ALL PARTY COOPERATION AGREEMENT

This All Party Cooperation Agreement ("**APCA**" or "**Agreement**"), dated 18 December 2007, is entered into by and between:

On the one hand:

CEGEDEL Net S.A. ("**CEGEDEL Net**"), a company incorporated under the laws of Luxembourg, having its registered office at 2, rue Thomas Edison in L-1445 Strassen, registered in the commercial register at Luxembourg under number B. 104.089, hereto represented by Carlo Bartocci, Directeur and Roby Gengler, chef de Service;

ELIA SYSTEM OPERATOR ("**ELIA**"), a company incorporated under the laws of Belgium, having its registered office at Boulevard de l'Empereur, 20, 1000 Brussels, Belgium, registered in the commercial register at Brussels under number 0476.388.378, hereto represented by Pierre Bernard and by Frank Vandenberghe;

EnBW Transportnetze AG ("**ENBW TNG**"), a company incorporated under the laws of Germany, having its registered office at Kriegsbergstr., 32, 70174 Stuttgart, Germany, registered in the commercial register at Amtsgericht Stuttgart under number HRB 19075, hereto represented by Olivier Chatillon;

E.ON NETZ ("**E.ON Netz**"), a company incorporated under the laws of Germany, having its registered office at Bernecker Str. 70, 95448 Bayreuth, Germany, registered in the commercial register at Bayreuth under number 3333, hereto represented by ;

RTE EDF TRANSPORT ("**RTE**"), a company incorporated under the laws of France, having its registered office at tour Initiale, 1 terrasse Bellini, TSA 41000, 92919 La Défense CEDEX, France, registered in the commercial register at Nanterre under number 444 619 258, hereto represented by Jean Verseille, Directeur Développement du Réseau;

RWE Transportnetz Strom GmbH ("RWE TSO"), a company incorporated under the laws of Germany, having its registered office at Rheinlanddamm 24, D-44139 Dortmund, Germany, registered in the commercial register at the Amtsgericht Dortmund under number HRB 15940, hereto represented by Dr. Hans-Jürgen Brick (CEO) and Dr. Klaus Kleinekorte (CEO)

TENNET TSO B.V. ("**TenneT**"), a company incorporated under the laws of the Netherlands, having its registered office at Arnhem, Utrechtseweg 310, the Netherlands, registered in the commercial register at Centraal Gelderland under number 09155985, hereto represented by its Manager Market and Regulatory Affairs C.J.M. Meeuwis

(collectively: the "**TSOs**");

And, on the other hand:

APX ("**APX**"), a company incorporated under the laws of the Netherlands, having its registered office at Strawinskylaan 729, 1077 XX Amsterdam, the Netherlands, registered in the commercial register at 34153887, hereto represented by Andrew Claxton, Director of Business and International Development;

BELPEX ("**BELPEX**"), a company incorporated under the laws of Belgium, having its registered offices at Boulevard de l'Impératrice 66, 1000 Brussels, Belgium and registered in the commercial register at Brussels, under number 0874978602, hereto represented by Catherine Vandenborre, CEO;

EUROPEAN ENERGY EXCHANGE AG ("**EEX**"), a company incorporated under the laws of Germany, having its registered office at Neumarkt 9-19, 04109 Leipzig, Germany, registered in the commercial register at Leipzig under number HRB 23215, hereto represented by Dr. Hans-Bernd Menzel, CEO and by Dr. Wolfgang von Rintelen and operating the power spot market of European Energy Exchange that is subject to German exchange legislation (Börsengesetz) and supervised by the exchange supervisory authority of the state of Saxony;

POWERNEXT ("**POWERNEXT**"), a company incorporated under the laws of France, having its registered office at 5 boulevard Montmartre, 75002 Paris, registered in the commercial register in Paris under number 438 750 440, hereto represented by Mr Jean-François CONIL-LACOSTE, CEO;

(collectively: the "**Power Exchanges**");

Individually herein referred to as a "**Party**" or collectively referred to as the "**Parties**":

* * *

A. Whereas the Parties are committed to improve cooperation in the field of cross-border exchange of electricity in Europe and more specifically in the region of Central West Europe ("**CWE**") in order to enhance market integration and security of supply within said region;

B. Whereas, in this context, the Parties together with other signatories executed on 6 June 2007 a memorandum of understanding ("**MoU**") including several annexes with the general objectives of (i) analyzing, designing and implementing a flow-based market coupling between the five (5) countries (Belgium, France, Germany, Luxemburg and the Netherlands) of the CWE region (the "**CWE Market Coupling Project**") with January 2009 as a target date, of (ii) enhancing market integration and of (iii) enhancing security of supply in the CWE region (collectively, the "**MoU Objectives**");

C. Whereas, under the MoU, the TSOs and the Power Exchanges have, along with the concerned regulators and other public authorities, undertaken to use their reasonable resources and support to achieve the MoU Objectives;

D. Whereas, the Parties agree on the need for agreements between themselves covering issues as such cost sharing arising from the design phase of the CWE Market Coupling Project, *i.e.* the phase during which, in particular, the high-level architecture and business process is established, the different options for market coupling algorithms are analysed, the possible flow-based network representations are analysed by the TSOs, possible organization and governance structures are investigated and a proposal for further proceedings is made (the "**Design Phase**") and confidentiality within the context of the CWE Market Coupling Project;

E. Whereas it has been decided that, to this effect, the Parties shall enter into two separate agreements, the first one being the Non-Disclosure Agreement (the "**NDA**") and the second one being this Agreement, which is an interim agreement pending a further agreement of the Parties on ongoing ownership and governance within the framework of the CWE Market Coupling Project (the "**Governance, Ownership and Funding Agreement**" or "**GOF**"). It is acknowledged by the Parties that this Agreement shall not be performed before the signature of the NDA.

In consideration of the Parties' mutual promises and agreements and subject to the terms and conditions set forth below, the Parties agree as follows:

1. THE PURPOSE OF THE APCA

1.1 The purpose of the APCA is mainly to:

1.1.1 Describe the organisational aspects of the CWE Market Coupling Project ;

1.1.2 Provide a regime of cost sharing in connection with the Design Phase of the CWE Market Coupling Project (consisting of general principles applicable to all Common Costs and specific principles exclusively applicable to Algorithm Costs and Workstream Algorithm Design Costs (as defined in Section 4 below);

1.1.3 Give assurance to each Party that its efforts, input and resources aimed at achieving the CWE Market Coupling Project will be recognized and fairly compensated in accordance with the agreed principles and in full transparency;

1.1.4 Give assurance to all the Parties that the results of the Design Phase will be made available to the Parties for the CWE Market Coupling Project on acceptable terms and in timely fashion; and

1.1.5 Provide for an "**Exit clause**" should the Parties not reach an agreement on the Governance, Ownership and Funding Agreement by the expected deadline (as provided for in Article 6.2 below), which Exit Clause will provide for a fair treatment of each Party, without any discrimination and bearing in mind the objectives of the MoU.

1.2 The APCA is entered into without prejudice to the Governance, Ownership and Funding Agreement.

1.3 The APCA is composed of this agreement and the annexes listed below :

- Annexe 1 : List of Common Costs foreseen under Category 1 and 2 and examples of costs that could be considered as Common Costs for Category 3
- Annexe 2 : List of contact details for the Parties
- Annexe 3 : Joint Expenditure and Funding Policy
- Annexe 4 : Definitions

2. ORGANISATIONAL ASPECTS

2.1 The Parties expressly agree that they will cooperate in view of achieving the MoU Objectives by means of the following working, consultation, validation and/or decision-making groups:

(a) The "**Joint Steering Committee**" or "**JSC**" comprising representatives of the seven TSOs and of the four Power Exchanges participating in the CWE Market Coupling Project with all necessary power and authority to take decisions binding upon their respective organisation as far as strategic, organisational, operational and financial aspects of the CWE Market Coupling Project are concerned;

(b) The "**Joint Project Board**" or "**JPB**", an advisory, recommendation and validation body comprising representatives of the seven TSOs and the four Power Exchanges participating in the CWE Market Coupling Project and the Project Manager (cf. below), with all necessary power and authority to take binding decisions within the scope of the missions delegated to it by the JSC or by this Agreement.

