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General Agreement

Concerning the Delivery and Acceptance of Electricity

Between

("Party A")

between

MVM Partner Energiakereskedelmi Zrt

having its registered office at Szentendrei út 207-209, H-1031 Budapest, Hungary, registered at in the Companies Register at the Budapest, Register No. 01-10-044818, VAT No. 12898019-2-44.

("Party B")

and

MVM Partner Serbia d.o.o.

having its registered office at, Nehruova Str. No. 132/13, Belgrade Serbia, registered at in the Companies Register at the Budapest, Register No.207 00483, VAT No. 106890036 .

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

entered into on 1 August 2011 (the "Effective Date").

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ANNEX 1 - DEFINED TERMS

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

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

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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 the 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.

MVM Partner Zrt



Mr. NÉMETH Ádám
Director


Ms. GOÓR Mária
Director

MVM Partner Serbia D.O.O.



Mr. MAJOR György
General Manager



Mr. VARGA Viktor
General Manager

sk

Cef

EFET

European Federation of Energy Traders

Election Sheet to the General Agreement

with an Effective Date of 1st August 2011

("Party A")

between

MVM Partner Zrt

Address: Szentendrei út 207-209, H-1031 Budapest, Hungary

Tax number: : 12898019-2-44

Number of registry: 01-10-044818

("Party B")

and

MVM Partner Serbia d.o.o.

Address: Serbia, Belgrade Nehruova Str. No. 132/13

Tax number: 106890036

Number of registry: 207 00483

PART I: CUSTOMISATION OF PROVISIONS IN THE GENERAL AGREEMENT

§1

Subject of Agreement

§1.2 Pre-Existing Contracts: § 1.2 shall apply, or
 § 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), or
 to the following time:

§3

Concluding and Confirming Individual Contracts

§ 3.1 Conclusion of Individual Contracts:

§ 3.1 shall not apply as written in the General Agreement but instead shall apply as follows:



Individual Contracts may be concluded:

- via telephone, or
- in written form, duly signed by the authorized representatives of the Parties and delivered by letter or facsimile,

and shall be legally binding and enforceable from the time the terms of such Individual Contract are concluded.

§ 3.2 Confirmations:

§ 3.2 shall not apply as written in the General Agreement but instead its first sentence shall be deleted and replaced by the following sentence:

In the event that an Individual Contract is not concluded in written form, the Parties shall confirm in writing their understanding of the agreed terms of the Individual Contract (each such written confirmation constituting a "Confirmation").

Furthermore, § 3.2 shall be supplemented as follows:

Seller shall send the Confirmation to Buyer without delay after the Individual Contract is concluded.

§ 3.4 Authorised Persons:

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

Authorised Persons: Individual Contracts may only be concluded between the authorized traders of the Parties. Absent prior notice to the contrary, each Party acknowledges and represents to the other that each of its employees purporting to represent, negotiate and enter into one or more binding Individual Contracts on such Party's behalf shall be deemed to be an authorized trader of that Party. Party shall, upon request from the other Party, provide it with an update list of the persons authorised to negotiate, confirm and sign on behalf of such Party. For the purpose of this § 3.4, either Party shall, upon request from the other Party, provide it with an update list of the persons authorised to negotiate, confirm and sign on behalf of such Party."

§4

Primary Obligations for Delivery and Acceptance of Electricity

§ 4.2 Definition of Schedule shall be interpreted as follows:

"**Schedule**" shall mean, as applicable, those actions necessary for a Party to effect its respective delivery or acceptance obligations as regulated in the Operational Codes. ("Üzletszabályzat, Kereskedelmi Szabályzat, Üzemi Szabályzat")

§5

Primary Obligation for Options

§ 5.4. Notice of Exercise:

§ 5.4. shall not apply as written but instead shall be replaced by the following:

4. Notice of Exercise: Each notice of Exercise shall be effective upon receipt by the Writer and may be only given in writing.

