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| **AGREEMENT FOR USE OF THE WIBID AND WIBOR REFERENCE RATES** |
| between |
| **GPW Benchmark S.A. as the Administrator** |
| and |
| **the User of Reference Rates** |
|  |
| April 2018 |

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This agreement, hereinafter referred to as the “**Agreement for Use of Reference Rates**” or the “**Agreement**” has been concluded in Warsaw on , between

1. **GPW BENCHMARK S.A.** with a registered office in Warsaw, ul. Książęca 4, 00-498 Warsaw, entered in the Register of Entrepreneurs of the National Court Register by the District Court for the capital city of Warsaw in Warsaw, 12th Commercial Division of the National Court Register under KRS number 0000493097, NIP 5252546511, (hereinafter referred to as the „**Administrator**”),

and

1. **[●]**, with a registered office in [CITY], at [STREET, POSTAL CODE, CITY, STATE], entered in the register of entrepreneurs of the National Court Register, maintained by the District Court for [●], [●] Commercial Division of the National Court Register under KRS number [KRS NUMBER], NIP [NIP NUMBER], of share capital in the amount of PLN [SHARE CAPITAL AMOUNT] (hereinafter referred to as the “**User of Reference Rates**”)

The **Administrator** and **the User of Reference Rates** shall be referred to hereinafter jointly as „**the Parties**”, and individually as the **“Party**”.

# DEFINITIONS

Terms not defined below, written in capital letters, shall have their meaning assigned to them in the Regulations for WIBID and WIBOR Reference Rates, hereinafter referred to as the **„Regulations”**,published on the website of the Administrator [www.gpwbenchmark.pl](http://www.gpwbenchmark.pl/).

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| **Reference Rates Documentation** | The Regulations, Code of Conduct and other documents, which the Administrator is obliged to publish based on legal provisions in force. |
| **Information Sheet of the User of Reference Rates** | a document, constituting Appendix 1 to the Agreement for Use of Reference Rates, containing contact data and information concerning the User of Reference Rates. |
| **License For Use of Reference Rates** | the license granted to the User of Reference Rates for use of Reference Rates within the scope specified in clause 8.1 of the Regulations. |
| **License Fee** | remuneration payable on behalf of the Administrator on the basis of the Agreement for Use of Reference Rates. |
| **Table of Charges**  **of the Administrator** | a document, specifying the amount of the License Fee and the rules of  its charging and payment. |

# STATEMENTS OF THE ADMINISTRATOR

* 1. The Administrator hereby states that:
     1. it is the entity having control over provision of Reference Rates, and as of the date of conclusion of this Agreement has the status of an index provider, referred to in Article 51 section 3 of the Benchmarks Regulation;
     2. Reference Rates are provided on the basis of the applicable Reference Rates Documentation;
     3. it is the holder of intellectual property rights to Reference Rates, including copyrights to the Reference Rates Documentation.
  2. If any of the above statements has ceased to be valid throughout the term of the Agreement for Use of Reference Rates, the Administrator shall immediately inform the Users of Reference Rates of this fact.

# PROVISION OF REFERENCE RATES

* 1. The Administrator shall provide Reference Rates in accordance with the Regulations and legal provisions applicable to the Administrator with regard to provision of Reference Rates.
  2. The Administrator hereby reserves the right to make changes to Reference Rates or to cease to provide them in accordance with the Reference Rates Documentation.
  3. The Administrator shall exercise due diligence in order to avoid any errors and delays in provision of Reference Rates, however, without guaranteeing their complete elimination, in particular, errors and delays resulting from mechanical, electrical or transmission failures, power supply failures or inappropriate functioning of any devices or computer programs used to provide Reference Rates or due to any other reasons beyond the control of the Administrator. In such cases, the Administrator shall act in accordance with the Reference Rates Documentation.

