

# AMENDMENT

## Individual Contract for the Delivery and Acceptance of Electricity Nr. 2019-00023505

Date and time of conclusion: 28. 05. 2019, 11:39:08

Seller: Interenergo, energetski inženiring, d.o.o.  
Tivolska cesta 48  
1000 Ljubljana  
Slovenia  
28X-INTERENERGO8

Buyer: ENERGY MT EAD  
8, Bacho Kiro str. Oborishte Distr., fl. 3  
1000 Sofia  
Bulgaria  
32X001100100237U

Fax: +386 1 6203 701

Fax:

E-mail: backoffice@interenergo.si

E-mail: m.anestieva@emtbg.com

Trader: Anita Stanković

Trader:

### Delivery Schedule

Delivery Period		From (CET)	To (CET)	Capacity (MW)	Quantity (MWh)	Price (EUR / MWh)	Value (EUR)
Start Delivery	End Delivery						
29. 05. 2019	29. 05. 2019	0:00	4:00	10	40	OPCOM_SPOT + 1,00	
		4:00	5:00	6	6	OPCOM_SPOT + 1,00	
		6:00	7:00	10	10	OPCOM_SPOT + 1,00	
		7:00	10:00	15	45	OPCOM_SPOT + 1,00	
		10:00	11:00	10	10	OPCOM_SPOT + 1,00	
		14:00	16:00	10	20	OPCOM_SPOT + 1,00	
<b>Total</b>					<b>131</b>		<b>5.794,16</b>

Delivery point (Trading zone): DAP Romania, Romania - TEL (10YRO-TEL----P) / Bulgaria, Bulgaria - ESO-EAD (10YCA-BULGARIA-R)

Cross-border capacity is provided by the buyer.

Other arrangements:

**INVOICING AND PAYMENT:** in the course of the calendar month following delivery of electricity according to the Delivery Schedule, the Seller of electricity shall transmit to the Buyer an invoice for the previous month, setting forth the total quantities of electricity that were sold by it in the previous calendar month. In connection with such invoice, the Party may state all amounts then owed between the Parties including, but without limitation, all amounts owed for the purchase and sale of the electricity, taxes (that the Seller is obligated by law to collect), fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties and, if applicable, any net amount due for payment (Payment Netting). On or before the later to occur of (a) the twentieth (20th) day of the calendar month and (b) the fifth (5th) business day following receipt of an invoice, 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 on the invoice. Such payment shall be executed only when the invoice amount is received with a respective bank account. Such payment shall be made, unless otherwise agreed or stipulated by law, in EUR. Each party shall pay its own bank and its own corresponding bank charges. In the event payment due date does not fall on a business day, payment shall be made the preceding business day. Unless otherwise agreed between the Parties, overdue payments shall bear interest from and including the due day to, but excluding, the date of payment of the unpaid portion at a rate equal to the one month EURIBOR set as the due date, plus five percent (5%) per annum. "Business day" shall mean any day other than a Saturday or a Sunday, on which banks of the remitter are open to general public.

**PAYMENT NETTING:** If on any day the Parties are each required to pay one or more amounts in the same currency under this any Individual Contract concluded between the Parties, 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.

**NON-PERFORMANCE:** In the event of non-performance by the Seller (except due to force majeure or owing to circumstances for which the Buyer is responsible), the Seller shall pay to the Buyer the positive difference between the contract price and the (economically

appropriate) substitute purchase price for the quantity of undelivered electricity at which the Buyer would be able, acting in a reasonable manner and in good faith, to buy the quantity of electricity not delivered (including any transmission costs and other reasonable and verifiable actual and direct costs and expenses incurred by the Buyer as a result of the Seller's failure to deliver). In the event of non-performance of the Buyer (except due to force majeure or owing to circumstances for which the Seller is responsible), the Buyer shall pay to the Seller the positive difference only between the contract price and the (economically appropriate) substitute sales price for the quantity of electricity not taken by the Buyer at which the Seller would be able, acting in a reasonable manner and in good faith, to sell the quantity of electricity not taken by the Buyer (including any transmission costs and other reasonable and verifiable actual and direct costs and expenses incurred by the Seller as a result of the Buyer's failure to accept). Any and all other capital damages are excluded. If the Seller is responsible for the damages to person or property, its liability shall be limited to the extent to which the Seller is able to successfully recover such damages from the respective grid operator under the respective balancing agreement, except in cases of fraud, criminal intent and/or gross negligence. For the avoidance of doubt, increases or decreases in the electricity prices shall not constitute force majeure. Amounts that are due according to this paragraph shall be invoiced and paid according to the previous paragraph.

