

# **EFET**

## **European Federation of Energy Traders**

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### **FRENCH CAPACITY CERTIFICATES APPENDIX** **(POWER)**

to the  
EFET General Agreement  
Concerning the Delivery and Acceptance of Electricity  
Version 2.1/December 20, 2000 and Version 2.1(a)/September 21, 2007  
(the “FR Capacity Certificates Appendix”)

**WAIVER: THE FOLLOWING FRENCH CAPACITY CERTIFICATES APPENDIX WAS PREPARED BY EFET’S MEMBERS WHILST EXERCISING THEIR RESPECTIVE REASONABLE CARE AND DUE DILIGENCE. HOWEVER, EFET, EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE, OR FOR ANY DAMAGES OR LOSSES RESULTING FROM ITS USE, IN ANY INDIVIDUAL CASE OR JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS FRENCH CAPACITY CERTIFICATES APPENDIX TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND THAT THEY BEST SERVE TO PROTECT THE USER’S LEGAL INTEREST. USERS OF THIS FRENCH CAPACITY CERTIFICATES APPENDIX ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS WHERE AVAILABLE AS WELL AS THEIR OWN COUNSEL.**

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# EFET

## European Federation of Energy Traders

### FRENCH CAPACITY CERTIFICATES APPENDIX (POWER)

to the General Agreement Concerning  
the Delivery and Acceptance of Electricity  
Version 2.1/December 20, 2000 and Version 2.1(a)/September 21, 2007

dated as of [\*\*\*]  
(the “French Capacity Certificates Appendix Effective Date”)

Between

[\*\*\*]

(“Party A”)

and

[\*\*\*]

(“Party B”)

**Check the applicable box and fill in date ONLY if you are using this French Capacity Certificates Appendix to modify and supplement a previously executed General Agreement between the Parties:**

☐ By executing this French Capacity Certificates Appendix in the signature block at the end hereof, the Parties hereby modify, supplement and amend the terms of that certain previously executed General Agreement entered into and dated as of [\*\*\*] to provide that the terms of this French Capacity Certificates Appendix shall be incorporated therein, and shall be applicable to and thereafter govern all FR Capacity Certificates Transactions.

☐ All FR Capacity Certificates Transactions entered into by the Parties for and concerning the delivery of Capacity Certificates, which were entered into prior to the French Capacity Certificates Appendix, but which remain either fully or partially unperformed as of the French Capacity Certificates Appendix Effective Date (each such transaction a “**Pre-Existing FR Capacity Certificates Transaction**”) shall, as of the French Capacity Certificates Appendix Effective Date:

☐ become a FR Capacity Certificates Transaction hereunder, subject to the terms and conditions of the Agreement, as modified by this French Capacity Certificates Appendix; or

☐ not become a FR Capacity Certificates Transaction hereunder and instead shall remain governed by and subject only to their original terms and conditions.

## FRENCH CAPACITY CERTIFICATES APPENDIX (POWER)

**Applicability of the French Capacity Certificates Appendix.** This French Capacity Certificates Appendix to the General Agreement (inclusive of this French Capacity Certificates Appendix's Annexes) modifies, supplements and amends, to the extent set forth herein, certain provisions of the General Agreement (which pursuant to §1.1 of the General Agreement, includes its Annexes and Election Sheet) and shall only apply to and govern all Individual Contracts entered into by the Parties for and concerning the Transfer and acceptance of Transfer of Capacity Certificates (each such Individual Contract a "FR Capacity Certificates Transaction", and collectively, the "FR Capacity Certificates Transactions") save as expressly provided to the contrary with respect to any Section or Sections of the General Agreement or this French Capacity Certificates Appendix. Any and all future Individual Contracts between the Parties that constitute a FR Capacity Certificates Transaction shall be automatically subject to the General Agreement, as it is modified, supplemented and amended by its Annexes, Election Sheet and this French Capacity Certificates Appendix, without any further action by the Parties, unless the agreed upon terms of such Individual Contract expressly provide that it shall not be. For all other types of Individual Contracts, the General Agreement shall remain unchanged. The provisions of the General Agreement are hereby modified, supplemented and amended (except as expressly noted to the contrary herein) only in respect of such FR Capacity Certificates Transactions in accordance with the following.