§6

Delivery, Measurement, Transmission and Risk

6.3§ Transfer of Rights of Title

The second sentence in § 6.3. shall not apply as written but instead shall be replaced by the following:

The delivery and acceptance 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 be effective upon receipt of the confirmation of the Network Operator.

6.4. § The measurement of electricity delivers and receipts
The 6.4. § shall not apply as written but instead shall be replaced by the following:

With respect to the legal regulation of the countries in which the Party's registered seats are located, the Network Operators are obliged to ensure that the measurement and justification of the electricity transmission and receipt duly provides evidence to the procedure related to the Network Operator Delivery Point.

§7

Non-Performance Due to Force Majeure

§ 7.1 Definition of Force Majeure (B):

[X] § 7.1 (a) and (b) shall not apply as written but instead shall be replaced by the following and further a new point (c) shall be added:

- (a) the failure of communications or computer systems of the relevant Network Operator(s) or the System Operator which prevents the Claiming Party from performing its obligations of delivery or acceptance; or
- (b) the relevant System Operator or Network Operator denies access to the network; or
- (c) the System Operator, using its own authority, has rejected or limited the inconsistency from the Delivery Schedule (the ordered difference from the schedule) and/or has ordered the discontinuation or termination of import.

§ 7.3. Notification and Mitigation of Force Majeure:

§ 7.3. shall be supplemented by adding the following sentence to the end of this section:

Upon request of the other Party, the affected Party shall present a certificate on the existence of force majeure issued by authorities or by the interest representation organization of the country of origin.

A new § 7.5. & 7.6 shall be inserted as follows:

Negotiations and Termination of the Individual Contract: If the period of force majeure exceeds continuous (uninterrupted) 30 days, the Parties shall conduct negotiations on the possible amendment of the Agreement. If such negotiations are not successful within 10 days, either of the Parties shall be entitled to terminate the Individual Contract with immediate effect, even if it would otherwise not be entitled to do so pursuant to the governing law or the Individual Contract, furthermore the Parties shall, without delay, settle

accounts with one another as stated for the termination of the Individual Contract, in accordance with the rules applicable to subsequent impossibility.

7.6. **Exclusions.** The Parties agree that a claim of Force Majeure may not be based on:

- (i) loss of Buyer's markets;
- (ii) Buyer's inability economically to use or resell any or all of the Contract Quantity purchased under this Agreement;
- (iii) the loss or failure of Seller's source of supply;
- (iv) Seller's ability to sell any or all of the Contract Quantity at a price greater than the Contract Price; or
- (v) a Party's inability to pay its debts as they become due.

§9 Suspension of Delivery

§ 9 Suspension of Delivery:

§ 9 shall be further amended by adding the words "and the Non-Defaulting Party shall have the right to withhold payments owed by it to the Defaulting Party, (such right to withhold payments to also arise where a Material Reason has occurred) subject to prior written notification," before the words "under all" in the sixth line thereof.

§10 Term and Termination Rights

§ 10.2 Expiration Date:

§ 10.2 shall apply

and there shall be no Expiration Date

§ 10.2 shall not apply and there shall be no Expiration Date

§ 10.3 Termination for Material Reason: A new § 10.3 (g) is added at the end of § 10.3 (f):

- (g) If the Termination Amount (calculated pursuant to §10.3(c)) is payable by the Terminating Party to the other Party then, at the discretion of such Terminating Party, and with prior notice to the other Party, the Termination Amount may be reduced by its set-off against any not disputed amounts payable (netted, if netting is agreed upon and applicable in the Other Agreement) by the other Party to the Terminating Party under any agreement (the "Other Agreement") between the other Party and the Terminating Party (the „Other Agreement Amount“). Prior notice shall include the amounts to be set-off and the invoice numbers of payables to be set-off. The Other Agreement Amount will be discharged automatically and in all respects to the extent of its set-off. The Terminating Party shall give the prior notice to the other Party at the latest together with the notification of the Termination Amount. Nothing in this § 10.3 (g) shall be effective to create a charge or other security interest.

