

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970 / Fax: +31 20 64 64 055

E-mail: secretariat@efet.org

Webpage: www.efet.org

WAIVER: THE FOLLOWING GENERAL AGREEMENT WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST. USERS OF THIS GENERAL AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

Grand Energy Distribution EOOD

having its registered office at Industrial zone Orion, 3020 Str. Nr. 34, 1360 Sofia

(*"Grand Energy"/"Party A"*)

and

Axpo Energy Romania S.A.

having its registered office at 79-81, Popa Savu Str., 011432 Bucharest, Sector 1, Romania.

(*"Axpo Romania" /"Party B"*)

(referred to jointly as the "**Parties**" and individually as a "**Party**")

entered into on 22.03.2019 (the "**Effective Date**")

TABLE OF CONTENTS

§ 1 Subject of Agreement.....	5
1. Subject of Agreement.....	5
2. Pre-Existing Contracts.....	5
§ 2 Definitions and Construction.....	5
1. Definitions.....	5
2. Inconsistencies.....	5
3. Interpretation.....	5
4. References to Time.....	5
§ 3 Concluding and Confirming Individual Contracts.....	5
1. Conclusion of Individual Contracts.....	5
2. Confirmations.....	5
3. Objections to Confirmations.....	5
4. Authorised Persons.....	5
§ 4 Primary Obligations For Delivery and Acceptance of Electricity.....	6
1. Delivery and Acceptance.....	6
2. Definition of Schedule.....	6
§ 5 Primary Obligations for Options.....	6
1. Delivery and Acceptance Pursuant to an Option.....	6
2. Premium for the Option.....	6
3. Exercise of Option and Deadline.....	6
4. Notice of Exercise.....	6
§ 6 Delivery, Measurement, Transmission and Risk.....	6
1. Current/Frequency/Voltages.....	6
2. Delivery Schedules.....	6
3. Transfer of Rights of Title.....	6
4. Measurement of Electricity Deliveries and Receipts.....	7
5. Documentation of Actual Deliveries and Receipts.....	7
6. Reimbursement of External Costs.....	7
7. Seller and Buyer Risks.....	7
§ 7 Non-Performance Due to Force Majeure.....	7
1. Definition of Force Majeure.....	7
2. Release From Delivery and Acceptance Obligations.....	7
3. Notification and Mitigation of Force Majeure.....	7
4. Effects of Force Majeure on Other Party.....	7
§ 8 Remedies for Failure to Deliver and Accept.....	8
1. Failure to Deliver.....	8
2. Failure to Accept.....	8
3. Amounts Payable.....	8
§ 9 Suspension of Delivery.....	8
§ 10 Term and Termination Rights.....	8
1. Term.....	8
2. Expiration Date and 30 Day Termination Notice.....	9
3. Termination for Material Reason.....	9
4. Automatic Termination.....	9
5. Definition of Material Reason.....	9
§ 11 Calculation of the Termination Amount.....	11
1. Termination Amount.....	11
2. Settlement Amount.....	11

§ 12	Limitation of Liability.....	11
1.	Application of Limitation.....	11
2.	Exclusion of Liability.....	11
3.	Consequential Damage and Limitation of Liability.....	12
4.	Intentional Default, Fraud and Fundamental Rights.....	12
5.	Duty to Mitigate Losses.....	12
§ 13	Invoicing and Payment.....	12
1.	Invoice.....	12
2.	Payment.....	12
3.	Payment Netting.....	12
4.	Invoicing and Payment of Scheduled Contract Quantities.....	12
5.	Default Interest.....	13
6.	Disputed Amounts.....	13
§ 14	VAT and Taxes.....	13
1.	VAT.....	13
2.	Other Taxes.....	13
3.	Seller's and Buyer's Tax Obligation.....	14
4.	Taxes Targeted at End-Users.....	14
5.	Exemption Certificates.....	14
6.	Indemnity.....	14
7.	New Taxes.....	15
8.	Termination for New Tax.....	15
9.	Withholding Tax.....	16
§ 15	Floating Prices and Fallback Procedure for Market Disruption.....	16
1.	Calculation of Floating Contract Prices.....	16
2.	Market Disruption.....	17
3.	Fallback Mechanism.....	17
4.	Definition of Market Disruption Event.....	17
5.	Calculation Agent.....	18
§ 16	Guarantees and Credit Support.....	18
§ 17	Performance Assurance.....	18
1.	Right to Require Performance Assurance.....	18
2.	Material Adverse Change.....	18
§ 18	Provision of Financial Statements and Tangible Net Worth.....	20
1.	Provision of Financial Statements.....	20
2.	Decline in Tangible Net Worth.....	20
3.	Accounting Principles.....	20
§ 19	Assignment.....	20
1.	Prohibition.....	20
2.	Assignment to Affiliates.....	20
§ 20	Confidentiality.....	20
1.	Confidentiality Obligation.....	20
2.	Exclusions from Confidential Information.....	21
3.	Expiration.....	21
§ 21	Representations and Warranties.....	21
§ 22	Governing Law and Arbitration.....	22
1.	Governing Law.....	22
2.	Arbitration.....	22

§ 23 Miscellaneous	22
1. Recording Telephone Conversations.....	22
2. Notices and Communications	22
3. Amendments.....	23
4. Partial Invalidity	23
5. Third Party Rights.....	23

ANNEX 1 - DEFINED TERMS

ANNEX 2A - CONFIRMATION OF INDIVIDUAL CONTRACT (FIXED PRICE)

ANNEX 2B - CONFIRMATION OF INDIVIDUAL CONTRACT (FLOATING PRICE)

ANNEX 2C - CONFIRMATION OF INDIVIDUAL CONTRACT (CALL OPTION)

ANNEX 2D - CONFIRMATION OF INDIVIDUAL CONTRACT (PUT OPTION)

ELECTION SHEET TO THE GENERAL AGREEMENT

PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

§ 1
Subject of Agreement

1. **Subject of Agreement:** This General Agreement (which includes its Annexes and the election sheet ("**Election Sheet**")) governs all transactions the Parties shall enter into for the purchase, sale, delivery and acceptance of electricity, including Options on the purchase, sale, delivery and acceptance of electricity (each such transaction being an "**Individual Contract**"). All Individual Contracts and this General Agreement shall form a single agreement between the Parties (collectively referred to as the "**Agreement**"). The provisions of this General Agreement constitute an integral part of each Individual Contract.
2. **Pre-Existing Contracts:** If § 1.2 is specified as applying in the Election Sheet, each transaction between the Parties regarding the purchase, sale, delivery and acceptance of electricity, including Options on such transactions, entered into before the Effective Date but which remain either not yet fully or partially performed by one or both Parties, is deemed to be an Individual Contract under the Agreement.

§ 2
Definitions and Construction

1. **Definitions:** Terms used in the Agreement shall have the meanings set out in Annex 1.
2. **Inconsistencies:** In the event of any inconsistency between the provisions of the Election Sheet and the other provisions of this General Agreement, the Election Sheet shall prevail. In the event of any inconsistency between the terms of an Individual Contract (whether evidenced in a Confirmation or by other means) and the provisions of this General Agreement (including its Election Sheet), the terms of the Individual Contract shall prevail for the purposes of that Individual Contract.
3. **Interpretation:** Headings and titles are for convenience only and do not affect the interpretation of the Agreement.
4. **References to Time:** References to time shall be to Central European Time (CET) or as specified in the Election Sheet.

§ 3
Concluding and Confirming Individual Contracts

1. **Conclusion of Individual Contracts:** Unless otherwise agreed between the Parties, Individual Contracts may be concluded in any form of communication (whether orally or otherwise) and shall be legally binding and enforceable from the time the terms of such Individual Contract are concluded.
2. **Confirmations:** In the event that an Individual Contract is not concluded in written form, both Parties shall be free to confirm, or have confirmed, in writing their understanding of the agreed terms of the Individual Contract (each such written confirmation constituting a "**Confirmation**"). A written Confirmation shall not constitute a requirement for a legally valid Individual Contract. A Confirmation shall contain the information stipulated in, and shall be substantially in the form of, the applicable confirmation sheet from among those attached to this General Agreement as Annex 2 a - d.
3. **Objections to Confirmations:** Without prejudice to the provisions of § 3.2, if a Party receives a Confirmation, it shall promptly review the terms of such Confirmation and if they differ from its understanding of the terms of the applicable Individual Contract notify the other Party of any inconsistency without delay. If both Parties send a Confirmation without delay and their terms contradict, then each such Confirmation shall be deemed to be a notice of objection to the terms of the other Party's Confirmation.
4. **Authorised Persons:** If § 3.4 is specified as applying to a Party in the Election Sheet, Individual Contracts may be negotiated, confirmed and signed on behalf of that Party exclusively by those persons listed by it for such purposes as may be specified in an Annex to this General Agreement. Each Party may unilaterally amend and supplement in writing the list of persons currently authorised to act on its behalf at any time. Such amendments and supplements shall become effective upon their receipt by the other Party.

§ 4

Primary Obligations For Delivery and Acceptance of Electricity

- 1. Delivery and Acceptance:** In accordance with each Individual Contract, the Seller shall Schedule, sell and deliver, or cause to be delivered, and the Buyer shall Schedule, purchase and accept, or cause to be accepted, the Contract Quantity at the Delivery Point; and the Buyer shall pay to the Seller the relevant Contract Price.
- 2. Definition of Schedule:** "Schedule" shall mean, as applicable, those actions necessary for a Party to effect its respective delivery or acceptance obligations, which may include nominating, scheduling, notifying, requesting and confirming with the other Party, their respective designated agents and authorised representatives, and the Network Operator, as applicable, the Contract Quantity, Contract Capacity, Delivery Point, Delivery Schedule, Total Supply Period, and any other relevant terms of the Individual Contract in accordance with all applicable rules of the Network Operator and other customary industry practices and procedures.

