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# ENERGY COMMUNICATION PLATFORM (ECP) SOFTWARE TERMS OF USE

(November 2018)

## WHEREAS:

- (1) In accordance with Regulation (EC) N°714/2009 on conditions for access to the network for cross-border exchanges in electricity, the European Network of Transmission System Operators for Electricity (ENTSO-E) is the association through which all transmission system operators (TSO) cooperate at the level of the European Union.
- (2) ENTSO-E has acquired and upgraded the ECP Software, which function is to enable a secure, encrypted and reliable transfer of data.
- (3) The present ECP Software Terms of Use (the “Terms of Use”) determine the contractual conditions applicable to the access of the Licensee to and use of the Energy Communication Platform software (the “ECP Software”) as made available by ENTSO-E.
- (4) The use of the ECP Software under the present Terms of Use requires the participation of a TSO or ENTSO-E who is taking the management of the ECP Central Component on his behalf. The Licensee may only access and use the ECP Software under present license insofar as a TSO or ENTSO-E is managing the ECP Central Component and as ENTSO-E or the concerned TSO allows the Licensee to such use. Any other use, i.e. which is not performed in the framework of an ECP deployment based on the control of the ECP Central Component by a TSO or ENTSO-E, shall be subject to a specific written agreement from ENTSO-E.
- (5) To promote the use of the ECP Software, ENTSO-E allows its adaptation into Derivative Works by the Licensee, insofar as the Licensee grants ENTSO-E a license on the rights related to all Derivative Works.
- (6) ENTSO-E provides no maintenance and support services regarding ECP Software or Derivative Works.
- (7) To favour competition regarding the provisions of ECP Software related services, ENTSO-E also allows Licensee to use the ECP Software for commercial services such as services of hosting, development and maintenance, at the exclusion however of the marketing of the ECP Software itself or of its Derivative Work, since the ECP Software is made available free of charge, in accordance with the present Terms of Use.

## Definitions

- (1) “**Business Day**” means any day from Monday to Friday inclusive, with the exception of public holidays in Belgium.
- (2) “**Derivative Work**” means any derived version of the ECP Software, including any form in which the ECP Software may be recast, transformed, updated or adapted, and any development based in whole

or in part on the ECP Software, and any new user interface of the ECP Software, which are made by a Licensee.

- (3) **“ECP Software”** means the software Energy Communication Platform, in all its forms of expression, including its graphical user interfaces and user documentation, updates and releases, as made available by ENTSO-E. The ECP Software is made of the combination of ECP Central Component and ECP Client Component.
- (4) **“ECP Central Component”** means the “ECP Component Directory” and the “ECP Broker” elements of the ECP Software..
- (5) **“ECP Client Component”** means the “ECP Endpoint” element of the ECP Software.
- (6) **“Installation”** means download of a copy of a software (e.g. the ECP Software) and, if applicable, its Source Code Materials, and all the operations to be carried out by the Licensee, pursuant to user manual or technical documentation or instructions if available, in order to make the concerned software operational.
- (7) **“Intellectual Property Rights”** (or “IPR”) means (a) copyright, patents, database rights and rights in trade-marks, designs, know-how and confidential information (whether registered or unregistered); (b) applications for registration, and the right to apply for registration, for any of these rights; and (c) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world.
- (8) **“IT Service Purpose”** means the use of the ECP Software or of Derivative Works for the sole purpose of providing IT services to third-parties, at the exclusion of the marketing of copies of the ECP Software or of Derivative Works.
- (9) **“Licensee”** means the legal entity or natural person receiving the right to use the ECP Software within the limits set forth in present Terms of Use.
- (10) **“Release”** means an issue of the ECP Software made available by ENTSO-E which incorporates major changes in comparison with the previous issue, including, but not limited to, security breach patch or implementation of a new data modelling. A Release is generally issued after several new Versions of the ECP Software.
- (11) **“Personal Use Purpose”** means the use of the ECP Software or of Derivative Works, for any other purposes than the IT Service Purpose, insofar as it is limited to internal business needs of the concerned user.
- (12) **“Source Code Materials”** means the source code of the ECP Software or of the Derivative Work and all technical information and documentation made available by ENTSO-E or by the Licensee which are necessary to modify and properly configure the ECP Software or the Derivative Work.
- (13) **“TSO”** means Transmission System Operator.
- (14) **“Version”** means an issue of the ECP Software made available by ENTSO-E and which include minor changes in comparison with the previous issue.

## 1. Rights granted to the Licensee

The ECP Software, including Source Code Materials, in whole or in part, is and shall remain the exclusive property of ENTSO-E.

ENTSO-E shall grant the Licensee with a free of charge, worldwide, non-exclusive and non-transferable license on the Intellectual Property Rights relating to the ECP Software and its Source Code Materials, which

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are necessary to : (1) use the ECP Software, (2) use the ECP Software elements to incorporate them within Derivative Works, and (3) use the ECP Software elements as incorporated within Derivative Works.