§ 10.4 Automatic Termination: §10.4 shall apply to Party A & B with termination effective immediately

preceding the occurrence of a Material Reason described in §10.5 (c) (but without prejudice to the applicability of the grace period referred to in §10.5 (c) (iv), where the Material Reason is the petition mentioned in the same paragraph)

(i) has instituted against it by a regulator, supervisor or any similar official with primary insolvency, rehabilitative or regulatory jurisdiction over it in the jurisdiction of its incorporation or organisation or the jurisdiction of its head or home office, a proceeding seeking a judgment 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 by such regulator, supervisor or similar official, or

(ii) has a resolution passed for its winding up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger), or

(iii) becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other official,

whichever occurs earlier.

§ 10.5 (a) Non Performance:

§ 10.5. (a) shall apply with the following modification: "two (2) Business Days" shall be deleted and replaced by "three (3) Business Days".

§ 10.5 (a) (i) shall be amended as follows: Between the words "or" and "in case of" in the second line of the clause the following words shall be included:

"in the case of a demand to deliver any Performance Assurance such Performance Assurance has not been delivered within the period set out in § 17.1, or".

§ 10.5(a) Definition of Material Reason: § 10.5 (a)(i) shall be amended as follows:

Insert the following words after the word "or" in line 2:

"in the case of a demand to deliver any Performance Assurance such Performance Assurance is not delivered within the period set out in §17.1 or".

§ 10.5 (b) Cross Default and Acceleration:

§ 10.5(b) shall be deleted and replaced by the following wording applying to both Parties A and B

(i) any default, event of default or other similar condition or event (however described) in respect of such Party, such Party's Credit Support Provider (if such Party has a Credit Support Provider) or such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Threshold Amount (as specified for that Party under § 10.5 (b) (iii)) which has resulted in such Specified Indebtedness

becoming due and payable under such agreements or instruments before it would otherwise have been due and payable, or

- (ii) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due date thereof in an aggregate amount of not less than the Threshold Amount for that Party (as specified under § 10.5 (b) (iii)) under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period) and
- (iii) for the purpose of the above, the Threshold Amount shall be for
Party A: EUR 2.000.000,-- and for its credit support provider EUR 50.000.000,--
and for
Party B: EUR 2.000.000,-- and for its credit support provider EUR 50.000.000,--

§ 10.5(c) Winding-up/Insolvency/Attachment:

the applicable time period shall be:

- (i) **zero (0)** days, if a Party or its Credit Support Provider institutes such a proceeding against itself;
- (ii) **zero (0)** days, if any of the proceedings specified in § 10.5(c) (iv) has been instituted against a Party or its Credit Support Provider and such Party or its Credit Support Provider, as the case may be, is unable to pay its debts as they fall due, or is otherwise in a position which justifies the commencement of such insolvency proceedings;
- (iii) **fourteen (14)** calendar days in any other case. Within such deadline the Non-Defaulting Party has the right to satisfy its outstanding claims from the Performance Assurance (if any). On the date on which the above 14-day deadline expires, the Non-Defaulting Party shall be entitled in its sole discretion either to make use of its right under § 17.1, or to terminate the Contract for Material Reason in accordance with § 10.3; or

§ 10.5(d) Failure to Deliver or Accept:

§ 10.5(d) shall apply, or
 § 10.5(d) shall not apply

but only with respect to the Individual Contract under which the failure to deliver or accept happens, not to the General Agreement or other Individual Contracts.

§ 10.5 (e) Force Majeure:

§ 10.5 (e) shall only apply to the Individual Contracts whose obligations are affected by Force Majeure and § 10.3 shall only apply to such Individual Contracts, except that in case of an Early Termination of such Individual Contracts no Settlement Amount shall be payable.

