observer may be granted access to certain documentation on the Cooperation as decided from time to time by the TSO MCSC and may be entitled to participate to certain meetings as decided by the TSO MCSC. For the avoidance of doubt an Observer has no voting rights.

## **Article 12–Intellectual Property Rights**

- 12.1 Each Party (or subset of Parties) shall remain the exclusive owner of its own Intellectual Property Rights.
- 12.2 Unless otherwise specified under the Agreement, the disclosure, access or use of developments, data or Confidential Information pursuant to the Agreement shall not affect the ownership of any Intellectual Property Rights, nor is to be construed as granting any right (such as license), express or implied, on or in connection with any Intellectual Property Rights on such development, data and/or Confidential Information, between the Parties or towards any third party.
- 12.3 Developments made under the Agreement (including but not limited to the content of this Agreement) and the Intellectual Property Rights on such developments, shall be jointly owned by the Parties, unless decided otherwise by the TSO MCSC.

## **Article 13–Liability**

- 13.1 **General principles of liability**
- 13.1.1. The principles set forth under this Article are only applicable for any liability under this Agreement. Liabilities between NEMOs and TSOs are regulated in DAOA and consequences for liabilities between TSOs are set forth in this Agreement.
- 13.1.2. Except otherwise stipulated in the Agreement each Party is liable for its own commitments only and Parties shall not bear joint and several liability (“geen hoofdelijkheid / pas de solidarité”).
- 13.1.3. A Party suffering a damage caused by the same damageable event, constituting i) a breach (whether by act or omission) of an obligation under both the Agreement and the TCID or ii) a breach of an extra-contractual duty (whether by act or omission) arising in the context of the Agreement and of the TCID, cannot be compensated twice under both the Agreement and the TCID (i.e.,

no cumulative application of the liability clauses set forth in both agreements).

### 13.2 **Liability between the parties**

13.2.1. In case of breach due to gross negligence or fraud or intentional breach by a TSO (hereinafter: "**Breaching TSO**") of any of its obligations under this Agreement, the affected TSO (hereinafter: "**Affected TSO**") shall be entitled to obtain compensation from the Breaching TSO for any and 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 Agreement. For the avoidance of doubt, TSOs shall not be liable in case of simple negligence.

13.2.2. The indemnification obligations of the Breaching TSO shall be limited to [REDACTED]. This cap shall for the avoidance of doubt not apply in the event of fraud or intentional breach by the Breaching TSO.

### 13.3 **Liability following third party claims**

13.3.1. This Article rules the consequences between the Parties following third party claims.

13.3.2. [REDACTED]. The Breaching TSO shall be promptly notified of any claim under this clause made against the Affected TSO. The Breaching TSO may at his own cost conduct negotiations for the settlement of such claim, and any litigation that may arise therefrom. The Affected TSO shall not make any admission which might be prejudicial to the Breaching TSO, unless the Breaching TSO has failed to take over

the conduct of the negotiations or litigation within a reasonable time after having been so requested.

13.4 **Commitments jointly undertaken by TSOs (DAOA article 23.1.4)**

13.4.1. Should article 23.1.4 of DAOA be triggered and the TSOs have to indemnify the NEMOs thereunder (each up to the equal part mentioned in article 23.1.4 (b) of DAOA), [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

13.5 **Obligation to mitigate damages**

In any event damages or liability cases occur, the TSOs shall assist each other in taking the appropriate actions/measures to prevent and/or minimize all damages towards each other and towards third parties.

**Article 14–Force majeure**

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

14.2 Upon occurrence of Force Majeure, the Party(ies) seeking protection under this clause shall notify the other Parties in writing as soon as possible. The notice shall contain a description of the event constituting Force Majeure, of the obligations that the notifying party can no longer perform, of the steps it is taking to overcome the effects of the Force Majeure event and of the probable duration of this event of Force Majeure.

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

- 14.4 The Party(ies) invoking Force Majeure shall take all measures which may reasonably be required to resume the performance of its (their) obligations under this Agreement as quickly as practicably possible.
- 14.5 The Parties shall, if necessary, jointly examine the measures to be taken to limit the effect of Force Majeure.