(c) The "**Project Manager**", an independent project manager, appointed by the JSC, who will be in charge, amongst other things, of the day-to-day management of the CWE Market Coupling Project and of the coordination of the work of the JPB. The Project Manager shall report to the JSC on behalf of the JPB ;

(d) The "**Project Office**", which is a dedicated project function providing administrative support to the Project Manager;

(e) The "**Workstreams**", composed of representatives of the seven TSOs and the four Power Exchanges participating in the CWE Market Coupling Project and grouped for the Design Phase under the following 5 streams: technical, legal and governance, market design, regulatory and algorithm design. They are each in charge of producing project deliverables that are the responsibility of all Parties; each Workstream is coordinated by a "**Workstream Leader**". The Workstream Leaders report to the Project Manager.

2.2 Decision making process rules and effect of the decisions

Decisions of the JSC and of the JPB, if a delegation occurs as foreseen under and in compliance with Article 2.1.(b) above, on the subjects described in this Agreement shall be taken by unanimous consent of their respective members according to the decision making process rules set forth in writing by unanimous consent of the JSC. Such decisions of the JSC and of the JPB shall automatically bind the Parties, without the need for any kind of other approval by the Parties.

3. COSTS SHARING OF COMMON COSTS

3.1 Scope

The rules set forth below govern the sharing of the costs: (i) incurred during the Design Phase; (ii) which meet the requirements and definitions set forth below; (iii) to the exclusion of the Algorithm Costs and WSAD Costs, which are defined in, and governed by, Section 4 below.

3.2 Definitions:

"**Common Costs**", according to Article 3.1 (i) and (ii) above, are:

(a) "**Category 1**" : costs related to the Project Manager and costs related to the Project Office

(b) "**Category 2**": costs related to any Workstreams Leaders activities

(c) "**Category 3**": costs related to work or expenditure commissioned under the CWE Market Coupling Project (*i.e.* commissioned by any Workstream Leader or by the Project Manager) and undertaken by internal or external experts (cf. below) of the Parties, provided they meet the following criteria. The costs are:

(i) incurred to the benefit of the 11 Parties;

(ii) specific to the Design Phase; and

(iii) commissioned favouring an efficient, costs effective and, if possible, equal distribution between internal experts of the Parties (cf. below)

For the purposes of this Agreement:

"**Internal experts**" are the official members of the Workstream (regardless of whether or not they are part of the internal staff of the Party they represent within the Workstream) who have been entrusted by a Workstream Leader with the responsibility of performing (a) specific task(s) necessary for the achievement of the tasks assigned to the Workstream and/or members of the internal staff of the Parties (not member of a Workstream) to whom such specific task(s) has(ve) been delegated by an official Worsktream member, under its responsibility and provided the Workstream Leader has been prior informed of the delegation of task(s).

"**External experts**" are experts not member of the internal staff of the Parties and especially entrusted by a Workstream Leader, after approval of the JSC, with the responsibility of performing (a) specific task(s) for the benefit of the 11 Parties and necessary for the achievement of the tasks assigned to the Workstream.

Annex 1 to the APCA lists the Common Costs foreseen under Category 1 and 2 and provides examples of costs that could be considered as Common Costs for Category 3.

The qualification of a cost as a Common Cost in compliance with the above criteria is at first instance made by each Workstream Leader for his/her respective Workstream. The final qualification is subject to the approval of the JPB, on the basis of a proposal made by the Project Manager, it being understood that, if a proposed Common Cost is considered by the JPB not to be a Common Cost, then it will remain at the expense of the Party(ies) who has(ve) incurred it. Such approval of the JPB shall not be unreasonably withheld.

Furthermore, all Parties undertake to respect the following guidelines regarding the expenditures policy:

- travel by train is always allowed in 1st class;
- travel by plane will always be in economic class for Europe ; other destinations shall be dealt with on a case by case basis;
- hotels should cost within a range of 100 to 200 € per night, depending on the town and location;
- catering should cost a maximum of 70€/person and day.

3.3 Rates for Common Costs of Categories 2 and 3

Internal experts are charged at a rate of 735 € per day (comprising 8 hours of work) (covering the full charge for these experts including, inter alia, related office space, office furniture), provided they have been budgeted in compliance with Article 3.6 below and the "**Joint Expenditure and Funding Policy**" which is attached hereto as Annex 3.

External experts are allowed at actual cost, as invoiced, provided they have been budgeted and thus approved by the JSC in compliance with Article 3.6 below and the Joint Expenditure and Funding Policy.

By way of exception, Internal experts (i) who are official members of the Workstream but not a part of the internal staff of a Party and (ii) whose specific skills or competences are required may, upon proposal of the Project Manager and subject to prior approval of the JSC, be charged on the basis of specific rates.

3.4 New category of Common Costs

The adding of a new category of Common Costs to the above list is subject to the approval of the JSC on the basis of a motivated proposal made by the Project Manager and, if applicable, jointly with the Workstream concerned, in the name of the JPB.

3.5 Prior Common Costs

Costs related to work undertaken between 1 October, 2007 and the date of entry into force of the APCA (the "**Prior Common Costs**") are recovered by the Parties if they :

- are approved by the JSC on the basis of a proposal by the Project Manager and the Workstream and validated by the JPB; and
- relate to work commissioned under the CWE MC Project, incurred to the benefit of the 11 Parties and specific to the CWE MC Project.

3.6 Budget

Common Costs (including Prior Common Costs) have to be budgeted in compliance with the Joint Expenditure and Funding Policy.

For the avoidance of any doubt, the Parties confirm that once Common Costs have been budgeted, their expenditures no longer have to be approved by the JPB/JSC, as long as they do not exceed the budget.

Common Costs shall be auditable.

3.7 Monitoring of Common Costs

Common Costs which have been budgeted and incurred have to be monitored and reported by each Workstream Leader in compliance with the Joint Expenditure and Funding Policy.

3.8 Sharing Key and Settlement of Common Costs

Common Costs which have been budgeted and incurred shall be supported equally by each Party, *i.e.* each Party supporting a 1/11 portion of these costs.

In compliance with the Joint Expenditure and Funding Policy, the Project Manager shall prepare at the end of each month the Net Position of each Party (*i.e.* its share of the aggregate of all Parties' Common Costs to date less the Common Costs incurred by that Party).

The Common Costs will be settled between the Parties in accordance with the "**Joint Settlement Policy**" to be adopted by unanimous consent of the JSC upon proposal of the Project Manager. The Joint Settlement Policy shall also provide for the possibility for a Party whose "**Net Position**" (its share of the aggregate of all Parties' Common Costs to date less the Common Costs incurred by that Party) at a month's end exceeds €50.000 to request that all other Parties pay it an equal share of its Net Position, in order to bring it back to less than €50.000, unless this should have a material adverse tax effect.

4. COST SHARING OF ALGORITHM AND WORKSTREAM ALGORITHM DESIGN COSTS AND ALGORITHM PROPERTY RIGHTS

4.1 Principles

The algorithm to be used for the purposes of the CWE Market Coupling Project, at the end of the three phases described below (the "**CWE Algorithm**") will be based either on (i) one of the algorithms previously developed and currently owned by either APX, Belpex, and/or Powernext or a subset of these algorithms, or a combination of such algorithms, or (ii) an algorithm proposed by another candidate accepted by the Workstream in charge of selecting and developing the CWE Algorithm

under the rules set forth in the present Section 4 (the "**Algorithm Design Worsktream**" or "**WSAD**") together with the JSC, provided it complies with the Selection Criteria set forth in Article 4.3.2 (each and any of these algorithms (or subset or combination thereof) being referred to as "**Candidate Algorithm(s)**").