§ 10.5 Other Material Reasons:

Material Reasons shall be limited to those stated in the General Agreement, or
 the following additional Material Reasons shall apply to both Party A and Party B:

(g) **Specified Transaction:** A Party:

- (i) defaults under a Specified Transaction (as defined below) and, after

- giving effect to any applicable notice requirement or grace period, which results in a liquidation of, an acceleration of obligations under, or an early termination of, that Specified Transaction,
- (ii) defaults, after giving effect to any applicable notice requirement or grace period, in making any payment or delivery due on the last payment date or delivery date of a Specified Transaction; or
 - (iii) disaffirms, disclaims or repudiates any Specified Transaction that is, in either case, confirmed or evidenced by a document or other confirming evidence executed and delivered by that party, Credit Support Provider or Specified Entity (or such action is taken by any person or entity appointed or empowered to operate it or act on its behalf).

‘Specified Transaction’ means any transaction (other than an Individual Contract) between one Party to this Agreement (or any Credit Support Provider of such Party or applicable Specified Entity of such Party) and the other Party to this Agreement (or any Credit Support Provider of such other Party or any applicable Specified Entity of such other Party) that is a spot, forward, option or swap transaction in or with respect to one or more currencies, commodities, securities, rates, indices or other measures of financial or economic risk or any other similar transaction (or any combination thereof).

§ 11

Calculation of the Termination Amount

The last sentence of §11.2 shall be deleted and replaced as follows:

It is understood between the Parties that to the extent the Terminating Party calculates its Gains and Losses in § 11.2. (b) and (c) without entering into replacement transactions, for determination of the present value the following market price sources shall be taken into account, where necessary in case of a differing daily delivery characteristic, the price converted to the product as defined in the respective Individual Contract. The following order of succession shall be binding; accordingly, the next following market price source can only be adopted in case of the lack of availability of the previous market price source:

- (i) the relevant exchange price for the corresponding or most comparable product (in particular with regards to characteristic and volume) at the power exchange in the country of the relevant Delivery Point published for the Early Termination Date;
- (ii) any other published and reliable OTC market price index for a corresponding or most comparable product (in particular with regards to characteristic and volume) in the country of the relevant Delivery Point published for the Early Termination Date;
- (iii) the relevant exchange price of a power exchange or any other published and reliable OTC market price index for the corresponding or most comparable (except for the Delivery Point, however in particular with regards to characteristic and volume) product published for the Early Termination Date in a neighbouring country and/or a country connected by grids to the relevant Delivery Point, increased by any incremental transmission and cross border costs to the Delivery Point; and
- (iv) the average of the quotations of 3 independent leading market

If on any day the Parties are each required to pay one or more amounts in the same currency to each other under one or more Individual Contracts and such amounts are due, 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, subject to prior written approval of the calculation of such difference by the other Party. The Party who is owing the greater amount shall issue and transmit to the other Party a netting statement for the approval by such other Party. The requirement for the prior written approval or the approval does not apply in case the other Party is the Defaulting Party or is subject to a Material Reason.

13.5 Interest Rate:

the Interest Rate shall be equal to (i) one month BELIBOR (Belgrade Interbank Offered Rate) per annum set at the Due Date plus five percentage points per annum, provided that the overdue payments are to be made in RSD (Serbian Dinar), or (ii) one month EURIBOR per annum set at the Due Date plus three percentage points per annum, provided that the overdue payments are to be made in EURO.

§ 13.6 Disputed Amounts:

§13.6 (a) shall apply, or
 §13.6 (b) shall apply and its full wording is completed with the following:

In case of a claim to the invoice both Parties shall be immediately obliged to commence mutual negotiations and in the issue of disputable amounts the Date of Maturity will be counted from the day of reaching a mutual agreement. If the invoice does not satisfy valid statutory requirements or, as the case may be, requirements under this General Agreement, the Parties will ask to remove such defects. In such case the Date of Maturity as provided in this General Agreement will be counted from the day of complete removal of such defects. In case the disputed amount is finally determined to have been due, such withheld amount shall be credited for which the Seller issues a document in lieu of an invoice.