### **Article 15–Choice of law – Language of the Agreement**

- 15.1 The Agreement, its conclusion, performance and interpretation, including the issue of its valid conclusion (legal capacity excluded) shall be governed and construed in all respects in accordance with the laws of Belgium, to the exclusion of conflict of law provisions.
- 15.2 Notwithstanding any translations that may be made, whether signed or not, the sole applicable language for questions of interpretation or application of this Agreement is English.
- 15.3 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 16–Dispute Resolution, Arbitration, Summary Proceedings**

#### **16.1 Request for dispute resolution**

Any dispute arising between one or more Parties shall be submitted to dispute settlement in accordance with this Article 16 by sending a request for dispute resolution to the other Parties mentioning:

- i) the alleged event triggering the dispute resolution clause;
- ii) the Party(ies) responsible for this event;
- iii) if possible, the provisions of this Agreement or of any other agreement related to this Agreement, which have allegedly been breached; and

- iv) if possible, a first estimate of the damage as the case may be.

## 16.2 **Amicable settlement**

- 16.2.1. The concerned Parties shall use their Best Efforts to settle the disputes arising under or in the framework of this Agreement by way of an amicable settlement during a period of two (2) months (or such other period as agreed upon in writing by the Parties) of the date of the written notification of the dispute sent to the other concerned Party(ies), hereinafter the **“Amicable Dispute Resolution Period”**.
- 16.2.2. During the Amicable Dispute Resolution Period, a concerned Party may at any time, request to revert to mediation by one external independent mediator (certified, if available), with experience in the electricity sector and/or the information and communication technologies sector and who will abide by the European Code of Conduct for Mediators. Each concerned Party is entitled to propose a mediator fulfilling the mentioned conditions and the final mediator shall be chosen by unanimity of the concerned Parties, or, failing such, each Party may, after three weeks, commence ICC Alternative Dispute Resolution Rules and call for an independent mediator to be appointed under those rules. The Parties will pay the mediator fees and expenses in an equal proportion, unless otherwise agreed.
- 16.2.3. Any amicable settlement reached shall only be effective and binding for the Parties to it, provided it is laid down into a binding written settlement contract, signed by the Parties participating in the concerned amicable settlement.
- 16.2.4. During the Amicable Dispute Resolution Period, the Parties are entitled to apply injunctive relief in summary proceedings (“procédure en référé”) before the competent courts of Brussels, Belgium.



### 16.3 **Arbitration**

- 16.3.1. In case at the end of the Amicable Dispute Resolution Period no amicable settlement between the Parties is reached, the dispute shall be settled by means of arbitration under the ICC Rules of Arbitration.
- 16.3.2. The arbitral tribunal shall have three arbitrators, regardless of the number of Parties involved and shall be appointed by the ICC Court of Arbitration. At least one of the appointed arbitrators shall have a strong legal background. At least one of the appointed arbitrators shall have a strong technical background in the energy sector and/or in the information and communication technologies sector. All appointed arbitrators shall preferably be familiar with the applicable sector specific legislations and regulations.
- 16.3.3. 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.
- 16.3.4. The Parties support, and shall as the case may be facilitate and take all steps necessary to allow, joinder or consolidation of ICC arbitrations deriving from this Agreement and/or Local Agreements, and/or other related agreements, where the disputes are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings.
- Parties agree that claims related to Joint Matters may be determined together in a single arbitration to the extent permitted under the ICC rules.
- 16.3.5. 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.

- 16.3.6. 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 17–Miscellaneous**

### **17.1 Severability**

If any term of this Agreement is held by a court of competent jurisdiction to be invalid, unenforceable or otherwise ineffective by operation of law, then this Agreement, including all of the remaining terms, will remain in full force and the TSOs shall negotiate in good faith to replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to the intentions of the TSOs.

### **17.2 Contract Management**

Parties shall appoint an entity / person (which can be the same as the TSO MCSC Secretary) to establish a common (online) storage place for keeping records of contractual documents (including meeting minutes and contracts with third parties (such as those mentioned in Article 5) and to keep the common storage up to date (amongst others by collecting and storing all minutes). The costs of the contract management are SDAC TSOs-Only Common Costs and shall be shared as set forth in Appendix E.