§ 5

Primary Obligations for Options

- 1. Delivery and Acceptance Pursuant to an Option:** When an Individual Contract provides for the purchase and sale of a physical option to buy electricity (a "Call Option") or to sell electricity (a "Put Option") (each, an "Option"), the seller of the Option (the "Writer") grants to the purchaser of the Option (the "Holder") the right, but not the obligation, by complying with certain designated procedures described below in this § 5, to require each Party to meet its respective obligations under § 4.1 for the delivery and acceptance of electricity in accordance with that respective Individual Contract.
- 2. Premium for the Option:** The Holder shall pay the Writer the Premium for the Option on or before the Premium Payment Date (and if no Premium Payment Date is designated in the terms of the Individual Contract, such Premium shall be due and payable on the fifth (5th) Business Day following the day on which the Parties entered into the Individual Contract). If the Option is Exercised, invoicing and payment of the Contract Price for the Contract Quantity shall be in accordance with § 13 (*Invoicing and Payment*) unless otherwise agreed.
- 3. Exercise of Option and Deadline:** The Holder of an Option may exercise its rights under the Option (in accordance with § 5.4 (*Notice of Exercise*)) by giving the Writer irrevocable notice of such Exercise during the Exercise Period. Unless otherwise agreed, if, in respect of an Individual Contract no Exercise Deadline is specified in respect of an Option, the Exercise Deadline shall be 10:00 am CET.
- 4. Notice of Exercise:** Each notice of Exercise shall be effective upon receipt by the Writer and may be given in writing or verbally, provided that Exercise may not be effected by e-mail and verbal Exercise may not be effected by leaving a message on a voice mail or similar verbal electronic messaging system. In the case of verbal Exercise, the Holder shall promptly confirm the Exercise in writing (including without limitation by facsimile), provided that such written confirmation is not a prerequisite to the validity of verbal Exercise.

§ 6

Delivery, Measurement, Transmission and Risk

- 1. Current/Frequency/Voltages:** Electricity shall be delivered in the current, frequency and voltage applicable at the relevant Delivery Point agreed in the Individual Contract and in accordance with the standards of the Network Operator responsible for the Delivery Point.
- 2. Delivery Schedules:** Electricity shall be delivered according to the Delivery Schedules specified in each Individual Contract.
- 3. Transfer of Rights of Title:** Delivery shall be effected by making available the Contract Quantity at the Contract Capacity at the Delivery Point. Delivery and receipt of the Contract Quantity, and the transfer from Seller to Buyer of all rights to title free and clear of any adverse claims thereto, shall take place at the Delivery Point.

4. **Measurement of Electricity Deliveries and Receipts:** Each Party is responsible for ensuring that electricity deliveries and receipts are measured or verified by means that can be reasonably evidenced in accordance with the Network Operator's procedures governing the relevant Delivery Point.

5. **Documentation of Actual Deliveries and Receipts:** Upon reasonable request, a Party shall:

- (a) provide to the other Party documentation in its possession or control that evidences Schedules, quantities, deliveries and receipts of electricity for the purposes of determining the cause of any deviations between the terms of an Individual Contract and actual deliveries and receipts of electricity; and
- (b) use its reasonable and diligent efforts to request and acquire from the Network Operator, and shall share with the requesting Party, any additional documentation necessary to reconcile inconsistencies between Scheduled and actual flows of electricity.

6. **Reimbursement of External Costs:** In the event a Party, at the request of the other Party or to resolve a dispute raised by the other Party, incurs reasonable external expenses in verifying that the other Party has failed to properly perform its obligations under the terms of an Individual Contract, such expenses shall be reimbursed upon demand by the Party that failed to perform.

7. **Seller and Buyer Risks:** Seller shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with Scheduling, transmission and delivery of the Contract Quantity up to the Delivery Point. Buyer shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with acceptance and transmission of, the Contract Quantity at and from the Delivery Point.

§ 7

Non-Performance Due to Force Majeure

1. **Definition of Force Majeure:** Unless otherwise specified in the Election Sheet, for purposes of the Agreement "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitation, due to one or more of the following:

- (a) the failure of communications or computer systems of the relevant Network Operator(s) which prevents the Claiming Party from performing its obligations of delivery or acceptance; or
- (b) the relevant Network Operator's suspension of delivery or acceptance or its disregard of the Claiming Party's obligations with regard to Scheduling under the Individual Contract.

2. **Release From Delivery and Acceptance Obligations:** If a Party is fully or partly prevented due to Force Majeure from performing its obligations of delivery or acceptance under one or more Individual Contracts and such Party complies with the requirements of § 7.3 (*Notification and Mitigation of Force Majeure*), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance. No obligation to pay damages pursuant to § 8 (*Remedies for Failure to Deliver and Accept*) will accrue to the Claiming Party with respect to those quantities not delivered or received.

3. **Notification and Mitigation of Force Majeure:** The Claiming Party shall as soon as practical after learning of the Force Majeure notify the other Party of the commencement of the Force Majeure and, to the extent then available, provide to it a non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

4. **Effects of Force Majeure on Other Party:** In the event, and to the extent, a Seller's delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations

shall also be released. In the event and to the extent a Buyer's acceptance obligations are released by Force Majeure, Seller's corresponding delivery obligations shall also be released.

§ 8

Remedies for Failure to Deliver and Accept

1. Failure to Deliver: To the extent that the Party obliged to deliver electricity (the "**Delivering Party**") fails to deliver the Contract Quantity in whole or in part in accordance with the terms of an Individual Contract and such failure is not excused by an event of Force Majeure or the other Party's non-performance, the Delivering Party shall pay the other Party (the "**Accepting Party**") as compensation for damages an amount for such quantity of undelivered electricity equal to the product of:

- (a) the amount, if positive, by which the price, if any, at which the Accepting Party acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered electricity exceeds the Contract Price; and
- (b) the quantity of undelivered electricity.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Accepting Party as a result of the Delivering Party's failure.

2. Failure to Accept: To the extent that the Accepting Party fails in whole or in part to accept the Contract Quantity in accordance with an Individual Contract and such failure is not excused by an event of Force Majeure or the other Party's non-performance, the Accepting Party shall pay the Delivering Party as compensation for damages an amount for the quantity of non-accepted electricity equal to the product of:

- (a) the amount, if positive, by which the Contract Price exceeds the price at which the Delivering Party is or would be able to sell the quantity of non-accepted electricity in the market acting in a commercially reasonable manner; and
- (b) the quantity of the non-accepted electricity.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Delivering Party as a result of the Accepting Party's failure.

3. Amounts Payable: Amounts that are due according to this § 8 shall be invoiced and paid in accordance with § 13 (*Invoicing and Payment*).

§ 9

Suspension of Delivery

In addition to any other rights or remedies available to a Party (the "**Non-Defaulting Party**"), should a Party (the "**Defaulting Party**") default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Performance Assurance required pursuant to the Agreement or any Credit Support Document, the Non-Defaulting Party shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party to immediately cease further deliveries of electricity (and be released (and not merely suspended) from its underlying delivery obligations) under all Individual Contracts until such time as the Non-Defaulting Party, has received either the required collateral or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Non-Defaulting Party.

§ 10

Term and Termination Rights

1. Term: This General Agreement shall come into force as of the Effective Date. It may be terminated in accordance with either § 10.2 (*Expiration Date and 30 Day Termination Notice*) or § 10.3 (*Termination for Material Reason*) through § 10.5 (*Definition of Material Reason*).

2. **Expiration Date and 30 Day Termination Notice:** This General Agreement will terminate on the Expiration Date (if one is specified in the Election Sheet) or if no Expiration Date has been specified in the Election Sheet, by a Party by giving the other Party thirty (30) days prior written notice of termination (in both cases "**Ordinary Termination**"). In the event of Ordinary Termination, the General Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under the Agreement prior to the date of the Ordinary Termination are fully performed by both Parties.

3. **Termination for Material Reason:**

- (a) If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (the "**Terminating Party**") may terminate the Agreement ("**Early Termination**") by giving the other Party notice. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two (2) Business Days.
- (b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (the "**Early Termination Date**"). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than twenty (20) days after such day. With effect from the Early Termination Date all further payments and performance in respect of all Individual Contracts shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay damages for non-fulfilment to the other Party in an amount (if any) calculated in accordance with § 11.1 (the "**Termination Amount**").
- (c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On, or as soon as practicable after, the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner, and shall notify the other Party of, the Termination Amount (if any) to be received or paid by it deriving from aggregating all Settlement Amounts as stipulated in § 11 (*Calculation of the Termination Amount*).
- (d) The Termination Amount shall be payable by the relevant Party to the other Party within three (3) Business Days of its notification by the Terminating Party.
- (e) The Terminating Party may take into account any Performance Assurance or credit support available pursuant to the Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this § 10.3 (*Termination for Material Reason*) is in addition to any other remedies available under the Agreement or at law.

4. **Automatic Termination:** If "**Automatic Termination**" is specified as applying to a Party in the Election Sheet and upon the occurrence of a Material Reason described in § 10.5(c) (*Winding-up/Insolvency/Attachment*), the Terminating Party need not send that Party any notice of the designation of an Early Termination Date and the Early Termination Date in such event shall be as specified in the Election Sheet. Except as provided in this § 10.4, Early Termination by virtue of operation of Automatic Termination shall be as provided in § 10.3 (*Termination for Material Reason*).

5. **Definition of Material Reason:** The Agreement may be terminated at any time for one or more of the following reasons (each, a "**Material Reason**");

- (a) **Non Performance:** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation (other than when such obligation is released pursuant to § 7 (*Non-Performance Due to Force Majeure*)):
 - (i) under the Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand;

- (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
 - (iii) under any Performance Assurance in accordance with § 17 (*Performance Assurance*).
- (b) **Cross Default and Acceleration:** Unless otherwise specified in the Election Sheet,
- (i) any payment default under any Specified Indebtedness with an aggregate outstanding principal balance equal to three percent (3%) of the Tangible Net Worth of such (aa) Party's, or (bb) such Party's Credit Support Provider (if such Party has a Credit Support Provider) or (cc) such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party), as the case may be, as of the date of the default, or
 - (ii) the failure of a Party or its Credit Support Provider or Controlling Party to make one or more payments in an aggregate amount (individually or collectively) of not less than the Threshold Amount specified in the Election Sheet for that Party under such agreements or instruments entered into between such Parties or their Affiliates (after giving effect to any applicable notice requirement or grace period).
- (c) **Winding-up/Insolvency/Attachment:** A Party or its Credit Support Provider:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in the Election Sheet, is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet;
 - (v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
 - (vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
 - (viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 10.5(c).
- (d) **Failure to Deliver or Accept:** If specified as applying in the Election Sheet, the failure of a Party to comply with its obligation to deliver or accept electricity under an Individual Contract, (other than, when such obligation is released pursuant to §7 (*Non-Performance Due*

to *Force Majeure*) for more than seven (7) consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days.

- (e) **Force Majeure:** A Party is released from its obligations under the Agreement due to Force Majeure for more than thirty (30) consecutive days or for more than sixty (60) days in aggregate within a period of one calendar year.
- (f) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this General Agreement or an Individual Contract or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

Unless otherwise specified in the Election Sheet, the above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 10.