**FORCE MAJEURE:** means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the "Claiming Party") which it could not reasonably be avoided or overcome and which makes it impossible for the Claiming Party to perform its delivery or acceptance obligations, including, but without limitations, due to one or more of the following:

- a. The failure of communications or computer systems of the relevant Network Operator(s) which prevent 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 discard of the Claiming Party's obligations with regard to the Scheduling under the Individual Contract.

If a Party is fully or partly prevented due to Force Majeure from performing its obligations of delivery or acceptance under the Individual Contract and such Party complies with the requirements stipulated herein, 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 will accrue to the Claiming Party with respect to those quantities not delivered or received. 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. 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.

**LIQUIDATION:** Notwithstanding anything herein to the contrary, in the event that either Party (the "defaulting party") (i) makes a general assignment or any arrangement for the benefit of the creditors, (ii) becomes insolvent, however evidenced, or is unable to pay its debts as they fall due, (iii) files a petition or otherwise commences a proceeding under any insolvency or similar law, or has any such petition filed or commenced against it, if such third party petition is not withdrawn, dismissed, discharged or restrained within five working days, (iv) has a liquidator, receiver, trustee or similar official appointed with respect to it or any substantial portion of its property or assets, (v) fails to pay or perform when due, any obligation to the other Party (the "non-defaulting party"), whereas such failure is not remedied within three (3) business days of a written demand, (vi) fails to provide adequate assurance of its ability to perform all of its outstanding obligations to the non-defaulting party under Individual Contract, within a period not exceeding 48 hours of written demand or (vii) permits or fails to prevent any credit support to be provided in respect of its obligations to the non-defaulting party to terminate or cease to be in effect with respect to this Individual Contract; then,

- a. Upon the occurrence of an event described in any of the clauses (i) through (iv)(inclusive) above, the Individual Contract then outstanding between the Parties shall automatically terminate at 11:59 p.m. on the day before the occurrence of such event; or
  - b. Upon the occurrence of an event described in any of the clauses (v) through (vii)(inclusive) above, the non-defaulting party shall have the right, to liquidate and terminate the Individual Contract then outstanding between the Parties with termination effective immediately upon the receipt of termination notice sent by fax; and
- In the event the Individual Contract is terminated pursuant to (a) or (b), above, the non-defaulting party shall calculate, in a commercially reasonable manner, a settlement amount (as defined below) for the Individual Contract as of the time of its termination or as soon thereafter as it is reasonably practicable and shall net (i) all such settlement amounts that are due to the defaulting party, plus any margin or cash deposit then held by the non-defaulting party, plus any or all other amounts due to the defaulting party against (ii) all such settlement that are due to the non-defaulting party, plus any margin or cash deposit held by the defaulting party, plus any or all other amounts due to the non-defaulting party by the defaulting party plus all of the non-defaulting party's reasonable costs and expenses (including, without limitation, reasonable attorney's fees) associated with the enforcement of its rights hereunder so that all such amounts be netted to a single liquidated amount payable by one Party to the other Party. A Party with a payment obligation shall pay such amount to the other Party within two (2) days of its receipt of notice of such amount; provided, the defaulting party pays any sum due from it under Individual Contract.

