

EFET

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European Federation of Energy Traders

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EFET MEMBERS ARE REFERRED TO THE USAGE NOTE TO THIS ~~EECS CERTIFICATES~~CERTIFICATE MASTER AGREEMENT AVAILABLE ON THE EFET WEBSITE.

EECS ~~Certificates~~Certificate & National Scheme Certificate Master Agreement

Between

having its registered office at _____

("[*abbreviation of name*]")_

and

having its registered office at _____

("[*abbreviation of name*]")

(referred to jointly as the "**Parties**" and individually as a "**Party**")

entered into on _____ (~~the~~ "**Effective Date**").

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ANNEX 1 - DEFINED TERMS

ANNEX 2 - ELECTION SHEET TO THE ~~EECS-CERTIFICATES~~ CERTIFICATE MASTER AGREEMENT

PART I: CUSTOMISATION OF PROVISIONS IN THE ~~EECS-CERTIFICATES~~ CERTIFICATE MASTER AGREEMENT

PART II: ADDITIONAL PROVISIONS TO THE ~~EECS-CERTIFICATES~~ CERTIFICATE MASTER AGREEMENT

ANNEX 3 - CONFIRMATION OF INDIVIDUAL CONTRACT

§ 1

Subject of Agreement

1 ~~1. Subject of Agreement:~~ This ~~EECS-Certificates~~ Certificate Master Agreement (~~which includes and~~ its Annexes and the election sheet ("**Election Sheet**")) governs all transactions the Parties shall enter into for the purchase, sale, Delivery and acceptance of ~~EECS-Certificates~~ (each such transaction being an "**Individual Contract**"). All Individual Contracts and this ~~EECS-Certificates~~ Certificate Master Agreement shall form a single agreement between the Parties (collectively referred to as the "**Agreement**"). The provisions of this ~~EECS-Certificates~~ Certificate Master Agreement constitute an integral part of each Individual Contract.

2 ~~2. Pre-Existing Contracts~~ If § 1.2 is specified as applying in the Election Sheet, each transaction between the Parties regarding the purchase, sale, Delivery and acceptance of ~~EECS-Certificates~~, entered into before the Effective Date but which ~~remain~~ remains either not yet fully or partially performed by one or both Parties, is deemed to be an Individual Contract under the Agreement.

§ 2

Definitions and Construction

1 ~~1. Definitions:~~ Capitalised terms used the Agreement not otherwise defined herein (including in Annex 1 of this ~~EECS-Certificates~~ Master Agreement) Definitions: Capitalised terms used in the Agreement shall have the meanings ~~given to them in the version number of the Principles & Rules of Operation of the Members of the Association of Issuing Bodies for the European Energy Certificate System, as specified in the Confirmation (the "EECS Rules"), and in the Relevant Domain Protocol in force at the date each Individual Contract is entered into. The version of the EECS Rules specified in the Confirmation as published by the Association of Issuing Bodies for the European Energy Certificate System at http://www.aib-net.org/portal/page/portal/AIB_HOME/AIB_OPE/EECS are expressly incorporated into this Agreement by reference.~~ set out in Annex 1 of the Certificate Master Agreement.

2 ~~2. Inconsistencies:~~ In the event of any inconsistency between the provisions of the Election Sheet and the other provisions of this ~~EECS-Certificates~~ Certificate Master Agreement, the Election Sheet shall prevail. In the event of any inconsistency between the terms of an Individual Contract (whether evidenced in a Confirmation or by other means) and the provisions of this ~~EECS-Certificates~~ Certificate Master Agreement (~~including and~~ its Election Sheet), the terms of the Individual Contract shall prevail for the purposes of that Individual Contract. In the event of any inconsistency between the ~~EECS Issuance and Registry~~ Rules ~~or the Relevant Domain Protocol~~ and this Agreement, the ~~EECS Issuance and Registry~~ Rules shall prevail. In the case of EECS Certificates, in the event of any inconsistency between the EECS Rules and the Relevant Domain Protocol, the Relevant Domain Protocol shall prevail.