§ 11

Calculation of the Termination Amount

1. Termination Amount: The Terminating Party shall calculate an amount (the "**Termination Amount**") to be paid in accordance with § 10.3 (*Termination for Material Reasons*) and § 10.4 (*Automatic Termination*) by calculating the sum (whether positive or negative) of all Settlement Amounts for all Individual Contracts plus any or all other amounts payable between the Parties under or in connection with the Agreement.

2. Settlement Amount: The "**Settlement Amount**" for an Individual Contract shall be the Gains less the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Individual Contract. For the purpose of this provision:

- (a) "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace a terminated Individual Contract and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of such Individual Contract;
- (b) "**Gains**" means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the termination of an Individual Contract, determined in a commercially reasonable manner; and
- (c) "**Losses**" means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from its termination of an Individual Contract, determined in a commercially reasonable manner.

In calculating the Settlement Amounts, the Terminating Party may, but is not obliged, to calculate its Gains and Losses as at the Early Termination Date, at its discretion, without entering into any replacement transactions.

§ 12

Limitation of Liability

1. Application of Limitation: This § 12 will apply unless otherwise specified by the Parties in the Election Sheet.

2. Exclusion of Liability: Subject to §§ 12.3 and 12.4 and except in respect of any amounts payable under § 8 (*Remedies for Failure to Deliver and Accept*) or § 10.3 (*Termination for Material Reason*), a Party and its employees, officers, contractors and/or agents, are not liable to the other Party for any loss, cost, expense or damages ("**Damages**"), (including, without limitation, any liability due to the irregularities in the supply of electricity under an Individual Contract) incurred by the other Party under or in connection with the Agreement, except where such Damages are due to gross negligence, intentional default or fraud of a Party or

its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Agreement.

3. Consequential Damage and Limitation of Liability: Subject to § 12.4, the liability of a Party under or in connection with this Agreement:

- (a) does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and
- (b) is limited to an amount equal to the amounts payable for electricity supplied or to be supplied by a Party under any relevant Individual Contract provided that such limitation shall not apply to payments under § 8 (*Remedies for Failure to Deliver and Accept*) and § 11 (*Calculation of the Termination Amount*).

4. Intentional Default, Fraud and Fundamental Rights: Nothing in the Agreement operates to exclude or limit a Party's liability for:

- (a) intentional default,
- (b) fraud; or
- (c) any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations ("*Kardinalspflichten*").

5. Duty to Mitigate Losses: For the avoidance of doubt, and subject to applicable law, each Party agrees that it has a duty to mitigate its Damages and covenants that it will use commercially reasonable efforts to minimise any Damages it may incur under or in connection with the Agreement.

§ 13

Invoicing and Payment

1. Invoice: Each Party who is a Seller of electricity in an Individual Contract shall transmit to the other Party in the course of the calendar month following a delivery of electricity according to the Delivery Schedule for the previous month an invoice setting forth the total quantities of electricity that were sold by it under Individual Contracts in the previous calendar month. In connection with such invoice the Party may state all amounts then owed between the Parties pursuant to the Individual Contracts including, without limitation, all amounts owed for the purchase and sale of electricity, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties and, if applicable, any net amount due for payment pursuant to § 13.3 (*Payment Netting*). Invoicing of Premiums due under an Individual Contract for Options shall be as agreed by the Parties in the Individual Contracts.

2. Payment: On or before the later to occur of (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day or (b) the fifth (5th) Business Day following receipt of an invoice (the "**Due Date**"), a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party as specified in the Election Sheet. Such payment shall be made, unless otherwise agreed, in EURO, and subject to § 14 (*VAT and Taxes*) and the remitter shall pay its own bank charges. Notwithstanding the foregoing, the Due Date for payment of a Premium under an Individual Contract for Options shall be the Premium Payment Date specified in the Individual Contract.

3. Payment Netting: If this § 13.3 is specified as applying in the Election Sheet, if on any day the Parties are each required to pay one or more amounts in the same currency (for which purpose all EURO currencies shall be considered a single currency) under one or more Individual Contracts then such amounts with respect to each Party shall be aggregated and the Parties shall discharge their respective payment obligations through netting, in which case the Party, if any, owing the greater aggregate amount shall pay the other Party the difference between the amounts owed.

4. Invoicing and Payment of Scheduled Contract Quantities: Invoicing and payment shall be based on Scheduled Contract Quantities in accordance with all applicable Delivery Schedules for the respective month.

When and if data becomes available confirming that the actual quantities of electricity delivered and received differs from that set out in the Delivery Schedules, invoicing and payment will be adjusted to reflect any deviations between the Contract Quantities and actual deliveries.

5. Default Interest: Overdue payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment, at the Interest Rate. For this purpose the "**Interest Rate**" shall be the rate of interest specified in the Election Sheet.

6. Disputed Amounts: If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay:

- (a) if this § 13.6(a) is specified as applying in the Election Sheet, the full amount invoiced no later than the Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or
- (b) if this § 13.6 (b) is specified as applying in the Election Sheet, the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.

§ 14

VAT and Taxes

1. VAT: All amounts referred to in this General Agreement are exclusive of VAT. The VAT treatment of the supply of electricity under an Individual Contract shall be determined pursuant to the VAT laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is payable on any such amounts, the Buyer shall pay to the Seller an amount equal to the VAT at the rate applicable from time to time; provided that such amount shall only be required to be paid once the Seller provides the Buyer with a valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount.

Where, in accordance with EU and/or national legislation, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 38, 39 or 195 of Council Directive 2006/112/EC, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such legislation;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in (a) above, the Seller reserves the right to charge local VAT.

2. Other Taxes: All amounts referred to in this General Agreement are exclusive of Other Taxes. In the case of Other Taxes, if the cost of an Other Tax is charged or passed on by the Seller to the Buyer, the Buyer shall pay this amount of Other Tax to the Seller; provided that such amount of Other Tax is identified separately on the invoice issued by the Seller and confirmation is received by the Buyer, where applicable, that such amount of Other Tax has been duly paid or accounted for to the relevant Tax authority, as appropriate.

Where in accordance with EU and/or national legislation there is an exemption or other relief, as applicable,

from Other Taxes in respect of any supplies under an Individual Contract, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is exempt from Other Taxes for the purposes of such legislation;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying Party shall indemnify the other Party in respect of any and all Other Taxes, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in (a) above the Seller reserves the right to charge Other Taxes.

3. Seller's and Buyer's Tax Obligation: The Seller shall pay or cause to be paid all Tax on or with respect to electricity delivered pursuant to an Individual Contract arising before the transfer of risk and title at the Delivery Point. The Buyer shall pay or cause to be paid all Tax on or with respect to the electricity delivered pursuant to an Individual Contract arising after the transfer of risk and title at the Delivery Point. Subject to §14.2, the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with applicable local laws. In the event that the Seller is required by law to pay any Tax which is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such Tax. In the event that the Buyer is required by law to pay any Tax which is properly for the account of the Seller, the Buyer may deduct the amount of any such Tax from the sums due to the Seller under the Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.

4. Taxes Targeted at End-Users: The Buyer covenants to the Seller that, for the purposes of a Tax which is targeted at the end-user or consumer of electricity, either:

- (a) it will not be an end-user or consumer of such electricity delivered to it under any Individual Contract, or
- (b) that the Buyer has the status of an intermediary or any equivalent status as defined in any applicable legislation, or
- (c) that the electricity so delivered will either be transported out of the jurisdiction in which the Delivery Point is situated under such Individual Contract or will be re-sold within such jurisdiction,

and the Buyer will provide such documentation as may be required by applicable legislation to evidence any of the foregoing.

5. Exemption Certificates: If, however, the Buyer intends to consume any of the electricity delivered under an Individual Contract, the Buyer shall provide to the Seller, if required under the applicable legislation, a Valid Certificate evidencing the exemption of the Buyer's relevant facility from the Tax which is targeted at the end-user or consumer of electricity, in respect of its energy supply to the reasonable satisfaction of the Seller. If such a Valid Certificate, which is required by any applicable legislation, is not provided and/or the Seller is not so satisfied by the relevant time of invoicing and the Seller is liable to pay the Tax targeted at the end-user or consumer of electricity, the Seller shall charge the Buyer and the Buyer shall pay to the Seller in addition to the Contract Price an amount equal to the Tax which is applicable to the end-user or consumer of electricity on the electricity delivered under such Individual Contract, at the rate applicable at the time of the sale. If the Buyer, subsequent to the Seller charging such Tax, provides the Seller within the applicable time (if any) with a Valid Certificate, the Seller shall reimburse the Buyer for any such Taxes paid by the Buyer, provided the Seller has reclaimed such Tax.

6. Indemnity: In the event that, in respect of an Individual Contract, a Party is in breach of its obligations under §14.4 (*Taxes Targeted at End-Users*) or §14.5 (*Exemption Certificates*), it shall indemnify and hold harmless the other Party against any liability for Tax which is targeted at the end-user or consumer of electricity (and any associated charges or penalties) in respect of electricity delivered under such Individual Contract.

7. **New Taxes:** If any New Tax is applicable to an Individual Contract, and the Buyer is, by the use of reasonable endeavours, able to obtain any available exemption or relief therefrom or is contractually able to pass the same through to or be reimbursed in respect thereof by , a third party, the Buyer shall pay or cause to be paid, or reimburse the Seller if the Seller has paid, such New Tax, and the Buyer shall indemnify, defend and hold harmless the Seller from and against any claims for such New Tax.

8. **Termination for New Tax:** Unless otherwise specified in the Election Sheet or in the terms of an Individual Contract, the provisions of this §14.8 shall only apply in respect of an Individual Contract if the period from the date on which the Parties concluded such Individual Contract pursuant to § 3.1 (**Conclusion of Individual Contracts**) to the end of the Total Supply Period exceeds two years.