### **PART I:** **GENERAL TERMS**

- 1) **Subject of the French Capacity Certificates Appendix.** The Relevant Authority plans to establish or has established Rules under which participants may trade Capacities Certificates. The purpose of this French Capacity Certificates Appendix is to modify certain provisions of the General Agreement in order that its terms facilitate the entering into FR Capacity Certificates Transactions between the Parties that include, but are not limited to, forward, spot, option and swap transactions. In addition to the provisions of the General Agreement, the provisions of this French Capacity Certificates Appendix shall therefore be applicable to FR Capacity Certificates Transactions between participants of Capacity Certificates market in France.
- 2) **Definitions and Construction.** Capitalised terms used in this French Capacity Certificates Appendix not otherwise defined herein (including in Annex 1 to this French Capacity Certificates Appendix) shall have the meanings given to them in the Rules. In the event of any inconsistency between definitions found in this French Capacity Certificates Appendix or in the Rules and in the General Agreement, this French Capacity Certificates Appendix's definitions will prevail for purposes of all FR Capacity Certificates Transactions. All references to "Electricity", "Network Operator" and "Transmission", "delivery" or "flows" in the General Agreement shall, in the context of FR Capacity Certificates Transactions, be construed as references to, respectively, "**Capacity Certificate(s)**", "**Relevant Authority**", "**Transfer(s)**" and "**transfer**". References to a Section (§) or Sections (§§) in this French Capacity Certificates Appendix shall be references to a Section or Sections in the General Agreement unless otherwise stated. In the event of any inconsistency between the terms of a FR Capacity Certificates Transaction (whether evidenced in a Confirmation or otherwise) and the provisions of either this French Capacity Certificates Appendix or the General Agreement (as amended by this Capacity Appendix), the terms of the FR Capacity Certificates Transaction shall prevail for the purpose of that FR Capacity Certificates Transaction. References to any law or statute include any amendment to, consolidation, re-enactment or replacement of such law or statute.
- 3) **Concluding and Confirming FR Capacity Certificates Transactions.** All FR Capacity Certificates Transactions shall contain the information stipulated in, and, if confirmed with a Confirmation, shall be substantially in the form of the sample confirmation sheet attached as Annex 2 (A) to this French Capacity Certificates Appendix or, with respect to other types of transactions, in such other form as the Parties may agree.
- 4) **Primary Obligations for Delivery and Acceptance of Capacity Certificates.** For the purpose of FR Capacity Certificates Transactions, § 4 of the General Agreement is hereby deleted in its entirety and replaced with the following new § 4:

#### **§ 4.1 Delivery, Acceptance and Scheduling Obligations.**

In accordance with each FR Capacity Certificates Transaction and the Rules Seller shall Schedule, sell and Transfer to Buyer, or cause to be Transferred, and Buyer shall Schedule, purchase and accept Transfer of, or cause such Transfer to be accepted, the Contract Quantity of Capacity Certificates, and the Buyer shall pay to the Seller the relevant Contract Price.

#### § 4.2 Electronic Transfer of Capacity Certificates

No later than two (2) days prior to the relevant Delivery Date, the Seller shall (unless otherwise specified in the FR Capacity Certificates Transaction) Schedule the Transfer of Capacity Certificates in respect of the relevant Compliance Period and Contract Quantity to the Buyer's Holding Account with the Relevant Authority in accordance with the Rules applicable on the relevant Delivery Date and the Buyer shall support such Scheduling ("**Electronic Transfer**").

**§ 4.3 Definition of Schedule.** "Schedule" shall mean, those actions necessary for a Party to effect its Transfer or acceptance (if applicable) obligations, which may include nominating, initiating, requesting and confirming with the Relevant Authority (and if applicable, the other Party) the Contract Quantity of Capacity Certificates, the account I.D. of the Buyer's Holding Account, the Contract Price, the Delivery Date and any other relevant terms of the FR Capacity Certificates Transaction in accordance with the Rules and any other customary industry practices and procedures to ensure that all applicable requirements for effecting Transfer from the Seller to the Buyer by the Delivery Date are met. For the avoidance of doubt, the Parties' obligations to Schedule shall include the obligation to ensure their respective accounts in the Registry are properly established in time to discharge their respective Transfer or acceptance obligations under a FR Capacity Certificates Transaction.

**§ 4.4 Payment for Capacity Certificates.** In respect of each FR Capacity Certificates Transaction, the Buyer shall pay the Seller for the Delivered Quantity in accordance with the provisions of § 13 (**Invoicing and Payment**).

- 5) **Primary Obligations for Options on Capacity Certificates.** Except to the extent otherwise modified herein, there shall be no change to § 5 (**Primary Obligations for Options**) of the General Agreement with respect to FR Capacity Certificates Transactions.
- 6) **Delivery, Measurement, Transfer and Risk.** For purposes of FR Capacity Certificates Transactions, § 6 of the General Agreement shall be deleted and replaced with the following:

**§ 6.1 No Encumbrances.** In respect of each FR Capacity Certificates Transaction and at each Delivery Date, the Seller shall Transfer to the Buyer at the Delivery Point, FR Capacity Certificates free and clear of any liens, security interests, encumbrances or similar adverse claims by any person (the "**No Encumbrance Obligation**"). Where a Party is in breach of the No Encumbrance Obligation, the following shall apply:

- (a) The General Agreement and all other Individual Contracts agreed by the Parties under this General Agreement shall continue unaffected.
- (b) Without prejudice to any defences available to the Seller (including, but not limited to, any defences of statutes of limitation or similar), following written notice of that breach from the Buyer to the Seller (irrespective of how long after the relevant Delivery Date such notice is provided):
  - (i) the Buyer shall determine the Encumbrance Loss arising from that breach (the "**Encumbrance Loss Amount**") either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
  - (ii) shall notify the Seller of such Encumbrance Loss Amount due, including detailed support for its calculation.

The Buyer is not required to enter into replacement FR Capacity Certificates Transaction in order to determine the Encumbrance Loss Amount.

- (c) By no later than the third (3rd) Business Day after the later of (i) receipt of a valid invoice in connection with such Encumbrance Loss Amount and (ii) receipt of the above-mentioned notice of detailed support of the Buyer's calculation of the Encumbrance Loss Amount, the Seller shall pay the Encumbrance Loss Amount to the Buyer. Upon payment of the Encumbrance Loss Amount by the Seller, the Parties shall have no further obligations in respect of that Individual Contract and that breach. The Buyer acknowledges that its exclusive remedies in respect of such breach are those set out in this § 6.1.

**§ 6.2 Documentation of Actual Deliveries and Receipts.** Upon reasonable request of Buyer, Seller shall:

- (a) provide any documentation necessary to the Buyer as may be prescribed by any applicable laws or regulation including but not limited to the Rules; and
- (b) provide any documentation with reference to the Capacity Certificates specified in any relevant Confirmation.