The "Settlement Amount" for the Individual Contract shall mean the Gains less the aggregate of the Losses and Costs which the non-defaulting party incurs as a result of the termination of the Individual Contract. "Costs" means brokerage fees, commissions and other third party costs and expenses incurred by the non-defaulting party either in terminating any arrangements pursuant to which it has hedged its obligations or entering into new arrangements which replace the terminated Individual Contract and all legal fees, costs and expenses incurred by the non-defaulting party in connection with its termination of the Individual Contract: "Gains" means an amount equal to the present value of the economic benefit to the non-defaulting party, if any (exclusive of Costs), resulting from the termination of the Individual Contract: "Losses" means an amount equal to the present value of the economic loss to the non-defaulting party, if any (exclusive of Costs), resulting from its termination of the Individual Contract. In calculating the Settlement Amount, the non-defaulting party may, but is not obliged to, calculate the Settlement Amount without entering into any replacement transactions.

**SUSPENSION OF DELIVERY:** Should a party (the "defaulting party") default on any payment that is due under the Individual Contract, the non-defaulting party should be entitled, no earlier than three (3) business days after sending a written notice to the defaulting party to immediately cease further deliveries of electric energy and be released (and not merely suspended) from its underlying delivery obligations under the Individual Contract until such time as the non-defaulting party, has received either the required Letter of Credit or full payment (including all applicable default interest and expenses) of all outstanding amounts owed under such Individual Contract to the non-defaulting party.

**NON-RELIANCE:** Each party represents that (i) it is not acting as a fiduciary, advisor or agent to it with respect to the Individual Contract; (ii) it is not relying upon the advice, assurance or representations of the other party, except for those representations set forth in this Individual Contract, and (iii) it fully understands and has assessed the economic and other risks of entering into and performing an Individual Contract, and has made its own independent judgments about, and is capable of assuming, those risks.

**SETTLEMENT OF DISPUTES:** Both Parties endeavour to settle amicably and in good faith any dispute or difference arising out of or in connection with the Individual Contract. It is explicitly agreed between the Parties herein that any remaining controversy or claim of any kind shall be finally settled according to the Rules of Arbitration of the International Chamber of Commerce (ICC) without recourse to the ordinary courts of law by three arbitrators, each Party having the right to nominate one arbitrator. The International Court of Arbitration in accordance with the aforementioned Rules shall appoint the third arbitrator, who shall act as chairman of the arbitral tribunal. The place of arbitration shall be Vienna. The language of the proceedings shall be English.

**APPLICABLE LAW:** Individual Contract shall be construed and governed by the substantive laws of Federal Republic of Germany, excluding any application of the "United Nations Convention on the International Sale of Goods of April 11, 1980".

**BROKER CORRESPONDENCE:** Any correspondence that is initiated by a broker regarding the Individual Contract is solely to confirm the broker's involvement in the Individual Contract and/or commission rate (if applicable). The Individual Contract shall be the only valid contract of this transaction.

**ASSIGNMENT:** Neither Party shall be entitled to assign its rights and obligations under the Contract to a third party or to an Affiliate without the prior written consent of the other Party.

**CONFIDENTIALITY:** The Parties shall not disclose either in writing or in verbal or electronic form any part of the Individual Contract to any third party unless with prior written consent of the other Party hereto during the validity period of the present Individual Contract and following one year from termination or expiry of the present Individual Contract. The other Party hereto shall not unreasonably withhold its consent (for example for legal requirements as court order or request by regulatory authorities). This confidentiality clause shall not apply to information which can be (in compliance with the law) passed on to the transmission system operator(s).

**REPRESENTATION:** Either Party hereby represents and warrants to the other Party that it is a taxable dealer ("Taxable Dealer"). The Taxable Dealer means a taxable person whose principal activity in respect of purchases of electricity is reselling those products and whose own consumption of those products (electricity) is negligible.

**RECORDING TELEPHONE CONVERSATIONS:** Each Party is entitled to record telephone conversations held in connection with this transaction 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 recordings.

**MISCELLANEOUS:** This Confirmation forms an integral part of the Individual agreement and enters into force upon signing by both Parties.

Please sign this Individual Contract and return it to us immediately by fax or e-mail stated herein.

On behalf of Seller:

Elaž Štern     Jiří Bojč  
Director     Procurator  
Anita Stanković  
by Power of Attorney

Date: 31.5.2019

On behalf of Buyer:



Date:

