

# GENERAL AGREEMENT FOR THE SALE AND PURCHASE OF ELECTRIC ENERGY

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between

**VERBUND Trading Romania SRL**  
B-dul CAROL I nr. 31-33 C3 etj. 5 sector 2,  
30161 Bucharest sec 2  
Rumänien

**VTR-RO**

and

**VERBUND Trading GmbH**  
A-1010 Vienna, Am Hof 6a  
Austria

**VTR**

individually or collectively referred to also as "Party" or "Parties"

## **1. SCOPE**

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- 1.1 This General Agreement shall govern all Delivery Contracts for the sale and purchase of electric energy ("Contract Power") between the Parties and shall come into force on 1<sup>st</sup> September 2014. This General Agreement replaces the general agreement concluded by the Parties on 1<sup>st</sup> January 2011 which is automatically terminated up the entry into force of the present General Agreement.
- 1.2 Each transaction between the Parties concerning the purchase, sale, delivery and acceptance of electricity entered into before the entry in force of this General Agreement but which remain not yet fully performed by either or both Parties is deemed to be a Delivery Contract under this General Agreement.
- 1.3 This General Agreement, along with any Delivery Contract(s) to be concluded by the Parties (as set forth in Appendix 1) and any Delivery Contracts as specified under article 1.2 herein, shall form a single agreement between the Parties (the "Entire Contract").
- 1.4 All terms marked with capital letters shall have the meaning given to them in Appendix 2.

## **2. QUANTITY AND CHARACTERISTICS OF THE ENERGY**

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To be defined in each Delivery Contract (as set out in Appendix 1 hereto).

## **3. ENERGY PRICE**

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The energy price ("Contract Price") shall be included in each Delivery Contract and is understood as a net price for the energy. VAT shall be due as specified

in the relevant law. The Contract Price is calculated taking into account the conditions and according to the procedures in use on the relevant network and includes costs for transport of the energy to the Delivery Point. All amounts due shall be denominated in Euro, unless otherwise agreed upon in each Delivery Contract.

#### **4. DELIVERY AND MEASUREMENTS**

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- 4.1. The Delivery Point shall be specified in each Delivery Contract.
- 4.2. Any risks connected with the delivery of energy by the Seller to the Buyer shall pass to the Buyer at the Delivery Point as defined in each Delivery Contract.
- 4.3. Should a discrepancy arise between the quantity stated and confirmed as delivered by the Seller and that stated and confirmed as accepted by the Buyer, then the measurements effected by the grid operator to which the Seller nominates the schedule of the delivery shall determine the quantity to be invoiced, such determination being binding upon both Parties.

#### **5. INVOICING AND PAYMENT**

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- 5.1 The Seller shall transmit to the Buyer in the course of the month following the delivery month an invoice setting forth the total quantities of electricity that were delivered by it under Delivery Contracts in the previous month.
- 5.2 On or before the later to occur of (a) the 20th day of the month following the delivery month or (b) the 5th Business Day following receipt of an invoice, the Buyer shall make available, in freely available funds and without any limitation, the amount set forth on such invoice at the payment address or bank account provided by the Seller in the relevant invoice. Each Party shall carry its own bank costs and fees.
- 5.3 If on any day the Parties are each required to pay one or more due amounts in the same currency to each other, under one or more Delivery Contracts, then such amounts shall be aggregated and the Parties shall discharge their respective payment obligations through netting, in which case the Party, if any, owing the greater aggregate amount at the end of any given month shall pay the other Party the difference between the amounts owed.
- 5.4 In case of late payment or of default of payment, the Seller is entitled to charge interest on any outstanding amount at the rate of 1-month EURIBOR (on the due date) plus 3% or at least at the statutory rates applicable, from the due date, as described in Article 5.2, until the date upon which the payment is received.

#### **6. SECURITIES AND COLLATERALS**

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- 6.1. Each Party (the "Requesting Party") is entitled to require, on a case by case basis upon conclusion of each Individual Contract or at any time during the execution of said Delivery Contract, and the other Party shall accordingly

deliver, the necessary and appropriate collateral in accordance with Paragraph 6.2. and 6.3. below.

