

**Rules for Capacity Allocation by Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC and as Rollback Solution For Foreseen Unavailability Of ITVC , respectively, on the border between the NE and the CWE regions (ITVC Shadow Auction Rules)**

Version 1.0

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## Section I. Introduction

The Transmission System Operators and the Power Exchanges in the CWE and the Nordic regions, namely 50Hertz Transmission GmbH (50Hertz Transmission), Amprion GmbH, EnBW Transportnetze AG, Elia System Operator SA/NV, Energinet.dk SOV (Energinet.dk), Fingrid Oyj, RTE EDF Transport SA, Statnett SF (Statnett), Affärsverket svenska kraftnät (Svenska Kraftnät), TenneT TSO B.V. (TenneT), transpower stromübertragungs gmbh (transpower), APX B.V., Belpex SA, EPEX Spot SE and Nord Pool Spot AS, the European Market Coupling Company GmbH (EMCC) and the European Energy Exchange AG agreed upon a joint co-operation. The aim of this co-operation is to optimise capacity allocation and minimise price discrepancies between the CWE and the Nordic Regions, consistent with the requirements of the relevant Transmission System Operators and Power Exchanges, by the means of an Interim Tight Volume Coupling between the spot market of Nord Pool Spot and the CWE Price Coupling (ITVC).

With regard to the ITVC, EMCC acts as a market coupling auction office for the allocation of available transmission capacity on the interconnectors between Germany and Eastern Denmark (DK2), between Germany and Western Denmark (DK1), between the Netherlands and Norway and between Germany and Sweden, respectively.

50Hertz Transmission, Energinet.dk, Statnett, Svenska Kraftnät, TenneT and transpower deem it necessary that available transmission capacity can and will be allocated on a day-ahead basis also in the event that ITVC becomes unavailable.

In line with this, it was decided to implement a Fallback Solution For Unforeseen Unavailability Of ITVC on the interconnectors between Germany and Eastern Denmark (DK2), between Germany and Western Denmark (DK1) and between the Netherlands and Norway, respectively. This Fallback Solution For Unforeseen Unavailability Of ITVC shall be organised in case unforeseen technical reasons lead to the impossibility to conduct ITVC and, thus, to the necessity to decide an unforeseen ITVC decoupling.

Furthermore, it was decided to foresee additionally a Rollback Solution For Foreseen Unavailability Of ITVC. It can and will be triggered when ITVC becomes unavailable for a longer time period and, therefore, a suspension of ITVC has to be decided.

In case of the Fallback Solution For Unforeseen Unavailability Of ITVC as well as in case of the Rollback Solution For Foreseen Unavailability Of ITVC, available transmission capacity on the interconnectors between Germany and Eastern Denmark (DK2), between Germany and Western Denmark (DK1) and between the Netherlands and Norway, respectively, will be allocated through explicit Auctions.

For running the explicit Auctions both as Fallback Solution For Unforeseen Unavailability Of ITVC and as Rollback Solution For Foreseen Unavailability Of ITVC, CASC CWE S.A. (CASC) was chosen as a service provider. CASC will prepare and conduct the explicit Auctions on behalf of the concerned TSOs, but in its own name.

### **Article 1.01 General context**

In accordance with Regulation (EC) n° 1228/2003 of the European Parliament and of the Council, which is dated 26 June 2003 and which concerns the conditions for access to the network for cross-border exchanges in electricity, as well as Commission Decision n° 2006/770/CE of 9 November 2006 amending the appendix to the Regulation and establishing guidelines for the management and allocation of available transfer capacity of the interconnections between national systems, and with the statutory and regulatory provisions respectively applicable in Denmark, Germany, Luxembourg, Norway and the Netherlands, the ITVC Shadow Auction Rules set out the terms and conditions which govern the Allocation via Shadow Auctions of Available Capacity in both directions on the Country Borders between Germany and Eastern Denmark, between Germany and Western Denmark and between the Netherlands and Norway, respectively, in case that the available capacity on these borders for technical reasons cannot be allocated via the ITVC conducted by EMCC. This Auction mechanism is not motivated by commercial interests, but is intended to provide a means of managing congestion based on market mechanisms.

Capacity is Auctioned in the form of physical transmission rights of electrical energy on a daily basis.

The Auction is in respect of Capacity only.

### **Article 1.02 Fallback Solution For Unforeseen Unavailability Of ITVC**

In case, ITVC cannot take place due to unforeseen circumstances, explicit Daily Auctions, in the form of Shadow Auctions, are organised as Fallback Solution For Unforeseen Unavailability Of ITVC, in accordance with the present ITVC Shadow Auction Rules. Shadow Auctions can be organised at any time from the ITVC launch date onwards.

### **Article 1.03 Rollback Solution For Foreseen Unavailability Of ITVC**

In order to mitigate the risk of continuous unavailability of the ITVC after its launch and to maximize the capacity allocation mechanism without any regression, the TSOs could trigger under exceptional circumstances a Rollback Solution For Foreseen Unavailability Of ITVC.

The Participants to Shadow Auctions acknowledge that the TSOs have the right to trigger such a Rollback Solution For Foreseen Unavailability Of ITVC in case a major problem (meaning mainly an essential problem with the IT system used for ITVC, correction of which will take an indefinite time) affects the ITVC and/or prevents a proper and sustainable functioning of ITVC on the interconnectors between the NE and the CWE regions.

As Rollback Solution For Foreseen Unavailability Of ITVC, explicit Daily Auctions are organised by the Joint Auction Office in accordance with the present ITVC Shadow Auction Rules,

The Joint Auction Office shall inform the Participants to Shadow Auctions in due time of the date the Rollback Solution For Foreseen Unavailability Of ITVC is triggered and keep them regularly informed of the likely duration of this Rollback Solution For Foreseen Unavailability Of ITVC.

All the necessary information to switch to the Rollback Solution For Foreseen Unavailability Of ITVC is given to the Participant to Shadow Auctions so that the Participant to Shadow Auctions has the time to get ready for the launch date of the Rollback Solution For Foreseen Unavailability Of ITVC. In case of Rollback Solution For Foreseen Unavailability Of ITVC, the allocation of daily Capacities is done at each of the borders between Germany and Eastern Denmark, Germany and Western Denmark and the Netherlands and Norway, respectively, via explicit Auctions, operated by the Joint auction Office.

The Participants to Shadow Auctions acknowledge that, once triggered, the Rollback Solution For Foreseen Unavailability Of ITVC may last for an indefinite duration. The TSOs conducting the Shadow Auctions will put all reasonable efforts in their sphere of influence in re-installing the necessary technical and operational arrangements in order to re-initiate ITVC as soon as possible. However, the re-initiation of ITVC may also depend on the cooperation of Power Exchanges which are not in the sphere of influence of the TSOs.

All information related to the Rollback Solution For Foreseen Unavailability Of ITVC is published on the Joint Auction Office's Website.

#### **Article 1.04 Auctions**

Auctions concern only Available Capacity on a daily basis. They are explicit closed Auctions, comprising a single round. Auction payment is made according to a Marginal Price.

A Bid that is selected following an Auction is binding upon the respective TSOs and the Participant to Shadow Auctions: the TSOs are required to provide the Participant to Shadow Auctions with the Capacity corresponding to the Allocated Capacity in accordance with Article 2.06 and Article 2.07 and the Participant to Shadow Auctions is required to pay the amount resulting from the Auction.

The Participant to Shadow Auctions thus acquires physical transmission rights to electricity under the conditions set out in the present ITVC Shadow Auction Rules, which it may exercise with the concerned TSOs according to the conditions of the present ITVC Shadow Auction Rules and the procedures set down in the respective Nomination Contracts.

#### **Article 1.05 Recovery of payments**

Payments in respect of the Allocated Capacities will be collected in accordance with Article 4.03.

The Joint Auction Office has a mandate from the concerned TSOs to recover Auctions payments.

When such payment is due, the Participant to Shadow Auctions is only officially released from its obligations once it has credited the Business Account with the appropriate amount and the Joint Auction Office has collected it from the Business Account or, in case the Participant to Shadow Auctions did not open this Business Account, once the the Joint Auction Office's Bank Account has been credited with the appropriate amount.

A claim made by a Participant to Shadow Auctions against a TSO and/or the Joint Auction Office does not relieve such a Participant to Shadow Auctions from the obligation to settle Auction payments owed to the Joint Auction Office. No set-off may be made between the amounts owed by/to the Participant to Shadow Auctions and the amounts owed by/to the Joint Auction Office.

No set-off may be made between the amounts owed by/to the Participant to Shadow Auctions by/to the TSOs on the one hand and the amounts owed by/to the Participant to Shadow Auctions by/to the Joint Auction Office on the other hand.

#### **Article 1.06 ITVC Shadow Auction Rules**

The ITVC Shadow Auction Rules describe the Auctions both as Fallback Solution For Unforeseen Unavailability Of ITVC and as Rollback Solution For Foreseen Unavailability Of ITVC, the conditions for participating in them, the Auction procedures, the attribution of Allocated Capacities and their conditions of use.

The ITVC Shadow Auction Rules apply to daily Capacity Allocations.

In the event of an inconsistency between the ITVC Shadow Auction Rules and the Nomination Contracts, for matters relating to the implementation of Auctions in accordance with the present ITVC Shadow Auction Rules on the Country Borders between Germany and Eastern Denmark, between Germany and Western Denmark and between the Netherlands and Norway, the ITVC Shadow Auction Rules shall prevail.

#### **Article 1.07 Date when the ITVC Shadow Auction Rules come into force**

Version 1.0 of the ITVC Shadow Auction Rules applies to Capacity Allocations for the delivery periods as from the ITVC launch date for the respective interconnectors.

## **Section II. General**

### **Article 2.01 Definitions and interpretation**

#### **(a) Definitions**

The terms used in the ITVC Shadow Auction Rules and its Appendices, and which begin with a capital letter, have the meanings attributed to them below:

<b>50Hertz Transmission:</b>	50Hertz Transmission GmbH, with its registered office at Eichenstraße 3a in 12435 Berlin, Germany, being one of the German TSOs.
<b>Allocation or Allocate:</b>	The process by which the Joint Auction Office attributes Capacity to the Participant to Shadow Auctions in response to a Bid Notified by the Participant to Shadow Auctions.
<b>Allocated Capacity:</b>	The Capacity acquired following an Auction.
<b>Auction:</b>	The Allocation of Capacity via explicit Capacity Auctions either as Fallback Solution For Unforeseen Unavailability Of ITVC or as Rollback Solution For Foreseen Unavailability Of ITVC, as described in Section VI, Section VII and Section VIII.
<b>Auction Tool:</b>	<p>The IT system, managed by the Joint Auction Office, used to receive Bids from Participants to Shadow Auctions, process them and return the Results.</p> <p>A description of the Auction Tool is provided in the documentation available on the Joint Auction Office's Website.</p>
<b>Available Capacity:</b>	The Capacity made available by the respective TSOs for an Auction and which they guarantee under the terms of the ITVC Shadow Auction Rules.
<b>Bid:</b>	A pair (Capacity, Bid Price) offered by a Participant to Shadow Auctions for a Block.
<b>Bid Price:</b>	The financial part of the Bid made by the Participant to Shadow Auctions, expressed in Euros/MW per hour.
<b>Bid Submitter:</b>	A legal entity designated to submit Bids on behalf of a Participant to Shadow Auctions.