**§ 6.3 Seller and Buyer Risks.** In respect of each FR Capacity Certificates Transaction, the Buyer and Seller shall, unless otherwise expressly agreed between them, each bear all risks associated with and shall be responsible for its own respective costs in performing its obligations under § 4 (*Primary Obligations For Delivery and Acceptance of Capacity Certificate*). Further, absent express agreement to the contrary between Buyer and Seller, all costs, fees and charges assessed or imposed by a Relevant Authority shall be the responsibility of the Party upon whom such cost, fee or charge is allocated by the Relevant Authority.

**§6.4. Reimbursement of External Costs.** In the event a Party incurs reasonable external expenses in verifying that the other Party has failed to properly perform its obligations under the terms of a FR Capacity Certificates Transaction, such expenses shall be reimbursed upon demand by the Party that failed to perform.”

- 7) **§ 7 Non-Performance Due to Force Majeure.** For purposes of FR Capacity Certificates Transaction, § 7 of the General Agreement is hereby deleted in its entirety and replaced with the following new § 7 (*Non-Performance due to Force Majeure and Suspension Event*):

**§ 7.1 Definition of Force Majeure.** “**Force Majeure**” in the context of a FR Capacity Certificates Transaction means the occurrence of an event or circumstance beyond the control of the Party affected by Force Majeure (the “**Affected Party**”) that cannot, after using all reasonable efforts, be overcome and which makes it impossible for the Affected Party to perform its Transfer or acceptance of Transfer obligations in accordance with the terms of this Agreement including but not limited to the suspension, failure or malfunction of the Registry which prevents the Electronic Transfer or acceptance of the Capacity Certificates. For the avoidance of doubt, but without limitation, Force Majeure shall not include an event or circumstance where there are insufficient Capacity Certificates in the relevant Holding Account(s) to effect the required Transfer, whether that insufficiency is caused by the low or non-allocation of Capacity Certificates by a Relevant Authority, the delay or failure of the Relevant Authority to replace a Capacity Certificate or the failure of that Party to procure sufficient Capacity Certificates to meet its Transfer obligations.

**§ 7.2 Suspension of Delivery and Acceptance Obligations.** If a Party is fully or partly prevented due to Force Majeure from performing its obligations of Transfer or acceptance of Transfer, as applicable, under one or more FR Capacity Certificates Transactions, no breach or default on the part of the Affected Party shall be deemed to have occurred and the obligations of both Parties with respect to the relevant FR Capacity Certificates Transaction(s) will be suspended for the period of time and to the extent that such Force Majeure prevents their performance. During the continuation of Force Majeure, the Affected Party shall continue to use all reasonable endeavours to overcome the Force Majeure. Subject to § 7.4 (*Settlement of FR Capacity Certificates Transaction Prevented by Force Majeure*) below, upon the Force Majeure event being overcome or it ceasing to subsist, both Parties will, as soon as reasonably practicable thereafter (and in any event no later than the third (3<sup>rd</sup>) Delivery Business Day following the cessation or Parties overcoming such Force Majeure event) (“**Delayed Delivery Date**”), resume full performance of their obligations under the Agreement (including but not limited to §4.2 (*Electronic Transfer of Capacity Certificates*)) in respect of the relevant FR Capacity Certificates Transaction(s), including, for the avoidance of doubt, any suspended obligations.

**§ 7.3 Notification and Mitigation of Force Majeure.** The first Party learning of the occurrence of an event of Force Majeure shall, as soon as practicable, notify the other Party of the commencement of Force Majeure. Each Party shall then undertake in good faith to determine, and notify the other Party with, to the extent then available, a non-binding estimate of the extent and expected duration of the Force Majeure event and its impact on performance of all FR Capacity Certificates Transaction(s) affected by the event of Force Majeure. The Affected Party shall use all commercially reasonable efforts to mitigate the effects of Force Majeure and shall, during the continuation of Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

**§ 7.4 Settlement of FR Capacity Certificates Transaction Prevented by Force Majeure.**

- (a) **Termination for Force Majeure.** Where Force Majeure continues for a period of time ending on the earlier to occur of: (i) a period of thirty (30) Delivery Business Days from the date that, but for Force Majeure, would have been the Delivery Date of the relevant FR Capacity Certificates Transaction(s); and (ii) the day that falls five (5) Delivery Business Days before the Transfer Deadline, either Party may, by written notice to the other Party, terminate all (but not less than all) of the FR Capacity Certificates Transaction(s) affected by Force Majeure.