Where the provisions of this § 14.8 apply in respect of an Individual Contract and:

- (a) a New Tax is imposed on a Party (the "**Taxed Party**") in respect of the Contract Quantity; and
- (b) having used reasonable endeavours to do so, the Taxed Party is unable contractually to pass on the cost of the New Tax to the other Party or a third party; and
- (c) the total amount of the New Tax that would be payable in respect of the balance of the total amount of electricity to be delivered during the remainder of the Total Supply Period (the "**Remaining Contract Quantity**"), unless otherwise specified in the Election Sheet, shall exceed five percent (5%) of the product of the Remaining Contract Quantity and the Contract Price

then, the Taxed Party shall be entitled to terminate the Individual Contract subject to the following conditions:

- (a) the Taxed Party must give the other Party (the "**Non-Taxed Party**") at least five (5) Business Days' prior written notice (the "**Negotiation Period**") of its intent to terminate the Individual Contract (and which notice shall be given no later than 180 Days after the later of the enactment or the effective date of the relevant New Tax), and prior to the proposed termination the Taxed Party and the Non-Taxed Party shall attempt to reach an agreement as to the sharing of the New Tax;
- (b) if such agreement is not reached, the Non-Taxed Party shall have the right, but not the obligation, upon written notice to the Taxed Party within the Negotiation Period, to pay the New Tax for any continuous period it so elects on a calendar month to calendar month basis, and in such case the Taxed Party shall not have the right during such continuous period to terminate the Individual Contract on the basis of the New Tax;
- (c) should the Non-Taxed Party elect to pay the New Tax on a calendar month to calendar month basis, the Non-Taxed Party may elect to cease the payment of the New Tax upon giving five (5) Business Days' prior written notice to the Taxed Party of its election to cease payment of such New Tax, in which case the Non-Taxed Party shall indemnify the Taxed Party for the New Tax and related interest and penalties that may be incurred by the Taxed Party in respect of the period during which the Non-Taxed Party had elected to pay the New Tax and the Taxed Party shall again be subject to the provisions of this § 14.8 as if the New Tax had an effective date as of the date on which the Non-Taxed Party ceased payment of such New Tax;
- (d) if agreement as to sharing a New Tax is not reached and the Non-Taxed Party does not elect to pay the New Tax for any period of time within the Negotiation Period, the Individual Contract affected shall be terminated on the expiry of the Negotiation Period;
- (e) upon termination of the Individual Contract, the provisions of § 11 (**Calculation of the Termination Amount**) relating to the calculation and payment of the Termination Amount shall apply but only in respect of the Individual Contract(s) so terminated, and for these purposes:
 - (i) the Non-Taxed Party shall be understood to be the Terminating Party for the calculation of the Termination Amount; and

- (ii) the effect (if any) of the relevant New Tax on the calculation of the Termination Amount (or any Settlement Amount) shall be expressly excluded.

9. **Withholding Tax:** If this § 14.9 is specified as applying in the Election Sheet, the following shall apply between the Parties:

- (a) **Payments Free and Clear:** All payments under an Individual Contract shall be made without any withholding of or deduction for or on account of any Tax unless such withholding or deduction is required by law. If a Party is so required to withhold or deduct Tax from a payment to be made by it, then that Party ("**Paying Party**") shall notify the other Party ("**Receiving Party**") immediately of such requirement and pay to the appropriate authorities all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the authorities, the Paying Party shall deliver such evidence (or a certified copy thereof) to the Receiving Party.
- (b) **Grossing-Up:** The Paying Party shall increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, the Receiving Party receives the same amount it would have received had no such withholding or deduction been made or required to be made, except that no increase shall be made in respect of any Tax:
 - (i) which is only imposed as a result of a connection between the Receiving Party and the jurisdiction of the authority imposing the Tax (including, without limitation, a connection arising from the Receiving Party having or having had a permanent establishment or other fixed place of business in that jurisdiction, or having been present or engaged in business in that jurisdiction) other than the mere execution or delivery of this General Agreement, any Confirmation or any Credit Support Document; or
 - (ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the appropriate authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in the Election Sheet in a form reasonably satisfactory to the Paying Party; or
 - (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in the Election Sheet for the purposes of this § 14.9 failing or ceasing to be true and accurate provided that this paragraph (iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 14.9(b)) if such representation has failed or ceased to be true and accurate by reason of:
 - (aa) any change in, or in the application or interpretation, of any relevant law, enactment, directive, or published practice of any relevant Tax authority being a change occurring on or after the date on which the relevant Individual Contract is entered; or
 - (bb) any action taken by a Tax authority, or brought in a court of competent jurisdiction, on or after the date on which the relevant Individual Contract is entered into.

§ 15

Floating Prices and Fallback Procedure for Market Disruption

1. **Calculation of Floating Contract Prices:** In the event the Contract Price is based on an index, exchange or any other kind of variable reference price (such price being a "**Floating Price**") the Contract Price shall be determined on the Settlement Date at the Settlement Price as specified in the applicable Individual Contract. The Settlement Price shall be determined in accordance with the Calculation Method on the Calculation Date as specified in the Individual Contract. The Calculation Date is the date specified as such in the Individual Contract on which the Settlement Price for the specific delivery is determined. The Calculation

Agent shall provide prompt notice of the Settlement Price determined as well as the amount to be paid on the Due Date. Payment shall be made pursuant to § 13 (*Invoicing and Payment*).

2. Market Disruption: Upon the occurrence of a Market Disruption Event as specified in § 15.4 (*Definition of Market Disruption Event*), the Calculation Agent shall determine an alternative price to which the relevant Individual Contract shall be settled (the "**Alternative Settlement Price**") according to the applicable Fallback Mechanism contained in the provisions of § 15.3 (*Fallback Mechanism*). In the event of a Market Disruption Event, the order of succession of §15.3 from (a) to (c) shall be binding upon the Calculation Agent. The Calculation Agent can only use the next following Fallback Mechanism provision if the previous Fallback Mechanism provision is not available due to a Market Disruption Event or otherwise as provided in §15.3, as applicable.

3. Fallback Mechanism: In the event of a Market Disruption Event the Calculation Agent shall determine the Alternative Settlement Price according to the following procedure (each a "**Fallback Mechanism**"):

- (a) **Fallback Reference Price:** The Calculation Agent shall determine the Alternative Settlement Price based upon the price for that Calculation Date of the first Alternate Commodity Reference Price, if any, specified in the applicable Individual Contract and which is not itself subject to a Market Disruption Event; if an Alternate Commodity Reference Price has not been agreed on in the Individual Contract, the next applicable Fallback Mechanism shall apply for the relevant Individual Contract;
- (b) **Negotiated Fallback:** Each Party shall promptly negotiate in good faith to agree with the other on an Alternative Settlement Price (or a method for determining the Alternative Settlement Price), and, if the Parties have not so agreed on or before the fifth (5th) Business Day following the first Calculation Date on which the Market Disruption Event existed, the next applicable Fallback Mechanism shall apply;
- (c) **Dealer Fallback:** On or after six (6) Business Days following the first Calculation Date on which the Market Disruption Event occurred or existed, the Parties shall promptly and jointly agree upon three independent leading participants in the relevant market ("**Dealers**") selected in good faith from among participants of the highest credit standing which satisfy all the criteria that the Parties apply generally in deciding whether to offer or to make an extension of credit or to enter into a transaction comparable to the Individual Contract that is affected by the Market Disruption Event. The Dealers shall be appointed to make a determination of the Alternative Settlement Price taking into consideration the latest available quotation for the relevant commodity reference price and any other information that in good faith is deemed relevant. The Alternative Settlement Price shall be the arithmetic mean of the three amounts determined to be the Alternative Settlement Price by each Dealer, in which case the calculation shall be binding and conclusive in the absence of manifest error.

4. Definition of Market Disruption Event: "**Market Disruption Event**" under this § 15 shall mean the events stipulated under § 15.4 (a) through (f) (the existence of which shall be determined in a commercially reasonable manner by the Calculation Agent). For purposes of this § 15.4, "**Price Source**" shall mean any institution determining and publishing the price for a relevant commodity (a "**Commodity Reference Price**") including exchanges trading in any relevant future contracts or commodities on which the Floating Price is based.

- (a) the failure of any relevant Price Source to announce or publish information necessary for determining the Commodity Reference Price;
- (b) the temporary or permanent objective unavailability of any relevant Commodity Reference Price;
- (c) a temporary or permanent closing of the Price Source of any relevant Commodity Reference Price;

- (d) the discontinuance or suspension of, or the imposition of a material limitation on, trading in any relevant futures contract or commodity offered by the relevant exchange for the Commodity Reference Price;
- (e) the occurrence since the date such Individual Contract was entered into of a material change in the details of the composition of or specifications for any relevant commodity or Commodity Reference Price (i) which are entered into or incorporated in any relevant futures contract or offered by the relevant exchange or (ii) which are used by any other relevant institution for determining the Commodity Reference Price in compiling the price information necessary for determining such Floating Price; or
- (f) the occurrence since the commencement of the relevant Individual Contract of a material change in the method of calculation used for any relevant Commodity Reference Price to determine the price information necessary for determining such floating price.

5. **Calculation Agent:** Unless the Parties otherwise specify in the Election Sheet or in the relevant Individual Contract, the Seller shall be the Calculation Agent.

§ 16

Guarantees and Credit Support

To address each Party's risk relating to the creditworthiness of the other Party, and to secure the prompt fulfilment of all obligations resulting from this General Agreement and Individual Contracts, the Parties may agree, on or at any time after the Effective Date, or at the time of the concluding of each Individual Contract, upon the circumstances in which Credit Support Documents may be required to be provided for the benefit of a Party, including, the form of Credit Support Documents, the amount of credit support, and the identity of one or more acceptable Credit Support Providers.

§ 17

Performance Assurance

1. **Right to Require Performance Assurance:** At any time and from time to time, when a Party (the "**Requesting Party**") believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Requesting Party (each a "**Performance Assurance**"). Upon receipt of such written notice, the other Party shall within three (3) Business Days provide to the Requesting Party the Performance Assurance required.

2. **Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing insofar as such event is specified as applying to a Party in the Election Sheet:

- (a) **Credit Rating:** If the Credit Rating of an Entity listed in (i)-(iii), each such Entity being a "**Relevant Entity**" of such Party, is withdrawn or downgraded below the rating set out for such Party in the Election Sheet:
 - (i) the other Party (unless all of that other Party's financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document); or
 - (ii) the other Party's Credit Support Provider (other than a bank); or
 - (iii) any Entity who is a party to a control and/or profit transfer agreement (*Berherrschungs-Gewinnabführungsvertrag*) within the meaning of the German Stock Corporation Act (*Aktiengesetz; AktG*) (a "**Control and Profit Transfer Agreement**") with the other Party and such other Party is in relation to such Entity, its subsidiary over which such Entity has control (a "**Controlling Party**"); or

- (b) **Credit Rating of a Credit Support Provider that is a Bank:** If the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the Credit Rating set out in the Election Sheet; or
- (c) **Financial Covenants:** Insofar as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfill any of the following financial requirements as determined by reference to its most recent financial statement:
- (i) **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet;
 - (ii) **Funds from Operations:** The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet; or
 - (iii) **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in the Election Sheet; or
- (d) **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in the Election Sheet; or
- (e) **Expiry of Performance Assurance or Credit Support Document:** If any Performance Assurance or any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under the Agreement, or, if a Performance Assurance or Credit Support Document is due to expire or terminate within the period of time, if any, specified in the Election Sheet, or the failing or ceasing of such Credit Support Document to be in full force or effect for the purpose of the Agreement (in each case other than in accordance with its terms or the terms of the Agreement) before the satisfaction of all outstanding obligations of such other Party under the Agreement to which such Credit Support Document relates, without the written consent of the Requesting Party.
- (f) **Failure of Performance Assurance or Credit Support Document:** If any Credit Support Provider or Performance Assurance provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document or Performance Assurance provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document or Performance Assurance and such failure is continuing after any applicable grace or cure period; or
- (g) **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement; or
- (h) **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.
- (i) **Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:

- (i) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
- (ii) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under the Agreement or any Credit Support Document to which it or its predecessor was a party by either operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
- (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under the Agreement.

