

## **AGREEMENT**

between

### **ELEKTROENERGIEN SISTEMEN OPERATOR EAD**

1618 Sofia, 201 Tsar Boris III blvd.

hereinafter „ESO“,

and

### **EMS AD Beograd**

Kneza Miloša 11, 11000 Beograd

Serbia

hereinafter „EMS“,

(hereinafter referred to as the “Parties”),

## **I. Scope of Agreement**

1. Article 16 of Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-zonal exchanges in electricity and repealing Regulation (EC) No 1228/2003 (hereinafter: Regulation 714/2009) and Regulation (EU) 2016/1719 of 26 September 2016 establishing a guideline on forward capacity allocation setting general principles of congestion management requires that network congestion problems shall be addressed with non-discriminatory market based solutions which give efficient economic signals to the market participants and transmission system operators involved.
2. By this Agreement EMS and ESO agree to organize transparent allocation of the available transmission capacities at the bidding zone border Bulgaria - Serbia in order to allocate and assign Physical Transmission Rights (hereinafter called PTRs) to the market participants in a transparent and non-discriminatory way. The allocation refers to Cross Zonal Capacity on the bidding zone border Bulgaria – Serbia that is to be available to market participants for the period from 1st of January 2019 onwards, and which are to be governed by the EU law, Energy Community Treaty and relevant national legislation.
3. As agreed between the Parties yearly, monthly and daily capacity auctions on the bidding zone border Bulgaria – Serbia shall be operated by Joint Allocation Office S.A. (hereinafter: JAO), a public limited company incorporated under the laws of Luxembourg, having its registered office at 2, Rue de Bitbourg, L-1273 Luxembourg-Hamm, Grand Duchy of Luxembourg.
4. Allocation of the yearly and monthly capacities is regulated by the “Harmonised Allocation Rules for long-term transmission rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation” and “Border Specific Annex for the Bidding Zone border Bulgaria – Serbia to the Harmonised Allocation Rules for long-term transmission rights” (both of which are hereafter referred to as HAR), which constitute integral parts of this Agreement, unless otherwise stipulated, attached as Annex ./1.

Allocation of the daily capacities is regulated by “Rules for explicit Daily Capacity Allocation on Bidding Zone border Bulgaria – Serbia” (hereinafter: DAR), which constitute an integral part of this Agreement, unless otherwise stipulated, attached as Annex ./2.

All rights and obligations of JAO as service provider and EMS and ESO as service users and all relevant operational procedures between EMS, ESO and JAO relating to the allocation of the yearly, monthly and daily capacities are set forth in Service Level Agreement for Explicit Allocation (hereinafter: SLA EXPALL).

5. The terms and conditions for the nomination of PTRs are defined in the “Nomination Rules for the Bidding Zone Border Bulgaria – Serbia” which constitute an integral part of this Agreement, unless otherwise stipulated, attached as Annex ./4.

## **II. Procedure for allocation of the available cross zonal capacities at the border between the bidding zones of EMS and ESO**

## **1. General provisions for execution of the Auction procedures**

1.1. The following auctions of Available Transmission Capacity at the border between the bidding zone border Bulgaria – Serbia (in both directions: from Bulgaria to Serbia and from Serbia to Bulgaria) will be operated by JAO, which shall act in its own name but for the account of EMS and ESO:

- yearly explicit auctions of PTRs (according to the Auction Calendar published on the JAO Website);
- monthly explicit auctions of PTRs to be held before the beginning of each month of the year (according to the Auction Calendar published on the JAO Website);
- daily explicit auctions of PTRs to be held every calendar day.

### **III. Acceptance of the auction results**

1. The Parties are willing to accept the results of the individual auction procedures operated by JAO provided that these procedures are consistent with the terms and conditions set out in the HAR and DAR and will carry out the transmission services according to the respective results in compliance with the legal requirements of grid access and applicable market rules.