<b>Bid Value:</b>	The value of the Bid in Euros, equal to the product of the Bid Price, the duration in Hours of the corresponding Block and the Bid Volume.
<b>Bid Volume:</b>	The volume part of the Bid made by the Participant to Shadow Auctions, expressed in Megawatts (MW).
<b>Bilanzkreisvertrag:</b>	The agreement between a market party on the one hand and 50Hertz Transmission or transpower on the other hand, containing, inter alia, a mechanism for settling imbalances between energy injection into and energy extraction out of the German electricity grid.
<b>Block:</b>	A quantity of Megawatts (MW) made available at an Auction over a range of Hourly Periods and/or a range of Days.
<b>BNetzA:</b>	The Federal Network Agency for Electricity, Gas, Telecommunications, Post and Railway, the German regulatory authority who is a separate higher federal authority within the scope of business of the German Federal Ministry of Economics and Technology.
<b>Border:</b>	A Country Border or a TSO Border.
<b>Border Between Germany And Eastern Denmark:</b>	A set of power lines interconnecting the transmission networks in Germany and the Eastern part of Denmark.
<b>Border Between Germany And Western Denmark:</b>	A set of power lines interconnecting the transmission networks in Germany and the Western part of Denmark.
<b>Border Between the Netherlands and Norway:</b>	A set of power lines interconnecting the Dutch and Norwegian transmission networks.
<b>Capacity:</b>	A physical transmission right of electricity, defined by a value, expressed in whole Megawatts (MW), over a Border in one or the other direction.
<b>CASC CWE S.A.:</b>	Capacity Allocation Service Company S.A. acting as the Joint Auction Office.
<b>Central West Europe Region (or “CWE Region”):</b>	Central Western Europe, the region composed of Belgium, France, Germany, Luxembourg and the Netherlands.
<b>Country Border:</b>	Each of the following sets of power lines interconnecting the transmission networks of two countries on the border between the NE and the CWE regions:

- the Border Between Germany and Eastern Denmark (DK2),
- the Border Between Germany and Western Denmark (DK1),
- the Border Between the Netherlands and Norway.

**CWE Market Coupling:**

The coupling of daily electricity markets in Belgium, The Netherlands, Germany and France, which simultaneously effects an implicit allocation of physical daily transmission rights and a clearing of energy offers-demands.

**Daily Product:**

A set of Hourly Blocks sold during the Shadow Auctions.

**Day or D:**

A calendar day of a Period of twenty-four (24) Hours, beginning at 0:00:00 and ending at 23:59:59. The Days upon which the legal time changes (daylight saving time) will be composed of either twenty-three (23) Hours or twenty-five (25) Hours.

**Declaration of acceptance:**

The declaration by which a legal entity undertakes to comply with the terms and conditions contained in the ITVC Shadow Auction Rules. The standard declaration form can be found in APPENDIX 1.

**DERA:**

Danish Energy Regulatory Authority (Energitilsynet / Konkurrencestyrelsen).

**EIC Code:**

ETSO Energy identification code, known by the Joint Auction Office and the TSOs.

**Energiekamer:**

The Office of Energy Regulation (Energiekamer), the Dutch regulatory authority, who is charged with Regulating the Electricity Act 1998 and Gas Act. This regulatory body comes under the Ministry of Economic Affairs and operates as a chamber within the Netherlands Competition Authority (Nederlands Mededingingsautoriteit (NMA))

**Energinet.dk:**

Energinet.dk SOV, the Danish TSO, with its registered office at Tonne Kjærsvvej 65 in 7000 Fredericia, Denmark.

**Entitlement or Entitled:**

The right to participate in Auctions under the terms of Article 3.03.

**Exchange Programme:**

An exchange declaration established by a Nomination Agent in accordance with the Programming Authorisation and that specifies the power, expressed

in Megawatts (MW) per Hourly Period, exchanged over a TSO Border in one direction or the other.

**Fallback Solution For Unforeseen Unavailability Of ITVC:**

Capacity Allocation mechanism which is triggered by the Joint Auction Office in case unforeseen reasons lead to the impossibility to conduct ITVC and, thus, to the necessity to decide to have instead explicit Shadow Auctions on the interconnectors between Germany and Eastern Denmark (DK2), between Germany and Western Denmark (DK1) and between the Netherlands and Norway, respectively, conducted by the Joint Auction Office.

**Force Majeure:**

Has the meaning set forth in Article 5.06.

**Functional Acknowledgement of Receipt:**

An electronic message sent by the Auction Tool to indicate that the information has been correctly received by the Joint Auction Office.

**Gross Negligence:**

An act or omission in disregard of due care to a severe degree.

**Hour or H:**

CET official time or a Period of 60 minutes.

**Hourly Block:**

A quantity of Megawatts (MW) over a given Hourly Period.

**Hourly Period:**

A Period of one (1) Hour, the first (1st) of each Day beginning at 0:00:00.

**Information System or IS:**

The Joint Auction Office's computer environment, which can be accessed by the Participant to Shadow Auctions.

**IS Rules:**

The rules for access to the Information System and use of the applications of the Joint Auction Office, including their appendices and definitions as published on the Joint Auction Office's Website.

**ITVC:**

Interim Tight Volume Coupling conducted by EMCC on the interconnectors between the NE and the CWE regions, namely, on the interconnectors between Germany and Eastern Denmark (DK2), between Germany and Western Denmark (DK1), between the Netherlands and Norway and between Germany and Sweden, respectively.

**ITVC Decoupling:**

The inability of ITVC to Tight Volume Coupling during a daily session.

<b>ITVC Performing Party:</b>	The party or the parties responsible for running the ITVC market coupling for a particular day.
<b>ITVC Shadow Auction Rules:</b>	The present Rules for Capacity Allocation by Explicit Auctions on the border between the NE and the CWE Regions.
<b>Joint Auction Office:</b>	The entity in charge, among others, of Allocating the Available Capacity, as described in Article 2.02.
<b>Joint Auction Office's Bank Account:</b>	Bank account on which the Joint Auction Office receives the payment for the Shadow Auction. The bank account's details are indicated in the invoice.
<b>Joint Auction Office's Website or Website:</b>	The Internet site of the Joint Auction Office, namely <a href="http://www.casc-cwe.eu">www.casc-cwe.eu</a> .
<b>Marginal Price:</b>	The lowest Bid Price for a selected Block at an Auction.
<b>Megawatt or MW:</b>	The unit of electrical power expressed in megawatts.
<b>Nomination:</b>	The Exchange Programme sent by a Nomination Agent, to one of the two concerned TSOs, relating to the power, expressed in MW, that it wishes to use under a Programming Authorisation.
<b>Nominate:</b>	The sending of Nomination.
<b>Nomination Agent:</b>	A legal entity designated by the Participant to Shadow Auctions to Nominate an Exchange Programme to one of the two concerned TSOs, under Programming Authorisation.
<b>Nomination Contract(s):</b>	The Bilanzkreisvertrag signed with 50Hertz Transmission or transpower, a Balance Responsible Agreement signed with Energinet.dk, a Balance Responsible Agreement signed with Statnett and/or the PV Contract signed with TenneT.
<b>North Europe Region (or "NE Region"):</b>	Northern Europe, the region composed of Denmark, Finland, Norway and Sweden.
<b>Notification or Notify:</b>	The transmission of information between the Participant to Shadow Auctions and the Joint Auction Office under the conditions set out in Article 5.01.

<b>NVE:</b>	The Norwegian regulator for electricity - The Norwegian Water Resources and Energy Directorate (NVE) is a directorate under the Ministry of Petroleum and Energy.
<b>Participant to Shadow Auctions:</b>	A legal entity which has signed the Declaration of acceptance. Participants to Shadow Auctions are bound by the ITVC Shadow Auction Rules.
<b>Party or Parties:</b>	The Joint Auction Office and/or a Participant to Shadow Auctions.
<b>Payment Incident:</b>	The events described in Article 4.03(d).
<b>Period:</b>	A given length of time.
<b>Power System:</b>	The system made up of electrical networks, generating facilities connected to the said networks and which inject electrical energy, and consumption sites connected to the networks and which withdraw electrical energy.
<b>Product:</b>	A Block or set of Blocks sold at an Auction.
<b>Programming Authorisation:</b>	The amount, for each TSO Border, for each Hourly Period of a given Day, of the Capacities acquired at a Shadow Auction. The Programming Authorisation identifies clearly for each Capacity the Participant to Shadow Auctions and the Nomination Agents.
<b>PV Contract:</b>	Contract between TenneT and the "Programmaverantwoordelijke" (PV), which sets out the program responsibility of the PV to draw up, on behalf of TenneT, programs with regard to production, transport and use of electricity, in which demand and offer are balanced and that the PV shall act in accordance to these programs.
<b>Result:</b>	The Capacity selected per Auctioned Block and the Marginal Price of each Block.
<b>Rollback Solution For Foreseen Unavailability Of ITVC:</b>	The capacity allocation mechanism which is triggered in case of an foreseen unavailability of ITVC for an unknown duration due to exceptional circumstances as defined in Article 1.03.

<b>Safety of the Power System or Safety:</b>	The extent to which the network can be operated normally, limiting the number of incidents, avoiding major incidents and limiting their consequences where they do occur.
<b>Section:</b>	A section in the ITVC Shadow Auction Rules.
<b>Statnett:</b>	Statnett SF, the Norwegian TSO, with its registered office at Husebybakken 28B, Postboks 5192 Majorstuen, 0786 Oslo, Norway.
<b>TenneT:</b>	TenneT TSO B.V, the Dutch TSO, with its registered office at Utrechtseweg 310, NL-6812 AR Arnhem.
<b>50Hertz Transmission-Energinet.dk Border:</b>	A power line called "KONTEK-Cable" and interconnecting the transmission networks operated by 50Hertz Transmission and Energinet.dk, respectively.
<b>transpower-Energinet.dk Border:</b>	A set of power lines interconnecting the transmission networks operated by transpower and Energinet.dk, respectively.
<b>TenneT-Statnett Border:</b>	A power line called "NorNed-Cable" and interconnecting the transmission networks operated by TenneT and Statnett, respectively.
<b>transpower:</b>	transpower stromübertragungs gmbh, with its registered office at Bernecker Straße 70 in 95448 Bayreuth, Germany, being one of the German TSOs.
<b>TSO:</b>	Transmission system operator.
<b>TSO Border:</b>	Each of the following set of power lines interconnecting the transmission networks of two TSOs on the border between the NE and the CWE regions: <ul style="list-style-type: none"> <li>▪ the 50Hertz Transmission-Energinet.dk Border,</li> <li>▪ the transpower-Energinet.dk Border,</li> <li>▪ the TenneT-Statnett Border.</li> </ul>
<b>Working Day:</b>	Every day which is not a Saturday, Sunday or an official public holiday in Germany, Luxembourg, Norway or The Netherlands as published on the Joint Auction Office.s Website.
<b>Working Hour:</b>	Every hour on a Working Day from 08:30 to 17:00.