- (b) **Force Majeure Termination Payment.** In the event and to the extent that a FR Capacity Certificate Transaction is terminated in accordance with § 7.4(a), the Parties' corresponding Transfer and acceptance of Transfer obligations under the terminated FR Capacity Certificate Transaction(s) shall be released and discharged. By specifying in Part II of this French Capacity Certificates Appendix which of the following subparagraphs (i) or (ii) they wish to be operative, the Parties shall designate the consequences that will follow as a result of the Force Majeure event and what, if any, rights and obligations they wish to apply between them in the event of termination of a FR Capacity Certificate Transaction due to Force Majeure:
- (i) **No Termination Payment.** No termination payment or other financial settlement obligation shall be applicable (other than, for the avoidance of doubt, payment for any Capacity Certificate Transferred under such FR Capacity Certificate Transaction which were not prevented due to Force Majeure and/or payment of any damages due for non-performance of any portion of the terminated FR Capacity Certificate Transaction(s) not excused due to Force Majeure (hereinafter collectively, "**Unpaid Amounts**")) and each Party shall be permanently released and discharged of any further obligations with respect to the FR Capacity Certificate Transaction(s) terminated by reason of Force Majeure.
  - (ii) **Two-Way Loss Termination Payment.** Each Party will determine its Loss in respect of the relevant FR Capacity Certificate Transaction(s) and an amount will be payable equal to one half of the difference between the Loss of the Party with the higher Loss ("X") and the Loss of the Party with the lower Loss ("Y"). If the amount payable is a positive number, Y will pay it to X; if it is a negative number, X will pay the absolute value of such amount to Y. Payments due under this § 7.4(b) shall, unless otherwise agreed, be invoiced and made in accordance with the requirements of the Payment Cycle selected by the Parties in respect of § 13.2 (*Payment*).

- 8) **§ 8 Remedies for Failure to Transfer or Accept.** For purposes of FR Capacity Certificate Transactions, § 8 of the General Agreement is hereby deleted in its entirety and replaced with the following new § 8 (*Remedies for Failure to Transfer or Accept*):

**§ 8.1 Failure to Transfer:**

- (a) **Two Delivery Business Days Grace Period.** When the Seller fails to Schedule or Transfer to the Buyer the Contract Quantity, in whole or in part, on a Delivery Date as required in accordance with the terms of a FR Capacity Certificate Transaction, and such failure is not excused by an event of Force Majeure, Suspension Event or the Buyer's non-performance, the Seller may, subject to §8.1(c) below, remedy such failure by Scheduling (analogous to §4.2 (*Electronic Transfer of Capacity Certificates*)) and Transferring such Contract Quantity (or undelivered portion thereof) to the Buyer on the second (2<sup>nd</sup>) Delivery Business Day following the Delivery Date, provided that such day is not on or after the day which is five (5) Delivery Business Days before the Transfer Deadline following the relevant Delivery Date applicable to the undelivered Capacity Certificate(s), and further subject to the additional obligation of the Seller to pay the Buyer, as compensation for its late Transfer, interest calculated as follows for the two Delivery Business Day grace period: Interest for the two Delivery Business Day grace period shall accrue at the Interest Rate specified in §13.5 (*Default Interest*) for the period from (and including) the Delivery Date to (but excluding) the second Delivery Business Day following the Delivery Date on the Total Contract Price of the undelivered Capacity Certificates, such Total Contract Price calculated as follows: the number of undelivered Capacity Certificates multiplied by a fraction determined by dividing the Total Contract Price by the Contract Quantity.
- (b) **Buyer's Remedies for Replacement Capacity Certificates.** Subject to §8.1(c) below, in the event that the Seller fails to Transfer to the Buyer all or any portion of a Contract Quantity as required by § 8.1(a) (*Two Delivery Business Days Grace Period*) in accordance with the terms of a FR Capacity Certificate Transaction, the Seller shall have the obligation to pay the Buyer, as compensation for its failure to Transfer, an amount (hereinafter "**Buyer's RRC**") equal to the sum of:
  - (i) the price, if any, in excess of the portion of the Total Contract Price applicable to the Capacity Certificates not Transferred to the Buyer by the Seller, which the Buyer, acting in a commercially reasonable manner either did, or would have been able to, pay to purchase or otherwise acquire in an arm's length transaction from a third party or parties, a quantity of Capacity Certificates necessary to replace the Capacity Certificates not Transferred by the Seller;
  - (ii) such reasonable additional incidental costs as the Buyer incurred in attempting to make or making such replacement purchase of Capacity Certificates to the extent those costs and expenses are not recovered in § 8.1(b)(i) above; and
  - (iii) interest accrued during the two Delivery Business Day grace period as provided in §8.1(a).

- (c) **Buyer's Remedies for Penalty.** In the event the Delivery Date of the Capacity Certificates is five (5) Delivery Business Days or less before the Transfer Deadline, §8.1(b) above shall not apply and the Buyer shall be entitled to invoice the Seller for damages calculated in accordance with the following formula:

$$\text{Remedy for Penalty} = \text{UCC} \times [(\text{RPP} - \text{CP})]$$

**where:** "UCC" means undelivered Capacity Certificates, which is the total number of Capacity Certificates the Seller failed to Transfer;

"RPP" means replacement penalty price, which is the maximum price the Buyer might pay as a penalty or balancing costs to the Relevant Authority in accordance with the Rules for each undelivered Capacity Certificate; and

"CP" means the Contract Price per Capacity Certificate that the Buyer would have been required to pay to the Seller for each undelivered Capacity Certificate comprising the UCC had the Seller not defaulted on its delivery obligation.

The Buyer shall adjust the RPP when the actual penalty suffered by it is imposed and shall, reimburse or invoice, as and if applicable, the Seller the difference between the RPP and the actual amount the Buyer paid as penalty.