### **IV. Data Exchange**

1. The organisational procedure between EMS and ESO related to the scheduling activities shall be in line with the Policy 2 “Scheduling and Accounting” of the ENTSO-E “Continental Europe Operation Handbook”.
2. Data exchange between EMS, ESO and JAO related to yearly, monthly and daily auctions is defined in detail in the SLA EXPALL.

### **V. Data Publishing**

1. Data and information regarding yearly, monthly and daily allocation shall be published and delivered by JAO in accordance with SLA EXPALL.
2. JAO will deliver data in accordance with Regulation (EC) 543/2013 and to ACER REMIT Information System in accordance with Regulation (EU) No 1348/2014.

### **VI. Arbitration**

1. For all disputes which may arise between the Parties, out of, or in relation to, or in connection with, this Agreement, including disputes concerning the existence and validity thereof, the Parties shall attempt to settle disputes in the first instance by mutual discussions conducted over a period of not less than fifteen (15) days and of no more than sixty (60) days, (“the Amicable Settlement Period”) such a period starting from the first notification in writing thereto by one of the Party to the other Party.

2. Upon failure to reach an amicable agreement at the end of the Amicable Settlement Period, the Parties agree that they will exclusively resort all disputes to arbitration under the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) appointed in accordance with these rules. The number of arbitrators shall be three. The language to be used in the arbitral proceedings shall be English. The substantive law of Austria shall be applicable.
3. Paragraphs 1 and 2 of this article does not apply to Annex./1 and Annex./2.

#### **VII. Severability**

1. If any part or provision of this Agreement and/or its Annexes are or become invalid, illegal, void or unenforceable, the remaining part(s) shall continue to be valid and enforceable and shall not be affected thereby. EMS and ESO hereby agree, that any invalid, illegal, void and/or unenforceable part(s) or provision(s) shall be replaced by valid, legal and/or enforceable part(s) or provision(s) in order to achieve the intended economic and legal effect as far as possible.

#### **VIII. Notices**

1. All notices and communications under this Agreement shall be served by e-mail, unless explicitly envisaged otherwise in this Agreement. In the event of a problem with the e-mail, notices may be served via fax and/or writing and/or delivered in person by courier or by post, which such service deemed effective on the date of receipt. All notices and communications shall be in writing and in the English language. The Parties shall inform each other immediately in case of a change of the e-mail or the postal addresses and/or in case of a change of telephone and fax numbers.

#### **IX. Confidentiality**

1. Information considered as confidential includes all commercially sensitive information, information clearly marked as “confidential” and information which by its nature must be considered or qualified as confidential. No recipient of confidential information shall use or otherwise process the confidential information obtained by him pursuant to this Agreement for any purpose except as strictly required for the performance of the obligations hereunder, or disclose any such information to any third party, other than those of its directors, employees, professional advisors and representatives, regulatory authorities, which have a strict need to know such information for the proper performance of this Agreement. EMS and ESO are obliged to organize their data handling in such a way as to minimize the risk of misuse or unauthorized access or disclosure of confidential information.
2. This confidentiality obligation is not applicable if such information is required to be disclosed by law, judicial order, or any self-regulating or similar organization to whose rules the Parties are subjected.

## **X. Amendments**

1. No amendment or modification of this Agreement and its Annexes shall take effect unless it is in writing, executed and delivered by the authorized representatives of EMS and ESO and approved by the National Regulatory Authorities if such approval is required by the national legislations.

## **XI. Assignment of Rights and Obligations**

1. EMS and ESO hereby agree, that it is prohibited to transfer (including by means of merger, split of, or transfer or otherwise) all or a part of its rights and obligations arising under this Agreement to a third party without the prior and express consent of the other party. This consent cannot be unreasonably withheld or delayed.