This license is granted exclusively for the following limitative purpose(s):

- IT Service Purpose
- Personal Use Purpose

The Licensee shall not make any other use of the ECP Software or Derivative Works unless they received a prior authorisation in writing from ENTSO-E.

This license is granted for a term corresponding to the entire duration of the Intellectual Property Rights on the ECP Software.

The non-transferable character of present license does not prevent

- 1) the Licensee from asking an IT Service Provider to adapt or configure the ECP Software or Derivative Works, insofar as the concerned IT service provider has first approved the present Terms of Use as made available by ENTSO-E on the ECP Software downloading facilities.
- 2) the Licensee from distributing copies of the ECP Software or of Derivative Works, insofar as they are distributed free of charge and insofar as the receiving party has first approved present Terms of Use as made available by ENTSO-E on the ECP Software downloading facilities and complies with the conditions set forth in present Terms of Use, and in particular the requirement to use the ECP Software in a framework where the ECP Central Component is managed by a TSO or ENTSO-E.

Present license does not cover the use of the ECP Software in connection with specific environments or applications, which may be subject to specific conditions and/or approval process imposed by the owner of these environments/applications.

The present free of charge license requires the participation of a TSO or ENTSO-E in the management of the ECP Central Component. Any other use not based on the management of the ECP Central Component by a TSO or ENTSO-E is not covered by the present terms of license and shall be subject to a specific license agreement.

In return of the right to adapt the ECP Software granted by ENTSO-E, the Licensee shall grant ENTSO-E with a non-exclusive license of exploitation of all Intellectual Property Rights on all Derivative Works, as specified in Clause 2.

## **2. Rights granted to ENTSO-E**

The Licensee shall grant ENTSO-E with a worldwide, non-exclusive, sub-licensable, and free of charge license on all Intellectual Property Rights relating to all Derivative Works and related Source Code Materials.

This license shall cover in particular the following rights and forms of exploitation:

- right to make temporary or permanent reproduction on any media (on or off line) and in any form, including distribution right of the copies of the concerned works. This includes, but is not limited to, reproduction on paper, CD, DVD, hard disk, server, memory sticks, advertising material.

- right to adapt the Derivative Works in any forms, including translation right in any languages, notably in order to include the concerned Derivative Works in other works (such as new Versions or Releases, new software) and/or to improve the concerned works and/or to create Derivative Works based in whole or in part thereon ;
- right to communicate the concerned works to the public through any system of communication, including networks (such as the Internet, any other kind of open networks or intranet) and including any system enabling the members of the public to access the concerned works from a place and at a time individually chosen by them; and
- right to exploit the concerned works and their adaptations for merchandising and advertising purposes, without naming the origin.

This license is granted for a term corresponding to the entire duration of the Intellectual Property Rights on the Derivative Work, including their possible extensions, despite the possible termination for whatever reason of the present Terms of Use or of the rights granted pursuant to Clause 1.

The Licensee shall impose to their employees and subcontractors similar Intellectual Property Rights transfer clause in their favour, with the ability to re-transfer or sub-license the granted rights to any third-party of their choice.

Considering the functional character of the concerned works, the exercise of moral rights of the authors shall not constitute an obstacle to the above-mentioned use and forms of exploitation of the concerned works. In particular, the Licensee shall not exercise its moral rights in consideration of:

- any kind of modification to the concerned works which would be made in order to meet ENTSO-E needs (or its members and/or partners' needs);
- any kind of adaptation of the concerned works which would be considered by ENTSO-E as useful in order to improve their user-friendly character and/or performances, or to enable them to operate within different or specific technical or functional environments ;
- the mention of his or her name(s) in relation with the exploitation of the concerned works; and
- the destruction of the concerned works which would become technically or functionally outdated.

In the event the Licensee is a legal entity and not a natural person, the Licensee shall vouchsafe that the authors shall not exercise his/her moral rights in consideration of the above-mentioned situations.

The sole compensation for this license consists in the rights granted by ENTSO-E pursuant to Clause 1.

The Licensee shall send to ENTSO-E a copy of all Source Code Materials as soon as the concerned Derivative Works may reasonably be considered as completed and at least prior any kind of exploitation thereof.

### **3. No Maintenance Services**

ENTSO-E shall have no obligation to provide the Licensee with any support or maintenance in any form, neither regarding Installation, nor regarding operation of the ECP Software.

ENTSO-E shall have in any event no obligation neither with regard to any improvements, nor to any change requests.

## 4. Term and Termination

These Terms of Use are applicable for a term corresponding to the entire duration of the Intellectual Property Rights on the ECP Software, including their possible extensions.

ENTSO-E may terminate the Terms of Use and consequently revoke the licence given to the Licensee at any time with immediate effect, upon written notice to the Licensee, if the Licensee is in material or persistent breach of any of the terms of these Terms of Use.

The Licensee shall be deemed in situation of material breach, among others, in the following circumstances:

- use of the ECP Software or of Derivative Work beyond the conditions applicable for the Personal Use Purpose or IT Service Purpose;
- infringement of a third-party Intellectual Property Rights;

## 5. Liability

ENTSO-E does not warrant that the ECP Software will run uninterrupted or be free from errors. No warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to condition, quality, performance, merchantability or fitness for purposes is given or assumed by ENTSO-E.