6.2. The Parties agree that the above mentioned collateral may be one or several of the following collaterals:

- a) an irrevocable, unconditional bank guarantee on first demand issued by a first class bank (Credit rating: A- without negative outlook of Standard & Poor's or A3 without negative outlook of Moody's) (hereinafter the "Guarantor") in which the Guarantor irrevocably and unconditionally undertakes to pay to the beneficiary on the account quoted in the demand and within 2 Business Days, without examination of the underlying legal relationship, waiving any objection and without the possibility to defer the payment thereof; or
- b) a Letter of Credit issued by a first class bank (Credit rating: A- without negative outlook of Standard & Poor's or A3 without negative outlook of Moody's), or
- c) Cash deposit, or
- d) a Parent Company Guarantee, or
- e) any other security agreed upon by the Parties,

each of them in a form acceptable to the Requesting Party. The amount of the collateral must in any case be at least equal to:

- for yearly Delivery Contracts, the average sum corresponding to 3 months of delivery;
- for any other Delivery Contracts, the total value of each respective Individual Contract for which a collateral is required.

6.3. The request for such collateral must be sent to the other Party by means of a written notice sent by fax and post and the other Party shall provide the Requesting Party with the required collateral within five (5) Business Days upon receipt of the faxed version of such written notice.

6.4. If the other Party fails to provide the required collateral within the time frame set out in 6.3 hereabove, the Requesting Party shall be entitled to an Early Termination as set out in article 11.1 hereinafter.

## **7. DUTIES/TAXES**

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The Seller shall bear all fees, costs, taxes and any other expenses up to (including) the Delivery Point.

The Buyer shall bear all fees, costs, taxes and any other expenses after the Delivery Point.

## **8. SUSPENSION OF DELIVERY**

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Should a Party, the "Non-paying Party", be in default on any payment obligation due under a Delivery Contract or should a Party fail to provide to the Requesting Party the Performance Assurance required, as specified in article 6.2, the other Party shall be entitled, three (3) Business Days after receipt by

the Non-paying Party of a written notice to this effect, to cease further deliveries of electricity under all outstanding Delivery Contracts until all outstanding amounts have been fully settled.

## **9. LIABILITY**

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- 9.1 Should the Seller fail to deliver the Contract Power specified in any Delivery Contract in whole or in part and such failure is not excused by an event of Force Majeure or the Buyer's non performance, then the Seller shall pay to the Buyer, as compensation for damages, an amount for such quantity of undelivered electricity equal to the product of:
- a) the amount, if positive, by which the price at which the Buyer, acting in a commercially reasonable manner, is or would be able to purchase or otherwise acquire in the market the quantity of undelivered electricity exceeds the Contract Price; and
  - b) the quantity of undelivered electricity; and
  - c) the coefficient of 1,05.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Buyer as a result of the Seller's non performance, to the extent such costs and expenses are directly linked to the Buyer's purchase or acquisition of substitute quantities, as set out in this article 9.1.

- 9.2 Should the Buyer fail to accept the Contract Power specified in the Delivery Contract in whole or in part and such failure is not excused by an event of Force Majeure or the Seller's non performance, the Buyer shall pay to the Seller as compensation for damages an amount for such quantity of non-accepted electricity equal to the product of:
- a) the amount, if positive, by which the Contract Price exceeds the price at which the Seller, acting in a commercially reasonable manner, is or would be able to sell the quantity of non-accepted electricity in the market; and
  - b) the quantity of non-accepted electricity; and
  - c) the coefficient of 1,05.

Such amount shall be increased by any incremental transmission costs and other reasonable and verifiable costs and expenses incurred by the Seller as a result of the Buyer's failure, to the extent such costs and expenses are directly linked to the Seller's sale of non-accepted quantities, as set out in this article 9.2.

Amounts payable shall be invoiced and paid in accordance with Article 5.

## **10. LIMITATION OF LIABILITY**

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- 10.1. Without prejudice to the liability set out in article 9 herein, A Party is not liable to the other Party for any other loss, cost, expense or damages ("Damages") incurred by the other Party under or in connection with this General Agreement or any Delivery Contract, except where such Damages are due to gross negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under the Entire Contract. For the avoidance of doubt, the

limitation of liability under this article 10.1 shall not apply to the liability set out in article 9.

10.2. The liability of a Party to the Entire Contract:

- a) does not include liability for any indirect and/or consequential Damages other than those stated elsewhere in this General Agreement, including without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and
- b) is limited to an amount equal to the total amounts payable for electricity to be supplied by a Party under the Delivery Contract(s) concerned, provided that such limitation shall not apply to payments under Article 9.

Each Party agrees that it has a duty to mitigate its Damages and covenants that it will use all commercially reasonable efforts to minimise any Damages it may incur under or in connection with this General Agreement or any subsequent Delivery Contract.