## **XII. Hardship**

1. If any extraordinary event or circumstance occurs, independent of the will of EMS and/or ESO, unforeseeable at the time of the conclusion of this Agreement (including legislative changes or positions of the regulatory authorities or any other authority) and which fundamentally reduces the benefits and modalities of continuing the Agreement, the related provisions of the Agreement shall become subjects to correction. The parties concerned shall endeavour to reach an applicable solution within 2 (two) months from the request of the affected party (EMS and/or ESO/or both parties). During such period EMS and ESO shall negotiate in good faith. If concerned parties do not succeed to reach the settlement, the Agreement may be terminated by common written consent of EMS and ESO. Upon such termination, EMS and ESO shall be relieved from any other further obligations under the Agreement other than payment of obligations already due or accrued and any other non-performed obligations under this Agreement, which were to be performed prior to and until such termination decision.

## **XIII. Official Languages**

1. EMS and ESO agree that the present Agreement and all notices and legal proceedings provided hereunder to be drawn up in the English language, to the extents permitted by the rules of the public policy relating directly or indirectly to these proceedings.

## **XIV. Nature of the Contractual Relationships**

1. This Agreement shall in no event be considered a partnership or joint-venture or other form of association between EMS and ESO.

## **XV. Liability**

1. EMS and ESO undertake to carry out the provisions set out in this Agreement and its Annexes with the diligence of a careful businessman and bidding zone manager in compliance with the applicable laws and regulations in the electricity sector. EMS and ESO shall notify the respective other Party of risks and dangers

appending the performance of this Agreement recognizable to a careful businessman and bidding zone manager and provide suggestion for solution.

2. Claims for damages resulting from breach of material contractual duties of the Agreement and its appended Annexes are limited to the damages typical and foreseeable in the context of this Agreement, unless there has been intentional misconduct or gross negligence on behalf of EMS and ESO. Any claims or damages going beyond that, including claims for business interruption, for loss of business profits, or for indirect incidental, special or consequential damages are expressly excluded.

#### **XVI. Validity**

1. This Agreement is concluded for an indefinite period of time.
2. The Parties may terminate this Agreement by mutual agreement taking into account the obligations set in SLA EXPALL, with the provisions of this Agreement being applied to all PTRs allocated under this Agreement, use of the PTRs and the performance of the obligations of the Parties also after the termination of this Agreement.

#### **XVII. Disclaimer**

1. No act or omission by EMS or ESO shall be deemed to be a waiver of any rights, if such a waiver is not declared explicitly and in writing.

#### **XVIII. Common Understanding**

The Parties agree to adapt the HAR, DAR and/or this Agreement amicably, if necessary. However, the Parties agree to keep the HAR and DAR transparent and non-discriminatory.

#### **XIX. Miscellaneous**

In case of any dispute between EMS and ESO, in case there is any discrepancy between the wording of this Agreement and of the HAR and DAR the wording of this Agreement shall prevail.

#### **XX. Annexes**

**./1 Harmonised Allocation Rules for long-term transmission rights in accordance with Article 51 of Commission Regulation (EU) 2016/1719 of 26 September 2016 establishing a Guideline on Forward Capacity Allocation and Border Specific Annex for the Bidding Zone border Bulgaria – Serbia to the Harmonised Allocation Rules for long-term transmission rights**

constitute an integral part of this Agreement.

**./2 Rules for explicit Daily Capacity Allocation on Bidding Zone border Bulgaria - Serbia**

constitute an integral part of this Agreement.

**./3 List of Contacts**

constitutes an integral part of this Agreement.

**./4 Nomination Rules for the Bidding Zone Border Bulgaria - Serbia**

constitute an integral part of this Agreement.

Date: .....

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**ELEKTROENERGIEN SISTEMEN OPERATOR EAD**

**Angelin Tsachev  
Executive Director**

Date: .....

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**EMS AD BEOGRAD**

**Aleksandar Kurćubić  
Executive Manager for System and Market Operation  
(based on Authorization of EMS AD General Manager no. 132/900-00-OPP-  
2128/2017-028 dated 21.11.2017)**