# THE MODE AND FORM OF COMMUNICATION BETWEEN THE ADMINISTRATOR AND THE USER OF REFERENCE RATES

* 1. The Users of Reference Rates shall communicate with the Administrator using contact data indicated on the website of the Administrator [www.gpwbenchmark.pl](http://www.gpwbenchmark.pl/).
  2. Unless the Agreement states otherwise, information for Users of Reference Rates is made available on the website of the Administrator [www.gpwbenchmark.pl](http://www.gpwbenchmark.pl/).
  3. The Information Sheet of the User of Reference Rates, filled out by the User of Reference Rates constitutes Appendix 1 to the Agreement and contains the following information:
     1. indication of persons representing the User of Reference Rates in association with the Agreement for Use of Reference Rates and their e-mail addresses and phone numbers, which may be used for the purpose of communication in any form other than in writing, with indication of the scope of authorization of a given person with regard to contacts with the Administrator, in particular, indicating whether a given person is authorized to make and receive statements of will in association with the performance of the Agreement for Use of Reference Rates;
     2. indication of service addresses, to which written correspondence is to be sent,
     3. data serving as the basis for the calculation of the License Fee payable on behalf of the Administrator by the User of Reference Rates, referred to in the Table of Charges of the Administrator and a declaration concerning the mode of receipt of invoices.
  4. In the case of any changes to the data and information specified in the Information Sheet of the User of Reference Rates, the User of Reference Rates shall immediately submit to the Administrator an Information Sheet of the User of Reference Rates, containing valid data and information.
  5. In situations in which the Agreement for Use of Reference Rates does not specify the form of communication, communication between the Administrator and the User of Reference Rates takes place via e-mails specified in the Information Sheet of the User of Reference Rates. Communication via phone is acceptable, provided that every conversation is recorded.
  6. In situations in which the Agreement for Use of Reference Rates requires written communication, such communication shall take place through delivery (also via e-mail) to the other party of the Agreement for Use of Reference Rates to the address specified in accordance with the provisions of clause 4.1 - with reference to the Administrator and clause 4.3.2 - with reference to the User of Reference Rates.

# LICENSE FOR USE OF REFERENCE RATES

* 1. The Administrator hereby grants to the User of Reference Rates a paid, non-exclusive, worldwide License for Use of Reference Rates throughout the term of this Agreement for Use of Reference Rates.
  2. The License for Use of Reference Rates includes the right of the User of Reference Rates to use the Reference Rates exclusively within the scope specified in clause 8.1 of the Regulations. The User of Reference Rates shall not be entitled to grant further Licenses for Use of Reference Rates.
  3. Making use of data concerning the Reference Rates by the User of Reference Rates, including access to data and sharing of data shall require a separate agreement with the Administrator or the distributor of such information.
  4. Termination of the Agreement for Use of Reference Rates shall result in expiry of the License for Use of Reference Rates.

# LICENSE FEE

* 1. In exchange for the granted License for Use of Reference Rates and the commitment of the Administrator, referred to in clause 3.1 of the Agreement, the User of Reference Rates shall pay the License Fee to the Administrator.
  2. The License Fee amount, the rules of its calculation and payment have been specified in the valid Table of Charges of the Administrator, published in the manner specified in clause 4.2 above, which can be unilaterally changed by the Administrator in accordance with clause 6.3 of the Agreement for Use of Reference Rates. The Table of Charges of the Administrator, valid on the date of conclusion of this Agreement, constitutes Appendix 2 to the Agreement for Use of Reference Rates.
  3. Subject to the provisions of clause 6.4 below, at the beginning of each calendar year, the Administrator may unilaterally make changes to the Table of Charges of the Administrator, provided that these are published in the manner specified in clause 4.2 at least two months prior to their introduction. If the User of Reference Rates does not accept the changes to the Table of Charges of the Administrator, the User of Reference Rates may give a notice of termination of the Agreement in accordance with clause 8.1 of the Agreement for Use of Reference Rates. Changes to the Table of Charges of the Administrator shall be binding for the User of Reference Rates as of the date of their introduction, if the User of Reference Rates has not given a notice of termination of the Agreement in accordance with clause 8.1.
  4. Increase in the License Fee for Reference Rates may take place in the case of substantial increase in the costs or risk associated with the provision of Reference Rates, in particular, the duties and responsibilities based on the Benchmarks Regulation and its implementing acts.