## **§ 8.2 Failure to Accept:**

- (a) **Two Delivery Business Days Grace Period.** When the Buyer fails to Schedule or accept Transfer of a Contract Quantity in whole or in part on a Delivery Date as required in accordance with the terms of a FR Capacity Certificates Transaction, and such failure is not excused by an event of Force Majeure, Suspension Event or the Seller's non-performance, the Seller shall, subject to §8.1(c) below, afford the Buyer an opportunity to remedy its failure by again attempting to Schedule (analogous to §4.2 (*Electronic Transfer of Capacity Certificates*)) and Transfer such Contract Quantity (or undelivered portion thereof) to the Buyer on the second (2<sup>nd</sup>) Delivery Business Day following the Delivery Date, provided that such day is not on or after the Transfer Deadline applicable to the undelivered Capacity Certificate(s), and further subject to the additional obligation of the Buyer to pay the Seller, as compensation for its failure to accept Transfer of the Capacity Certificates, interest calculated as follows for the two Delivery Business Day grace period: Interest for the two Delivery Business Day grace period shall accrue at the Interest Rate specified in §13.5 (*Default Interest*) for the period from (and including) the Delivery Date to (but excluding) the second Delivery Business Day following the Delivery Date on the Total Contract Price of the Capacity Certificates not accepted by the Buyer, such Total Contract Price calculated as follows: the number of Capacity Certificates not accepted by the Buyer multiplied by a fraction determined by dividing the Total Contract Price by the Contract Quantity.
- (b) **Seller's Remedies for Replacement Capacity Certificates.** In the event that the Buyer fails to accept Transfer of all or any portion of a Contract Quantity as required by § 8.2(a) (*Two Delivery Business Days Grace Period*) in accordance with the terms of a FR Capacity Certificates Transaction, the Buyer shall incur the obligation to pay the Seller, as compensation for its failure to accept Transfer an amount (hereinafter "**Seller's RRC**") equal to the sum of:
- (i) the price, if any, less than the portion of the Total Contract Price applicable to the Capacity Certificates not accepted by the Buyer, which the Seller, acting in a commercially reasonable manner either did, or would have been able to, receive, in an arm's length transaction with a third party or parties, from the resale or balancing action by the Relevant Authority of the Capacity Certificates not accepted by the Buyer;
  - (ii) such reasonable additional incidental costs as the Seller incurred in attempting to make or making such resale of the relevant Capacity Certificates; and
  - (iii) interest accrued during the two Delivery Business Day grace period as provided in § 8.2(a).

**§ 8.3 Amounts Payable.** Amounts that are due according to this § 8 shall be invoiced and paid in accordance with Payment Cycle B as defined in § 13.2 (*Payment*).

## **§ 8.4 Remedies for Failure to Transfer or Accept after Cessation of Force Majeure event or Suspension Event.**

- (a) Where Seller fails to Transfer to the Buyer the Contract Quantity in whole or in part on a Delayed Delivery Date and such failure is not excused by another event of Force Majeure, another Suspension Event or the

Buyer's non-performance, Buyer's remedies for replacement Capacity Certificates shall consist of Buyer's RRC as provided in § 8.1(b) of this French Capacity Certificates Appendix.

- (b) Where the Buyer fails to accept Transfer from the Seller of the Contract Quantity in whole or in part on a Delayed Delivery Date and such failure is not excused by another event of Force Majeure, another Suspension Event or the Seller's non-performance, the Seller's remedies for replacement Capacity Certificates shall consist of the Seller's RRC as provided in § 8.2(b) of this French Capacity Certificates Appendix.

- 9) Except to the extent otherwise modified herein, there shall be no other amendment to § 9 (*Suspension of Delivery*) of the General Agreement with respect to FR Capacity Certificates Transactions.

- 10) **§ 10 Term and Termination Rights.** § 10 of the General Agreement is hereby amended with respect to both Individual Contracts for Electricity and Individual Contracts for Capacity Certificates at any time in which the Parties have outstanding FR Capacity Certificates Transactions remaining between them to be partially or fully performed by: (i) the addition in the second line of § 10.3(a) (*Termination for Material Reason*) after the words "may terminate the Agreement" of the words "or the French Capacity Certificates Appendix only"; and (ii) the following amendments:

**§ 10.5 Definition of Material Reason.** The addition at the end of the second line of § 10.5 after the words "(each a "Material Reason")" of the words "save that in the event of termination pursuant to § 10.5(a) (*Non Performance*) or § 10.5(f) (*Representation or Warranty*) of the General Agreement, the Non-Defaulting Party may, at its sole discretion, elect to terminate only the French Capacity Certificates Appendix and not the previously executed General Agreement, if and only when such uncured non-performance, warranty breach or misrepresentation concerns only one or more FR Capacity Certificates Transaction(s). If the Non-Defaulting Party elects to terminate only the French Capacity Certificates Appendix together with all FR Capacity Certificates Transactions thereunder, it may do so in the manner prescribed in § 10 (*Term and Termination Rights*) and § 11 (*Calculation of Termination Amount*), but only with respect to its FR Capacity Certificates Transactions and in such manner as to result in the accrual of an amount due from one Party to the other Party analogous to a Termination Amount but concerning only the FR Capacity Certificates Transaction(s) terminated (a "FR Capacity Certificates Termination Amount")."

**§ 10.5(d) Failure to Transfer or Accept.** § 10.5(d) of the General Agreement is deleted in its entirety.

**§ 10.5(e) Force Majeure.** For the purposes of this Appendix only, § 10.5(e) of the General Agreement is deleted in its entirety and replaced with the following:

"Unless expressly agreed, in writing, to the contrary by the Parties, Force Majeure's or Suspension Event's impairment of a Party's ability to perform its obligations with respect to any single FR Capacity Certificates Transaction shall not give rise to a Material Reason for initiating an Early Termination of either the Agreement or this French Capacity Certificates Appendix and all then outstanding FR Capacity Certificates Transactions."