## **(b) Interpretation**

The titles and headings of the present ITVC Shadow Auction Rules are given for reference only, and in no way express the intentions of the Parties. They shall not be taken into account when interpreting the stipulations contained in the present ITVC Shadow Auction Rules.

### **Article 2.02 The Joint Auction Office**

The TSOs have decided to outsource parts of their tasks of capacity allocation to a Joint Auction Office in charge of carrying out, on behalf of the TSOs but in its own name, the joint Allocation, by Auctions, in accordance with Section VI, Section VII and Section VIII, of the Available Capacity on a daily basis.

The Joint Auction Office shall therefore, on behalf of the TSOs but in its own name, prepare and conduct the Auctions, provide all necessary information to the Participants to Shadow Auctions as defined in Article 2.08, the Nomination Agents and TSOs and collect payments and/or pay according to Section IV.

CASC CWE S.A. is jointly appointed by the TSOs as the Joint Auction Office. However, a change in the Joint Auction Office does not affect the rights and obligations resulting from an Auction.

CASC CWE S.A. address : 2, rue de Bitbourg, 1273 Luxembourg Hamm, LUXEMBOURG

### **Article 2.03 Auctions**

Auctions for the Allocation of Capacities over each Hourly Period of a Day for the Borders concerned are implemented in both directions of the Country Borders in accordance with Section VI, Section VII Section VIII of the ITVC Shadow Auction Rules.

### **Article 2.04 Available Capacities**

The Available Capacities for each border are determined jointly by the two respective TSOs, by firstly each TSO evaluating its internal grid situation and secondly the TSOs determining subsequently a common capacity in a coordinative manner. Furthermore, the agreed capacity splitting rules between different timeframes of capacity allocation are also applied.

The daily Available Capacities for Shadow Auctions take into account the net value of the Nominations in the framework of the Programming Authorisations related to yearly and monthly Capacities.

For each day, for which the Joint Auction Office is running Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC and/or as Rollback Solution For Foreseen Unavailability Of ITVC, the Available Capacities will be published on the Joint Auction Office's Website.

Furthermore, for information purposes, the TSOs also publish on their respective websites longer-term forecasts of Available Capacities and aggregated Nominations. The Joint Auction Office's Website will refer to those websites for this information.

### **Article 2.05 Basis on which Available Capacities are made available for Shadow Auction**

Available Capacities are made available for Auctions in units of one (1) MW with a minimum of one (1) unit.

Daily Available Capacities are put up for Auction per Hourly Period.

### **Article 2.06 Firmness of Capacities**

Capacities Allocated through Auctions in accordance with the present ITVC Shadow Auction Rules are firm.

Capacity reductions if necessary will be neutralised by the respective TSOs using counter trading and/or redispatch arrangements.

### **Article 2.07 Firmness of Exchange Programmes**

The Exchange Programmes Nominated to and accepted by the TSOs, in accordance with the modalities of Article 8.06 are firm if the Exchange Programmes don't exceed the boundaries of both the capacity Allocated

through the Auctions in accordance with the present ITVC Shadow Auction Rules and the programme authorization by the Joint Auction Office.

TSOs will guarantee firm capacity using counter trading arrangements if capacity is reduced due to reasons linked to the safety of the Power system.

#### **Article 2.08 Publications**

The Joint Auction Office shall publish and update when necessary the following information on its Website:

- The present ITVC Shadow Auction Rules and their Appendices, along with any amendments as necessary;
- Details of the implementation of the Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC and Rollback Solution For Foreseen Unavailability Of ITVC, respectively;
- The description of all the IT documents to be used by the Participants to Shadow Auctions and the forms to be sent by them;
- The Available Capacity for the Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC and as Rollback Solution For Foreseen Unavailability Of ITVC, respectively (if such an Auction is organised);
- All information related to the Auctions (in particular the time schedule of the Auctions when they are decided in advance);
- All information related to the Rollback Solution For Foreseen Unavailability Of ITVC (in particular the date of the Rollback launch, the possible duration when known, the time schedule of the Shadow Auctions);
- The data resulting from Auctions, including the anonymous complete Bid curves;
- The number of Participants having obtained Capacity and the total number of Participants having taken part in the Auction(s);
- Names, phone and fax numbers and e-mail addresses of persons to be contacted at the Joint Auction Office;
- Official public holidays in Denmark, Germany, Luxembourg, Norway or The Netherlands;
- Any other useful information.

#### **Article 2.09 Currency**

Bids, Prices, payment conditions, payments related to Auctions, as well as financial information, are expressed in Euros (€).



### **Section III. Conditions for participating in the Auctions**

#### **Article 3.01 Registration**

##### **(a) Declaration of acceptance**

Prior to an Auction, the legal entity wishing to participate in an Auction shall register with the Joint Auction Office, by submitting two (2) duly completed and signed copies of the Declaration of acceptance (cf. APPENDIX 1). The Declaration of acceptance will then be returned to applying legal entity, countersigned by the Joint Auction Office, thereby certifying that the legal entity is registered as a Participant to Shadow Auctions.

Legal entities wishing to adhere to the ITVC Shadow Auction Rules may not hold more than one (1) Declaration of acceptance.

##### **(b) Commitments of a Participant to Shadow Auctions**

By signing a Declaration of acceptance, the Participant to Shadow Auctions shall comply with all the provisions contained in the ITVC Shadow Auction Rules.

The Participant to Shadow Auctions shall keep the information contained in its Declaration of acceptance up to date, and Notify the Joint Auction Office of any changes in this information no later than five (5) Working Days before they take effect.

#### **Article 3.02 Financial guarantees**

##### **(a) For the Participation to Auctions**

The opening of the Business Account and the signature of the Participant to Shadow Auctions' Financial Agreement are not mandatory. The financial modalities described in Article 4.02 and Article 4.03 apply.

##### **(b) Participants to Shadow Auctions already being entitled to participate in explicit Auctions conducted by the Joint Auction Office in the CWE Region and, thus, having a Business Account**

In case a Participant to Shadow Auctions is already entitled to participate in the explicit auctions conducted by the Joint Auction Office in the CWE Region and, thus, already has a Business Account at the bank selected by the Joint Auction Office and allowing the Joint Auction Office to withdraw money in respect of the Allocated Capacities directly from that Business Account, then this Participant to Shadow Auctions is allowed to use this Business Account also for settling Auction payments owed to the Joint Auction Office in respect of the Capacities Allocated in the Shadow Auctions in accordance with the present ITVC Shadow Auction Rules

The Business Account remains the property of the Joint Auction Office. At any times, the Business Account shall contain a positive disposable balance.

The disposable balance is the funds in the Business Account minus debts payable to the Joint Auction Office for Capacity Allocated through explicit Auctions in the CWE Region and minus debts payable to the Joint Auction Office for Capacity Allocated through Auctions in accordance with the present ITVC Shadow Auction Rules, regardless whether or not these debts have been invoiced yet.

The Participant must credit the appropriate amount on the Business Account in accordance with Article 4.02. Any bank charges or interests relative to the Business Account are to be borne by or credited to the Participant to Shadow Auctions on the Business Account.

As indicated more in details in the Participant to Shadow Auctions' Financial Agreement, the funds on the Business Account are blocked, this means that the Participant to Shadow Auctions shall make a request to the Joint Auction Office if the Participant to Shadow Auctions wishes to withdraw money from the Business Account. The agreement of the Joint Auction Office following such request depends in particular on the disposable balance of the Participant to Shadow Auctions

The Participant to Shadow Auctions' Financial Agreement, which sets forth all of the rights and obligations of the Parties with respect to the Business Account, is available on the Joint Auction Office's Website.

**(c) Specific case of Rollback Solution For Foreseen Unavailability Of ITVC**

After the declaration of the Rollback Solution For Foreseen Unavailability Of ITVC and within the period specified (which shall not be less than ten (10) Working Days), the Participants to Shadow Auctions willing to participate in Auctions conducted as Rollback Solution For Foreseen Unavailability Of ITVC on the Border(s) Between Germany and Eastern Denmark, Between Germany and Western Denmark and/or Between the Netherlands and Norway as indicated in ARTICLE 5 of APPENDIX 1, shall provide a Bank Guarantee compliant with APPENDIX 6.

The amount of this Bank Guarantee is fixed at one hundred thousand euros (100.000 €) per Border.

If such Bank Guarantee is not provided by the Participant to Shadow Auctions within the period specified, the Joint Auction Office is entitled to launch the general suspension procedure according to Article 3.04(a).

The Bank Guarantee shall be provided by a credit institution complying with the following requirements:

- To be settled in a member State of the European Union or in Switzerland or in Norway.
- Not to be the Participant to Shadow Auctions itself, nor to control this Participant to Shadow Auctions nor be controlled by it under the terms of corporation law.
- To be acknowledged as solvent with a long term financial rate granted from the subsequently referred international rating agencies at least A+ (Standard & Poor's) or A1 (Moody's).

Once the Rollback Solution For Foreseen Unavailability Of ITVC is over and ITVC re-launched and provided that (i) all debts related to Auctions conducted as Rollback Solution For Foreseen Unavailability Of ITVC are paid or (ii) the Participant to Shadow Auctions is not under Payment Incident as set forth in Article 4.03(d), the Bank Guarantee is restituted by the Joint Auction Office to the Participant to Shadow Auctions.

**Article 3.03 Entitlement**

In order to be Entitled to participate in the Auctions, the Participant to the Shadow Auctions shall:

- meet the conditions set out in Article 3.01 and Article 3.02; and
- have signed a Bilanzkreisvertrag with 50Hertz Transmission and a Balance responsible agreement with Energinet.dk in case the Participant to Shadow Auctions wants to participate in Auctions at the Border Between Germany And Eastern Denmark (DK2) and/or  
a Bilanzkreisvertrag with transpower and a Balance responsible agreement with Energinet.dk in case the Participant to Shadow Auctions wants to participate in Auctions at the Border Between Germany And Western Denmark (DK1) and/or  
a Balance Responsible agreement with Statnett and a PV contract with TenneT in case the Participant to Shadow Auctions wants to participate in Auctions at the Border Between the Netherlands and Norway;  
and
- have signed and abide by the terms of one (1) Nomination Contract; and
- have provided a Bank Guarantee within the period specified (which shall not be less than ten (10) Working Days) following the declaration of the Rollback Solution For Foreseen Unavailability Of ITVC for Participants to Shadow Auctions willing to take part in Auctions as Rollback Solution For Foreseen Unavailability Of ITVC according to Article 3.02(c); and
- have an EIC Code; and
- undertake to behave as a professional, preventing from any action which may lead to the damaging or reduction in effectiveness of the Auction Tool and/or Information System (it being understood that such an action is deemed to happen in case of any behaviour that can be assimilated to an attack on the Information System such as, but not limited to, deny of service, spam, virus, brute forcing, trojan horse attack, DoS attack, ping of death attack, sniffing and spoofing, dictionary attack, ...); and
- not be under a Payment Incident as set out in Article 4.03(d).

Entitlement is effective on the date indicated in the Declaration of acceptance countersigned by the Joint Auction Office.

Entitlement is granted for an undefined Period and may be suspended or withdrawn in accordance with the provisions of Article 3.04.