To the fullest extent permitted by applicable law, ENTSO-E shall not be liable to the Licensee, under any circumstances, whether in tort, contract, or otherwise, including (gross) negligence, for any damage including without limitation direct, special, incidental, indirect, consequential, or any other loss or damage whatsoever (including damages for loss, of use, information, goodwill, profit, work stoppage, data, business, or revenue) incurred by the Licensee, arising out of the use or inability to access or use the ECP Software or Derivative Works, the provision or failure to provide any service in connection with the ECP Software or Derivative Works, even if ENTSO-E has been advised of the possibility of such damage or such damage are foreseeable, considering inter alia, that the right to use the Software is granted free of charge.

The Licensee warrants being owner of all Intellectual Property Rights and entitled to grant exploitation rights to ENTSO-E as set forth in the provisions of Clause 2. The Licensee undertakes at its own expense to defend ENTSO-E or, at its option, settle any claim or action brought against ENTSO-E alleging that the possession, use, development, modification or maintenance of the ECP Software, or any part thereof or any plug-in or add-on realised by the Licensee in accordance with present Terms of Use infringes the Intellectual Property Rights of a third party and shall be responsible for any reasonable losses, damages, costs (including legal fees) and expenses incurred by or awarded against ENTSO-E as a result of or in connection with any such infringement claim.

## 6. Additional or diverging conditions for specific use of the ECP Software

Where the Licensee uses the ECP Software in connection with a specific project or tool, the license granted pursuant to present Terms of Use is without prejudice to additional requirements and conditions which might be imposed to that specific use.

In such circumstances, the right to use the ECP Software, as granted in accordance with Clause 1, shall be subject to the compliance with all conditions and requirements which might be imposed to participate to the concerned project and/or to use the concerned tool, these latter prevailing on present Terms of Use in case of contradiction.

## 7. Personal Data

Personal data collected during the process of conclusion of present contract (name, title, email, contact details, organisation, position, login, logs) shall be processed by ENTSO-E, acting as data controller, in compliance with the Belgian Act of 30 July 2018 on the protection of individuals in relation to the processing of personal data and with the Regulation (EU) 2016/679, for the sole purpose of managing the ECP Software licensing process and the relations of ENTSO-E with the Licensee in relation with their use of the ECP Software.

The processing is necessary for the performance of the license granted by ENTSO-E to the Licensee.

By providing ENTSO-E its personal data, the Licensee give ENTSO-E its express agreement to use the information for the above- mentioned purposes.

These data will be used exclusively for the above-mentioned purpose.

The personal data which the Licensee communicate to ENTSO-E are registered in a database held by and under the responsibility of ENTSO-E. The personal data are processed for a term corresponding to the whole term of the license and ten (10) years after its termination. As the case may be, personal data are processed beyond this term where required to comply with applicable legal obligations of ENTSO-E (data controller).

The personal data will not be transmitted to any third party.

Upon request sent by email to the Service Desk ([servicedesk@entsoe.eu](mailto:servicedesk@entsoe.eu)) and upon submitting proof of its identity, the Licensee can obtain, at no cost if the volume is reasonable, from ENTSO-E a copy of its personal data. The Licensee can also access and, as the case may be, obtain the rectification or the deletion of its personal data which are inaccurate, inexact, incomplete or not relevant. The President of the Court of First Instance of the place of your residence (in Belgium) or of the place of ENTSO-E's official registration, is competent to decide on any dispute relating to the exercise of your right to access and to rectify or to remove of a personal data

If at any time, you are of the opinion that ENTSO-E does not respect your privacy, please inform the Service Desk by email ([servicedesk@entsoe.eu](mailto:servicedesk@entsoe.eu)) which shall do everything to identify and solve the problem.

## 8. Notices, Severability, Applicable Law and Jurisdiction

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All written notices that a party is required to provide to the other party pursuant to present Terms of Use has to be done at the following addresses:

- For ENTSO-E:

By email sent to the Service Desk email address: [servicedesk@entsoe.eu](mailto:servicedesk@entsoe.eu), or to the relevant email address as mentioned by ENTSO-E during the ECP Software download process.

- For the Licensee:

To the attention of the registered user, at the email address mentioned during the ENTSO-E Sharepoint account registration process.

A notice shall be deemed to have been duly given the first Business Day following the day the notice is sent, if sent by email provided that the email transmission is promptly confirmed by an electronic receipt from the recipient email server.

If any term of these Terms of Use is held by a court of competent jurisdiction to be invalid, unenforceable, or otherwise ineffective by operation of law, these Terms of Use shall remain in full force and ENTSO-E shall replace such invalid or unenforceable provision with a provision that corresponds as closely as possible to the intention of ENTSO-E.

The validity, performance and construction of these Terms of Use shall be governed by the laws of Belgium.

The courts of Brussels shall have exclusive jurisdiction to settle any disputes arising out of or in connection with these Terms of Use.