# RESPONSIBILITY OF THE ADMINISTRATOR

* 1. The Administrator shall be held responsible exclusively to the User of Reference Rates, who has paid the applicable License Fee.
  2. Responsibility of the Administrator to Users of Reference Rates shall be limited to responsibility for damages within the boundaries of actually suffered damages (excluding lost benefits).
  3. The Administrator shall be absolved from responsibility to the Users of Reference Rates, if the damages result from circumstances, which are beyond the control of the Administrator, including in particular:
     1. non-performance or inappropriate performance by the Fixing Participant of the duties imposed upon them by the Code of Conduct,
     2. acts or omissions of third parties, for which the Administrator is not responsible on the basis of the legal provisions in fore,
     3. inability to perform the duties of the Administrator based on the Regulations as a result of a failure of IT systems, unless such a failure is the result of circumstances, for which the Administrator is responsible,
     4. other causes beyond the control of the Administrator.
  4. The Administrator shall not be held liable to the Users of Reference Rates for consequences of actions which are consistent with the Reference Rates Documentation or have been undertaken on the basis of opinions, recommendations, or decisions of the Competent Authority.
  5. The Administrator shall not be held liable in association with use of Reference Rates outside the scope of the License for Use of Reference Rates or as a result of events which did not occur throughout the term of the Agreement for Use of Reference Rates.

# TERM AND TERMINATION OF THE AGREEMENT FOR USE OF REFERENCE RATES

* 1. The Agreement for Use of Reference Rates shall be concluded for an indefinite period of time with the possibility of its termination by each of the Parties at the end of every calendar year with a notice period of at least one month.
  2. For the avoidance of doubt, in the case of submission to the Administrator of a statement of a notice of termination of the Agreement for Use of Reference Rates later than one month prior to the end of the year, the Agreement for Use of Reference Rates shall be terminated at the end of the following calendar year, and the User of Reference Rates shall be obliged to pay the applicable License Fee for the extended period of use.
  3. The statement of the notice of termination of the Agreement for Use of Reference Rates shall be effective if sent in writing to the Administrator to the address specified in accordance with clause 4.1, and in the case of termination by the Administrator, to the User of Reference Rates to the address specified in the Information Sheet of the User of Reference Rates.
  4. The Administrator may terminate the Agreement for Use of Reference Rates at any time in the case of failure to pay the License Fee on time in accordance with the Agreement, provided that the User of Reference Rates has been addressed in writing with a demand for payment and the payment term established by the Administrator, not shorter than 30 days, has expired. Termination of the Agreement in this manner shall not release the User of Reference Rates from the obligation of payment of the License Fee for the period of validity of the Agreement.
  5. The Agreement for Use of Reference Rates shall be terminated on the date of cessation of provision of Reference Rates by the Administrator in accordance with the Regulations.
  6. In the case of termination of the Agreement for Use of Reference Rates in accordance with clause 8.5, the User of Reference Rates shall be entitled to reimbursement of the appropriate part of the License Fee for the period of time from the date of termination of the Agreement for Use of Reference Rates until the last day of the period for which the License Fee has been paid, which shall exhaust the claims of the User of Reference Rates in this regard. For the avoidance of doubt, in other cases of termination of the Agreement for Use of Reference Rates, the User of Reference Rates shall not be entitled to a reimbursement of the License Fee.
  7. At the time of termination of the Agreement for Use of Reference Rates, the User of Reference Rates shall lose the right to use the Reference Rates in the manner specified in clause 8.1 of the Regulations.