### **Article 3.04 Suspension and withdrawal of Entitlement**

#### **(a) Suspension of Entitlement by the Joint Auction Office**

(i) General procedure of suspension:

The Entitlement of a Participant to the Shadow Auctions may be suspended by the Joint Auction Office, at the end of a suspension procedure as described in this paragraph, without prejudice to immediate suspension in case of violation of essential contractual obligations, as stated in paragraph (ii) of the present Article.

When a Participant to Shadow Auctions fails to comply with one or more of its contractual obligations, the Joint Auction Office Notifies in writing by registered letter or registered e-mail with acknowledgment of receipt, to the Participant to Shadow Auctions the obligation to remedy to any breach or non-compliance of its contractual obligations.

This Notification indicates:

- the reasons for the launch of the general procedure of suspension; and
- the necessary action(s) that should be taken by the Participant to the Shadow Auctions to remedy to the breach and/or non-compliance of its contractual obligations which is (are) the reason(s) for launching the general procedure of suspension; and
- a deadline of minimum ten (10) Working Days, starting on the date of receipt of the Notification, within which these action(s) should be taken; and
- the possibility for the Participant to the Shadow Auctions, upon its request in writing to answer to this Notification and/or to discuss orally the reason(s) of the Notification with the Joint Auction Office.

The Participant to the Shadow Auctions has the right to discuss the reason(s) for the launch of the general procedure of suspension with the Joint Auction Office in order to address any contradictory information and to defend its position. If the Participant to the Shadow Auctions intends to request for such meeting and contradictory discussion, the Participant to the Shadow Auctions shall request for it to the Joint Auction Office and the meeting shall be held within the abovementioned deadline within which the Participant to the Shadow Auctions should take any action to remedy to the situation.

Without prejudice of the outcome of the meeting, if the Participant to the Shadow Auctions does not take the requested action(s) to remedy the situation, within the abovementioned deadline, the Entitlement of the Participant to the Shadow Auctions may be suspended by the Joint Auction Office. This decision of suspension shall be taken within minimum five (5), and maximum ten (10), Working Days starting at the end of the abovementioned deadline. The Joint Auction Office Notifies in writing and confirmed by registered letter or registered e-mail with acknowledgment of receipt, to the Participant to the Shadow Auctions, the suspension of its Entitlement.

This Notification of suspension indicates:

- the reasons for the suspension of the Entitlement of a Participant to the Shadow Auctions; and
- the date and time of the suspension of Entitlement; and
- the consequences of the suspension.

Suspension of Entitlement takes effect on the date and time indicated in the Notification of the suspension of Entitlement (which, for the avoidance of any doubt, will correspond to an immediate entry into force of the suspension upon its Notification), unless the Participant to the Shadow Auctions has remedied the situation that causes the suspension.

Any suspension of the Entitlement of a Participant to the Shadow Auctions will be communicated to BNetzA, DERA, Energiekamer and NVE at the latest within the two (2) Working Days as from the Joint Auction Office Notification thereof. This communication will enclose a copy of the Notification to the Participant to the Shadow Auctions.

Nothing in this article shall preclude the Participant to the Shadow Auctions from applying for injunctive relief in summary proceedings (“procédure en référé”) before the Commercial Court in whose jurisdiction the Joint Auction Office is established, in application of Article 5.08.

(ii) Immediate suspension in limited cases:

Notwithstanding the abovementioned suspension procedure, the Entitlement of the Participant to the Shadow Auctions may be immediately suspended by the Joint Auction Office only in the following limitative cases of violation of an essential contractual obligation imposed to the Participant to the Shadow Auctions:

- the Nomination Contract(s) of/for the Participant to the Shadow Auctions is(are) suspended or withdrawn, during the time it is not replaced by another valid Nomination Contract, for at least one Border; and/or
- the Participant to the Shadow Auctions is under a Payment Incident; and/or
- of an urgency, in the course of which the Participant jeopardizes the proper functioning of the Joint Auction Office or in case of any behaviour that can be assimilated to an attack on the Information System.

Such a suspension is Notified by registered letter with acknowledgment of receipt and/or registered e-mail by the Joint Auction Office to the Participant and shall take effect immediately. Any suspension of the Entitlement of a Participant to the Shadow Auctions will be communicated to BNetzA, DERA Energiekamer and NVE at the latest within two (2) Working Days as from the Joint Auction Office Notification thereof. This communication will enclose a copy of the Notification to the Participant to the Shadow Auctions.

(iii) Consequences of suspension

The following provisions are applicable to any suspension decision taken in application of the general procedure of suspension (i) or in application of an immediate suspension (ii).

In case of suspension, the Participant to the Shadow Auctions may no longer take part in Auctions in accordance with the present ITVC Shadow Auction Rules.

**(b) Withdrawal of Entitlement by the Joint Auction Office**

An Entitlement of the Participant to the Shadow Auctions is withdrawn by the Joint Auction Office

- in the event of the bankruptcy, liquidation or dissolution of the Participant; or
- following receipt by the Joint Auction Office of a decision by the European Commission stating that the Participant to the Shadow Auctions has committed a misusing or fraudulent act with regard to the Allocation of Capacities on one of the Borders between the NE and the CWE Regions and requesting for the withdrawal of Entitlement.

The withdrawal of Entitlement takes effect on the date indicated in the Notification of the withdrawal of Entitlement, which indicates the reasons for the withdrawal.

If the Joint Auction Office withdraws the Entitlement of a Participant to Shadow Auctions, the said Participant may no longer take part in Auctions in accordance with the present ITVC Shadow Auction Rules.

Withdrawal of Entitlement does not exonerate the Participant from its payment obligations in accordance with Section IV. The Participant may not claim any indemnity as a result of the application of the present stipulation. If Entitlement is withdrawn the Declaration of acceptance is automatically terminated.

The Participant which Entitlement has been withdrawn at the initiative of the Joint Auction Office may not claim status as a Participant to Shadow Auctions at a later date.

**(c) Withdrawal of Entitlement by the Participant to Shadow Auctions**

The Participant to Shadow Auctions may request the withdrawal of Entitlement at any time, in order to terminate its participation in the Auctions in accordance with the present ITVC Shadow Auction Rules.

Any such request must be made by registered mail with acknowledgement of receipt in accordance with APPENDIX 5.

The withdrawal of the Entitlement of the Participant to Shadow Auctions takes effect ten (10) Days after the Joint Auction Office receives Notification of the request for withdrawal by the Participant to Shadow Auctions.

If Entitlement is withdrawn at the request of the Participant to Shadow Auctions, he may no longer take part in Auctions in accordance with the present ITVC Shadow Auction Rules..

Withdrawal of Entitlement does not exonerate the Participant to Shadow Auctions from its payment obligations in accordance with Section IV. The Participant to Shadow Auctions may not claim any indemnity as a result of the application of the present stipulation.

However, if the Participant to Shadow Auctions considers that the Joint Auction Office has not fulfilled one or more of its essential contractual obligations and wishes to withdraw its Entitlement:

- he sends a notice of default to the Joint Auction Office by Notification, demanding that the essential contractual obligations are to be fulfilled;
- if there is no response to this notice of default within ten (10) Days, the Participant to Shadow Auctions may request the withdrawal of its Entitlement by Notification with immediate effect from the time of receipt by the Joint Auction Office. This Notification will state the reasons for the request for withdrawal.

If the Joint Auction Office has not fulfilled its essential contractual obligations, the Entitlement is withdrawn and the amount for acquisition of the Capacity is not due from the date of withdrawal of Entitlement onwards.

In either of these cases where Entitlement is withdrawn at the initiative of a Participant to Shadow Auctions, the Declaration of acceptance is automatically terminated.

The Participant to Shadow Auctions which Entitlement has been withdrawn at its own initiative and under the terms of the present Article, may again claim status of Participant to Shadow Auctions by following the ITVC Shadow Auction Rules procedure.

#### **Article 3.05 Mandate for Bid submission**

The Participant to Shadow Auctions may give a mandate to a Bid Submitter to send out the Bids on its behalf. The authorising Participant to Shadow Auctions and the Bid Submitter must fulfil the conditions relating to the mandate laid down in APPENDIX 2.

In this event, the Joint Auction Office will grant to the Bid Submitter an access to the Information System by providing a username and password in respect of the modalities defined in the IS Rules.

## **Section IV. Financial provisions**

### **Article 4.01 Valuation**

Participants to Shadow Auctions are required to pay the valuation amounts of Allocated Capacities at Auctions to the Joint Auction Office.

The gross pre-tax valuation of an Allocated Capacity at an Auction is equal to the sum, by Hourly Period, of the products of:

- the Auction Marginal Price, published by the Joint Auction Office for that particular hour;
- the duration in Hours;
- the Allocated Capacity as it results from the Auction, i.e. after any fractioning.

The valuation of Allocated Capacities at Auctions is exclusive of tax. It will be increased to include the taxes and levies in force.

### **Article 4.02 Payment deposits**

All amounts referred to in this Article will have to be increased to include the taxes and levies in force.

A Participant to Shadow Auctions having a Business Account shall credit the appropriate amount to the Business Account according to Article 3.02(b).

If Auctions in accordance with the present ITVC Shadow Auction Rules have been performed during Month M-1 and if the Business Account of the Participant to Shadow Auctions contains a negative disposable balance on the first Working Day of Month M, the Joint Auction Office Notifies by registered letter with acknowledgment of receipt and/or registered e-mail the Participant to Shadow Auctions of the lack of credit on the Business Account on the first (1st) Working Day of month M.

If the balance on the Business Account allows the payment of all the debts related to month M-1 for the Capacity already used (including Auctions in the CWE Region and Auctions in accordance with the present ITVC Shadow Auction Rules related to Month M-1), the corresponding amount will be collected according to Article 4.03. The Participant has five (5) Working Days after the Notification to credit the Business Account with the valuation amount of Capacities Allocated by the Joint Auction Office through Auctions in the CWE Region for use during M and M+1. Otherwise, the Joint Auction Office shall Notify the Participant of a Payment Incident pursuant to Article 4.03(d).

If the balance on the Business Account does not allow the payment of all the debts related to month M-1 (including Auctions in the CWE Region and Auctions in accordance with the present ITVC Shadow Auction Rules related to Month M-1), according to Article 4.03, the Participant has five (5) Working Days after the Notification to credit the Business Account to recover a positive disposable balance (including all debts due for Months M-1, M and M+1). Otherwise, the Joint Auction Office Notifies the Participant of a Payment Incident pursuant to Article 4.03(d).

For the Participants to Shadow Auctions who don't have a Business Account, the corresponding amount for the capacity Allocated through Auctions in accordance with the present ITVC Shadow Auction Rules during month M-1 has to be transferred to the Joint Auction Office's Bank Account at the latest on the tenth (10<sup>th</sup>) Working Day of month M.

If the Joint Auction Office's Bank Account is not credited with the corresponding amount, the Joint Auction Office shall Notify by registered letter with acknowledgment of receipt and/or registered e-mail the Participant to Shadow Auctions of the lack of Credit at the latest on the sixth (6<sup>th</sup>) Working Day of month M.