§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, or

subject to the terms of an Individual Contract, the provisions of § 14.8 shall only apply in the following circumstances:

[_____]

§ 14.9 Withholding Tax:

§ 14.9 shall apply, or

§ 14.9 shall not apply

§15

Settlement of Floating Prices and Fallback Procedures For Market Disruption

§ 15.5 Calculation Agent: the Calculation Agent shall be Seller, provided that Seller is not in default. Should the Seller be in default, then Buyer shall act as Calculation Agent. Party in default for this purpose shall be defined as Party experiencing a Material Reason.
 the Calculation Agent shall be _____

§16

Guarantees and Credit Support

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

None

Party B shall provide Party A with the following Credit Support Document(s):

None

§ 16 Credit Support Provider:

Credit Support Provider(s) of Party A shall be:

Credit Support Provider(s) have to be agreed between the Parties from time to time. Initially: none.

Credit Support Provider(s) of Party B shall be:

Credit Support Provider(s) have to be agreed between the Parties from time to time. 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:

_____;

§17.2 (b) (**Credit Rating of Credit Support Provider that is a Bank**): and the minimum rating shall be: BBB- by Standard & Poor's Rating Group, or Baa3 by Moody's Investor Services Inc

§17.2 (c) (**Financial Covenants**), and

the EBIT to Interest ratio shall be: _____,

the Funds From Operations to Total Debt ratio shall be:

_____, and

the Total Debt to Total Capitalisation ratio shall be: _____;

§17.2 (d) (Decline in Tangible Net Worth), and the relevant figure is:

§17.2 (e) (**Expiry of Performance Assurance or Credit Support**), and

the relevant time period shall be 15 calendar days, or

- no time period shall apply;
- §17.2 (f) (Failure of Performance Assurance or Credit Support);
- §17.2 (g) (Failure of Control & Profit Transfer Agreement);
- §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 (a) (Credit Rating), and the minimum rating shall be: _____;
- §17.2 (b) (Credit Rating of Credit Support Provider that is a Bank) and the minimum rating shall be: BBB- by Standard & Poor's Rating Group, or Baa3 by Moody's Investor Services Inc.;
- §17.2 (c) (Financial Covenants), and
- the EBIT to Interest ratio shall be: _____,
- the Funds From Operations to Total Debt ratio shall be: _____, and
- the Total Debt to Total Capitalisation ratio shall be: _____;
- §17.2 (d) (Decline in Tangible Net Worth), and the relevant figure is:
- §17.2 (e) (Expiry of Performance Assurance or Credit Support), and
- the relevant time period shall be 15 calendar days, or
- no time period shall apply;
- §17.2 (f) (Failure of Performance Assurance or Credit Support);
- §17.2 (g) (Failure of Control & Profit Transfer Agreement);
- §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), 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 of 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 conclusively 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 available on the Internet at www.jas.hu, or
- Party A need not deliver annual, and
- Party B shall deliver annual reports to the extent that they are not available on the Internet at www.mvm.hu, or www.mvmp.hu
- Party B need not deliver annual reports

18.1 (a) shall be supplemented with the following provisions:

Both Parties shall deliver annual reports until 30th June each year to the extent they are not available on the websites of the Parties

§ 18.1(b) Quarterly Reports:

- Party A shall not deliver quarterly reports, or
- Party B need not deliver quarterly reports

§18.2 Tangible Net Worth:

- Party A shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be, or
- Party A shall have no duty to notify as provided in §18.2, and
- Party B shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be
- Party B shall have no duty to notify as provided in §18.2

§19

Assignment

§ 19.1 Prohibition:

The refusal of consent is reasonable, including but not limited to, the following reasons:

- if not all rights and obligations from the Agreement together are required to be transferred to the same assignee;
- if the assignee has its registered office in another jurisdiction than the assigning Party;
- if the credit standing of the assignee is weaker than of the assigning Party;
- if the existing internal credit line, which the refusing Party credits to the assignee, will become or is impended to become exhausted due to the transfer, taking into account the existing extent of utilization of the credit line at the time of transfer.