## **11. TERMINATION**

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### 11.1 Early Termination

Each Party shall have the right to terminate the General Agreement and all outstanding Delivery Contracts upon written notice (the "Termination Notice") to the other Party (the day on which the Termination Notice is received by the other party being the Early Termination Date on which the termination becomes effective) upon occurrence of any of the following events:

- a) the Buyer fails to effect a due payment under any Delivery Contract within 7 Business Days after a written demand by the Seller;
- b) the other Party or its Guarantor commits a Material Breach of this General Agreement or a Delivery Contract which is not effectively and fully remedied by such defaulting Party within 15 Business Days of the receipt by the defaulting Party of the terminating Party's written notice given to that effect;
- c) if a Party's performance becomes definitely impossible due to an event of Force Majeure, as specified in article 12.4.
- d) the other Party fails to provide to the Requesting Party the Performance Assurance required, as specified in articles 6.2 within 5 Business Days of the receipt by the defaulting Party of the terminating party's written notice to that effect.

### 11.2 Automatic Termination

If a Party or its Guarantor is dissolved or wound up, becomes insolvent or is liquidated, whether voluntarily or involuntarily, becomes subject to insolvency, reorganisation or a similar procedure, or a motion for the initiation of such proceedings is rejected due to the lack of funds, or has a receiver or liquidator of its assets appointed, termination of the Entire Contract shall automatically occur with effect as of 24 hours before the application to the competent authorities issuing the decisions and measures set out in this article 11.2.

### 11.3 Ordinary Termination

This General Agreement can be terminated by a Party at any time giving the other Party 30 days prior written notice of termination ("Ordinary Termination"). In the event of Ordinary Termination, the General Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under this General Agreement or any Delivery Contract prior to the date of Ordinary Termination are fully performed by both Parties.

## 12. FORCE MAJEURE

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- 12.1 A Party is not liable for a failure to perform any of its obligations under the Entire Contract in so far as it proves:
- that the failure was due to an impediment beyond its control, and
  - that it could not reasonably be expected to have foreseen the impediment and its effects upon its ability to perform at the time of the conclusion of this General Agreement or any Delivery Contract thereunder, and
  - that it could not have reasonably avoided or overcome the effect of such impediment.
- 12.2 Will constitute events of Force Majeure, but are not limited to, the following occurrences:
- natural calamities, including fire, flood, drought, earthquake, hurricane,
  - acts of government, states of war, state of emergency, embargoes, blockades,
  - war, acts of sabotage,
  - general strikes,
  - the failure of communications or computer systems of the relevant network operator(s) which prevents the claiming party from performing its obligation of delivery or acceptance,
  - the relevant network operator's suspension of delivery or acceptance or its disregard of the claiming party's obligations with regard to Programming under the Entire Contract, and in particular,
  - the complete or partial impossibility of access or transit through the relevant power grids (including, without limitation, interconnector lines) due to (i) unforeseeable technical or operational reasons, or (ii) loss of interconnector capacity due to dispositions or orders from any competent authority.
- 12.3 A Party seeking to be relieved of liability on grounds of Force Majeure shall, as soon as the impediment and its effects upon its ability to perform become known, notify the other Party of such occurrence. It shall correspondingly give notification of the cessation of the event of Force Majeure. Failure to give either notice shall make the Party thus failing liable to damages as provided in Article 9 for loss which could have been avoided.
- During the period of Force Majeure, the Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall provide the other Party with reasonable updates of the extent and expected duration of its inability to perform.
- 12.4 If and when performance becomes definitively impossible, either Party shall be entitled to terminate the Delivery Contract(s) affected with effect as of 15

Business Days after a written notice to the other Party of its decision to terminate.

In the event, and to the extent, that the obligations of the one Party are released by Force Majeure, the other Party's corresponding obligations shall also be released.

### **13. SEVERABILITY**

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If any provision of the Entire Contract is found to be void or unenforceable by any competent court or authority or no longer complies with the applicable Market Rules, such provision shall be deemed to be deleted from the Entire Contract and the remaining provisions shall continue in full effect. The Parties shall in such event negotiate in good faith and seek to agree upon a valid and enforceable provision, as close to the technical and economic aim of the provision found to be void or unenforceable.

Should the execution of the Entire Contract become partly or totally impossible due to fundamental changes to the Market Rules, the Parties agree to comply with the new applicable Market Rules. In such event, the Parties will enter into good faith negotiations to reasonably adapt the Entire Contract to the requirements of the new Market Rules.