The Participant to Shadow Auctions has five (5) working days after the Notification to credit the Joint Auction Office's bank account with the corresponding amount. Otherwise, the Joint Auction Office Notifies the Participant of a Payment Incident pursuant to Article 4.03(d).

## **Article 4.03 Invoicing and payment conditions**

### **(a) Invoice and payment conditions**

All amounts referred to in this Article will be increased to include the taxes and levies in force.

The valuation amounts of Allocated Capacities in the Auctions for use during the month M will be invoiced to the Participants to Shadow Auctions without a Business Account on a monthly basis no later than on the second (2<sup>nd</sup>) Working Day of month M+1 and must be transferred to the Joint Auction Office's Bank Account no later than the tenth (10<sup>th</sup>) Working Day of the month M+1.

The valuation amounts of Allocated Capacities in the Auctions for use during the month M will be invoiced to the Participants to Shadow Auctions with a Business Account together with any other invoices regarding auctions in the CWE region conducted by the Joint Auction Office on a monthly basis no later than on the fifth (5<sup>th</sup>) Working Day and will be collected automatically from the Business Account on the fifth (5<sup>th</sup>) Working Day of the month M+1.

Any bank charges relative to the settlement of the invoice are to be borne by the Participant to Shadow Auctions.

### **(b) Issuance of Invoices and self billing**

No later than the fifth (5<sup>th</sup>) Working Day of each month M+1, the Joint Auction Office shall send to the Participant to Shadow Auctions a statement of account including the amounts due for:

- Shadow Auctions Allocated Capacities for use during month M;

The charges due for the Auctions are all invoiced all at once and grouped together on a single line per Auction.

The Participant to Shadow Auctions Notifies the Joint Auction Office of any changes in its invoicing address. Such change will take effect on the first (1<sup>st</sup>) Day of month M+1, on condition that Notification of the change has been received at least five (5) Working Days before the end of Month M.

### **(c) Claim related to an invoice**

To be admissible, any claims made relating to an invoice must be Notified by registered letter with acknowledgement of receipt to the Joint Auction Office, within thirty (30) Days of the invoice's date of issue. Beyond this Period, the invoice will be deemed to have been accepted by the Participant. The above-mentioned registered letter must contain a precise and detailed description of the reasons for the objection to the invoice.

A claim in no way relieves the Participant to Shadow Auctions from the obligation to pay the invoice in accordance with the terms of paragraph (a) above.

If the claim proves to be justified, reimbursement will be made, including interest. The rate of interest, determined on the Day on which the invoice is sent, is equal to the interest rate applied by the European Central Bank to its most recent refinancing operation, plus seven (7) percentage points. The interest is applied from the first (1<sup>st</sup>) Day following the date of payment by the Participant to Shadow Auctions of the unjustified amounts up to the date of payment by the Joint Auction Office of the reimbursement of the unjustified amounts.

This interest will be increased to include any applicable taxes and levies.

### **(d) Payment Incident**

For Participants to Shadow Auctions having a Business Account, on the first (1<sup>st</sup>) Working Day of the Month M, the balance of the Business Account shall cover all credits due pursuant to Article 4.02 and not collected pursuant to Article 4.03, corresponding to the sum of :

- amounts blocked or payable regarding Capacity Allocated through Auctions in the CWE Region and
- the amount due for Capacity Allocated through Auctions in Month M-1;

Otherwise, the Joint Auction Office Notifies the Participant of the lack of credit in accordance with Article 4.02 on the first (1<sup>st</sup>) Working Day of the Month M. If the corresponding payment is not done in full within five

(5) Working Days after the Notification, the Joint Auction Office will register this and Notify by registered letter with acknowledgment of receipt and/or registered e-mail the Participant of a Payment Incident.

For Participants to Shadow Auctions who do not have a Business Account, the corresponding amount for the Capacity Allocated at Auctions within month M has to be transferred to the Joint Auction Office's Bank Account on the tenth (10<sup>th</sup>) Working Day of month M+1. If the Joint Auction Office's bank account is not credited with the corresponding amount at this date, the Joint Auction Office Notifies the Participants of the lack of Credit.

The Participant to Shadow Auctions has five (5) Working Days after the Notification to credit the Joint Auction Office's Bank Account with the corresponding full amount. Otherwise, the Joint Auction Office will register this and Notify by registered letter with acknowledgment of receipt and/or registered e-mail the Participant of a Payment Incident.

As a consequence of the Payment Incident, the Entitlement of the Participant to Shadow Auctions will be suspended pursuant to Article 3.04.

In case of Rollback Solution For Foreseen Unavailability Of ITVC, the Bank Guarantee is called until the payment including the interest for late payments has been fully done.

Interest for late payments are charged and invoiced to the Participant without further notice on all amounts due and not paid by it at the due date for payment. Such interest will be at the rate of seven (7) percentage points per annum above the base lending rate of European Central Bank plc, and apply from the date due for payment until the date of actual payment. The minimum amount to be charged for late payment is €140. Interests are increased to include taxes and levies in force.

The Payment Incident will run until the Participant pays on the Joint Auction Office's Bank Account (or the Business Account) all overdue amounts and all interests for late payments pursuant to this Article.

The same disposition applies to the Joint Auction Office in case of late payment.



## **Section V. General provisions**

### **Article 5.01 Notifications**

All Notifications made under the ITVC Shadow Auction Rules must be sent to the address specified in the Declaration of acceptance or to any other address specified by one Party to the other Party, subject to the provisions of Article 4.03(b).

All Notifications shall be made by registered mail with acknowledgement of receipt or, if no specific form is required by the ITVC Shadow Auction Rules, by any other means that enables the date of receipt by the receiving Party to be certified.

### **Article 5.02 Responsibility**

This Article applies to damages resulting from a breach of any provision of the ITVC Shadow Auction Rules.

As a legal consequence of the fact that the Joint Auction Office is, pursuant to Article 2.02, acting on behalf of the TSOs but in its own name under the present ITVC Shadow Auction Rules, the Joint Auction Office bears a contractual liability towards the Participants to Shadow Auctions, whereas TSOs can only be held liable in tort towards the Participants to Shadow Auctions.

Even in the case of Gross Negligence, the liability both contractual and in tort of Parties towards each other is limited to direct damages only. The TSOs liability in tort, even in the case of Gross Negligence, vis-à-vis the Participant to Shadow Auctions is limited to direct damages only.

Except in cases of Gross Negligence, the liability of a Party both contractual and in tort, or of a TSO in tort, is limited to twenty five thousand euros (€ 25.000) per Party per incident. Without prejudice to the maximum of twenty five thousand euros (€ 25.000) per Party per incident, in case several Participants to Shadow Auctions claim to have suffered damages due to the same incident or related incidents, a TSO or the Joint Auction Office's liability either jointly and severally or individually is limited to two hundred fifty thousand euros (€ 250.000). If the total amount of the direct damages of the damaged Participants to Shadow Auctions exceeds this maximum of two hundred fifty thousand euros (€ 250.000), the claims of the respective Participants to Shadow Auctions are reduced proportionally.

No indemnification will be due unless the Party proves specifically that the damage suffered, resulted directly from the breach and that the Party took reasonable steps to mitigate the damages suffered.

Neither the TSOs nor the Joint Auction Office are responsible for the timely arrival of Bids or if the Joint Auction Office is unable to contact the Participants to Shadow Auctions via the channels foreseen in accordance with the ITVC Shadow Auction Rules.

### **Article 5.03 Transfer of rights and obligations arising from the Declaration of acceptance**

Neither Party may transfer, in any way, any of the rights and obligations arising from the Declaration of acceptance without the prior written consent of the other Party

In the event of a change in the legal status of the Participant to Shadow Auctions, such as a merger or a takeover or a change in the company name, the Participant to Shadow Auctions shall Notify the Joint Auction Office of the change by sending a registered letter with acknowledgement of receipt, as soon as possible, and in any event at least fifteen (15) Days before the date on which the change takes effect.

### **Article 5.04 Intellectual property**

The signature of a Declaration of acceptance does not confer any rights to patents, knowledge or any other form of intellectual property concerning information or tools made available or sent by one Party to the other under the terms of the ITVC Shadow Auction Rules.

### **Article 5.05 Confidentiality**

In compliance with the statutory and regulatory provisions applicable in Denmark, Germany, Luxemburg, the Netherlands and Norway, the Declaration of acceptance and any other information exchanged relating to its preparation and application, are confidential.

Moreover, each Party will determine by all means available any other information of any type or on any support, which it considers confidential, without prejudice to application of the Articles of the present ITVC Shadow Auction Rules concerning publications which are made by the TSOs and/or the Joint Auction Office.

Without prejudice to the aforementioned statutory and regulatory provisions, the Party which receives such confidential information may only use it within the framework of the application of the Declaration of acceptance. The confidential information may not be disclosed to a third party without the other Party's prior and expressed consent and subject to the strict condition that the Party has given assurance that such third party observes the same undertakings of confidentiality as those set out in the present Article.

These conditions shall not prejudice:

- the obligations to communicate to any Regulators, governments and/or other administrative authorities that might request such communication in relation to the exercise of their missions;
- the obligations to communicate to any court of law and arbitrators that might request such communication;
- the transmission by the TSOs and/or the Joint Auction Office of information for the purpose of accomplishing their missions or in relation to the contracts and/or rules with the foreign transmission system operators;
- the transmission by the TSOs and/or the Joint Auction Office of information to consultants (such as, legal, technical or other advisers), so long as they are not producers, suppliers, intermediaries or companies linked or associated therewith and that such consultants do work for the TSOs, the Joint Auction Office and/or one of the institutions mentioned above;
- the communication of information essential for technical or safety reasons;
- the obligation to publish data in accordance to the applicable law or as foreseen in the present ITVC Shadow Auction Rules;
- the fact that the Joint Auction Office is allowed to send via Email the individual Auction results to the Participants to Shadow Auctions

as long as, in each of these circumstances, the Party has given assurance that the recipient of the information observes the same undertakings of confidentiality as those set out in the present Article.

Moreover, the obligations arising from the present Article are not applicable:

- if the Party which receives the information can prove that at the time of disclosure, such information was already publicly available;
- if the receiving Party provides proof that, since the time of disclosure, the said information has been legally received from a third party or has become publicly available;
- to confidential information communicated, in accordance with the legal and regulatory provisions, in an incorporated form from which no item of information specific to a market player can be deduced;
- to information whose publication is explicitly provided for by the present ITVC Shadow Auction Rules.

Each Party undertakes to take all the measures necessary to ensure compliance with the present obligation to confidentiality by its staff.

Each Party shall Notify the other Party without delay of any violation of the obligations arising from the present Article.

The Parties shall comply with the present confidentiality obligation throughout the Entitlement Period and for a Period of five (5) years after Entitlement is withdrawn or suspended for whatever reason.

#### **Article 5.06 Force Majeure**

Force Majeure means any unforeseeable event or situation beyond the reasonable control of a 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 hereunder in accordance with the terms of the ITVC Shadow Auction Rules.

The Party, which invokes Force Majeure, shall send the other Party Notification describing the nature of Force Majeure and its probable duration.

The obligations of a Party subject to the Force Majeure, with the exception of confidentiality obligations defined in Article 5.05, shall be suspended from the beginning of the Force Majeure.