As far as development issues to achieve the CWE Algorithm are concerned, the Design Phase is composed of the following 3 phases:

- "**Phase 1**" : all time prior to the start of work of Artelys as Workstream leader of the WSAD, i.e. 21 November 2007;
- "**Phase 2**" : selection process, starting from 21 November 2007 and ending when the selection of the Candidate Algorithm retained to perform the CWE Market Coupling Project (the "**Selected Algorithm**") is completed ; and
- "**Phase 3**" : further development of the Selected Algorithm, starting from the date of selection of the Candidate Algorithm and ending at the beginning of the phase following the Design Phase under the CWE Market Coupling Project (the "**Implementation Phase**").

It is agreed that the JSC shall determine in due time the exact date corresponding to the ending of Phase 2 and of Phase 3 as described above.

4.2 Phase 1

During Phase 1, costs related to the development of the Candidate Algorithm(s) (the "**Initial Costs**") are not explicitly shared under the present Agreement, it being understood that they may be included in the Selling Price, in compliance with Article 4.3.2.3 below.

4.3 Phase 2

4.3.1 Algorithm Costs and WSAD Costs sharing

During Phase 2, only the following Algorithm Costs and WSAD Costs shall be shared (the "**Algorithm Phase 2 Costs**"):

1. costs related to work and expenditure: (i) commissioned by the WSAD Leader and (ii) necessary for performing the comparison and the evaluation of the Candidate Algorithm(s); and
2. costs related to the WSAD Leader activities.

4.3.2 Selection process

4.3.2.1 The WSAD shall agree on a "**Selection Process**" for the CWE Algorithm which will be based on the principle that the assessments made by the WSAD with the lead of its independent WSAD Leader have to be reviewed and validated by an independent panel of validators (the "**External Panel of Validators**"), to be recommended by the WSAD and appointed by the JSC.

The Selection Process shall be based on the requirements defined by the WSAD and approved by the JSC, and shall amongst other things include as "**Selection Criteria**" at least the following elements:

(i) the technical analysis (the ability to meet the technical criteria defined by the WSAD);

(ii) the Financial Data, as defined below, taking into consideration that it will be for the WSAD Leader to define and for the JSC to approve in the Selection Criteria if the candidates are requested to provide either (a) a fixed price or (b) a time and material assessment;

(iii) the Selling Conditions, as defined below;

(iv) the time of delivery; and

(v) the quality of the Candidate Algorithm.

The Selection Process shall ensure a fair and equal treatment to all Party(ies) submitting the Candidate Algorithms for selection.

4.3.2.2 All Parties shall have the opportunity to participate in the Selection Process via their respective representative in the WSAD and especially, to request, at any time via their respective representative in the WSAD, any information related to the Candidate Algorithms and the Selection Process (including documentation, source codes, or models), necessary for the purposes of understanding and evaluating the CWE Algorithm, it being understood that any disclosure of information pursuant to such request is subject to the NDA.

4.3.2.3 As part of the Selection Process, at least the following information shall be provided by the party(ies) submitting the Candidate Algorithms for selection:

(i) the "**Financial Data**" of the Candidate Algorithm including the following elements, shown individually:

- the "**Selling Price**" for the granting of Minimum Using Rights, as defined under (ii) below. It is agreed by the Parties that the Selling Price shall identify specifically which amount relates to the Initial Costs, as referred to under Article 4.2 above (this information shall be made available once it is known whether a fixed price or a time and material assessment is requested and once the WSAD has identified which functionality must be budgeted under development costs during Phase 3 and in any event before the selection is made);
- the development costs that will need to be made during Phase 3 (either a fixed price, or a time and material assessment, depending on the requirement provided as Selection Criteria);
- the maintenance costs fairly and reasonably estimated; and
- the costs for extension of the Candidate Algorithm to other countries or regions, fairly and reasonably estimated;

(ii) the "**Selling Conditions**" of the Candidate Algorithm. As part of the Selling Conditions, the following "**Minimum Using Rights**" shall be granted:

- all rights of use of the Candidate Algorithm, if and when selected, necessary to perform the CCU Functions to the benefit of the entity or entities in charge of the CCU Functions; and
- (recognising that, within the framework of the CWE Market Coupling Project, other Parties may need to perform analysis that require the use of the CWE Algorithm) a full access to the Candidate Algorithm, and to all information related thereto, as well as the right of use of it to perform such analysis (but no right to modify) to the benefit of each individual Party; and

(iii) relevant information to enable the WSAD to estimate the costs for the implementation of the Candidate Algorithm, if selected, if this estimation is felt necessary and technically possible by the WSAD; and

(iv) whether the Party(ies) submitting the Candidate Algorithm for selection is willing to negotiate in the context of the signature of the GOF a full or partial transfer of intellectual property rights, co-ownership or sharing thereof, or the mere granting of licence thereof.

For the sake of clarity, the Parties confirm that the Selling Price does not include development costs that will need to be made during Phase 3, maintenance costs nor cost for extension to other countries.

4.3.2.4 The WSAD shall prepare an "**Evaluation Report**" assessing each of the Candidates Algorithm on the basis of the Selection Criteria and containing a recommendation on the Candidate Algorithm to be selected. This Evaluation Report will then be reviewed by the External Panel of Validators who shall express its recommendation. The final decision to select the CWE Algorithm is taken by the JSC.

4.4 Phase 3

4.4.1 Cost sharing

During Phase 3, only the following Algorithm Costs and WSAD Costs shall be shared (the "**Algorithm Phase 3 Costs**"):

1. the Phase 3 development costs incurred on the basis of the fair and reasonable estimation or on the basis of the fixed price referred to under Article 4.3.2.3. above ;

2. the costs related to work or expenditure commissioned by the WSAD Leader and undertaken by Internal or External experts (cf. Article 3 above) of the Parties, provided they meet the following criteria: the costs are

   a. incurred to the benefit of the 11 Parties,

   b. specific to the Design Phase of the CWE Market Coupling Project, and

c. commissioned favouring an efficient, costs effective and, if possible, equal distribution between Internal Experts of the Parties;

3. costs related to the WSAD Leader activities.

4.4.2 Payment of Selling Price

Each Party shall support 1/11 of the Selling Price for the granting of the Minimum Using Rights to all Parties or, as the case may be, to the entity in charge of the CCU functions, of the Selected Algorithm provided that the Selection and the Selling Price have been approved by all Parties at the JSC. Payment of the Selling Price for the granting of the Minimum Using Rights to all Parties or, as the case may be, to the entity in charge of the CCU functions, shall be made at the latest at the end of the Design Phase.

The Minimum Using Rights shall be granted by the relevant Party(ies) to the other Parties upon receipt of the payment of such Parties' part in the Selling Price.

The terms and conditions for granting more than the Minimum Using Rights shall be governed by the GOF and payment already made for the Minimum Using Right will be given due consideration.

4.5 Intellectual Property Rights

Notwithstanding the granting of the Minimum Using Rights as described above, the ownership of the Selected Algorithm (in status of end of phase 2) shall initially remain with the respective party submitting the Selected Algorithm, until an agreement on the GOF is reached between the Parties. The Party(ies) submitting the Selected Algorithm expressly endeavour not to use such interim right in any manner which would be unfair to the other Parties during the negotiations in good faith of the GOF, it being understood that the content of the APCA is without prejudice to the GOF.

4.6 Rates for Algorithm Phases 2 and 3 Costs

Internal experts are charged at a rate of 735 € per day (i.e. 8 hours of work) (covering the full charge for these experts including, inter alia, related office space, office furniture), provided they have been budgeted in compliance with Article 4.7 below and the Joint Expenditure and Funding Policy.

External Experts are allowed at actual cost, as invoiced, provided they have been budgeted in compliance with Article 4.7 below and the Joint Expenditure and Funding Policy.

By way of exception to the above, if as foreseen in Article 4.3.2.3 (i), the WSAD has requested a fixed price for the development costs that will need to be made during Phase 3, it is this amount, as provided by the party submitting the Candidate Algorithm that will be budgeted and no budget overspending will be allowed in that respect.