### **14. CONFIDENTIALITY**

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14.1 Neither Party shall disclose the terms of the Delivery Contracts ("Confidential Information") to a third party.

14.2 This obligation shall not apply to information which is (i) disclosed with the other Party's prior written consent, (ii) passed on to the network operator(s) for the provision of network services to perform the Entire Contract, Affiliates, agents, professional advisors, banks or other financing institutions or rating agencies, or (iii) disclosed to comply with any applicable law or in connection with any court or regulatory proceedings; provided that each Party shall give the other Party prompt notice of such disclosure.

### **15. ASSIGNMENT**

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The Entire Contract may not be transferred by either Party hereto to another party, other than an Affiliate, without the written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any assignment hereunder shall not relieve the assignor of any liability under the Entire Contract.

### **16. APPLICABLE LAW AND JURISDICTION**

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16.1 The applicable law shall be Austrian Law, to the exclusion of its conflict of laws rules.

16.2 In the event of any dispute in relation to the General Agreement and/or any Delivery Contract or the conclusion, interpretation, performance, breach, termination or validity thereof, the Parties undertake to proceed diligently with good faith negotiations in an attempt to find the solution best adapted to the

situation. The dispute shall be raised by means of a written communication from one Party to the other. If such steps prove unsuccessful after one month from the date on which the dispute was raised, either Party may refer the dispute to the arbitration proceedings as specified in articles 16.3 to 16.6.

- 16.3 All disputes in connection with the General Agreement and/or the Delivery Contracts or the conclusion, interpretation, performance, breach, termination or validity thereof, over which no amicable settlement has been reached pursuant to article 16.2 herein, shall be referred to and resolved by the International Court of Arbitration of the International Chamber of Commerce, Paris, France ("ICC") under the ICC-Rules of Arbitration. The tribunal shall consist of three arbitrators appointed in accordance with said rules. No recourse to the ordinary courts of law shall be possible and the decision of the arbitrators shall be final and binding upon the Parties.
- 16.4 The venue for the arbitration proceedings shall be Vienna.
- 16.5 The language in which the proceedings shall be conducted shall be English.
- 16.6 Any dispute concerning this General Agreement or any Delivery Contract shall not release the Parties from their outstanding contractual obligations.

## **17. MISCELLANEOUS**

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- 17.1 In case of any contradiction between this General Agreement and any subsequently agreed upon Delivery Contract, the terms of the Delivery Contract shall prevail.
- 17.2 Any changes and/or amendments to this General Agreement or a Delivery Contract shall be made in the written form and shall be mutually agreed upon and signed by both Parties.
- 17.3 Any Party that may be entitled to immunity from suit, arbitration, enforcement of orders, or pre-trial attachment of assets hereby expressly waives such immunity.
- 17.4 Notwithstanding any provision to the contrary herein, any notice, including but not limited to invoices or certificates provided under or in connection with the Entire Contract shall be given in writing via courier, fax or registered post, and shall be deemed to have been received by the notified Party as and when delivery is confirmed by the courier, by fax or by post confirmation.
- 17.5 Each Party is entitled to record telephone conversations held in connection with the General Agreement and each of the Delivery Contracts and to use the same as evidence. Each Party waives any further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.
- 17.6 The Parties undertake to engage in fair business practices and reject any and all forms of corruption and bribery. Based on this understanding, the Parties agree to strictly comply with their respective internal compliance rules and procedures and with statutory anticorruption provisions. Thus, the Parties and

their employees agree to neither offer, promise or grant nor to demand, make promise or accept any unjustified benefits of whatever kind in connection with the signing and performance of this contract and the resulting contractual relationship. The Parties also expect third parties involved in the performance of this contract to act accordingly and undertake to urge them to comply with the law.

The Parties acknowledge that the contract is performed exclusively in line with their regular business operations.

17.6 This General Agreement is prepared in the English language, in two identical copies. In case any translations thereof are made, the terms of this English version shall prevail.

17.7 Each Party represents to the other that this General Agreement has been duly executed by an authorised official of such Party and that this General Agreement shall constitute a binding obligation of such Party, and is enforceable against such Party in accordance with its terms without any further action by such Party or any other person, entity or authority. Each Party further represents that no additional approvals of any kind shall be required in order for such Party to perform of its obligations under this General Agreement.