17.3 **Non waiver**

Neither the failure of a TSO at any time to enforce any of the provisions of this Agreement nor the grant at any time of any other indulgence towards any TSO shall be construed as a waiver of that provision or the right of a TSO afterwards to enforce that or any other provision.

17.4 **Notices**

17.4.1. Unless expressly provided otherwise in this Agreement, all notices, requests, demands, or other communications under this Agreement shall be served in the English language by registered letter or by e-mail (with acknowledgement of receipt) to the appropriate TSO or TSOs at its/their contact address(es) mentioned under Appendix B (Contact details).

17.4.2. Any change of address or contact details of a TSO must be notified by any of the abovementioned means to the other TSOs, the new address or contact details being considered official for purposes of this Agreement as from the third (3rd) working day following the sending of this notification. Appendix B shall be updated accordingly by the TSO MCSC with the assistance of the TSO MCSC Secretary.

17.4.3. In the event of difficulty in using electronic means to send notices or other communications under this 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 working day in which case the notice shall be deemed given and effective on the first following day that is a working day.

17.5 **Assignment**

- 17.5.1. Rights and obligations under this Agreement shall be transferable to a legal successor by way of universal legal succession without prior written consent of the Parties.
- 17.5.2. Assignment of rights and/or obligations other than by way of universal legal succession to another party shall be subject to the prior written consent of all Parties, which consent shall not be unreasonably withheld, conditioned or delayed.
- 17.5.3. This Agreement shall be binding upon and inure to the benefit of the Parties and their permitted assignees and/or their legal successors.

#### 17.6 **Amendments**

Except where expressly provided for otherwise, the Agreement, including this clause, can only be modified by written consent of all Parties. Notwithstanding the above, and without prejudice to Articles 5.3 and 17.4.2., the Appendixes to this Agreement (except Appendix A and Appendix D) can be amended by means of a decision of the TSO MCSC. The TSO MCSC can also decide upon new appendices to the Agreement within the scope and on the terms and conditions set forth in this Agreement.

#### 17.7 **Interpretation**

- 17.7.1. No provision of this Agreement shall be interpreted adversely against a Party solely because that Party was responsible for drafting that particular provision. Words denoting the singular may where the context requires include the plural and vice versa. Words denoting one gender shall include another gender.
- 17.7.2. The headings of Articles, (sub)paragraphs or Appendixes are inserted for convenience only and do not affect their interpretation.
- 17.7.3. Any reference to any agreement, rule, enactment, statutory provision, regulation or code or any subdivision or provision of it

shall be construed at the particular time as a reference to the text then in force, as it may have been amended, modified, consolidated, re-enacted or replaced.

17.7.4. All references to Articles or Appendixes refer to the corresponding Articles or Appendixes of this Agreement as amended, supplemented or modified from time to time, in accordance with Article 17.6 unless otherwise specified.

17.7.5. All references to the term "person" shall refer to any individual, company, entity, business, trust, partnership, joint venture or other person whatsoever, in the broadest meaning of the word.

#### 17.8 **Adaptations**

If the relevant applicable Legal Provisions are changed so that this Agreement conflicts with them, or if a decision by a court, an administrative authority or a regulator requires the modification of this Agreement, the TSOs shall, to the extent legally possible, negotiate in good faith to replace the affected provisions with provisions that (i) comply with the new legislation or decision referred to above and (ii) correspond as closely as possible to the original intentions of the TSOs.

### **Article 18– General Data Protection**

#### 18.1 **Personal Data and description of processing**

18.1.1. In the context of the Agreement, only Personal Data consisting of contact information of Party representatives or members of personnel or personnel of service providers, such as, name, professional email address, professional phone number shall be processed. No personal data of market participants or any other party shall be processed in the context of the Agreement.

18.1.2. Any processing is carried out purely by virtue of the data subject's representation of/service to a Party in the context of the performance of the Agreement. Any Personal Data shall only be

processed for the limited purpose of the performance of the Agreement.

18.1.3. The Parties agree that the legal grounds for processing the contact information of Party representatives is based on the legitimate interest of the Parties, namely to perform through their employees, service providers or representatives, the contractual rights and obligations under the Agreement.