4.7 Qualification as Algorithm Phase 2 or 3 Costs / Budget

The qualification of a cost as an Algorithm Phase 2 or 3 Costs in compliance with the above criteria is at first instance made by the WSAD

Leader. The final qualification is subject to the approval of the JPB, on the basis of a proposal made by the Project Manager.

Algorithm Phases 2 and 3 Costs have to be budgeted in compliance with the Joint Expenditure and Funding Policy.

Algorithm Phases 2 and 3 Costs shall be auditable.

4.8 Monitoring of Algorithm Phases 2 and 3 Costs

Algorithm Phases 2 and 3 Costs which have been budgeted and incurred have to be monitored and reported by the WSAD Leader in compliance with the Joint Expenditure and Funding Policy before any payment can occur. Any expected overspending of Algorithm Phases 2 and 3 Costs shall be immediately reported to the JSC by the Project Manager and the WSAD Leader. The expected overspending shall be approved by the JSC, which may elect to ask the assessment of the Panel of Validators.

4.9 Sharing key and settlement of Algorithm Phases 2 and 3 Costs

Algorithm Phases 2 and 3 Costs which have been budgeted and incurred will be supported equally by each Party, i.e. each Party supporting a 1/11 portion of these costs.

In compliance with the Joint Expenditure and Funding Policy, the Project Manager shall prepare at the end of each month the Net Position of each Party (*i.e.* its share of the aggregate of all Parties' Algorithm Phases 2 and 3 Costs to date less the Algorithm Phases 2 and 3 Costs incurred by that Party). The Project Manager can decide to provide a Net Position taking into account the Common Costs foreseen under Article 3 above and the Algorithm Costs and WSAD Costs sharing foreseen under this Article.

Settlement of the Algorithm Costs and WSAD Costs between the Parties will be made in accordance with the Joint Settlement Policy (cf. Article 3.8 above).

5. NEW PARTY

5.1 In case a new party should join the CWE Market Coupling Project, the sharing key of Common Costs and of Algorithm Costs and WSAD Costs will be revised accordingly, and any payment already made between the Parties reimbursed pro rata.

6. ENTRY INTO FORCE, DURATION AND TERMINATION

6.1 This Agreement shall enter into force as from the date it has been signed by all Parties (should the Parties not sign it on the same date, the date of last signature will trigger the entry into force), and will remain into force until the end of the Design Phase, as determined by a decision of the JSC. However, the Parties may decide in a subsequent agreement (*e.g.* the Governance, Ownership and Funding Agreement) if they wish to extend the validity of any or all of the provisions of the Agreement.

6.2 This Agreement shall be terminated :

1. automatically if, by a decision of the JSC, the CWE Market Coupling Project is terminated, in which case the Common Costs and Algorithm Costs and WSAD Costs will be settled as indicated in the Joint Settlement Policy; or

2. at the initiative of any Party, for the following sole reason: if, notwithstanding their best efforts, the Parties cannot reach an agreement on the Governance, Ownership and Funding Agreement by the end of the Design Phase as determined by a JSC decision, it being understood that this date may be postponed by (a) further JSC decision(s), and subject to the following conditions:

- the Party willing to terminate the Agreement has sent a written notice requesting that this Agreement be terminated based on this reason by registered letter to the two chairmen of the JSC, with a copy to the Project Manager ;

- the termination requested in such written notice will take effect four weeks from the receipt of the abovementioned notice, unless within such period an agreement to the contrary is reached within the JSC with the Party wishing to terminate; in the event of termination the Common Costs and Algorithm Costs and WSAD Costs will be settled as indicated in the Joint Settlement Policy.

6.3 Any Party may terminate its participation to this Agreement for the following sole reason: if, after taking into consideration the particular case and the interest of all Parties involved, such Party cannot be expected any longer to continue to participate in this Agreement due to changed circumstances which were not foreseen at the moment of conclusion of this Agreement, independent of the will of the Party and not influenced by the Party, *i.e.*, in case of hardship and it being understood by the Parties that these circumstances would encompass a change in the applicable laws or regulations, or a decision by a court, an administrative authority or a regulator - and subject to the following conditions:

- the Party willing to terminate its participation to this Agreement has sent a written notice requesting that its participation to this Agreement be terminated based on this reason by registered letter to the two chairmen of the JSC, with a copy to the Project Manager ;

- the termination requested in such written notice will take effect four weeks from the receipt of the abovementioned notice, unless within such period an agreement to the contrary is reached within the JSC with the Party wishing to terminate.

The potential consequences upon the APCA or the CWE Market Coupling Project of such termination by a Party of its participation to this Agreement shall be decided upon by the JSC, however, the Common Costs and Algorithm Costs and WSAD Costs will be settled as indicated in the Joint Settlement Policy.

7. LIABILITY

7.1 The Parties acknowledge that each Party is liable for its proper commitments only. The Parties do not bear joint and several liability. Nothing in this Agreement shall be interpreted as considering the Parties as to bear joint and several liability.

7.2 In case of a breach by a Party (the "**Defaulting Party**") of any of its obligations under this Agreement, the affected Party shall be entitled to claim compensation to the Defaulting Party for any and all losses, damages, charges, fees or expenses, expected and unexpected, which can be considered as a direct damage arising out, or resulting from, a breach of the terms of this Agreement. The Defaulting Party also undertakes to hold the affected Party harmless against any related third-party claim. The indemnification obligations of the Defaulting Party shall at all times (including in the event of a gross negligence) be limited to a cap of 100.000 € per breach, except in the event of fraud or intentional breach by the Defaulting Party.

7.3 No Party shall be liable for delay or failure to fulfil its obligations under this Agreement if the delay or failure results from "**Force Majeure**" (any unforeseeable event or situation beyond the reasonable control of the Party, and not due to a fault of such Party, which cannot reasonably be avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or definitively, its obligations under this Agreement) or sovereign compulsion ("fait du prince").

8. MISCELLANEOUS

8.1 **Annexes.** The Annexes to this Agreement form an integral part thereof and any reference to this Agreement shall include a reference to the Annexes.

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

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

8.4 **Notice**. Unless expressly provided otherwise in this Agreement, all notices, requests, demands, or other communications under this Agreement shall be served in the English language by registered letter or by e-mail or by fax (with acknowledgement of receipt (e-mail) / transmission (fax) to the appropriate Party or Parties at its/their contact address(es) mentioned under Annex 2.

Any change of address of a Party must be notified by any of the abovementioned means to the other Parties, the new address being considered the official address for purposes of this Agreement as from the third (3rd) working day following the sending of this notification.

In the event of difficulty in using electronic means to send notices or other communications under this Agreement, notices may be served in writing and delivered in person or by courier or by post, with such service deemed effective on the date of receipt, unless that date is not a working day in which case the notice shall be deemed given and effective on the first following day that is a working day.

8.5 **Legal successors**. This Agreement is binding upon the Parties and their legal successors.

8.6 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their permitted assignees and successors in interest. Neither Party shall assign its rights or obligations hereunder, except with the prior written consent of all the other Parties, which consent shall not be unreasonably withheld, conditioned, or delayed. No assignment shall relieve either Party of responsibility for the performance of any accrued obligation that such Party then has hereunder. –

8.7 **Amendments.** The Agreement can only be modified by written consent of all the Parties.

Notwithstanding the above, the Annexes to this Agreement can be modified by means of JSC decision. Each Party shall then receive one original of such decision signed and initialled by the members of the JSC.

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

8.9 **Choice of law.** This Agreement shall be governed and construed in all respects in accordance with the laws of Belgium, to the exclusion of conflicts of law provisions. For the avoidance of any doubt, other agreement(s) to be entered into by the Parties under the CWE Market Coupling Project may be governed and construed in accordance with another law.