# AMENDMENT OF THE AGREEMENT FOR USE OF REFERENCE RATES

* 1. The Administrator may change the Agreement for Use of Reference Rates in the manner described in clause 9.2 - 9.4 without the requirement of making such an amendment in writing.
  2. Subject to the provisions of clause 9.5, amendment of the Agreement for Use of Reference Rates may take place only at the beginning of a given calendar year.
  3. In the case of amendment of the Agreement for Use of Reference Rates by the Administrator, the Administrator shall notify the Users of Reference Rates of the amendment in the manner specified in clause 4.2 of the Agreement and send a notification of amendment with the new content of the Agreement to the e-mail addresses of the User of Reference Rates, indicated in the Information Sheet of the User of Reference Rates no later than two months prior to the end of the calendar year, preceding the year of introduction of such an amendment.
  4. The Agreement for Use of Reference Rates containing the amendments, referred to in clause 9.1., shall be binding for the User of Reference Rates and the Administrator, unless the User of Reference Rates has given a notice of termination of the Agreement in accordance with clause 8.1. Lack of notice of termination of the Agreement shall in such case be interpreted as acceptance of the amended Agreement.
  5. Amendment to the Agreement for Use of Reference Rates resulting from the necessity of its adaptation to the generally applicable legal provisions may be made by the Administrator at any time, without the need to comply with the time period specified in clause 9.3, under the condition of previous notification of the amendment in the manner specified in clause 4.2 of the Agreement and by sending a notice to the e-mail addresses of the User of Reference Rates indicated in the Information Sheet of the User of Reference Rates, as much in advance as it is possible in such a case.
  6. The Agreement for Use of Reference Rates, which contains the amendment referred to above, shall be binding for the User of Reference Rates and for the Administrator starting from the date indicated by the Administrator in the notice.

# GOVERNING LAW, SETTLEMENT OF DISPUTES, ENTRY OF THE AGREEMENT INTO FORCE

* 1. The Agreement for Use of Reference Rates shall be subject to the laws of Poland.
  2. Any disputes resulting from the Agreement for Use of Reference Rates shall be settled by the court of appropriate jurisdiction for the registered office of the Administrator.
  3. This Agreement has been made in two identical copies, one copy for each Party.
  4. The Agreement for Use of Reference Rates shall come into force on the date of conclusion.

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| **Administrator** | | **User of Reference Rates** | |
| Signature:  First name and surname:  Position: | [●]  [●] | Signature:  First name and surname:  Position: | [●]  [●] |
| Date: |  | Date: |  |
| Signature:  First name and surname:  Position: | [●]  [●] | Signature:  First name and surname:  Position: | [●]  [●] |
| Date: |  | Date: |  |

# APPENDIX 1 TO THE AGREEMENT FOR USE OF REFERENCE RATES

**Information Sheet of the User of Reference Rates**

|  |  |  |
| --- | --- | --- |
| **First name** |  |  |
| **Surname** |  |  |
| **Scope of authorisation** |  |  |
| **E-mail address** |  |  |
| **Phone number** |  | |
| **Address for service** |  | |
| **Data serving as a basis for the charging of License Fee[[1]](#footnote-1)** |  | |
| **Invoice data (address specified in the invoice in the field “Purchaser”)** | 1. Registered office and address: 2. VAT EU taxpayer identification number – for taxation purposes in the EU: 3. NIP number: | |
| **Type of invoice** | 1. Electronic invoice YES [ ] NO [ ]   E-mail address for sending of invoices [ ]  or   1. Invoice in printout format YES [ ] NO [ ]   Address for sending of invoices [ ] | |

# APPENDIX 2 TO THE AGREEMENT FOR USE OF REFERENCE RATES

**Table of Charges of the Administrator**

Valid since May 1st, 2018 (appendix to Resolution no. 14/2018 of the Management Board of GPW Benchmark S.A. of April 17th, 2018)