§ 19.2 Assignment to Affiliates:

Party A may assign in accordance with § 19.2, provided that

- all and not some only of the rights and obligations are assigned and
- the respective Affiliate, being the assignee, has its registered office in the same jurisdiction as the assigning Party.

or

Party A may not assign in accordance with § 19.2, and

Party B may assign in accordance with § 19.2, or

Party B may not assign in accordance with § 19.2

provided that

- all and not some only of the rights and obligations are assigned and
- the respective Affiliate, being the assignee, has its registered office in the same jurisdiction as the assigning Party.

§ 19.3 Assignment of the claim for Termination Amount:

A new § 19.3 shall be added to the end of § 19.2:

The Terminating Party shall be entitled to assign its claim for the Termination Amount to any third party without the consent of the other Party and any further limitation

§20
Confidentiality

§ 20.1 Confidentiality Obligation: § 20 shall apply and its full wording is completed by the following text:

This provision shall not apply to the disclosure of information to third party providing finance-accounting services , insurance and/or supplementary financial services (and collection of debts) to Parties upon contract and MVM Group members.

§ 20.2 Exclusion from Confidential information

§ 20 shall apply to Party A and Party B but only in respect of the exclusion from Confidential Information described in § 20.2 (a), (c), (d).

§ 20.3 Expiration

§20.3 shall not apply as written in the General Agreement but shall apply as follows:

A Party's obligation in respect of an Individual Contract under this § 20 shall expire 5 (five) years after the expiration of such Individual Contract.

§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(k) | [DELETED] | [DELETED] |
| §21(l) | [] yes <input checked="" type="checkbox"/> no | [] yes <input checked="" type="checkbox"/> no |
| §21(m) | [] yes <input checked="" type="checkbox"/> no | [] yes <input checked="" type="checkbox"/> no |
| §21(n)* | <input checked="" type="checkbox"/> yes [] no | <input checked="" type="checkbox"/> yes [] no |

With respect to Party A § 21 (c) applies, but it shall be amended by adding the following words to the end of the sentence:

"to an extent or in a manner which has or is reasonably likely to have a material adverse effect on the ability of Party A to duly perform its payment or delivery obligations under the Agreement."

The wording of § 21 (f) and (h) shall be deleted and replaced by the following:

- (f) it has negotiated, entered into and executed the Agreement and any Credit Support Document to which it is a party as either (i) principal or (ii) as agent for its ultimate parent company; provided that when acting as agent, it shall nonetheless remain primarily liable to the other Party under the Agreement;
- (h) it is either acting for its own account (in which case it is not acting as an advisor, agent, broker or in any other capacity, fiduciary or otherwise) or as agent for its ultimate parent company; 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 and where applicable, for its ultimate parent company based upon its own judgment, 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;

- (A1) It is a Taxable Dealer. The "Taxable Dealer" means a taxable person whose principal activity in respect of purchases of gas and electricity is reselling such products and whose own consumption of these products is negligible.
- (B1) Party A further represents to Party B that, as at the Effective Date, the establishment for VAT purposes to which the electricity supplied under this General Agreement and each underlying Individual Contract is made, and the true and correct VAT number of that establishment, are as follows:

| Party A's establishment(s)/place of establishment for VAT purposes | Party A's VAT Registration number(s) |
|--|--------------------------------------|
| MVM Partner Energiakereskedelmi ZRt | 12898019-2-44. |