Allocated Capacities that have been paid for and which become subject to a Force Majeure are reimbursed for the Period of that Force Majeure.

The Party can in no circumstances be held responsible or held liable to pay any compensation for damage suffered, due to the non-performance or faulty performance of all or part of its obligations, when such non-performance or faulty performance is due to a Force Majeure.

The Party, which invokes Force Majeure, shall make every possible effort to limit the consequences and duration of the Force Majeure.

If a Force Majeure lasts for more than thirty (30) Days, the Joint Auction Office may suspend Entitlement of the Participant and/or the Participant may request the withdrawal of its Entitlement by sending Notification by registered mail with acknowledgement of receipt, with due explanation, if Force Majeure adversely affects the essential obligations of the Parties under the present ITVC Shadow Auction Rules. The withdrawal or suspension of Entitlement will take effect on the date of receipt of the said Notification.

The withdrawal of Entitlement on grounds of Force Majeure automatically terminates the Declaration of acceptance.

#### **Article 5.07    Applicable law and language**

The ITVC Shadow Auction Rules are governed by Luxembourg law.

Notwithstanding any translations that may be made, whether certified or not, the sole applicable language for questions of interpretation or application of the ITVC Shadow Auction Rules is English.

#### **Article 5.08    Settlement of disputes**

In the event of a dispute regarding the interpretation or execution of the ITVC Shadow Auction Rules, the Parties undertake to meet to look for an amicable solution.

To this end, the requesting Party shall send Notification to the other Party by registered mail with acknowledgement of receipt, indicating:

- the Declaration of acceptance reference; and
- the reason for the dispute; and
- a proposal for a future meeting with a view to settling the dispute amicably.

If no agreement is reached or no response received within a Period of thirty (30) Days from the date of the aforementioned Notification, either Party may refer the matter to the Commercial Court in whose jurisdiction the Joint Auction Office is domiciled.

All disputes in connection with the ITVC Shadow Auction Rules can also be settled by way of arbitration in accordance with the rules of arbitration of the International Chamber of Commerce, by one (1) arbitrator. The arbitration decision is a final decision and, if needed, can be the subject of remedy.

Nothing in this Article shall preclude the Parties from applying for injunctive relief in summary proceedings ("procédure en référé") before the Commercial Court in whose jurisdiction the Joint Auction Office is domiciled.

#### **Article 5.09    ITVC Shadow Auction Rules modification procedure**

The ITVC Shadow Auction Rules are of indefinite duration but may be modified jointly, entirely or by Sections, by the TSOs, with the aim of clarifying them or supplementing them.

These ITVC Shadow Auction Rules are subject to the technical and legal conditions at the time they take effect. In case of material changes in these conditions, particularly following legal requirements, government action or rules jointly imposed by regulatory authorities, or if improvements are made to the Auction process, the ITVC Shadow Auction Rules will be modified at any time as appropriate.

The ITVC Shadow Auction Rules are amended according to the following procedure:

- (a) TSOs may at any time change the ITVC Shadow Auction Rules and Appendices. The amendments to the ITVC Shadow Auction Rules are subject to the prior approval of the respective national regulatory authorities when needed.

Participants to Shadow Auctions are entitled to propose amendments to the ITVC Shadow Auction Rules. Every proposal shall be sent to the Joint Auction Office, as a single point of contact for all TSOs, by registered post with acknowledgement of receipt, containing a clear description of the proposed amendment and its motivation. Once a decision is taken about the proposed amendment(s), the TSOs inform both the Participants to Shadow Auctions and the respective national regulatory authorities, about the acceptability of the proposal, providing a justification for the decision taken.

- (b) Consultation of Participants to Shadow Auctions:

Before submitting any significant amendment(s) of the ITVC Shadow Auction Rules to the respective national regulatory authorities, the TSOs will organise for Participants to Shadow Auctions the opportunity, and in any event not less than fifteen (15) Working Days, to review and give written comments on the proposed amendment(s).

The definitive version of the amendment(s) to the ITVC Shadow Auction Rules takes into account, as much as possible, the results of the consultation of the Participants to Shadow Auctions.

- (c) ITVC Shadow Auction Rules approval:

The amended version of the ITVC Shadow Auction Rules, as well as any relevant information related to the consultation of the Participants to Shadow Auctions and a report of consultation of the Participants to Shadow Auctions are submitted to the relevant national regulatory authorities for approval and/or advise as the case may be.

- (d) Amendments of the ITVC Shadow Auction Rules have no impact on the validity of the Declaration of Acceptance signed by the Participant to Shadow Auctions. This Declaration of Acceptance continues to be in force and includes acceptance of the modifications made to the ITVC Shadow Auction Rules, without prejudice to the right of the Participant to Shadow Auctions right to deregistration in accordance with Article 3.04(c).

#### **Article 5.10 Invalidity of a clause**

If any stipulation of the present ITVC Shadow Auction Rules is deemed invalid for any reason, it does not affect the validity of the other stipulations of the ITVC Shadow Auction Rules.

## **Section VI. Auction process**

### **Article 6.01 Auction calendar and process**

The Auctions are explicit Auctions used by the Joint Auction Office to Allocate the daily Capacity on the Borders Between Germany and Eastern Denmark (DK2), Between Germany and Western Denmark (DK1) and Between the Netherlands and Norway, respectively in the following cases:

- Unforeseen Unavailability Of ITVC: Auctions could be decided during the daily session of the ITVC when an unforeseeable incident occurs which makes it impossible to run ITVC properly.
- Foreseen Unavailability Of ITVC: Auctions are operated with a time schedule communicated in advance and published on the Joint Auction Office's website.

The Participants to Shadow Auctions have the possibility to submit default Bids for the Borders for which they are Entitled as stated in the Declaration of Acceptance or in APPENDIX 4.

These Bids are permanent Bids, which means that the Bid Value and Bid Price entered for each Hourly Period are not related to a specific Day: they are valid for every Day, for a specific Border and direction. These Bids can be updated and/or suppressed at any time before the launch of Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC according to the following paragraphs.

In case of Auctions as Rollback Solution For Foreseen Unavailability Of ITVC, the Participants to Shadow Auctions have the possibility to update their bids according to the following dispositions.

Bids submitted by Participants must comply with Article 6.02.

#### **(a) Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC**

In case of Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC, the Joint Auction Office imports the Bids submitted for Auctions and then informs individually, by an electronic message, the Participants to Shadow Auctions that the Auctions are performed as Fallback Solution For Unforeseen Unavailability Of ITVC for the Allocation of daily Capacity. There is no possibility for the Participants to update their Bids once the Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC have been announced.

Each Participant to Shadow Auctions is informed of the Result of its Bids, in accordance with Article 8.01.

Data resulting from the Auction as Fallback Solution For Unforeseen Unavailability Of ITVC are published on the Joint Auction Office's Website.

The Joint Auction Office may under no circumstances be held responsible if it is unable to contact the Participants to Shadow Auctions via the channels stated above, or if it is unable to publish an announcement on its Website.

#### **(b) Auctions as Rollback Solution For Foreseen Unavailability Of ITVC**

In case of Auctions as Rollback Solution For Foreseen Unavailability Of ITVC, the Joint Auction Office informs as soon as possible individually, by an electronic message, the Participants to Shadow Auctions that the Auctions are performed Rollback Solution For Foreseen Unavailability Of ITVC for the Allocation of Daily Capacity for the Borders concerned with the corresponding new time schedule.

The Available Capacity for the Auctions as Rollback Solution For Foreseen Unavailability Of ITVC and the information related to the time schedule will be published on the Joint Auction Office's Website in order to give to Participants to Shadow Auctions time to update their Bids accordingly.

Each Participant is informed of the Result of its Bids, in accordance with Article 8.01.

Data resulting from the Auction as Rollback Solution For Foreseen Unavailability Of ITVC are published on the Joint Auction Office's Website.

The Joint Auction Office may under no circumstances be held responsible if it is unable to contact the Participants via the channels stated above, or if it is unable to publish an announcement on its Website.

However, under exceptional circumstances, the Joint Auction Office may announce on its Website Auction practical modalities which deviate from the above for all or some of the Country Borders.

Justification of such modification will be published on the Joint Auction Office's Website.

## **Article 6.02 Submitting Bids**

### **(a) Format of Bids**

Bids must be submitted in accordance with the formats defined in the documentation available on the Joint Auction Office's Website. Bids not submitted in the required format will not be taken into account.

Bids are subject to Functional Acknowledgement of Receipt. If the Joint Auction Office does not issue a Functional Acknowledgement of Receipt for a Bid, the Bid in question is deemed not to have been submitted. The Functional Acknowledgement of Receipt is delivered once the Auction is run.

Shadow Auctions Bids are permanent bids, which means that the Bid Value and Bid Price entered for each Hourly Period are valid for every Day.

- Bids are considered as unconditional and irrevocable once the Auctions mode has been communicated to the Participants if the full decoupling is only known during the daily session of the ITVC.
- Bids are considered as unconditional and irrevocable once the Joint Auction Office has closed the gate closure for the update of the Bids according to the time schedule communicated by the Joint Auction Office if the decoupling is known in advance.

### **(b) Auction Tool and Bid Submitters**

The Auction Tool enables Participants to Shadow Auctions to submit Bids for a given border and direction in the case of Auctions. The Participant accesses the Auction Tool according to the conditions set out in the documentation available on the Joint Auction Office's Website.

A Participant may delegate one or more appointed Bid Submitters, in accordance with APPENDIX 2 to put in its offers, it being understood that the Participant may appoint a maximum of five (5) such Bid Submitters.

Bids are sent in the Participant to Shadow Auctions' name and not in the name of the Bid Submitter. The last valid Bids submitted in the Participant to Shadow Auctions' name is taken into account in the Auction algorithm.

### **(c) Limitation on Number of Bids**

Participants to Shadow Auctions submit a maximum of twenty (20) Bids for an Auction.

### **(d) Contents of a Bid**

Bids contain whole MW units, and Bid Prices in Euros per MW expressed to a maximum of two (2) decimal places.

### **(e) Selection of Bids**

Bid(s) submitted by a Participant to a Shadow Auction are submitted in a priority order according to their Bid Identification (ID). Lowest ID number means the highest priority. When an Auction is run, Bids are created according to the priority order until the sum of the Bids meet the Available Capacity. The last created Bid that exceeds the Available Capacity is reduced so the total of Bids does not exceed the Available Capacity. These Bids are then used when determining the Marginal Price.

## **Article 6.03 Allocation of available capacities through intraday trading in case Auctions cannot be held under standard conditions**

If the Joint Auction Office is unable to hold Auctions under the standard conditions stipulated, the concerned Auction(s) will be cancelled and the available capacities on the concerned Border(s) will be made available for intraday trading.

In this situation, the Joint Auction Office Notifies the Participant to Shadow Auctions, by an electronic message and on the Joint Auction Office's Website or by fax, of the switch to intraday trading on the concerned Border(s).

The Joint Auction Office may under no circumstances be held responsible if it is unable to contact the Participants to Shadow Auctions via the channels above, or if it is unable to publish an announcement on its Website.

In case an Auction is cancelled, Bids submitted prior to the cancellation of this Auction are automatically cancelled.