§ 18

Provision of Financial Statements and Tangible Net Worth

1. **Provision of Financial Statements:** Unless otherwise specified in the Election Sheet, if requested by a party, the other Party shall deliver
 - (a) within 120 days following the end of each fiscal year, a copy of such other Party's, or for such period the other Party's obligation are supported by a Credit Support Provider or if it is a party to a Control and Profit Transfer Agreement, its Credit Support Provider's or its Controlling Party's, as the case may be, annual report containing audited consolidated financial statements for such fiscal year, and
 - (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements; and
2. **Decline in Tangible Net Worth:** If this § 18.2 is specified as applying in the Election Sheet, as soon as it becomes aware of such decline, each Party shall promptly notify the other Party of the occurrence of a decline in its Tangible Net Worth or the Tangible Net Worth of its Credit Support Provider or Controlling Party, to a level below the amount specified in the Election Sheet.
3. **Accounting Principles:** In all cases the financial statements referred to in this §18 shall be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

§ 19

Assignment

1. **Prohibition:** Neither Party shall be entitled to assign its rights and obligations under the Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.
2. **Assignment to Affiliates :** If this § 19.2 is specified as applying in the Election Sheet, each Party shall be entitled to assign its rights and obligations under the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness. Such Assignment shall only become effective upon notice being received by the other Party and; provided that any Credit Support Document issued or agreed on behalf of the assigning Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

§ 20

Confidentiality

1. **Confidentiality Obligation:** Unless this § 20 is specified as not applying in the Election Sheet, and subject to § 20.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of an Individual Contract ("**Confidential Information**") to a third party.

2. Exclusions from Confidential Information: Confidential Information shall not include information which:

- (a) is disclosed with the other Party's prior written consent;
- (b) is disclosed by a Party to the Network Operator, its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;
- (c) is disclosed to comply with any applicable law, regulation, or rule of any exchange, system operator or regulatory body, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
- (d) is in or lawfully comes into the public domain other than by a breach of this § 20; or
- (e) is disclosed to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party.

3. Expiration: A Party's obligation in respect of an Individual Contract under this § 20 shall expire one (1) year after the expiration of such Individual Contract.

§ 21 **Representations and Warranties**

If specified as applying to a Party in the Election Sheet, that Party hereby represents and warrants to the other Party upon entering into this General Agreement and each time it enters into an Individual Contract as follows:

- (a) it is an Entity duly organised, validly existing and in good standing under the laws of its jurisdiction of incorporation or organisation;
- (b) the signing and the entering by it into of the General Agreement, any Credit Support Document to which it is a party and each Individual Contract and the carrying out of the transactions contemplated therein, shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to execute, deliver and perform its obligations under the Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery, performance and its entry into the Agreement and its execution, delivery and the performance of the Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party or any constitutional document, rule, law or regulation applicable to it;
- (d) no Material Reason for termination as outlined in § 10.5 (*Definition of Material Reason*), with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Agreement;
- (e) it has all governmental and regulatory authorisations, approvals and consents necessary for it to legally perform its obligations under the Agreement and any Credit Support Document to which it is party;
- (f) it has negotiated, entered into and executed the Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (g) it regularly enters into agreements for the trading of electricity as contemplated by the Agreement, and does so on a professional basis in connection with its principal line of business, and may be reasonably characterised as a professional market party;

- (h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this General Agreement and each Individual Contract and as to whether this General Agreement and each such Individual Contract is appropriate or proper for it based upon its own judgement, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of the Agreement;
- (i) the other Party is not acting as its fiduciary or adviser;
- (j) it is not relying upon any representation made by the other Party other than those expressly set forth in the Agreement or any Credit Support Document to which it is a party;
- (k) [DELETED];
- (l) it is a supplier ("*Versorger*") within the meaning of the German Electricity Tax Act (*Stromsteuergesetz* ("*StromStG*")) of March 24, 1999 and does not accept electricity as an end user ("*Letztverbraucher*"). (In this case, if it has its registered office within Germany, and upon the other Party's request, it shall forward evidence of its permission according to § 4 of *StromStG*);
- (m) with respect to a Party that is a governmental Entity or public power system, such governmental Entity or public power system represents and warrants to the other Party as follows: (i) all acts necessary for the valid execution, delivery and performance of the Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed; (ii) entry into and performance of the Agreement by a governmental Entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and applicable law; and (iii) the term of the Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and applicable law; and
- (n) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform any Individual Contract under the Agreement or any Credit Support Document to which it is party, such that it could become insolvent.

§ 22

Governing Law and Arbitration

1. **Governing Law:** Unless otherwise specified in the Election Sheet, this Agreement shall be construed and governed by the substantive law of the Federal Republic of Germany, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980."
2. **Arbitration:** Unless otherwise specified in the Election Sheet, any disputes which arise in connection with the Agreement shall be referred for resolution to the German Institution of Arbitration (DIS) and decided according to its rules, ousting the jurisdiction of the ordinary courts. The number of arbitrators shall be three. The arbitration shall be conducted in the language specified in the Election Sheet.

§ 23

Miscellaneous

1. **Recording Telephone Conversations:** Each Party is entitled to record telephone conversations held in connection with the Agreement and to use the same as evidence. Each Party waives any further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.
2. **Notices and Communications:** Except as otherwise provided herein or agreed with respect to an Individual Contract, all notices, declarations or invoices sent by one Party to the other shall be in writing and

shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile as provided in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

2. Amendments: Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to this General Agreement shall be made only in writing signed by both Parties.

3. Partial Invalidity: If, at any time, any provision of this General Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this General Agreement or of any Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

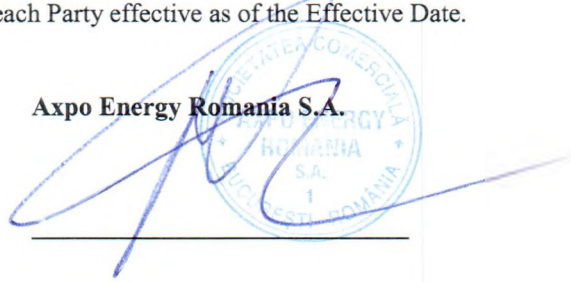
4. Third Party Rights: The Parties do not intend that any third party shall have any rights under or be able to enforce the Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

Grand Energy Distribution EOOD



Axpo Energy Romania S.A.



EUGEN POPU BESCO

Popu

Annexes:

1: Definitions

2a-d: Confirmation Forms for Fixed Price, Floating Price, Put Options and Call Options

EFET

European Federation of Energy Traders

Annex 1 to the General Agreement

Defined Terms

Terms used in the General Agreement shall have the following meanings:

"**Accepting Party**" has the meaning specified in § 8.1 (*Failure to Deliver*):

"**Affiliate**" means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly that Party or any Entity directly or indirectly under the common Control of a Party;

"**Agreement**" has the meaning specified in § 1.1 (*Subject of Agreement*):

"**Alternate Commodity Reference Price**" has the meaning, if any, specified in each Individual Contract containing a Floating Price;

"**Alternative Settlement Price**" has the meaning specified in § 15.2 (*Market Disruption*);

"**American Style Option**" means a style of Option which may be Exercised during an Exercise Period that consists of more than one day;

"**Automatic Termination**" has the meaning specified in § 10.4 (*Automatic Termination*);

"**Business Day**" means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office;

"**Buyer**" has the meaning specified in the Individual Contract;

"**Calculation Agent**" has the meaning specified in § 15.5 (*Calculation Agent*):

"**Calculation Date**" has the meaning specified in a Floating Price Individual Contract;

"**Calculation Method**" has the meaning specified in a Floating Price Individual Contract;

"**Call Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*):

"**Central European Time**" or "**CET**" means Central European Time and shall include Central European Winter Time and Central European Summer Time as applicable;

"**Commodity Reference Price**" has the general meaning specified in § 15.4, and with respect to a Floating Price Individual Contract, as specified in that Floating Price Individual Contract;

"**Confidential Information**" has the meaning specified in § 20.1 (*Confidentiality*):

"**Confirmation**" has the meaning specified in § 3.2 (*Confirmations*):

"**Contract Capacity**" means, in respect of an Individual Contract, the capacity agreed between the Parties, expressed in MW;

"**Contract Price**" means, in respect of an Individual Contract, the price agreed between the Parties;

"**Contract Quantity**" means, in respect of an Individual Contract, the quantity agreed between the Parties, expressed in MWh;

"**Control**" means ownership of more than fifty per cent (50%) of the voting power of a Party or Entity and "**Controlled**" or "**Controlling**" shall be construed accordingly;

"**Control and Profit Transfer Agreement**" has the meaning specified in § 17.2(a)(iii) (*Credit Rating*);

"**Controlling Party**" has the meaning specified in § 17.2(a)(iii) (*Credit Rating*);

"**Costs**" has the meaning specified in § 11.2(a) (*Settlement Amount*);

"**Credit Rating**" means in respect of an Entity any of the following: (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

"**Credit Support Documents**" has the meaning specified with respect to a Party specified in the Election Sheet, which may include, without limitation, a parent guarantee, bank guarantee, letter of awareness, letter of credit or any credit support agreement;

"**Credit Support Provider**" has the meaning specified with respect to a Party specified in the Election Sheet;

"**Damages**" has the meaning specified in § 12.2 (*Exclusion of Liability*);

"**Dealers**" has the meaning specified in § 15.3(c) (*Dealer Fall Back*);

"**Defaulting Party**" has the meaning specified in § 9.1 (*Suspension of Delivery*);

"**Delivering Party**" has the meaning specified in § 8.1 (*Failure to deliver*);