8.10 **Dispute resolution. Arbitration. Summary proceedings** Any disputes or disagreements between the Parties arising under or in connection with this Agreement will be settled amicably between the Parties. The disputes which cannot be settled amicably shall finally be settled by arbitration in Paris under the rules of arbitration of the ICC, in the English language. The award of the arbitration will be final and binding upon the Parties concerned. Nothing in this Article shall preclude the Parties from applying for injunctive relief in summary proceedings ("procédure en référé" / "kort geding") before the competent courts of Brussels, Belgium.

Remainder of Page Intentionally Left Blank; Signature Page Follows

IN WITNESS WHEREOF, as of the date specified below with their respective signatures.

For **CEGEDEL Net**

On: _____

By: Carlo BARTOCCI

Title: Directeur

For **CEGEDEL Net**

On: _____

By: Roby GENGLER

Title: Chef de Service

For **ELIA**

On: _____

By: Pierre BERNARD

Title: Secretary-General

For **ELIA**

On: _____

By: Frank VANDENBERGHE

Title: CO Customers & Market

For **EnBW TNG**

On: _____

By: Olivier CHATILLON

Title:

For **E.ON Netz**

On: _____

By:

Title:

For **RTE**

On:_____

By: Jean VERSEILLE

Title: Directeur Dévelopment du Réseau

For **RWE TSO**

For **RWE TSO**

On: _____

By: Dr. Hans-Jürgen BRICK

Title: CEO

On: _____

By: Dr. Klaus KLEINEKORTE

Title: CEO

For **TenneT**

On: _____

By: C.J.M. MEEUWIS

Title: Manager Market and Regulatory Affairs

For **APX**

On: _____

By: Andrew CLAXTON

Title: Director of Business Services and International Development

For **BELPEX**

On: _____

By: Catherine VANDENBORRE

Title: CEO

For **EEX**

For **EEX**

On: _____

By: Dr. Hans-Bernd MENZEL

Title: CEO

For **POWERNEXT**

On: _____

By: Dr. Wolfgang von RINTELEN

Title:

On: _____

By: Jean-François CONIL-LACOSTE

Title: CEO

Annex 1. List of Common Costs foreseen under Category 1 and 2 and examples of costs that could be considered as Common Costs for category 3

		Cost Sharing			
		Man /days	Travel	Physical Conference Costs(room, catering...)	Teleconference Costs
Project Management	**Office**	All Parties	All Parties	All Parties	All Parties
	Project Leader	All Parties	All Parties	All Parties	All Parties
Workstreams TE/RE/MD/LG	**Leader**	All Parties	All Parties	NA	NA
	Internal Experts (if dedicated)	All Parties	All Parties	NA	NA
	External Experts (if dedicated)	All Parties	All Parties	NA	NA
	regular Membership	Individual	Individual	NA	NA
JPB Participation	**Meeting Expenditure** **Regular Membership**	NA Individual	NA Individual	All Parties All Parties	All Parties All Parties
JSC Participation	**Regular Membership**	Individual	Individual	All Parties	All Parties
Note : Subprojects costs are not common costs as they are out of the scope of the APCA					

NA: Non Applicable
TE: Technical
MD: Market Design
LG: Legal Governance
RE: Regulatory

Work commissioned by the worksteam leaders can be:

- the drafting of (part of) a deliverable assigned to the Workstream including the consolidation of the subsequent comments made by the regular member of the task force and any presentation (written or oral) of the deliverable to the Workstream, the JPB and/or the JSC as the case may be (including time spent on preparing it);

- research necessary for the drafting of (part of) a deliverable assigned to the Workstream (including, if necessary the drafting of a summary report on the research).

Annexe 3. Joint Expenditure and Funding Policy

Joint Expenditure and Funding Policy
CWE Market Coupling

Version	0.4	
Date	11 December 2007	
Status	☒ Draft	☐ Final

Document creation and distribution

Document Owner	A.Viaene
Function	Project Leader
File location	CWE MC_20071106_Joint Expenditure and Funding Policy
Distribution	JPB, JSC, WS Leaders

Approval

Version	Date	Name	Function	Signature
V 0.3	11 December 2007	Annemie Viaene after unanimous approval of JPB/JSC	Project Leader	

Previous versions

Version	Date	Author	Summary of changes
0.0	06/11/07	A. Viaene	First draft
0.1	23/11/07	A. Viaene	Integrating principles decided in JBP of Nov 13th 2007 and adding appendices
0.2	04/12/07	A.Viaene	Integrating principles decided in JBP of Nov 27th 2007
0.3	11/12/2007	A.Viaene	Integration latest remarks on review round
0.4	11/12/2007	A.Viaene	Remarks Powernext
		F. Melchior	Remarks EnBW, RTE and Tennet

Related documents

Document ID	PID
Document ID	All Party Cooperation Agreement Design Phase
Document ID	All Party Cooperation Agreement Implementation Phase (to be drafted)

Attachments

Document ID	Appendix 1: Template: CWE MC - Budget and Cost Control
Document ID	Appendix 2: Template: CWE MC - Budget Request
Document ID	Appendix 3: Template: CWE MC - Expenditure Sheet

Contents

1 Scope and Coverage of this Policy 4
1.1. Processes covered 4
1.2. Project Phases covered 4
1.3. Types of financial expenditure covered 4
1.3.1. Common Costs 4
1.3.2. Other Costs 5

2 Budget Management 5
2.1. Definitions 5
2.2. Budget Proposal Procedure 5
2.2.1. Phasing 5
2.2.2. Drafting of the Budget Proposal 5
2.2.3. Budget Content 6
2.3. Budget Amendment Procedure 6
2.4. Budget Approval Procedure 7

3 Expenditure Management 7
3.1. Expenditure Approval Procedure 7
3.1.1. Launch of financial expenditure for budgeted items 7
3.1.2. Non budgeted expenditure – contingency budget 7
3.1.3. External procurement contracts 8
3.2. Cost Control Procedure 9
3.2.1. Definition 9
3.2.2. Cost Control Responsibilities 9
3.2.3. Cost Control Reporting 9
3.2.4. Cost control report validation and acceptance 9

APPENDIX 1: Template CWE MC - Budget and Cost Control 11

APPENDIX 2: Template CWE MC – Budget Amendment Request 12

APPENDIX 3 : Template CWE MC –Expenditure Sheet 13

4

1 Scope and Coverage of this Policy

1.1. Processes covered

The "Joint Expenditure and Funding Policy" intends to describe all processes regarding financial management of the CWE Market Coupling Project (hereinafter "CWE MC Project) for the so called "Common Costs" (see par 1.3).

The processes covered are mainly:

1. Budget Management: Proposal, Approval and Amendment
2. Expenditure Management: Expenditure commitment ruling and Cost Control

Through this policy, the Joint Steering Committee of the CWE Market Coupling project is delegating some tasks regarding above-mentioned processes, while keeping the final responsibility on the financial control of the project.

1.2. Project Phases covered

The CWE MC Project is characterised by two phases:

- the Project Design Phase
- the Project Implementation Phase

The Joint Expenditure and Funding Policy is covering the project design phase. Partners may agree in a later stage to apply the policy to the project implementation phase.

The "Joint Expenditure and Funding Policy" is in any case not covering the phase of continued operations once the Project is completed. The budget management, expenditure management, and financial settlements between Parties for continued operations will be described in the final governance arrangements, to be signed between the Parties.

1.3. Types of financial expenditure covered

1.3.1. Common Costs

Common financial expenditure in the framework of the CWE MC Project are subject to this "Joint expenditure and funding Policy". This common financial expenditure is composed of two elements, as defined currently in section 3 and 4 of the All Party Cooperation Agreement :the common costs and the algorithm and workstream algorithm design costs, jointly referred to as "Common Costs" for the exclusive purpose of this Policy and without prejudice to the All Party Cooperation Agreement.

1.3.2. Other Costs

Financial expenditure, in the framework of the CWE MC Project, but to the benefit of only one individual Project Partner, or a subset of Parties in a so called "sub-project", so called "Other Costs", are not subject to this "Joint expenditure and funding Policy". The exact definition of "Other Costs" can be found in the respective All Party Cooperation Agreements for the different project phases.