1. **General provisions**
   1. The Table of Charges of the Administrator specifies the License Fee amount payable to the Administrator based on the Agreement for Use of Reference Rates (hereinafter referred to as the “**Agreement**”) and the principles of its calculation and payment.
   2. The charges specified in this document are annual, payable for the period of a calendar year.
   3. The remuneration amounts specified in clause III of this document are net amounts, subject to increasing by VAT tax in accordance with the legal provisions applicable on the date of issue of the invoice.
   4. The Administrator may, at the beginning of each year, make unilateral changes to the Table of Charges of the Administrator in accordance with the principles and rules specified in the Agreement.
2. **The rules of charging of the License Fee**
   1. The License Fee amount depends upon:
      1. the sum of net assets of the User of Reference Rates in the case of Users of Reference Rates using the Reference Rates in the manner specified in clause 8.1.5 of the Regulations for Reference Rates,
      2. the sum of nominal value of issuance of a given series of Financial Instruments in the case of Users of Reference Rates using the Reference Rates in the manner specified in clause 8.1.1 of the Regulations for Reference Rates,
      3. the value of the balance sheet total of the User of Reference Rates for the remaining Users of Reference Rates.
   2. The net sum of assets, referred to in clause 1 (a) above and the value of the balance sheet total, referred to in clause 1 (c) above, is determined on the basis of data for the balance sheet date of the last ended financial year.
   3. The data necessary for determination of the amount of the License Fee, referred to in clause 1, shall be indicated by the User of Reference Rates in the Information Sheet, constituting Appendix 1 to the Agreement for Use of Reference Rates, and the User of Reference Rates is obliged to immediately inform of any amendment to this information, in accordance with clause 4.4 of the Agreement.
   4. The User is obliged to pay the License Fee throughout the entire period of Use of the Reference Rates, such as the term of the Financial Agreement, the period of existence of the Fund or the Financial Instrument.
   5. The License Fee is not applicable to the State Treasury and the National Bank of Poland.
3. **The rules of payment**
   1. License Fees are charged in annual periods and payable in advance for a given year. If the User of Reference Rates has failed to provide the valid data in accordance with clause II 3 by April 30 of a given year, the Administrator issues the invoice based on the available data, with the possibility of making an amendment after termination of a given settlement period.
   2. In the case of conclusion of the Agreement during the calendar year, the Administrator issues the invoice after its conclusion, and the License Fee is reduced by 1/12 of the License Fee per each full calendar month that has passed until the date of conclusion of the Agreement.
   3. The Administrator is to issue invoices in accordance with the declaration of the User of Reference Rates, in this regard, included in the Information Sheet.
   4. The User of Reference Rates shall make payments within 21 days from the date of issue of the invoice, by a transfer to the bank account of the Administrator, indicated in the invoice.
   5. Along with payment of a delayed License Fee, the User of Reference Rates shall pay interest on this amount in the statutory amount per each day of delay.
   6. The consequences of a failure of the User of Reference Rates to make payments shall be specified in the Agreement.
4. **The License Fee amount**

|  |  |
| --- | --- |
| **Value of the balance sheet/ net sum of assets / total nominal value of issue**  **in PLN billion** | **annual License Fee**  **in PLN** |
| (0, 10> | 10,000 |
| (10, 70> | 30,000 |
| >70 | 70,000 |

1. **Additional provisions**
   1. The Administrator hereby establishes a transitional promotion period from May 1st, 2018 until September 30, 2018, during which the annual License Fee for the year 2018 for Users of Reference Rates, who entered into the Agreement in this period, calculated in accordance with clause IV, is to be charged from October 1st, 2018 in the amount of 3/12 of the amount referred to in the Agreement.
   2. Moreover, in the case of signing of the Agreement by the User of Reference Rates until June 30, 2018, the Administrator shall apply a discount in the amount of 20% for the annual License Fee for the year 2018, calculated in the manner specified in clause 1 above.

1. In the accordance with the scope indicated in the Table of Charges of the Administrator [↑](#footnote-ref-1)