"**Delivery Point**" means, in respect of an Individual Contract, the delivery point agreed between the Parties;

"**Delivery Schedule**" means, in respect of an Individual Contract, the delivery schedule agreed between the Parties;

"**Due Date**" has the meaning specified in § 13.2 (*Payment*);

"**Early Termination**" has the meaning specified in § 10.3 (a) (*Termination for Material Reason*);

"**Early Termination Date**" has the meaning specified in § 10.3 (b) (*Termination for Material Reason*);

"**EBIT**" means earnings before interest and taxes which, shall be in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity); plus the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity;

"**Effective Date**" has the meaning set out on the first page of this General Agreement;

"**Election Sheet**" has the meaning specified in § 1.1 (*Subject of Agreement*);

"**Entity**" means an individual, government or state or division thereof, government or state agency, corporation, partnership or such other entity as the context may require;

"**EU**" means the European Community as it exists from time to time;

"European Style Option" means a style of Option which may be Exercised only on the day of the Exercise Deadline;

"Exercise" means the exercise of an Option pursuant to § 5.3 (*Exercise of Option and Deadline*) and **"Exercises"** and **"Exercised"** shall be construed accordingly;

"Exercise Deadline" means the day and time by which Exercise must be given under § 5.3 (*Exercise of Option and Deadline*);

"Exercise Period" means: (i) in respect of a European Style Option, the day of the Exercise Deadline; and (ii) in respect of any other Option including an American Style Option, each of the periods specified in the Individual Contract;

"Expiration Date" has the meaning specified in § 10.2 (*Expiration Date and 30 Day Termination Notice*) of the Election Sheet;

"Fallback Mechanism" has the meaning specified in § 15.3 (*Fall Back Mechanism*);

"Floating Price" has the meaning specified in § 15.1 (*Settlement Price Calculation*);

"Force Majeure" has the meaning specified in § 7.1 (*Definition of Force Majeure*);

"Funds from Operations" means the amount of cash generated or employed by the Relevant Entity in its operating activities;

"Gains" has the meaning specified in § 11.2(b) (*Settlement Amount*);

"General Agreement" means this General Agreement Concerning the Delivery and Acceptance of Electricity;

"Holder" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"Interest Rate" has the meaning specified in § 13.5 (*Default Interest*);

"Individual Contract" has the meaning specified in § 1.1 (*Subject of Agreement*);

"Letter of Credit" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in the Election Sheet as provided in § 17.2 (b) (*Credit Rating of a Credit Support Provider that is a Bank*);

"Losses" has the meaning specified in § 11.2(c) (*Settlement Amount*);

"Market Disruption Event" has the meaning specified in § 15.4 (*Definition of Market Disruption Event*);

"Material Adverse Change" has the meaning specified in § 17.2 (*Material Adverse Change*);

"Material Reason" has the meaning specified in § 10.5 (*Definition of Material Reason*);

"Negotiation Period" has the meaning specified in § 14.8 (*Termination for New Tax*);

"Network Operator" means collectively the relevant transmission providers and network, grid or system operators;

"New Tax" means in respect of an Individual Contract, any Tax enacted and effective after the date on which the Individual Contract is entered into, or that portion of an existing Tax which constitutes an effective increase (taking effect after the date on which the Individual Contract is entered into) in applicable rates, or extension of any existing Tax to the extent that it is levied on a new or different class of persons as a result of any law, order, rule, regulation, decree or concession or the interpretation thereof by the relevant taxing authority, enacted and effective after the date on which the Individual Contract is entered into;

"**Non-Defaulting Party**" has the meaning specified in § 9 (*Suspension of Delivery*);

"**Non-Taxed Party**" has the meaning specified in § 14.8 (*Termination for New Tax*);

"**Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Ordinary Termination**" has the meaning specified in § 10.2 (*Expiration Date and 30 Day Termination Notice*);

"**Other Tax**" means any energy Tax or excise duty but not including Taxes targeted at end users;

"**Party A**" means the Party identified as such in the Election Sheet;

"**Party B**" means the Party identified as such in the Election Sheet;

"**Paying Party**" has the meaning specified in § 14.9(a) (*Payments Free and Clear*);

"**Performance Assurance**" has the meaning specified in § 17.1 (*Performance Assurance*);

"**Premium**" has the meaning specified in the Individual Contract for an Option;

"**Premium Payment Date**" has the meaning specified in the Individual Contract for an Option;

"**Price Source**" has the meaning specified in § 15.4 (*Definition of Market Disruption Event*);

"**Put Option**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*);

"**Receiving Party**" has the meaning specified in § 14.9(a) (*Payments Free and Clear*);

"**Relevant Entity**" has the meaning specified in § 17.2(a) (*Credit Rating*);

"**Remaining Contract Quantity**" has the meaning specified in § 14.8 (*Termination for New Tax*);

"**Requesting Party**" has the meaning specified in § 17.1 (*Credit Rating*);

"**Schedule**" has the meaning specified in § 4.2 (*Definition of Schedule*) and "**Scheduled**" and "**Scheduling**" shall be construed accordingly;

"**Seller**" has the meaning specified in the Individual Contract;

"**Settlement Amount**" has the meaning specified in § 11.2 (*Settlement Amount*);

"**Settlement Date**" has the meaning specified in the Individual Contract;

"**Settlement Price**" has the meaning specified in the Individual Contract;

"**Specified Indebtedness**" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions);

"**Tangible Net Worth**" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated earnings less any accumulated retained losses and intangible assets including, but limited to, goodwill;

"**Tax**" means any present or future tax, levy, impost, duty, charge, assessment royalty, tariff or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority (whether or not for its benefit) in respect of any payment, nomination and allocation under any Individual Contract or under this Agreement, and "**Taxes**" shall be construed accordingly. For the avoidance of doubt, Tax

shall exclude; (i) any tax on net income or wealth; (ii) a stamp, registration, documentation or similar tax; and (iii) VAT;

"**Taxed Party**" has the meaning specified in § 14.8 (*Termination for New Tax*);

"**Terminating Party**" has the meaning specified in § 10.3 (*Termination for Material Reason*);

"**Termination Amount**" has the meaning specified in § 11.1 (*Termination Amount*);

"**Threshold Amount**" with respect to a Party, shall have the meaning as specified for that Party pursuant to § 10.5(b)(ii);

"**Total Capitalisation**" means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

"**Total Debt**" means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;

"**Total Supply Period**" means, in respect of an Individual Contract, the supply period agreed between the Parties;

"**Valid Certificate**" means any appropriate documentation accepted by the relevant taxing authorities or as required by applicable law, order, rule, regulation, decree or concession or the interpretation thereof;

"**VAT**" means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties;

"**VAT Rules**" means any VAT law, order, rule, regulation, decree or concession or the interpretation thereof;

"**Zero-Rated**" means, in respect of a supply, a tax exempt export or tax-free export under applicable VAT Rules and "**Zero-Rating**" shall be construed accordingly; and

"**Writer**" has the meaning specified in § 5.1 (*Delivery and Acceptance Pursuant to an Option*).

EFET

European Federation of Energy Traders

Annex 2a

to the

General Agreement

Confirmation of Individual Contract

(Fixed Price)

between

_____ as Seller

and

_____ as Buyer.

concluded on: __/__/__, __. __ hours

Delivery Schedule

Total Supply Period		From CET	To CET	Contract Capacity MW	Contract Quantity MWh	Contract Price Euro / MWh	Total amount Euro
First Date	Last Date						
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)

and additional (for single-block contracts)

Mon	Tue	Wed	Thu	Fri	Sat	Sun	including Holidays	excluding Holidays as specified below

Delivery Point (Trading zone) _____

Voltage Level: _____

Excluded Holidays: _____

Other arrangements: _____

Annex 2A - 1

Version 2.1(a)

Copyright © 2007 by European Federation of Energy Traders

This Confirmation confirms the Individual Contract entered into pursuant to the EFET General Agreement Concerning the Delivery of Electricity between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date: _____ Signature: _____

EFET

European Federation of Energy Traders

Annex 2b to the General Agreement

Confirmation of Individual Contract

(Floating Price)

between

_____ as Seller

and

_____ as Buyer.

Date and time of conclusion: ____/____/____, ____ hours

Delivery Schedule

First Date	Last Date	From CET	To CET	Contract Capacity MW	Contract Quantity MWh	Floating Price	Settlement Date
					(Total)	(variable)	
					(Total)	(variable)	
					(Total)	(variable)	
					(Total)	(variable)	
					(Total)	(variable)	

and additional (for single-block contracts)

Mon	Tue	Wed	Thu	Fri	Sat	Sun	Including Holidays	excluding Holidays as specified below

Price Source: _____

Commodity Reference Price: _____

Alternate Commodity Reference Price: _____

Calculation Date: _____

Calculation Agent: _____

Calculation Method: _____

Delivery Point (Trading zone): _____

Annex 2B - 1

Voltage level: _____
Excluded Holidays: _____
Other arrangements:

This Confirmation confirms the Individual Contract entered into pursuant to the General Agreement Concerning the Mutual Delivery of Electricity between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date: _____ Signature: _____

EFET

European Federation of Energy Traders

Annex 2c to the General Agreement

Confirmation of Individual Contract

(Call Option)

between

_____ as Writer

and

_____ as Holder

Date and time of conclusion: __/__/____, ____:____ hours

Option Details:

- a) Option Type: Call
- b) Exercise Deadline:
- c) Premium:
- d) Premium Payment Date:

Delivery Schedule:

First Date	Last Date	From CET	To CET	Contract Capacity MW	Contract Quantity MWh	Strike Price (Contract Price) Euro / MWh	Total amount Euro
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)

and additional (for single-block contracts)

Mon	Tue	Wed	Thu	Fri	Sat	Sun	including Holidays	excluding Holidays as specified below

Delivery Point (Trading zone): _____

Voltage Level: _____

Excluded Holidays: _____

Other arrangements: _____

This Confirmation confirms the Individual Contract entered into pursuant to the General Agreement Concerning Delivery of Electricity between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date: _____ Signature: _____

EFET

European Federation of Energy Traders

Annex 2d to the General Agreement

Confirmation of Individual Contract

(Put Option)

between

_____ as Writer

and

_____ as Holder

Date and time of conclusion: __/__/____, ____:____ hours

Option Details:

- a) Option Type: Put
- b) Exercise Deadline:
- c) Premium:
- d) Premium Payment Date:

Delivery Schedule:

First Date	Last Date	From CET	To CET	Contract Capacity MW	Contract Quantity MWh	Strike Price (Contract Price) Euro / MWh	Total amount Euro
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)
					(Total)		(Total)

and additional (for single-block contracts)

Mon	Tue	Wed	Thu	Fri	Sat	Sun	including Holidays	excluding Holidays as specified below

Delivery Point (Trading zone): _____

Voltage Level: _____

Excluded Holidays: _____

Other arrangements:

This Confirmation confirms the Individual Contract entered into pursuant to the General Agreement Concerning Delivery of Electricity between the Parties (General Agreement) and supplements and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date: _____ Signature: _____

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of 22.03.2019

between

Grand Energy Distribution EOOD

and

Axpo Energy Romania S.A.