#### **Article 6.04 Auction cancellation**

In the event of unavailability or technical difficulties with the Auction Tool or the Information System, the Joint Auction Office may be forced to cancel an Auction:

- before and during the course of the Auction itself: Participants and/or Bid Submitters are informed by a message that appears directly on the Auction Tool and also by an electronic message;
- after the Auction Results have been sent, in the event of erroneous Results: Participants to Shadow Auctions and/or Bid Submitters are informed by an electronic message. The Results of the Auction are thereupon cancelled.

The Joint Auction Office Notifies the Participants to Shadow Auctions and/or Bid Submitters as soon as possible of the reasons which caused the Auction cancellation. The Joint Auction Office publishes on its Website, as soon as possible, the reasons which caused the Auction cancellation.

## **Section VII. Determining the Auction Results**

### **Article 7.01 Method for determining the Auction Results**

The Auction Results are determined according to the following principles:

- If the total Capacity for which valid Bids have been submitted is equal to or lower than Available Capacity for the Auction in question, the Marginal Price is nil.
- If the total Capacity for which valid Bids have been submitted exceeds the Available Capacity for the Auction in question, the Marginal Price is equal to the lowest Bid Price selected in full or in part.
- The Auction Results are obtained using the resolution algorithm described below for each Block. This resolution algorithm is the one used by the Auction Tool.
  1. First, for each Auction Block, the Joint Auction Office ranks the Bid Prices in decreasing order;
  2. Only Bids that comply with the terms of Article 6.02 are taken into account in this ranking;
  3. The highest Bid(s) received for a Capacity requested which does(do) not exceed the Available Capacity is (are) selected. The residual Available Capacity is then allocated to the Participant(s) to Shadow Auctions which has (have) submitted the next highest Bids Price, if the Capacity requested does not exceed the residual Capacity; this process is then repeated for the rest of the residual Available Capacity;
  4. If the Capacity requested under the next highest Bid Price is equal to or greater than the residual Available Capacity, the Bid is selected either in full, or partially up to the limit of the residual Available Capacity. The price of this Bid constitutes the Marginal Price;
  5. If two (2) or more Participants to Shadow Auctions have submitted valid Bids with the same Bid Price, for a total requested Capacity which exceeds the residual Available Capacity, the residual Available Capacity is allocated in proportion to the Capacity requested in the Bids by these Participants to Shadow Auctions, in units of at least one (1) MW. The Capacities attributed are rounded down to the nearest Megawatt. The price of these Bids constitutes the Marginal Price.
- For the interconnectors between Germany and Eastern Denmark (DK2) and between the Netherlands and Norway, respectively, there is a ramping constraint in force. That means that the load flow on the respective interconnector cannot change from one hour to the next one by more than 600 MW.

This ramping constraint is handled in the resolution algorithm.
- The Capacity is deemed to have been Allocated to a Participant to Shadow Auctions from the moment when the Participant to Shadow Auctions is informed of this.
- The resolution algorithm may lead to the last Bid selected for the Block being split, so as to ensure that the Block Capacity put up for sale is Allocated in full. Consequently, the Participant to Shadow Auctions acknowledges and accepts that its Bid may be split according to the conditions described above.



## **Section VIII. Rules on the use of Capacity**

### **Article 8.01 Notification of Results**

After each Auction, each Participant to Shadow Auctions is informed of its Results by an electronic message.

The Joint Auction Office Notifies the Results file to the Participant to Shadow Auctions in accordance with Article 6.01, specifying the Capacity selected for each Auctioned Block and the Marginal Price of each Block, according to the format defined in the documentation available on the Joint Auction Office's Website.

If the Information System or the Auction Tool is unavailable, Participants are informed of the Auction Results via other means of communication.

### **Article 8.02 Deadlines for contestation Results**

The Participant to Shadow Auctions may contest the Results within the deadlines indicated below:

- for Auctions, and in case they have been triggered during the daily session of ITVC, there is no contestation gate;
- for Auctions, and in case they have been decided in advance, the deadline for contestation will be communicated with the general time schedule of the Auctions on the Joint Auction Office's Website;

The Joint Auction Office responds to the Participant to Shadow Auctions within the deadline indicated below:

- for Auctions, and in case they have been triggered during the daily session of ITVC, there is no contestation gate;
- for Auctions, and in case they have been decided in advance, the deadline for contestation will be communicated with the general time schedule of the Auctions on the Joint Auction Office's Website.

### **Article 8.03 Nomination Agents**

By default, the Participant to Shadow Auctions is designated as Nomination Agent on both sides of the Borders for all its Products.

On the Border Between the Netherlands and Norway, this designation may however be modified in accordance with the modalities defined here below. Notification is done by an electronic message in accordance with the format defined in the documentation available on the Joint Auction Office's Website. The Notification of the modification of the Nomination Agents to the Joint Auction Office must show, among others the following:

- the Participant, and
- the Nomination Agent on each side.

Designation of the Nomination Agents is subject to Functional Acknowledgement of Receipt. If the Joint Auction Office does not issue a Functional Acknowledgement of Receipt, the designation of the Nomination Agents in question is deemed not to have been submitted.

This designation identifies the Nomination Agents by their EIC Code in respect with the modalities mentioned in Article 9.07(a).

The Notification of the modification of the Nomination Agents must be made to the Joint Auction Office no later than two (2) Working Days before the Day to which the Capacity relates, that is:

- no later than Thursday before 12:00 (noon) for the following Saturday, Sunday or Monday;
- no later than Friday before 12:00 (noon) for the following Tuesday;
- no later than Monday before 12:00 (noon) for the following Wednesday;
- no later than Tuesday before 12:00 (noon) for the following Thursday;
- no later than Wednesday before 12:00 (noon) for the following Friday.

On the Border Between the Netherlands and Norway, any legal entity may be appointed as Nomination Agent on one side of this Country Border for the capacity acquired during the Auctions. The Participant to

Shadow Auction has to remain the Nomination Agent in respect of at least one of either end of the Country Border.

On the Borders Between Germany and Eastern Denmark and Between Germany and Western Denmark, respectively, the Participant to Shadow Auction shall be the Nomination Agent on both sides of the Borders (i.e. shall have signed the Nomination Contract to be entitled to nominate the Daily Capacity Allocated during Auctions).

Pursuant to public law requirements in Norway, all trade of electricity (import or export) to be carried out by the Bidder shall be carried out through Nord Pool Spot. The Bidder shall have a separate portfolio for the trade of electricity related to the NorNed-Cable.

Pursuant to public law requirements in the Netherlands (in particular Section 5.6.12 of the Net Code), all trade of electricity (import only) to be carried out by the Bidder shall be carried out through APX.

#### **Article 8.04 Designation of the TSO Border**

As Nomination has to be submitted by TSO Border, acquired in an Auction on a Country Border will be attributed to one (1) of the respective TSO Borders, before the calculation of the Programming Authorisations, in accordance with the TSO Designation.

This TSO Designation is implicit for the Country Border equivalent to one (1) TSO Border:

- Capacity on the Border Between the Netherlands and Norway will be attributed to the TenneT-Statnett Border.

For the other Country Borders, the TSO Designation is defined as follows:

- Capacity on the Border Between Germany And Eastern Denmark will be attributed to the 50Hertz Transmission-Energinet.dk Border;
- Capacity on the Border Between Germany And Western Denmark will be attributed to the transpower-Energinet.dk Border.

#### **Article 8.05 Programming Authorisation**

No later than fifteen (15) minutes after the Participant to Shadow Auctions has been informed of the Result of its Bids, on the Day before the Day concerned by the Capacity, the Joint Auction Office Notifies by electronic message the Programming Authorisation to the Participant to Shadow Auctions and the Nomination Agents indicating the Capacities acquired, for each Hourly Block, at Auctions. The Programming Authorisation identifies clearly for each Capacity the Participant to Shadow Auctions and the Nomination Agents.

#### **Article 8.06 Exchange Programmes**

Following Auctions, the Nomination Agent(s), as long as it(they) has(have) the appropriate Nomination Contract(s) with the concerned TSO(s), may Nominate their Exchange Programmes in accordance with the Nomination rules described in this (these) Nomination Contract(s).

These Exchange Programmes must, in particular, comply with the Programming Authorisation referred to in Article 8.05, as communicated to the respective TSOs by the Joint Auction Office based on the unique EIC Code of the respective Nomination Agent as mentioned in the Declaration of acceptance or in the designation file of the Nomination Agents.

The Joint Auction Office will at no moment verify during the whole process that the Nomination Agents designated for each Product have signed the appropriate Nomination Contracts.

#### **Article 8.07 Access to the Information System**

To receive Results and Programming Authorisations and to send Bids, Transfer and Resale

Notifications and the designation of the Nomination Agents, the Participant to Shadow Auctions accesses the Information System and uses the applications made available in accordance with the conditions defined by the Joint Auction Office in the IS Rules.

The Participant to Shadow Auctions will designate in the "User Representatives Identification Sheet", of which a specimen is supplied in the IS Rules, all persons authorised to act in its name and on its behalf in each application to which it has access. The Joint Auction Office will grant an access to the Information System by providing username and password in respect of the modalities defined in the IS Rules.

**APPENDIX 1 Declaration of acceptance of the Rules for Capacity Allocation by Auctions on the border between the NE and the CWE Regions (ITVC Shadow Auction Rules)**

**DECLARATION OF ACCEPTANCE N° \_\_\_\_\_<sup>1</sup>**

FOR

XXX, a company [give company form], with capital of \_\_\_\_\_ €, having its registered offices at \_\_\_\_\_ [give full address], registered under the number \_\_\_\_\_ [Trade and Business Register n° and Town] and with the intra-community VAT n° \_\_\_\_\_ represented by \_\_\_\_\_ acting in the capacity of \_\_\_\_\_,

Hereafter referred to as "Participant to Shadow Auctions",

**ARTICLE 1. Definitions**

All the words or groups of words used in the present Declaration of acceptance, whose first letter is a capital letter, have the meaning that has been given to them in the ITVC Shadow Auction Rules, as published on the Joint Auction Office's Website.

**ARTICLE 2. Object**

By signing this Declaration of acceptance, the Participant to Shadow Auctions declares that it is aware of and commits to abide by the ITVC Shadow Auction Rules, including any subsequent version thereof enacted in accordance with their Article 5.09.

**ARTICLE 3. Prerequisites**

By signing this Declaration of acceptance, the Participant to Shadow Auctions declares that it has signed the following contractual document (tick the appropriate box(es)):

- a Bilanzkreisvertrag with 50Hertz Transmission; and/or
- a Balance responsible agreement with Energinet.dk; and/or
- a Balance Responsible agreement with Statnett; and/or
- a PV Contract with TenneT; and/or
- a Bilanzkreisvertrag with transpower.

**ARTICLE 4. Access to the Information System**

By signing this Declaration of acceptance, the Participant to Shadow Auctions acknowledges that it has read and understood the IS Rules and undertakes to abide by them.

**ARTICLE 5. Designation of the Border(s) on which the Participant to Shadow Auctions shall be registered for Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC**

- Border between Germany and Eastern Denmark; and/or
- Border between Germany and Western Denmark; and/or
- Border between the Netherlands and Norway.