- (B2) Party B further represents to Party A that, as at the Effective Date, the establishment for VAT purposes to which the electricity is supplied under this General Agreement and each underlying Individual Contract is made, and the true and correct VAT number of that establishment, are as follows:

| Party B's establishment(s)/place of establishment for VAT purposes | Party B's VAT Registration number(s) |
|--|--------------------------------------|
| MVM Partner Serbia d.o.o. | 106890036 |

- (AB1) Party A and Party B each undertakes to inform the other Party within 30 days if the representations given under this subsection (A1-B2) have failed or ceased to be true and accurate at any time after the Effective Date. Provided Party fails to inform the other Party pursuant to this paragraph, that Party shall indemnify, defend and hold the other Party harmless and indemnified in respect of any and all VAT, penalties and interest incurred by the other Party as a result of that Party's failure to comply with the undertaking in this paragraph.

Any misrepresentation shall constitute a breach of this EFET General Agreement for which the sole remedy shall be the obligation to indemnify and hold harmless, upon demand, the other Party against any liability for VAT (and any associated charges or penalties) incurred by the other Party in respect of electricity delivered under such Individual Contract. In the event that a Party initiates an Early Termination of this EFET General Agreement (or such termination occurs as the result of an Automatic Termination) and at such time a Party owes an indemnification obligation hereunder, the amount of such indemnification obligation shall be deemed to be an "other amounts payable between the Parties under or in connection with the Agreement" within the meaning of § 11.1 and shall therefore be included in the calculation of the applicable Termination Amount owed by one Party to the other as the result of such Early Termination.

In addition Party A represents and warrants the following: _____
In addition Party B represents and warrants the following: _____

§22

Governing Law and Arbitration

§ 22.1 Governing Law:

- § 22.1 shall apply as written, or
 § 22.1 shall not apply as written but instead shall be as follows:

"This Agreement shall be construed and governed by the substantive law of Hungary, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980."

§ 22.2 Arbitration:

- § 22.2 shall apply as written and the language of the arbitration shall be: _____, or

§ 22.2 Arbitration:

[] § 22.2 shall apply as written and the language of the arbitration shall be: _____, or
[X] § 22.2 shall not apply as written but instead shall be as follows:

The Parties shall strive for settling amicably all disputes associated with the Agreement. In the absence of an agreement being reached amicably, the Parties shall refer the dispute to the exclusive competence of the regular court as per the registered office of Party A

“Any disputes which arise in connection with the present Agreement, its breach, termination, validity or interpretation shall be referred for final and binding resolution to the Court of Arbitration attached to the Hungarian Chamber of Commerce and Industry, in Budapest and decided according to its own Rules of procedure, ousting the jurisdiction of any ordinary courts. The number of arbitrators shall be three and shall each have experience (business, legal or otherwise) in the electricity sector and/or trading of energy contracts. The language to be used in the arbitral proceedings shall be Hungarian and the venue of the arbitration shall be Budapest, Hungary.

Except as otherwise provided in the Agreement, the Parties shall continue to perform their obligations under the Agreement to the extent possible notwithstanding the commencement of any arbitration proceedings.

Nothing in this Article § 22.2 shall be construed as preventing either Party from seeking conservatory or similar interim relief in any court of competent jurisdiction. “

§23
Miscellaneous

§ 23.2 Notices, Invoices and Payments:

(b) to Party A:

| | |
|--------------------------|---|
| Notices & Correspondence | MVM Partner Zrt. |
| Address: | 1031 Budapest, Szentendrei út. 207-209. |
| Telephone No: | +36-1-225-69-30 |
| Fax No: | +36-1-201-66-43 |
| Attention: | Ms. Mária Goór |
| Invoices | MVM Kontó Zrt. |
| Address: | 7031 Paks, Pf. 152 |
| Fax No: | |
| Attention: | |

Payments

| | |
|----------------------|-------------------------------------|
| Bank account details | K&H Bank Nyrt. |
| Account Number | HUF 10201006-50287060 |
| IBAN | HUF HU39 10201006-50287060-00000000 |

Account Number EUR 10201006-60206068-00000000
IBAN EUR HU23 10201006-60206068-00000000
SWIFT OKHBUHUB

VAT 12898019-2-44

(b) **TO PARTY B:** MVM Partner Serbia d.o.o.