- 11) Except to the extent otherwise modified herein, there shall be no other amendment to § 11 (*Calculation of the Termination Amount*) or § 12 (*Limitation of Liability*) of the General Agreement with respect to Capacity Transactions.

- 12) Except to the extent otherwise modified herein, there shall be no change to § 12 (*Limitation of Liability*) of the General Agreement with respect to FR Capacity Certificates Transactions.

- 13) **§ 13 Invoicing and Payment.**

For purposes of FR Capacity Certificates Transactions only, § 13 of the General Agreement is hereby amended by:

- (i) the deletion of the last sentence in § 13.1 (*Invoice*) commencing: "Invoicing of Premiums due" and ending "in the Individual Contracts.";
- (ii) the deletion of the words in the first sentence of § 13.2 (*Payment*) commencing: "On or before the later to occur of"...up to and including the words: "following receipt of an invoice (the "Due Date"), a",
- (iii) the addition of the words in § 13.2 as set-out below, and,
- (iv) if this French Capacity Certificates Appendix is amending a version 2.1 of the General Agreement and such words have not been previously deleted,
  - a) the deletion of the words: "§ 14 (*VAT and Other Taxes*) without deduction or withholding" from line 6 and their replacement with the words: "§ 14 (*VAT and Taxes*)";
- (v) the addition of the following new § 13.3.1 (*Cross Product Payment Netting*); and
- (vi) the deletion in its entirety of § 13.4 (*Invoicing and Payment of Scheduled Contract Quantities*) and its replacement with [not used]:



**§ 13.2 Payment.** Payments due in relation to FR Capacity Certificates Transactions shall be in accordance with either Payment Cycle A or Payment Cycle B (each, a “**Payment Cycle**”), as specified as applying in Part II of this French Capacity Certificates Appendix, as follows:

**Payment Cycle A:** “On or before the later to occur of either (a) the twentieth (20<sup>th</sup>) day of the calendar month following the month during which the Electronic Transfer occurred or if not a Business Day the immediately following Business Day or (b) the fifth (5<sup>th</sup>) Business Day following receipt of an invoice (the “**Due Date**”). A”; or

**Payment Cycle B:** “On or before the fifth (5<sup>th</sup>) Business Day after the later to occur of (a) the Delivery Date or (b) following receipt of an invoice (the “**Due Date**”). B”.

In the event the Parties do not designate a Payment Cycle as applying, Payment Cycle A shall apply.

**§ 13.3.1 Cross Product Payment Netting.** If the Parties have elected to make § 13.3 operative via their Election Sheet, payments in relation to Individual Contracts for Electricity shall continue to be netted one against the other and payments in relation to FR Capacity Certificates Transactions shall also be netted one against the other, but unless so agreed and specified in Part II of this French Capacity Certificates Appendix, payments in relation to Individual Contracts for Electricity shall not be netted against payments in relation to FR Capacity Certificates Transactions.

#### 14) § 14 VAT and Taxes.

14.1 For the purpose of a FR Capacity Certificates Transaction **§14.1 (VAT)**, of the General Agreement shall be amended by deleting the first three lines of subsection two and replacing them with the following: "Where, in accordance with EU and/or national legislation, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Article 44, 196 or 199a of Council Directive 2006/112/EC (as amended by any subsequent Directives) and in accordance with any associated national legislation, the following shall apply:"

14.2 For the purposes of a FR Capacity Certificates Transaction **§14.4 (Taxes Targeted at End Users)**, **§14.5 (Exemption Certificates)** and **§14.6 (Indemnity)** of the General Agreement shall each be deleted and replaced with “[Not Used]”.

14.3 For the purposes of a FR Capacity Certificates Transaction a new **§14.10 (Fixed Establishment)** shall be included as follows:

**“§14.10 Fixed Establishment:** Both Parties represent that, as at the Effective Date, the establishment for VAT purposes to which the Capacity Certificates under each FR Capacity Certificates Transaction are delivered (“Fixed Establishment”), is as specified in Part II of this French Capacity Certificates Appendix.

Both Parties undertake to inform the other Party within twenty (20) Business Days if the representation given under this paragraph has failed or ceased to be true and accurate at any time after the Effective Date of this FR Capacity Certificates Appendix. In the event that a Party fails to inform the other pursuant to this paragraph or the representations given have ceased to be true and accurate, that Party shall indemnify, defend and hold the other Party harmless in respect of any and all VAT, penalties and interest incurred by the other Party as a result of that Party's failure to comply with the above undertaking.”

15) Except to the extent otherwise modified herein, there shall be no change to § 15 (**Floating Prices and Fallback Procedure for Market Disruption**), § 16 (**Guarantees and Credit Support**), § 17 (**Performance Assurance**), § 18 (**Provision of Financial Statements and Tangible Net Worth**), § 19 (**Assignment**), or § 20 (**Confidentiality**), of the General Agreement with respect to FR Capacity Certificates Transactions.

16) **§ 21 Representation and Warranties.** § 21 of the General Agreement is hereby amended by the following deletions with respect to FR Capacity Certificates Transactions only:

§ 21(g) Deletion of the word “regularly” in the first line; and

§ 21(l) Deletion of § 21(l) in its entirety.