It is however understood by all Parties that the approval of "Other Costs" by the individual Parties or subsets of Parties is necessary to reach the goals of the CWE MC Project.

Parties commit to produce their best effort to align budget management and cost management for the "other costs" with the calendar of the CWE MC Project.

2 Budget Management

2.1. Definitions

The budget is the estimation of financial expenditure to reach the objectives of the CWE MC Project in advance.

Budget Management describes the following activities:

- Initial Budget Proposal
- Budget Amendment
- Budget Approval

2.2. Budget Proposal Procedure

2.2.1. Phasing

Parties agree to draft the Project Budget in two steps, covering the two subsequent project phases:

1. The budget for the Project Design phase: to be produced and approved at the start of the Project design phase.
2. The budget for the Project Implementation phase: to be produced and approved before the start of the Project Implementation Phase

2.2.2. Drafting of the Budget Proposal

Both the budget proposals for the Project Design and Implementation phase are a bottom-up exercise to be executed by:

a. the Workstream Leaders for the costs related to the activities of their individual workstream

b. the Project Manager for costs related to the Project Management

The budget proposal is drafted using the predefined template " CWE MC - Budget and Cost Control ", appended in appendix 1.

All Parties contribute to the constitution of this Common Project Budget, through their respective Workstream participants.

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Therefore, Parties supplying manpower services to the project, or contracting external parties, and thus planning to invoice the project, need the prior budget approval for the total foreseen expenditure for the respective deliverable, before entailing the work.

The budget proposal for each project phase is coordinated and consolidated by the Project Manager and submitted for approval according to the rules defined in §2.4

2.2.3. Budget Content

The Common Project Budget is supposed to cover "Common Costs" to be bared by all Parties on a basis of fair sharing. Definitions of common costs and sharing keys can be found in the cooperation agreements between all Parties.

The agreement determining the rules of cost sharing during the design phase of the CWE MC Project is called APCA or "All Party Cooperation Agreement".

For the Project Implementation Phase, a second cooperation agreement will be signed between the Parties. This agreement will subsequently determine the rules of cost sharing for this phase.

The template provided in appendix 1 is highlighting the cost elements to consider in the budget proposal per deliverable.

If needed, and subject to validation by the JPB and approval by the JSC, this template will be adapted:

- to add other common cost categories, once approved by the JSC
- for the Project Implementation phase, to reflect the deliverables and the content of the second cooperation agreement between Parties

2.3. Budget Amendment Procedure

A budget amendment is a planned change of the budget incurred during the concerned project phase.

It is understood by all Parties that budget amendments, in particular additional budget requests, are to be considered as absolute exceptions to the regular budgeting process and not to be repeated on a frequent bases.

Budget amendment requests, especially requests for additional budget, reasonably foreseeable in advance, are subject to an official request by the Workstream Leader or the Project Manager, using the template appended in appendix 2.

Additional budget requests have to be thoroughly motivated by the Workstream Leader or Project Manager.

A request for budget amendment is subject to the approval procedure described in §2.4.

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2.4. Budget Approval Procedure

The Common Project Budget for each project phase needs the approval of all Parties on JSC level.

The Project Manager presents the consolidated budget proposal of each project phase for validation to the JPB. The JPB validates the budget proposal and once validated, the Project Manager submits the proposal in the next JSC meeting for approval.

By approving the budget on JSC level, Parties commit to the execution of the project phase activities and procurements covered by the budget.

The Project Manager is responsible for submitting budget amendment requests to JPB for validation and subsequently for approval by JSC.

3 Expenditure Management

3.1. Expenditure Approval Procedure

Parties agree that expenditure needs to stay within the approved budget.

In order to avoid unforeseen deviations from the initially approved budget, Parties agree to setup an expenditure management and a cost control process by which commitment on expenditure is approved, controlled and tracked on an ongoing basis against the approved budget.

3.1.1. Launch of financial expenditure for budgeted items

Expenditure duly budgeted (e.i. in terms of both purpose and amount) in the approved Common Project Budget can be called upon by the Workstream Leader or Project Manager without additional approvals.

Parties supplying manpower services to the project, or contracting external parties, and thus entailing expenditure, need the prior approval of the total foreseen expenditure for the respective deliverable before entailing the work according to Budget Approval Procedure of § 2.4.

3.1.2. Non budgeted expenditure – contingency budget

Partners identify 3 types of non-budgeted expenditure:

- Overspending on budgeted deliverables (A)
- Non-budgeted urgent deliverables (B)
- Non-budgeted deliverables without urgency (C)

4

A) Overspending on budgeted deliverables:

Parties agree that a contingency budget of 15 % is automatically foreseen in initial common project budget per budgeted deliverable.

Workstream leaders will be able to use this 15% contingency budget without prior approvals but upon prior notice to Project Manager.

In the event the 15% contingency budget for a deliverable is completely consumed, the contingency budget exceeding budgeted expenditure is considered as non budgeted and has to be approved by the JPB that will take it into the JPB contingency budget for non budgeted items (see B) below.

B) Non budgeted urgent deliverables

For urgent non-budgeted deliverables that, due to time constraints, cannot be treated via the regular budget amendment procedure, Parties decide to foresee a contingency budget on JPB level. Per Project Phase, the JSC will decide on the amount of that contingency budget.

Workstream leaders and Project Manager can request the JPB for application of this contingency budget, via a duly motivated budget request using the template in appendix 2 . The JPB will be requested to approve the use of contingency budget. Any, acceptance by the JPB of consumption of the JPB contingency budget, is subject to notification to the JSC. If the JPB does not agree on the budget request, the request is escalated to JSC.

In the event the contingency budget is completely consumed, all non-budgeted expenditure will directly be reported to and will be subject to approval by the JSC.

C) Non budgeted deliverables without urgency

For non-budgeted deliverables that are not subject to time constraints, will be treated via the regular budget amendment procedure as described in paragraph 2.3.

3.1.3. External procurement contracts

It is reminded that contracts related to procurement of external services (e.g. hiring of external consultants, experts,...) are submitted to a minimal set of guidelines regarding confidentiality, travel and other expenses etc... to be drafted and agreed between the partners.

With the maximal use of internal project resources in mind, external contractors shall be hired only if internal resources are not available. **All** (regardless of their € amounts) external contracts are supposed to be submitted for approval at least to the JPB and the JSC.

Parties have agreed that contracts related to procurement of goods or external services are to be bared temporarily by one of the Parties in the country in which the delivery of the goods is supposed to take place or the service provider is residing. The respective Project Partner managing such contract has to assure that such cost of external procurement is duly budgeted through the respective Workstream and follows the expenditure management and cost control rules of this policy.

4

3.2. Cost Control Procedure

3.2.1. Definition

Cost Control consists of:

- The systematic tracking and reporting of the incurred expenditure items against their respective budgets
- The assurance that expenditure is not exceeding the approved budget

3.2.2. Cost Control Responsibilities

Cost Control is the responsibility of the Workstream Leaders for their respective Workstream activities.

The Project Manager is responsible for cost control for the Project Management Budget and for the consolidated Common Project Budget in general.

3.2.3. Cost Control Reporting

Cost control is executed in the same template as the budget (see appendix 1) to allow for effective comparison between budget and expenditure.

A report on the committed expenditure for the project against the respective budget is to be produced on a monthly basis by the Project Manager.

By each 20th calendar day of the month, the Workstream Leaders provide the Project Manager with their updated cost control table and commenting report. The Project Manager consolidates the tables and comments consolidated committed expenditure versus budget in his summary report.

All Parties, entailing common costs, contribute to the reconstitution of the committed expenditure tracking by providing the Workstream Leader or Project Manager with their respective committed monthly expenditure for each 15th calendar day of the month. This will happen through the use of the template "Expenditure Sheet" provided in appendix 3.

3.2.4. Cost control report validation and acceptance

Reporting on expenditure against budget is a systematic agenda point on the JPB and JSC meetings on a monthly basis. The Project Manager provides the necessary information to this event.