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**VERBUND Trading Romania SRL**



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**VERBUND Trading GmbH**

**Appendix 1**

*(This is only a model of a delivery contract. The actual form may vary but the contents shall mainly remain as that which is hereunder presented.)*

**DELIVERY CONTRACT**

under the General Agreement signed between the Parties

**[Name of Counterparty]**  
**[Address of Counterparty]**

**VERBUND Trading GmbH**  
A-1010 Vienna, Am Hof 6a  
Austria

I. The following conditions for delivery have been agreed upon

- 1. Deal Number: .....
- 2. Seller: .....
- 3. Seller's EIC-Code: .....
- 4. Buyer: .....
- 5. Buyer's EIC-Code: .....

6. Delivery Schedule:

<b>Total Supply Period</b>		From CET	To CET	Contract Capacity MW	Contract Quantity MWh (Total)	Contract Price Euro / MWh	Total amount Euro (Total)
First Date	Last Date						

- 7. Delivery point: .....
- 8. Supplementary terms: .....
- 9. Duties/taxes at the delivery point are borne by:     Seller       
  Buyer

II. Delivery Contract duration and validity

This Delivery Contract shall form an integral part of the General Agreement and all its terms and conditions, as far as applicable, shall apply.  
This Delivery Contract shall be valid until all outstanding obligations have been fulfilled.

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**[Name of Counterparty]**

**VERBUND Trading GmbH**

## Appendix 2

### DEFINITIONS

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1. **Affiliate:** means with respect to a party, any entity controlled, directly or indirectly, by that party, any entity that controls, directly or indirectly, that party ("Controlling Entity") or any further entity controlled by the Controlling Entity or any entity that is under the common control of both the party and a third company. Control means ownership of more than fifty per cent (50%) of the voting power of a party or entity.
2. **Business Day(s):** are all days of the week, except for Saturday and Sunday, on which commercial banks are open for business in the country whose law is chosen as applicable, except if otherwise agreed in a specific Delivery Contract.
3. **Buyer:** the Party that is to accept and to pay for electric energy.
4. **Contract Power:** the amount of electric energy to be delivered under a Delivery Contract.
5. **Contract Price:** the price agreed upon by both Parties in each Delivery Contract.
6. **Delivery Contract:** is the contract between the Parties for the delivery and acceptance of electric energy, for a defined period and at a defined price, in accordance with the requirements set out in Appendix 1.
7. **Delivery Point:** the point at which title and risk of the electric energy passes from one Party to the other.
8. **General Agreement:** is the agreement between the Parties in which they set out the general conditions of their co-operation concerning the sale and purchase of electric energy.
9. **Material Breach:** shall occur when the continuation of the contract by a Party is unreasonable due to a loss of trust in the other Party, due to a severe infringement of a material obligation due by the other Party.
10. **Market Rules:** mean all relevant legal regulations applicable to the Entire Contract at the relevant market in general, including all relevant energy law regulations.
11. **Seller:** the Party that is to delivery electric energy.
12. **Tax:** means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority (whether or not for its benefit) in respect of any payment under the General Agreement or any Delivery Contract.

COMMUNICATIONS

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**List of Authorised Contacts and Persons**

**Address**

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Am Hof 6a  
1010 Vienna  
Austria

**Confirmations**

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Telephone No.: +43 50313 53040  
Facsimile: +43 50313 52759  
E-Mail: stefan.fazokas@verbund.com

**Invoices**

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Billing Address: VERBUND Trading GmbH  
Am Hof 6a  
1010 Vienna  
Austria

Postal Address: VERBUND Trading GmbH  
Am Hof 6a  
1010 Vienna  
Austria

E-Mail: accounting.trading@verbund.com  
UID: ATU45644600

**Payments (EUR)**

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Bank: Raiffeisen Bank International AG  
Account: 104312583  
Bank Sort Code: 31000  
BIC: RZBAATWW  
IBAN: AT59 3100 0001 0431 2583

**COMMUNICATIONS**

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**List of Authorised Contacts and Persons**

<b>Address:</b> <b>Attention:</b> Billing & Settlement	<ul style="list-style-type: none"><li>• Invoices and Payments</li></ul>
<b>Address:</b> <b>Attention:</b> Duty Office	<ul style="list-style-type: none"><li>• Confirmations</li><li>• Exercise of Options</li></ul>
<b>Address:</b> <b>Attention:</b> To each of: Head of Back Office Dispatching / 24 h Control Room	<ul style="list-style-type: none"><li>• Any further Notices and Correspondence</li></ul>

Authorised Persons are advised separately.