- 17) § 22 Governing Law and Arbitration. If this §17 is specified as applying in Part II of this French Capacity Certificates Appendix, then for the purposes of FR Capacity Certificates Transactions only, § 22 of the General Agreement is deleted and replaced with the following<sup>1</sup>:

## § 22

### Governing Law and Jurisdiction

1. **Governing Law:** With respect to FR Capacity Certificates Transactions, this FR Capacity Certificates Appendix is to be construed in accordance with and governed by the substantive laws of France, excluding any application of the “United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 and conflicts of laws principles.”
  2. **Jurisdiction:**  
If Option (a) is elected in Part II of this FR Capacity Certificates Appendix, each Party irrevocably agrees that disputes that arise under or in connection with this FR Capacity Certificates Appendix and any and all FR Capacity Certificates Transactions are subject to the non-exclusive jurisdiction of the courts of France. If Option (b) is specified as applying in Part II this FR Capacity Certificates Appendix, any disputes which arise in connection with this FR Capacity Certificates Appendix shall be referred for resolution to the arbitration court as specified in Part II and decided according to its rules, ousting the jurisdiction of such courts. The number of arbitrators shall be three. The arbitration shall be conducted in the language specified in Part II of this French Capacity Certificates Appendix.
- 18) Except to the extent otherwise modified herein, there shall be no change to § 23 (*Miscellaneous*) of the General Agreement with respect to this FR Capacity Certificates Appendix and any and all FR Capacity Certificates Transactions.

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<sup>1</sup> Without prejudice to the general waiver, EFET recommends Parties to seek their own legal advice on the potential risk of using a governing law different to the law elected in §22 of the General Agreement for this French Capacity Certificates Appendix.

**Part II:****ELECTIONS FOR CUSTOMIZATION OF PROVISIONS IN THE CAPACITY APPENDIX:****§ 7****Non-Performance Due to Force Majeure**

§ 7.4(b) Force Majeure Termination Payment: ☐ § 7.4(b)(i) (No Termination Payment) shall apply; or  
☐ § 7.4(b)(iii) (Two-Way Loss Termination Payment) shall apply

**§ 13****Invoicing and Payment**

§ 13.2 Payment: ☐ Payment Cycle A shall apply, or  
☐ Payment Cycle B shall apply

§ 13.3.1 Cross Product Payment Netting: ☐ Payments due in relation to Individual Contracts in respect of Electricity shall be netted against payments due in relation to Capacity Transactions.

**§ 14****VAT and Taxes****§ 14.3 Fixed Establishment:**

	Jurisdiction	VAT Identification Number
Party A:	...	...
Party B:	...	...

**§ 17****Governing law and Jurisdiction**

§ 17.1 Governing law: ☐ shall apply, or

§ 17.2 Jurisdiction: ☐ §17.2(a) Jurisdiction of courts or France shall apply, or  
☐ §17.2(b) Arbitration shall apply and the language is ☐.

**Annex 1**

Delivery Business Day: Relevant place for Party A shall be ☐  
Relevant place for Party B shall be ☐

**Annex 1  
to the  
Capacity Appendix**

**Defined Terms**

<b>“Capacity Certificate”</b>	means an intangible personal property, fungible, negotiable and transferable, corresponding to a normative Unite Power Value, created by the public transmission system operator and issued to a capacity operator after a capacity has been certified and valid for a given Compliance Period.
<b>“Compliance Period”</b>	means the delivery year for which the Capacity Certificate(s) is issued in accordance with the Rules as specified by the Parties in the Confirmation to the FR Capacity Certificates Transaction.
<b>“Contract Quantity”</b>	means, in respect of an FR Capacity Certificates Transaction, the number of Capacity Certificates of one or more Compliance Periods, where applicable, as agreed to be bought and sold between the Parties.
<b>“CRE”</b>	means the Commission de régulation de l’énergie
<b>“Collection Deadline”</b>	means in respect of a FR Capacity Certificates Transaction, the 15 February in any calendar year in relation to the delivery year three years before, or as otherwise specified in the Rules for the surrender of Capacity Certificates in respect of a Compliance Period.
<b>“Delayed Delivery Date”</b>	has the meaning specified in § 7.2 provided, however, that such two Delivery Business Day grace period does not extend the Delayed Delivery Date in respect of an FR Capacity Certificates Transaction to a day that is on or after the Collection Deadline following the relevant Delayed Delivery Date; or (ii) on or after the Transfer Deadline in respect of the relevant FR Capacity Certificates Transaction;
<b>“Delivery Business Day”</b>	<p>means for the purposes of this French Capacity Certificates Appendix only, any day which is not a Saturday or Sunday, on which commercial banks are open for general business at the places where each Party specifies <u>as applying to it in Part II</u> of this French Capacity Certificates Appendix and France.</p> <p>In the event that a Party does not so specify a place in Part II of this French Capacity Certificates Appendix, then (that/those) place(s) shall be deemed to be the Seller and the Buyer’s addresses, as applicable, specified in § 23.2 (<b><i>Notices, Invoices and Payments</i></b>) of the General Agreement or, if no such addresses have been specified in § 23.2, at the place(s) where (that/those) Party(ies) (has/have) (its/their) registered office</p>
<b>“Delivery Date”</b>	means, in respect of a FR Capacity Certificates Transaction, the day agreed between the Parties on which the relevant Transfer from the Seller to the Buyer is to take place at the Delivery Point, subject to any adjustment in accordance with §7.2 ( <b><i>Suspension of Delivery and Acceptance Obligation</i></b> ). If the Delivery Date is not a Delivery Business Day, it shall be deemed to be the first Delivery Business Day following the agreed day.
<b>“Electronic Transfer”</b>	Has the meaning given in §4.2 of the French Capacity Certificates Appendix
<b>“Encumbrance Loss Amount”</b>	means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an FR Capacity Certificates Transaction including, but not limited to, any loss of bargain, cost of funding or, at the election of the Buyer but without duplication, loss or costs incurred as a result of it terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount shall include losses and costs in respect of any payment already made under an FR Capacity Certificates Transaction prior to delivery of the written notice by the Buyer and the Buyer’s legal fees

and out-of-pocket expenses but does not include any amount which the Buyer must pay to a third party in respect of any such penalty payable to any other party (including any government authority or regulator) by that third party.