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<sup>1</sup> Completed by the Joint Auction Office upon confirmation of Entitlement

**ARTICLE 6. Designation of the Border(s) on which the Participant to Shadow Auctions shall be registered for Auctions as Rollback Solution For Foreseen Unavailability Of ITVC**

- Border between Germany and Eastern Denmark; and/or
- Border between Germany and Western Denmark; and/or
- Border between the Netherlands and Norway.

**ARTICLE 7. Contact details of the Participant to Shadow Auctions**

EIC CODE:

The present EIC Code identifies in particular the Participant to Shadow Auctions, as the case may be, in respect with the modalities mentioned in the Article of the ITVC Shadow Auction Rules relative to the use of Programming Authorisations.

Invoicing and credit notes

(Please indicate a single invoicing telephone number, fax number and e-mail)

Contact:

Address:

Telephone number:

Fax number:

E-mail:

Operational contact

(Please indicate a single operational telephone number, fax number and e-mail)

Contact:

Address:

Telephone number:

Fax number:

E-mail:

All correspondence

Contact:

Address:

Telephone number:

Fax number:

E-mail:

**ARTICLE 8. Joint Auction Office's contact details**

Contact: to be completed  
Address: to be completed  
  
Telephone number: to be completed  
Fax number: to be completed  
E-mail: to be completed

**ARTICLE 9. Bank details**

All payments made by the Joint Auction Office to the Participant to Shadow Auctions will be made to the following Payment

Account: \_\_\_\_\_  
Bank: \_\_\_\_\_  
Agency: \_\_\_\_\_  
Account Holder: \_\_\_\_\_  
Account N°: \_\_\_\_\_  
SWIFT Code: \_\_\_\_\_  
IBAN Code: \_\_\_\_\_

**ARTICLE 10. Changes to information**

The Participant to Shadow Auctions undertakes to Notify the Joint Auction Office of any changes in the information provided by the Participant to Shadow Auctions in the present Declaration of acceptance, no later than five (5) Working Days before such changes take effect.

**ARTICLE 11. Effective date**

The present Declaration of acceptance will be effective as from \_\_\_\_\_<sup>2</sup>

The Declaration of acceptance will expire in accordance with the ITVC Shadow Auction Rules.

For the Participant:

For the Joint Auction Office:

Name and position of the legal representative:

Name and position of the legal representative:

\_\_\_\_\_

\_\_\_\_\_

Date:

Date:

\_\_\_\_\_

\_\_\_\_\_

Signature:

Signature:

\_\_\_\_\_

\_\_\_\_\_

<sup>2</sup> Completed by the Joint Auction Office upon confirmation of Entitlement

## **APPENDIX 2 Conditions pertaining to the mandate given by one Participant to Shadow Auctions to its Bid Submitter(s)**

A Participant to Shadow Auctions may give a mandate to a Bid Submitter to send out on its behalf the Bids. In this case, the Participant to Shadow Auctions may still submit Bids. Bids are sent in the name of the Participant to Shadow Auctions and not in the name of the Bid Submitter. The last valid Bids submitted in the name of the Participant to Shadow Auctions are taken into account in the Auction algorithm.

In such a case, the Participant to Shadow Auctions must send the followings to the Joint Auction Office:

- a copy of the mandate he is giving to the Bid Submitter; or
- an attestation signed by himself and the authorised Bid Submitter testifying that a mandate has been given from the former to the latter for the Bid submission.

In order to be accepted by the Joint Auction Office, the mandate or attestation must contain at least the following information and principles:

- the name and company name of the authorising Participant to Shadow Auctions and of the authorised Bid Submitter and the signature by their duly entitled respective representatives;
- the Bid submission purpose of the mandate;
- the duration and the conditions for cancelling the mandate;
- the principle by which this mandate under no circumstances absolves the Participant to Shadow Auctions from the obligations he has with regard to the Joint Auction Office under its Declaration of acceptance.

**APPENDIX 3 Modification of the Borders on which the Participant to Shadow Auctions shall be registered for Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC**

Form to be sent to the Joint Auction Office:

Address:

Fax number:

Declaration of acceptance n°:

Under the terms of the ITVC Shadow Auction Rules, \_\_\_\_\_ informs the Joint Auction Office of the modification of its registration for Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC , from \_\_\_\_\_<sup>3</sup> on, as follows (tick the appropriate box(es)):

- Border between Germany and Eastern Denmark; and/or
- Border between Germany and Western Denmark; and/or
- Border between the Netherlands and Norway.

Name and capacity of signatory:

\_\_\_\_\_

Signature:

\_\_\_\_\_

<sup>3</sup> The Notification of the modification of the registration as Fallback Participant must be made to the Joint Auction Office at the latest seven (7) Working Days before the Day to which the Capacity relates.



**APPENDIX 4 Modification of the Borders on which the Participant to Shadow Auctions shall be registered for Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC and/or Rollback Solution For Foreseen Unavailability Of ITVC**

Form to be sent to the Joint Auction Office:

Address:

Fax number:

Declaration of acceptance n°:

Under the terms of the ITVC Shadow Auction Rules, \_\_\_\_\_ informs the Joint Auction Office of the modification of its designation of the Borders on which he shall participate to Auctions as Fallback Solution For Unforeseen Unavailability Of ITVC , from \_\_\_\_\_<sup>4</sup>

on, as follows (tick the appropriate box(es)):

- Border between Germany and Eastern Denmark; and/or
- Border between Germany and Western Denmark; and/or
- Border between the Netherlands and Norway.

Under the terms of the ITVC Shadow Auction Rules, \_\_\_\_\_ informs the Joint Auction Office of the modification of its designation of the Borders on which he shall participate to Auctions as Rollback Solution For Foreseen Unavailability Of ITVC, from \_\_\_\_\_

on, as follows (tick the appropriate box(es)):

- Border between Germany and Eastern Denmark; and/or
- Border between Germany and Western Denmark; and/or
- Border between the Netherlands and Norway.

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<sup>4</sup> The Notification of the modification must be made to the Joint Auction Office at the latest seven (7) Working Days before the Day to which the Capacity relates.

**APPENDIX 5 Request for withdrawal of Entitlement**

Number of pages: 1+

Please let us know immediately if you have not received every page.

FROM:

TO:

COMPANY NAME:

FOR:

to be completed

ADDRESS:

FAX: to be completed

PHONE:

FAX:

DECLARATION OF ACCEPTANCE N°:

Under the terms of the ITVC Shadow Auction Rules, \_\_\_\_\_ wishes to withdraw its Entitlement.

Name and capacity of signatory:

\_\_\_\_\_

Signature:

\_\_\_\_\_

## APPENDIX 6 Model of Bank Guarantee

### Bank Guarantee upon first request (the “Guarantee”)

Bank Guarantee No.: \_\_\_\_\_

To be returned to the following address:

**CASC**

2, rue de Bitbourg  
L-1273 Luxembourg-Hamm  
LUXEMBOURG

[\_\_\_\_\_] <sup>5</sup> a company incorporated under [\_\_\_\_\_] <sup>6</sup> law, its registered offices being located at [\_\_\_\_\_] , represented by [\_\_\_\_\_] <sup>7</sup> (hereafter the “**Guarantor**”) undertakes, by virtue of the present document, irrevocably and unconditionally, to pay, in accordance with the conditions below, Capacity Allocation Service Company CWE S.A., a public limited company (société anonyme) incorporated under the laws of Luxembourg, having its registered office at 2, rue de Bitbourg, L-1273 Luxembourg-Hamm, Luxembourg, registered with the Luxembourg Register of Commerce and Companies under number B142.282 (the “**Beneficiary**”), upon first demand of the Beneficiary any sum up to a maximum amount of: [\_\_\_\_\_] Euros (EUR [\_\_\_\_\_] ) <sup>8</sup> (the “**Guarantee Amount**”) to be called upon by the Beneficiary on one or several occasions, each payment made by the Guarantor under this Guarantee reducing the Guarantee Amount accordingly.

This Guarantee may be invoked from the date of its signature. It will terminate on the day on which all obligations or debts due by [\_\_\_\_\_] <sup>9</sup> company incorporated under [\_\_\_\_\_] <sup>10</sup> (registration number [\_\_\_\_\_] ) (the “**Originator**”) to the Beneficiary pursuant to the Rules for Capacity Allocation by Explicit Auctions within Central Western Europe Region (the “**CWE Auction Rules**”) have been fulfilled (the “**Expiry Date**”) irrespective of whether it has been returned to us or not by this date.

The request for payment must be sent to the Guarantor by registered letter (the “**Letter of Invocation of Guarantee**”). The Guarantor must receive the Letter of Invocation of Guarantee no later than the Expiry Date.

Any payment by the Guarantor must be made within the ten (10) working days (being every day which is not a Saturday, Sunday or an official public holiday in Belgium, France, Germany, Luxembourg or The Netherlands as published on the Joint Auction Office's Website) following reception of the Letter of Invocation of Guarantee. The Guarantor will carry out this payment in compliance with the instructions contained in the Letter of Invocation of Guarantee.

The Guarantor may only be dispensed from the obligations incumbent upon him under the terms of the Guarantee before the Expiry Date, if the Beneficiary gives its written consent.

This Guarantee is absolute, independent and autonomous and granted by the Guarantor independently of the validity of the legal effects of the Declaration of Acceptance (as defined in the CWE Auction Rules) signed by the Originator in accordance with the CWE Auction Rules and without asserting any exception or objection resulting from the CWE Auction Rules. None of the obligations of the Guarantor under this Guarantee shall be discharged, impaired or otherwise affected by the inexistence, invalidity, unenforceability or non-performance (or, to the extent relevant, performance) of the obligations of the Originator arising from its business relation with the Beneficiary, or any other defences, rights of set-off or other rights to payment which the Originator or any other third party would be entitled to raise against the Beneficiary.

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5 Company name of the banking establishment issuing the Bank Guarantee

6 Nationality of applicable law of the banking establishment

7 Name of the authorised representative of the banking establishment

8 Contract amount, which is of one hundred thousand euros (100 000 €) per border, to be written by hand in figures and letters

9 Company name of the Participant to Shadow Auctions for Rollback

10 Nationality of applicable law of the Participant to Shadow Auctions for Rollback

The Beneficiary shall not be obliged before exercising any of its rights, powers or remedies under this Guarantee, (i) to make any demand on the Originator, (ii) to take any action or obtain judgement in any court against the Originator, (iii) to make or file any claim or proof in a winding-up, bankruptcy or dissolution of the Originator, or (iv) to enforce or seek to enforce any security taken in respect of any obligations of the Originator in respect of its business relation with the Beneficiary.

Modification or removal of factual or legal relations or links that may exist as of this day between the Guarantor and the Originator may not discharge the Guarantor from this Guarantee.

All the provisions of the Guarantee will retain their full effect, irrespective of any change in the financial or legal status of the Originator.

Reasonable and duly justified costs relative to this Guarantee will be borne by the Guarantor.

The Guarantee is governed by laws of the Grand Duchy of Luxembourg. For interpretation and execution of this Guarantee, the Commercial Court in whose jurisdiction the Beneficiary is domiciled will be competent.

Drawn up in ....., on.....