Notices & Correspondence MVM Partner Serbia d.o.o.

Address: Belgrade, Nehruova Str. No 132/13, Serbia (New Belgrade)

Telephone No:

Fax No:

Attention: Mr. Viktor Varga

Invoices Copland d.o.o.,

Address: Dobracina 33, 1 floor 11000 Belgrade, Serbia

Fax No: +381 11 2632 880/ +381 6050 40 231

Attention: **Ms. Marina Svilar**

Payments

Unicredit Bank Serbia
RSD-170003001157400081
EUR-170003001157432091
SWIFT: BACXRSBG

VAT 106890036

§ 23.3. **Amendments:** shall be supplemented with the following provision:

Change of company registration data, in particular, official residence, representative, bank account number, including change of organisation responsible for the conclusion and performance of the Agreement, or contact details shall not qualify as amendment of the Agreement. Such changes shall, depending on circumstances of the given case, be communicated by the affected Party to the other Party in writing 10 days in advance or 10 days following the occurrence (registration) of the change.

§ 23. **Miscellaneous shall be supplemented as follows:**

§ 23.7. **Reference:** Party B may only be entitled to refer to the Agreement or its collaboration associated with Party A upon Party A's prior and express consent in writing. Party A is entitled to revoke its previous consent in writing at any time, without reasoning.

§ 24. **Changed Circumstances**

PART II: ADDITIONAL PROVISIONS TO THE GENERAL AGREEMENT

1. The "Amalgamation/Merger" provisions of §17.2 (i) will apply to Party A and will apply to Party B, provided that:

- the words "undergoes a change of control" are deleted in respect of Party A and
- §17.2 (i) is supplemented by inserting the following wording to the end of the clause:

However, if Party B and/or its Credit Support Provider enter into an intra-group reorganisation on a solvent basis these events will not constitute a Material Adverse Change.

- subpoint (iii) of §17.2 (i) shall not be applicable.

The Parties agree to amend the following provisions of Annex 1 to the General Agreement (*Defined Terms*) as follows:

The definition of "Affiliate" in Annex 1 is amended for Party B so that it now reads as follows:

"Affiliate" means in respect of Party A & B any entity consolidated in the balance sheet of MVM ZRt.

The definition for Party A and B of "Tangible Net Worth" in Annex 1 is amended so that it now reads as follows:

"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 **not** limited to, goodwill;

"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, but excludes indebtedness in respect of bank deposits received in the ordinary course of business);

"Control" means (a) ownership of more than fifty per cent (50%) of the voting power of a Party or Entity or (b) the right to appoint or remove a majority of the board of directors or other executive officers of a Party or Entity, or (c) the right to exercise a dominant influence by virtue of provisions contained in the articles of association, or by virtue of a control contract over a Party or Entity, or (d) the effective ability to control alone, or pursuant to an agreement jointly with other shareholders, the majority of the voting rights, and "Controlled" or "Controlling" shall be construed accordingly;

"Delivery Point" means, in respect of an Individual Contract, the delivery point agreed between the Parties, which may be any of the input point within a national regulatory zone;

"Network Operator" means collectively the operators of the relevant transmission or local distribution networks;

The definition of "Business Day" shall be amended so that the words "in Beograd and" are inserted after the words "general business."

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

"Party A"

"Party B"

MVM Partner Zrt

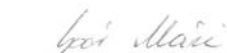
MVM Partner Serbia do.o.



Mr NÉMETH Ádám
Director



Mr MAJOR György
General Manager



Mr. GOÓR Mária
Director



Mr. VARGA Viktor
General Manager