<b>“Holding Account”</b>	means the form of record maintained by and in the Registry to record the allocation (if applicable), Transfer and holding of Capacity Certificates.
<b>“Loss”</b>	means an amount that each Party reasonably determines in good faith to be its total losses and costs (or gain, in which case it shall be expressed as a negative number) in connection with the termination of the applicable FR Capacity Certificates Transaction(s), or any unperformed portions thereof, any loss of bargain, cost of funding (based on the actual costs of such Party whether or not greater than market costs) or, without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss shall not include legal fees or similar out-of-pocket expenses. Each Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading Dealers.
<b>“Payment Cycle”</b>	means either Payment Cycle A or Payment Cycle B as defined in § 13.2 ( <i>Payment</i> );
<b>“Registry”</b>	means the registry established and operated by the Relevant Authority of France, in accordance with the Rules, in order to ensure the accurate accounting of the issue, holding, Transfer, acquisition, surrender, cancellation and replacement of Capacity Certificates.
<b>“Relevant Authority”</b>	means the entity appointed, pursuant to the Rules to implement, manage the Capacity Certificates market and or Certificates Registry in France and any administrative authority, governmental bodies however described which has jurisdiction to modify, amend, suspend, terminate or affect in any way the Rules.
<b>“Rules”</b>	means the Decree No 2012-1405 as of 14 December 2012 “relatif à la contribution des fournisseurs à la sécurité d'approvisionnement en électricité et portant création d'un mécanisme d'obligation de capacité dans le secteur de l'électricité” as amended and/or supplemented from time to time and any governmental decisions, regulations, decrees, laws, and any relevant decisions, guidelines, modalities and procedures made pursuant to them (whether made at the direction of a government, governmental body, regulator, competent authority or otherwise) as modified, amended and/or supplemented from time to time relating to the trade of Capacity Certificates as contemplated by this French Capacity Certificates Appendix.
<b>“Transfer”</b>	means (whether used as a verb or a noun) the sale and transfer of Capacity Certificates at a Contract Price from one Holding Account to another under and in accordance with the Rules for Transaction of Guarantees ( <i>Transaction de Garanties</i> ) and Transferable, Transferring and Transferred are to be construed accordingly.
<b>“Transfer Deadline”</b>	means, in respect of a FR Capacity Certificates Transaction the transfer deadline determined in accordance with the Rules, being specified that if the Rules do not provide for any Transfer Deadline, then Transfer Deadline shall be the Collection Deadline.
<b>“Unit Power Value”</b>	means 0.1 MW

**ADDITIONAL PROVISIONS APPLICABLE ONLY TO FR CAPACITY CERTIFICATES  
TRANSACTIONS:**

**This page need ONLY be executed by Parties that checked and completed one of the two boxes on the first page hereof.  
Those appending this Capacity Appendix to a General Agreement at the time of its execution need only append it to  
the General Agreement.**

IN WITNESS whereof this Capacity Appendix has been duly executed by the authorized representatives of each Party on  
the respective dates set out below with effect from the Capacity Appendix Effective Date.

**“Party A”**

**“Party B”**

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\_\_\_\_\_  
Name:.....

Title:.....

\_\_\_\_\_  
Name:.....

Title:.....

**Annex 2 (A)**  
**to the**  
**FRENCH CAPACITY CERTIFICATES APPENDIX (POWER)**

**CONFIRMATION OF**  
**FR CAPACITY CERTIFICATES TRANSACTION**  
**(Fixed price)**

between

\_\_\_\_\_ as **Seller**

and

\_\_\_\_\_ as **Buyer**

as Parties to the

EFET General Agreement Concerning the Delivery and Acceptance of Electricity entered into and dated as of \_\_\_\_\_  
 , \_\_\_\_\_

FR Capacity Certificates Transaction concluded on: \_\_\_\_\_ (**Trade Date**)

Name of Broker (if applicable): \_\_\_\_\_

**Delivery Schedule**

(Delivery Date to each Delivery Point for each Contract Quantity and Compliance Period.)

	<b>Delivery Point(s):</b>	<b>Compliance Period</b>	<b>Contract Quantity</b>	<b>Delivery Date</b>	<b>Price per Capacity Certificate</b>
	Holding Account number of Buyer:	[***]	[***]	[***]	[***]

Reporting of FR Capacity Certificates Transaction to CRE according to Rules: [   ]

This Confirmation confirms the FR Capacity Certificates Transaction entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity between the Parties (General Agreement) as modified, supplemented and amended by the French Capacity Certificates Appendix between the Parties and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the FR Capacity Certificates Transaction, please contact us immediately.

If the Confirmation that you sent or will send contains additional or deviating terms from those agreed in the FR Capacity Certificates Transaction and/or terms set out in this Confirmation and/or General Agreement, including any provision providing for the deemed acceptance of those terms, then this Confirmation shall serve as an objection to those additional or deviating terms, and such terms shall only become part of FR Capacity Certificates Transaction if we expressly agree to them in writing.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_