18.1.4. Personal Data shall be stored so long as it is actual, that is related to persons representing/working for a Party, thereafter it shall be immediately erased. Each Party shall notify any change of personnel whose Personal Data is processed and all Parties shall ensure erasing Personal Data that is no longer necessary as well as accuracy of the Processed Data.

## 18.2 **Joint Data Controller**

The Parties qualify as joint data controller in relation to the processing of Personal Data via the common (online) storage place referred to in Article 17.2, where the contractual documents as well as contact information lists with regard to Party representatives, personnel and service providers are stored.

## 18.3 **General distribution of responsibilities**

18.3.1. All Parties shall, at all times, comply with their respective obligations under all applicable Data Protection Legislation in relation to all Personal Data that is processed under this Agreement.

18.3.2. The TSO MCSC will designate a specific point of contact ("**GDPR SPOC**") for carrying-out data subjects' rights request, it being understood that the data subjects can nonetheless exercise their

rights under the GDPR vis-à-vis each Party as individual data controller.

18.3.3. Each Party is individually responsible for:

- a) notifying the required GDPR processing information under article 13 and 14 of the GDPR to data subjects appointed or acting as representative, personnel or service provider on such Party's behalf or at such Party's request in the performance of the Agreement, whose Personal Data is being processed, so that they are aware of the data processing carried out in the framework of the Agreement;
- b) ensuring the respect for data subjects rights as per articles 15 to 22 of the GDPR. If a Party receives a request, a complaint or inquiry from a data subject regarding the processing of its Personal Data, the GDPR SPOC shall be informed thereof and be requested to honor or implement the request in accordance with the GDPR.
- c) implementing internally the appropriate technical and organisational measures to ensure and to be able to demonstrate that the processing of Personal Data is performed in accordance with applicable Data Protection Legislation;
- d) complying with the requirement for records of processing activities in article 30 of the GDPR. For the avoidance of doubt, each Party agrees to keep an entry regarding the processing carried out in the context of the joint controllership in their respective registers to be kept in accordance with article 30 of the GDPR.
- e) complying with articles 33 and 34 of the GDPR on notification of a Personal Data breach to the supervisory authority and/or to the concerned data subject(s). The

concerned Party/ies shall inform the GDPR SPOC, so that they can inform all other Parties thereof.

However, if the reason for the breach is not immediately attributable to one of the data controllers, and the breach is attributable to the provider of the common (online) storage place referred to in Article 17.2 or any processor jointly chosen by the Parties, the GDPR SPOC is responsible for managing a Personal Data breach and notifying the Personal Data breach to the supervisory authority and/or to the data subjects.

#### 18.4 **Use of data processors and sub-processors**

18.4.1. The Parties shall mutually agree upon the recourse to any data processors regarding Personal Data they are co-controllers for. The Parties shall mutually agree on the use of any processor regarding Personal Data for which they are joint controller.

18.4.2. This is without prejudice to each Party's right to continue to use processors for their independent processing activities and any processors related to their respective IT systems. Each Party is liable for respecting its Data Protection obligations in this respect.

#### 18.5 **Security**

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

#### 18.6 **Liability**

18.6.1. The Parties shall be individually liable with regard to any Data Protection Legislation violation related to their individual responsibilities according to Article 18.3.1.

18.6.2. The Parties shall be jointly and severally liable towards data subjects with regard to any Data Protection Legislation violation



occasioned in relation to data processing for which they are joint controllers and the choice of commonly agreed processors.

- 18.6.3. To the extent a third-party claim or damage in relation to a violation of Data Protection Legislation is caused by one or more Party(ies)'(s) violation of Data Protection Legislation, such defaulting Party(ies) shall indemnify the other Parties in accordance with article 82 of the GDPR. Such defaulting Party(ies) shall also indemnify the other Parties for fines imposed on them in relation to Data Protection Legislation violations caused by the defaulting Party(ies) in relation to joint data processing.

In the event a fine is imposed for violation of Data Protection Legislation concerning the joint processing of Personal Data and such violation is attributable to all Parties or to the GDPR SPOC, the fine shall be equally shared between the Parties.

In these cases, the liability caps and caps on hold harmless set forth in Article 13 do not apply.