The monthly cost control report is presented to and validated by JPB. After validation by the JPB, the report is submitted in the next JSC meeting for final acceptance.

4

In the event that budget is exceeded, the Project Manager brings this to the attention of the JPB together with proposals for rectification. JPB is responsible for deciding on the respective measures proposed and JSC is finally requested to approve the measures to be taken.

APPENDIX 1: Template CWE MC - Budget and Cost Control

APPENDIX 2: Template CWE MC – Budget Amendment Request

APPENDIX 3 : Template CWE MC –Expenditure Sheet

4

CWE MC Budget and Cost Control

Bodies	Commons costs Items	Supplier Name	Internal manpower costs			External manpower costs			Procurement			TOTAL	Totale WS
			Estimation workload		Rate	Estimation workload		Rate					
			days	man	€ / (days.man)	days	man	€ / (days.man)	Travel	Teleconf	Meeting rooms		
Project Management	Working costs project management											0	
	Working costs project office											0	
	Deliverable A	XX										0	0
		YY											
	Deliverable B											0	
												0	
Workstream Market Design	Working costs											0	
	Deliverable X											0	
	Deliverable Y											0	
												0	
Workstream Algorithm Design	Working costs											0	
	Deliverable X											0	
	Deliverable Y											0	
												0	
Workstream Technical	Working costs											0	
	Deliverable X											0	
	Deliverable Y									0		0	
												0	
Workstream Legal&Governance	Working costs											0	
	Deliverable X											0	
	Deliverable Y											0	
												0	
Workstream Regulatory	Working costs											0	
	Deliverable X											0	
	Deliverable Y											0	
												0	
Steering Committee												0	
Project Board												0	
											Total	0	

CWE MC Project Cost Control - DESIGN PHASE

			Internal manpower costs			External manpower costs			Procurement					
		Supplier Name	Estimation workload		Rate	Estimation workload		Rate						
Bodies	Comments costs items		days	man	€ / (days.man)	days	man	€ / (days.man)	Travel	Telecont	Meeting rooms	TOTAL Expediture	Budget	% of Budget Spent
Project Management	Working costs project management											0		#DIV/0!
	Working costs project office											0		#DIV/0!
	Deliverable A	XX										0		#DIV/0!
		YY												
	Deliverable B											0		#DIV/0!
												0		#DIV/0!
												0		#DIV/0!
												0		#DIV/0!
Workstream Market Design	Working costs											0		#DIV/0!
	Deliverable X											0		#DIV/0!
	Deliverable Y											0		#DIV/0!
												0		#DIV/0!
												0		#DIV/0!
Workstream Algorithm Design	Working costs											0		#DIV/0!
	Deliverable X											0		#DIV/0!
	Deliverable Y											0		#DIV/0!
												0		#DIV/0!
												0		#DIV/0!
												0		#DIV/0!
Workstream Technical	Working costs											0		#DIV/0!
	Deliverable X											0		#DIV/0!
	Deliverable Y										0	0		#DIV/0!
												0		#DIV/0!
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												0		#DIV/0!
												0		#DIV/0!
											0

CWE MC - PROJECT EXPENDITURE SHEET

Month Covered	MM/YYYY
Author	
Submission date for approval	

Name	Supplier Company	Approving Workstream	Corresponding Project Deliverable	Mandays spent	Manday rate	Total Manhour cost	Expense description	Total Expense Amounts	Totals	Date submission approval request	Date of approval by WS Leader
						0		0	0	dd/mm/yyyy	dd/mm/yyyy
						0		0	0		
						0		0	0		
						0		0	0		
						0		0	0		
						0		0	0		
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						0		0	0		
						0		0	0		
						0		0	0		

CWE MC Budget Amendent Request

Issue Date	dd/mm/yyyy				
Name Requestor					
Requesting Body	PM	X	**Approving Body**	WS	
	AD_WS			PM	X
	RE_WS			JPB	
	TE_WS			JSC	
	MD_WS				

Description of the content and purpose of the requested budget

Motivation

Financials and Contracting

Procurement of goods		Supplier	
Procurement of Services	X	Contracting F	
Time and Material	X	All In Budget	
Describe		Describe what is included	
Mandays			
Tariff/day			
Expenses estimate			
Other			
Other			
Other			
Other			
Total Budget Requested (k€,excl VAT)			
Approval Date			
Remarks Approving Body			

Important instruction: This document has to be sent for validation to the respective Workstream Leader/ Project Manager. The WS Leader/ PM validates the budget request. Once validated, the document has to be submitted to the Project Manager who will submit it to the mandated body for final approval.

Annexe 4. Definitions

Definitions

Agreement : the All Party Cooperation Agreement.

Algorithm and Design Workstream : the Workstream in charge of selecting and developing the CWE Algorithm under the rules set forth in Section 4 of the APCA.

Algorithm Costs: all costs related to the algorithm governed by Section 4 of the APCA.

Algorithm Phase 2 Costs : the following Phase 2-related Algorithm Costs and WSAD Costs:

1. costs related to work and expenditure: (i) commissioned by the WSAD Leader and (ii) necessary for performing the comparison and the evaluation of the Candidate Algorithm(s); and

2. costs related to the WSAD Leader activities.

Algorithm Phase 3 Costs : the following Phase 3-related Algorithm Costs and WSAD Costs:

1. the Phase 3 development costs incurred on the basis of the fair and reasonable estimation or on the basis of the fixed price referred to under Article 4.3.2.3. of the Agreement;

2. the costs related to work or expenditure commissioned by the WSAD Leader and undertaken by Internal or External experts of the Parties, provided they meet the following criteria: the costs are

    a. incurred to the benefit of the 11 Parties,

    b. specific to the Design Phase of the CWE Market Coupling Project, and

    c. commissioned favouring an efficient, costs effective and, if possible, equal distribution between Internal Experts of the Parties;

3. costs related to the WSAD Leader activities.

APCA : please refer to Agreement.

Candidate(s) Algorithm : each and any of these algorithms (or subset or combination thereof): (i) one of the algorithms previously developed and currently owned by either APX, Belpex, and/or Powernext or a subset of these algorithms, or a combination of such algorithms, or (ii) an algorithm proposed by another candidate accepted by the Algorithm Design Worsktream together with the JSC, provided it complies with the Selection Criteria.

Category 1 : costs related to the Project Manager and costs related to the Project Office.

Category 2 : costs related to any Workstreams Leaders activities (except for WSAD activities which are governed by Section 4 of the APCA).

Category 3 : costs related to work or expenditure commissioned under the CWE Market Coupling Project (i.e. commissioned by any Workstream Leader or by the Project Manager) and undertaken by Internal or External Experts of the Parties, provided they meet the following criteria. The costs are:

(i) incurred to the benefit of the 11 Parties;
(ii) specific to the Design Phase; and
(iii) commissioned favouring an efficient, costs effective and, if possible, equal distribution between Internal experts of the Parties.

Common Costs : costs falling within Category 1, Category 2 and/or Category 3.

CWE : Central West Europe.

CWE Algorithm : the algorithm to be used for the purposes of the CWE Market Coupling Project, at the end of Phases 1, 2 and 3.

CWE Market Coupling Project : the project analyzing, designing and implementing a flow-based market coupling between the five (5) countries (Belgium, France, Germany, Luxemburg and the Netherlands) of the CWE region.

Design Phase : the phase of the CWE Market Coupling Project during which, in particular, the high-level architecture and business process is established, the different options for market coupling algorithms are analysed, the possible flow-based network representations are analysed by the TSO's, possible organization and governance structures are investigated and a proposal for further proceedings is made.

Evaluation Report: a report prepared by the WSAD assessing each of the Candidates Algorithm on the basis of the Selection Criteria and containing a recommendation on the Candidate Algorithm to be selected; this Evaluation Report will then be reviewed by the External Panel of Validators who shall express its recommendation; the final decision to select the CWE Algorithm is taken by the JSC.