“Party A”

“Party B”

PART I: CUSTOMIZATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

§ 1.2 Pre-Existing Contracts: § 1.2 shall not apply.

§2

Definitions and Construction

§ 2.4 References to Time: time references shall be:
 as provided in the General Agreement (CET)

§3

Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: § 3.4 shall not apply as written in the General Agreement but instead shall apply as follows:

“4. **Authorised Persons:** Individual Contracts may only be concluded by the authorized traders of a Party. Absent prior notice to the contrary, a Party acknowledges and represents to the other Party that each of its employees purporting to represent, negotiate and enter into one or more binding Individual Contracts on a Party’s behalf shall be deemed to be an authorized trader of that Party. Any list of authorised persons made available by either Party to the other Party (in the past or in the future) shall have no binding effect on the Parties, whatsoever, and shall only serve for information purposes.”

§5

Primary Obligations for Options

§ 5.3 Exercise of Option and Deadline: The last sentence shall be deleted and replaced by the following:

Unless otherwise agreed in respect of an Individual Contract, the Exercise Deadline in respect of an Option shall be 15:00 hours CET.

§7

Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure: [X] § 7.1 shall apply as written in the General Agreement.

§10

Term and Termination Rights

§ 10.2 Expiration Date: [X] § 10.2 shall apply and there shall be no Expiration Date.

§ 10.4 Automatic Termination: [X] § 10.4 shall apply to **Party A** but only in respect of the occurrence of one of the Material Reasons as described in § 10.5 (c) and with termination effective at 11.59 p.m. on the day before the occurrence of that Material Reason; and
[X] § 10.4 shall not apply to **Party B**.

§10.5(a) Non Performance: §10.5(a) shall be amended as follows:

§ 10.5(a) Non-Performance: After the words "*(Non-Performance Due to Force Majeure)*" in the last line of the first paragraph of § 10.5(a) the words "or, in respect of an obligation to deliver electricity (and without prejudice to any right to terminate for failure to pay for electricity delivered), when such obligation is suspended pursuant to § 9 (*Suspension of Delivery or Acceptance*)" shall be inserted.

§ 10.5(a)(i) shall be amended as follows:

The following words shall be added after the words "a failure to pay": "or a failure to deliver any Performance Assurance".

§ 10.5(b) Cross Default and Acceleration: [X] § 10.5 (b) shall not apply to **Party A** and shall not apply to **Party B**.

§ 10.5(c) Winding-up/Insolvency/Attachment: [X] § 10.5(c)(iv) shall apply to both Parties without any applicable grace period for the Party to have such proceedings (as are referred to in § 10.5(c)(iv)) withdrawn, dismissed, discharged, stayed or restrained unless such proceedings referred to in § 10.5(c) (iv) are being instituted by a third party against, and not by a Party or its Credit Support Provider or Controlling Party, in which case the applicable time period is within fifteen (15) days of their institution. For the avoidance of doubt, § 10.4 shall prevail and the right to ask for Performance Assurance according to § 17 remains unaffected during such grace period.

§ 10.5(c) shall be amended so that the words "or a Party's Parent Company" are inserted after "Credit Support Provider" in the first line.

§ 10.5(d) Failure to Deliver or Accept: [X] § 10.5(d) shall apply.

§ 10.5(e) Force Majeure: [X] § 10.5(e) shall not apply.

§ 10.5 Other Material Reasons: [X] the following additional Material Reasons shall apply to Party A and Party B:

(g) Default under Specified Transaction. The party, any Credit Support Provider of such party or any Controlling Party of such Party (1) defaults under a Specified Transaction and, after giving effect to any applicable notice

requirement or grace period, there occurs a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction, (2) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment due on the last payment, delivery or exchange date of, or any payment on early termination of, a Specified Transaction (or such default continues for at least three (3) Business Days if there is no applicable notice requirement or grace period) or (3) disaffirms, disclaims, repudiates or rejects, in whole or in part, a Specified Transaction (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

§12

Limitation of Liability

§ 12 Application of Limitation: § 12 shall apply as written in the General Agreement

§13

Invoicing and Payment

§ 13.2 Payment: initial billing and payment information for each Party is set out in § 23 of this Election Sheet.

§ 13.3 Payment Netting: § 13.3 shall apply.

§13.4 Invoicing and Payment of Scheduled Contract Quantities: § 13.4 shall be amended by adding the following words immediately prior to the full stop at the end thereof:

“,with such necessary adjustments made in the first subsequent calendar month for which information becomes available.”

§ 13.5 Interest Rate: the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus two percentage points (2) per annum.

§ 13.6 Disputed Amounts: §13.6 (a) shall apply, amended as follows:

in the first line the words: “subject to manifest errors,” shall be inserted before the words: “the full amount invoiced not later...”.

§14

VAT and Other Taxes

§ 14.8 Termination for New Tax: unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 14.8.

§ 14.9 Withholding Tax: § 14.9 shall apply

§15

Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 15.5 Calculation Agent: the Calculation Agent shall be Seller, unless a Material Reason has occurred and is continuing with respect to Seller, in which case the Calculation Agent shall be Buyer.

§16

Guarantees and Credit Support

§ 16 Credit Support Documents: Party A shall provide Party B with the following Credit Support Document(s): bank guarantee

Party B shall provide Party A with the following Credit Support Document(s): initially none

§ 16 Credit Support Provider: Credit Support Provider of Party A shall be:
Bank with a minimum rating as provided for in 17.2(b)

Credit Support Provider of Party B shall be:
initially none

§17 **Performance Assurance**

§ 17.2 Material Adverse Change: the following categories of Material Adverse Change shall apply to **Party A:**

§17.2 (a) (**Credit Rating**), and the minimum rating shall be “BB-“ by Standard & Poor’s Financial Services LLC or “Ba3” by Moody’s Investor Services Inc.

§17.2 (b) (**Credit Rating of Credit Support Provider or Provider of Performance Assurance that is a Bank**). If the Credit Rating of a Credit Support Provider or a Provider of Performance Assurance is withdrawn or downgraded below a minimum rating of BBB by S&P or Baa2 by Moody’s.

§17.2 (d) (**Decline in Tangible Net Worth**), and the relevant figure is: more than 25% (twenty five) decline within one (1) fiscal year in the Tangible Net worth of Party A (based on consolidated figures) or falls below (calculation for reference in Part II).

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period shall be thirty (30) days.

§17.2 (f) (**Failure of Performance Assurance or Credit Support**);

§17.2 (h) (**Impaired Ability to Perform**); and

§17.2 (i) (**Amalgamation/Merger**).

the following categories of Material Adverse Change shall apply to **Party B:**

§17.2 (b) (**Credit Rating of Credit Support Provider or Provider of performance Assurance that is a Bank**) If the Credit Rating of a Credit Support Provider or a Provider of Performance Assurance is withdrawn or downgraded below a minimum rating of BBB by S&P or Baa2 by Moody’s.

§17.2 (d) (**Decline in Tangible Net Worth**), and the relevant figure is: more than 25% (twenty five) decline within one (1) fiscal year in the Tangible Net worth of Party B’s Parent Company (based on consolidated figures) or falls below (calculation for reference in Part II).

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and the relevant time period shall be thirty (30) days.

§17.2 (f) (**Failure of Performance Assurance or Credit Support**);

§17.2 (h) (**Impaired Ability to Perform**); and

§17.2 (i) (**Amalgamation/Merger**).

In respect of the Credit Ratings referred to, respectively, in § 17.2 (b), as they apply to Party A and Party B, in the event that the applicable respective entity has each of two Credit Ratings, one being from Standard & Poor’s Rating group and the other from Moody’s Investor Services inc., and both such Credit Ratings are not the same level of parity (commonly known as “split ratings”), then, for the avoidance of doubt, the lowest such Credit Rating will be used to determine exclusively whether or not the respective Material Adverse Change has occurred.

§18
Provision of Financial Statements and Tangible Net Worth

§ 18.1 (a) Annual Reports: Party A shall deliver Annual Reports to the extent that they are not publicly available at <http://www.grandenergy.net/>

Party B shall deliver Annual Reports to the extent that they are not publicly available at www.axpo.com.

§ 18.1(b) Quarterly Reports: Party A and Party B need not deliver quarterly reports.

§18.2 Tangible Net Worth: Party A shall have no duty to notify as provided in § 18.2, and

Party B shall have no duty to notify as provided in § 18.2.

§19
Assignment

§19.1 Prohibition: At the end of §19.1 the following will be inserted:

“but a Terminating Party may make such a transfer of all or any part of its interest in any amount payable to it from the other Party under §10.3 (*Termination for Material Reason*) and §10.4 (*Automatic Termination*) without prior written consent.”

§ 19.2 Assignment to Affiliates: Party A may assign in accordance with § 19.2, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and transferring party.

Party B may assign in accordance with § 19.2, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and transferring party.

§20
Confidentiality

§ 20.1 Confidentiality Obligation: § 20 shall apply

§21
Representation and Warranties

The Following Representations and Warranties are made:

	by Party A:	by Party B:
§21(a)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(b)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(c)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(d)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(e)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(f)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(g)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(h)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(i)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(j)	<input checked="" type="checkbox"/> yes [] no	<input checked="" type="checkbox"/> yes [] no
§21(l)	[] yes [<input checked="" type="checkbox"/>] no	[] yes [<input checked="" type="checkbox"/>] no
§21(m)	[] yes [<input checked="" type="checkbox"/>] no	N/A
§21(n)	[<input checked="" type="checkbox"/>] yes [] no	<input checked="" type="checkbox"/> yes [] no

N/A: means not applicable.

Additionally, for the purposes of EU Council Directive 112/2006/EEC Art. 38 each Party represents, warrants and undertakes to the other Party in relation to each Individual Contract that, where applicable:

- (i) **Party A** gives the following VAT representation to the other Party upon entering into this General Agreement and each time it enters into an Individual Contract as a Buyer.
 - (a) it is a "Taxable Dealer" as defined in Article 38 of the EU Council Directive 2006/112 EC:
 - (b) its place of establishment for VAT purposes is Bulgaria with VAT Registration Number BG201208860.
- (ii) **Party B** gives the following VAT representation to the other Party upon entering into this General Agreement and each time it enters into an Individual Contract as a Buyer.
 - (a) it is a "Taxable Dealer" as defined in Article 38 of the EU Council Directive 2006/112 EC:
 - (b) its place of belonging for VAT purposes is Romania with VAT Registration Number RO15537844.
- (iii) Each Party, within ten (10) Business Days of any change in VAT status becoming effective, shall provide notice to the other Party of any change in the accuracy or the validity of the representation it has made, and will make.

§22

Governing Law and Arbitration

§ 22.1 **Governing Law:** § 22.1 shall apply as written.

§ 22.2 **Arbitration:** § 22.2 shall apply as written, the language of arbitration shall be English, the venue for arbitration shall be Munich.

§23

Miscellaneous

§ 23.2 **Notices, Invoices and Payments:**

(a) **TO PARTY A:**

Notices & Correspondence

Grand Energy Distribution EOOD

Address:

3020 Str. № 34, floor 4, 1360 Sofia,
Bulgaria

Telephone No:

+359 2 8904206

Fax No:

+359 2 8904251

Attention

Head of Trading

Invoices

Fax No:

+359 2 8904251

Attention

Accounting

Payments

Bank account details

UniCredit Bulbank AD

**Pl. Sveta Nedelya N7, 1000 Sofia,
Bulgaria**

IBAN: BG23 UNCR 7000 1521 7637 86
BIC: UNCRBGSF

VAT:

BG201208860

EIC code: 32X0011001003133

(b) TO PARTY B: S.C. AXPO ENERGY ROMANIA S.A

Notices & Correspondence

Address: 79-81, Popa Savu Str.
011432 Bucharest
Telephone No: +4 021 230 33 23
Fax No: +4 021 230 33 35
Attention: Catalin Iordache – Managin Director
Catalin.iordache@axpo.com

Invoices

Fax No: +4 021 230 33 35
Office.ro@axpo.com
Attention: Back Office & Regulations
Payments

Bank account details Bank: Unicredit Tiriac Bank, Bucharest
Swift: BACXROBU
IBAN: RO51BACX 0000 0000 7000 1001

Annex 1 – Defined Terms

“**Annual Report**” means in respect of one Party, the annual report of one Party, its Credit Support provider and its Controlling Party (as applicable) containing consolidated financial statements certified by independent certified public accountants and prepared in accordance with the International Financial Reporting Standards (formerly International Accounting Standards) issued by the International Financial Reporting Interpretations Committee of the International Accounting Standards Board (as amended, supplemented or re-issued from time to time).

[X] “**Commodity**” shall mean any tangible or intangible commodity of any type or description (including, without limitation, electric energy and/or capacity, petroleum and natural gas, the products or by-products thereof, coal, emissions, and base or precious metals).

The definition of “**Credit Rating**” shall be amended by deleting the words “Standard and Poor’s Rating group (a division of McGraw-Hill Inc)” and replacing them with “Standard and Poor’s, a division of the McGraw-Hill Companies Inc. and any successor thereto” and further amended by deleting the words “Moody’s Investors Service (Moody’s) and any successor thereto”.

The following new definitions shall be added:

“**Euro**” or “**EUR**” or “**€**” means the lawful currency of the member states of the European Union that adopt the single currency in accordance with the EC Treaty, whereby EC Treaty means the treaty establishing the European community (signed Rome March 25, 1957), as amended by the treaty on European Union (signed in Maastricht on Feb 7, 1992) the treaty of Amsterdam (signed in Amsterdam on October 2, 1997) and the Treaty of Nice (signed in Nice on Feb 20, 2001).

“**Specified Transaction**” means:

(a) any transaction (including an agreement with respect thereto) now existing or hereafter entered into between one Party to this Agreement (or any Credit Support Provider of such Party) and the other Party to this Agreement (or any Credit Support Provider of such other Party) which is a rate swap transaction, basis swap, forward rate transaction, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond

option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, any spot or forward purchase or sale of a commodity or interest in a commodity, or any other similar transaction (including any option with respect to any of these transactions);

(b) any combination of these transactions; and

(c) any other transaction identified as a Specified Transaction in this Agreement or the relevant confirmation.”

“**Parent Company**” means any entity holding directly or indirectly a majority of the beneficial interest in or voting rights over such Party.

The definition of "**Tangible Net Worth**" shall be amended as follows:

The words "... including, but limited to..." are replaced by "... including, but not limited to..."

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

1. **§ 3.5 Status of Confirmations:** A new § 3.5 shall be added as follows.

“The Confirmation shall, save in the event of manifest error, prevail over any oral or written agreement in respect of the Individual Contract. Failure or persistent failure by the Seller or the Buyer to send a Confirmation shall not be a Material Reason for terminating the Agreement under § 10.5(a) (*Definition of Material Reason: Non-Performance*), nor shall it affect the validity or enforceability of any Individual Contract.”

2. **§ 7.5 Effects of Long Term Force Majeure:** A new § 7.5 shall be added as follows:

“Where in respect of an Individual Contract the obligations of the Claiming Party have been adversely affected by Force Majeure on each Day for a consecutive period of thirty (30) Days or for a period of sixty (60) Days in aggregate, then such Party which is not the Claiming Party shall have the right to terminate such Individual Contract (the “Affected Individual Contract”) forthwith by written notice to the Claiming Party. The provisions in 10.3 and 11 shall apply, mutatis mutandis, with respect to the Affected Individual Contracts.”

3. **§ 9 Suspension of Delivery:** The first sentence of § 9 is hereby amended by inserting in the second line after “should a Party (the “Defaulting Party”)” the words “(i) institute or have instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law any other similar law affecting creditors’ right, (ii)” and inserting in the second line after “Agreement, or” the word “(iii)”. Furthermore, the words “three (3) Business Days” shall be replaced with “two (2) Business Days”.

4. **§ 10.3(g) Set-Off:** A new §10.3(g) shall be added as follows:

“Any Termination Amount payable to one Party (the “Payee”) by the other Party (the “Payer”) will, at the option of the Terminating Party (and without prior notice to the other Party), be reduced by its set-off against any other amounts (“Other Amounts”) payable by the Payee (or, where the Payee is the Terminating Party, any Affiliate of the Payee) to the Payer (or, where the Payer is the Terminating Party, any Affiliate of the Payer) (whether or not arising under this Agreement, matured or contingent and irrespective of the currency, place of payment or booking office of the obligation). To the extent that any Other Amounts are so set off, those Other Amounts will be discharged promptly and in all respects. The Terminating Party will give notice to the other Party of any set-off effected under this §10.3(g)

For this purpose, either the Termination Amount or the Other Amounts (or the relevant portion of such amounts) may be converted by the Terminating Party into the currency in which the other is denominated at the rate of exchange at which the Terminating Party would be able, acting in a reasonable manner and in good faith, to purchase the relevant amount of such currency.

If an obligation is unascertained, the Terminating Party may in good faith estimate that obligation and set off in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. If following the payment of a net sum taking into account an estimate of an unascertained amount, the estimate proves to have been incorrect, the relevant Party shall make any adjustment payment together with interest calculated in accordance with § 13.5 (*Default Interest*) within three (3) Business Days of the actual amount being ascertained.

Nothing in this §10.3(g) will be effective to create a charge or other security interest. This §10.3(g) will be without prejudice and in addition to any right of set-off, offset, combination of accounts, lien, right of retention or withholding or similar right or requirement to which any party is at any time otherwise entitled or subject (whether by operation of law, contract or otherwise)."

5. **§ 12.6 No Penalty:** A new §12.6 shall be inserted as set out below:

"Each Party acknowledges that the payment obligations in §8 (*Remedies for Failure to Deliver and Accept*) and §10.3 (*Termination for Material Reason*) are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages. Each Party irrevocably waives the right to contest those payments as a penalty."

6. **§ 14, paragraph 1,** subsection two, shall be amended in line two by deleting, after the figure "39" the word "or" and replacing it by "," and by adding after the figure "195" the words " or 199a" and in line three by adding after the words "Council Directive 2006/112/EC" the words "(as amended by any subsequent Directives) and in accordance with any associated national legislation", so that the full part of this subsection now reads:

"Where, in accordance with EU and/or national legislation, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Article 38, 39, 195 or 199a of Council Directive 2006/112/EC (*as amended by any subsequent Directives*) and in accordance with any associated national legislation, the following shall apply."

7. **§ 23 Miscellaneous**

A new §23.6 shall be added as follows:

"6. **No Money Laundering:** Each Party warrants and represents that any payment instructions given and any payments made by such Party pursuant to this Agreement will comply with all applicable laws, rules and regulations, including without limitation any tax and currency regulations of any country whose laws may govern a Party or the transaction in whole or in part, and that payment pursuant to such instructions will not create any liability for the paying Party under such laws. Each Party further warrants and represents that it has all necessary authorities, licenses and approvals to make such payments and/or give such payment instructions. Each Party further warrants and represents that any bank account designated by it for receipt of payments hereunder represents an official, authorised account of such Party, and that any payment instructions issued pursuant to this Agreement will have been duly authorised by such Party in good faith. Each Party agrees to provide such further assurances and documentation as may be reasonably requested by the other Party with regard to the matters covered in this paragraph."

A new §23.7 shall be added as follows:

"7. **Corrupt Practises:** Each Party hereby acknowledges that certain laws of the various jurisdictions where this Agreement and any Individual Contract are to be performed, prohibit any Person from offering to make or making any payment of money or anything of value, directly or indirectly, to any governmental official, political party, candidate for political office, or official of a public international organisation for the purpose of obtaining or retaining business or providing an improper advantage. Each Party hereby represents, warrants and covenants to the other Party that, in the performance of its obligations hereunder, it has not made or offered to make, and will not make or offer to make, any such prohibited payment. In the event of a breach of any such laws, the Party in breach shall fully indemnify (on an after tax basis), protect, defend and hold harmless the other Party and its affiliates, officers, directors, agents and employees from and against any and all claims, losses and liabilities attributable to any such breach."

Executed by the duly authorised representative of each Party effective as of the Effective Date.


"Party A"

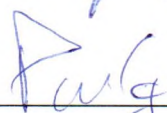
Grand Energy Distribution EOOD



"Party B"

Axpo Energy Romania S.A.





EUGEN Pomboescu