Exit clause : a clause which will provide for a fair treatment of each Party, without any discrimination and bearing in mind the objectives of the MoU, in case the Parties do not reach an agreement on the Governance, Ownership and Funding Agreement by the expected deadline as set forth in Article 6.2 of the APCA.

External experts : experts not member of the internal staff of the Parties and especially entrusted by a Workstream Leader, after approval of the JSC, with the responsibility of performing (a) specific task(s) for the benefit of the 11 Parties and necessary for the achievement of the tasks assigned to the Workstream.

External Panel of Validators : an independent panel of validators, which will be appointed by the JSC upon recommendation of the WSAD, with the missions of (i) reviewing and validating the assessments made by the WSAD with the lead of its independent WSAD Leader under the Selection Process, (ii) reviewing the Evaluation Report and expressing its recommendation thereon, and (iii) assessing, upon request of the JSC, the expected overspending of Algorithm Phases 2 and 3 Costs.

Financial Data : information about the Candidate Algorithm which will include the following elements, shown individually:

- the Selling Price;
- the development costs that will need to be made during Phase 3 (either a fixed price, or a time and material assessment, depending on the requirement provided as Selection Criteria);
- the maintenance costs fairly and reasonably estimated; and
- the costs for extension of the Candidate Algorithm to other countries or regions, fairly and reasonably estimated;

Force Majeure : any unforeseeable event or situation beyond the reasonable control of the Party, and not due to a fault of such Party, which cannot reasonably be avoided or overcome, and which makes it impossible for such Party to fulfil temporarily or definitively, its obligations under this Agreement.

GOF : please refer to Governance, Ownership and Funding Agreement.

Governance, Ownership and Funding Agreement : a further agreement to be entered into between the Parties on ongoing ownership and governance within the framework of the CWE Market Coupling Project.

Implementation Phase : the phase of the CWE Market Coupling Project which will start after the Design Phase.

Initial Costs : costs related to the development of the Candidate Algorithm(s) during Phase 1.

Internal experts : the official members of the Workstream (regardless of whether or not they are part of the internal staff of the Party they represent within the Workstream) who have been entrusted by a Workstream Leader with the responsibility of performing (a) specific task(s) necessary for the achievement of the tasks assigned to the Workstream and/or members of the internal staff of the Parties (not member of a Workstream) to whom such specific task(s) has(ve) been delegated by an official Worsktream member, under its responsibility and provided the Workstream Leader has been prior informed of the delegation of task(s).

Joint Expenditure and Funding Policy : a document which is attached as Annex 2 to the APCA, setting forth the rules applicable to, inter alia, the budget, expenditures, of the CWE Market Coupling Project.

Joint Project Board : an advisory, recommendation and validation body comprising representatives of the seven TSOs and the four Power Exchanges participating in the CWE Market Coupling Project and the Project Manager, with all necessary power and authority to take binding decisions within the scope of the missions delegated to it by the JSC or by the Agreement.

Joint Settlement Policy : a document to be adopted by unanimous consent of the JSC upon proposal of the Project Manager, which will set forth the rules applicable to settlement of the Common Costs between the Parties.

Joint Steering Committee : a group comprising representatives of the seven TSOs and of the four Power Exchanges participating in the CWE Market Coupling Project with all necessary power and authority to take decisions binding upon their respective organisation as far as strategic, organisational, operational and financial aspects of the CWE Market Coupling Project are concerned.

JPB : please refer to Joint Project Board

JSC : please refer to Joint Steering Committee

Minimum Using Rights : the following rights:

- all rights of use of the Candidate Algorithm, if and when selected, necessary to perform the CCU Functions to the benefit of the entity or entities in charge of the CCU Functions; and
- (recognising that, within the framework of the CWE Market Coupling Project, other Parties may need to perform analysis that require the use of the CWE

Algorithm) a full access to the Candidate Algorithm, and to all information related thereto, as well as the right of use of it to perform such analysis (but no right to modify) to the benefit of each individual Party.

MoU : the Memorandum of Understanding executed by the Parties together with other signatories on 6 June 2007.

MoU Objectives : the following objectives: (i) the CWE Market Coupling Project, (ii) enhancing market integration and (iii) enhancing security of supply in the CWE Region.

NDA : the Non-Disclosure Agreement, the signature of which by the Parties conditions the performance of the Agreement.

Net Position : the share, for any Party, of the aggregate of all Parties' Common Costs to date less the Common Costs incurred by that Party.

Parties : all of the signatories of the APCA, referred to collectively.

Party : any of the signatories of the APCA.

Phase 1 : the phase of the Design Phase consisting of all time prior to the start of work of Artelys as Workstream Leader of the WSAD, i.e. 21 November 2007.

Phase 2 : the phase of the Design Phase consisting of the selection process, starting from 21 November 2007 and ending when the selection of the Candidate Algorithm retained to perform the CWE Algorithm is completed.

Phase 3 : the phase of the Design Phase consisting of further development of the Selected Algorithm, starting from the date of selection of the Candidate Algorithm and ending at the beginning of the Implementation Phase.

Power Exchanges : APX, Belpex, EEX and Powernext (as all further described in the APCA), collectively.

Prior Common Costs : costs related to work undertaken between 1 October 2007 and the date of entry into force of the APCA, complying with the following requirements: they

- are approved by the JSC on the basis of a proposal by the Project Manager and the Workstream and validated by the JPB; and
- relate to work commissioned under the CWE MC Project, incurred to the benefit of the 11 Parties and specific to the CWE MC Project.

(for the avoidance of any doubt, not Algorithm Costs and WSAD Costs, governed by Section 4 of the APCA)

Project Manager : an independent project manager, appointed by the JSC, who will be in charge, amongst other things, of the day-to-day management of the CWE Market Coupling Project and of the coordination of the work of the JPB. The Project Manager shall report to the JSC on behalf of the JPB.

Project Office : a dedicated project function that provides administrative support to the Project Manager.

Selected Algorithm : the Candidate Algorithm that is retained to achieve the CWE Algorithm at the end of Phase 2.

Selection Criteria : the criteria upon which the Selection Process shall, amongst other things, be based, which shall include at least the following elements:

(i) the technical analysis (the ability to meet the technical criteria defined by the WSAD);
(ii) the Financial Data, as defined below, taking into consideration that it will be for the WSAD Leader to define and for the JSC to approve in the Selection Criteria if the candidates are requested to provide either (a) a fixed price or (b) a time and material assessment;
(iii) the Selling Conditions, as defined below;
(iv) the time of delivery; and
(v) the quality of the Candidate Algorithm.

Selection Process : the selection process for the CWE Algorithm which will be based on (i) the principle that the assessments made by the WSAD with the lead of its independent WSAD Leader have to be reviewed and validated by the External Panel of Validators, and (ii)
the requirements defined by the WSAD and approved by the JSC, including amongst other things the Selection Criteria; and which shall ensure a fair and equal treatment to all Party(ies) submitting the Candidate Algorithms for selection.

Selling Conditions : the selling conditions of the Candidates Algorithm, as a part of which the Minimum Using Rights shall be granted.

Selling Price : the selling price of the Candidates Algorithm for the granting of Minimum Using Rights, which shall identify specifically which amount relates to the Initial Costs (this information shall be made available once it is known whether a fixed price or a time and material assessment is requested and once the WSAD has identified which functionality must be budgeted under development costs during Phase 3 and in any event before the selection is made).

TSOs : Cegedel Net, Elia System Operator, ENBW, E.On Netz, RTE, RWE and TenneT (as all further described in the APCA), collectively.

Workstreams : groups composed of representatives of the seven TSOs and the four Power Exchanges participating in the CWE Market Coupling Project and grouped for the Design Phase under the following 5 streams: technical, legal and governance, market design, regulatory and algorithm design; they are each in charge of producing project deliverables that are the responsibility of all Parties; each Workstream is coordinated by a Workstream Leader.

Workstream Leader : the person in charge of coordinating each Workstream, and reporting to the Project Manager.

WSAD : please refer to Algorithm and Design Workstream.

WSAD Costs: all costs related to the WSAD governed by Section 4 of the APCA.