3 ~~3. Interpretation:~~ Headings and titles are for convenience only and do not affect the interpretation of the Agreement. Reference to any ~~law or statute~~ Law includes any amendment to, consolidation, re-enactment or replacement of such ~~law or statute~~ Law.

4 ~~4~~**References to Time:** References to time shall be to Central European Time (~~CET~~) or as specified in the Election Sheet.

§ 3

Concluding and Confirming Individual Contracts

1 ~~1~~**Conclusion of Individual Contracts:** ~~As soon as possible after an~~ Unless otherwise agreed between the Parties, Individual ~~Contract is~~ Contracts may be concluded in any form of communication (whether orally or otherwise) and shall be legally binding and enforceable from the time the terms of such Individual Contract are concluded.

2 **Confirmations:** In the event that an Individual Contract is not concluded in written form, ~~the~~ both Parties, ~~or a Party,~~ shall be free to confirm, or have confirmed, in writing ~~the~~ their understanding of the agreed terms of the ~~transactions by notice~~ Individual Contract (each such written confirmation ~~being~~ constituting a "Confirmation"). A written Confirmation shall not constitute a requirement for a legally valid Individual Contract. A Confirmation shall contain the information stipulated in, and shall be substantially in the form of, the applicable confirmation sheet from among those attached to this ~~EECS Certificates~~ Certificate Master Agreement as Annex 3.

3 **2-Objections to Confirmations:** Without prejudice to the provisions of § ~~3-1~~ 3.2 (Conclusion of Individual Contracts), if a Party receives a Confirmation, it shall promptly review the terms of such Confirmation and if they differ from its understanding of the terms of the applicable Individual Contract, notify the other Party of any inconsistency without delay. If both Parties send a Confirmation without delay and their terms contradict, then each such Confirmation shall be deemed to be a notice of objection to the terms of the other Party's Confirmation.

4 **3-Authorised Persons** If § 3.4 is specified as applying to a Party in the Election Sheet, Individual Contracts may be negotiated, confirmed and signed on behalf of that Party exclusively by those persons listed by it for such purposes as may be specified in an Annex to this ~~EECS Certificates~~ Certificate Master Agreement. Each Party may unilaterally amend and supplement in writing the list of persons currently authorised to act on its behalf at any time. Such amendments and supplements shall become effective upon their receipt by the other Party.

§ 4

Primary Obligations For Delivery and Acceptance of ~~EECS~~ Certificates

1 ~~1~~**Delivery and Acceptance:** In accordance with each Individual Contract, the modalities of transfer set out in § 4.2 (Electronic Transfer of Certificates) or § 4.3 (Transfer by Cancellation Statement), and ~~with~~ the provisions of the ~~EECS Issuance and Registry Rules and the Relevant Domain Protocol,~~ the Seller shall Schedule, sell and Deliver, or cause to be Delivered, the Contract Quantity of:

- (a) EECS Certificates in accordance with the EECS Rules and the Relevant Domain Protocol; or
- (b) National Scheme Certificates in accordance with the National Scheme Rules,

and the Buyer shall purchase and accept, or cause to be accepted, the Contract Quantity ~~of EECS Certificates;~~ and ~~the Buyer shall~~ pay to the Seller the relevant Contract Price.

2 ~~2~~**Electronic Transfer of ~~EECS~~ Certificates:** Unless "Transfer by Cancellation Statement" is specified to apply in the ~~Confirmation to an~~ Individual Contract, no later than on the relevant Delivery Date, the Seller shall Schedule the Delivery of the Contract Quantity of:

- (a) EECS Certificates to the ~~Buyer's Account with the relevant Authorised Issuing Body~~ Delivery Point in accordance with the EECS Rules and the Relevant Domain Protocol; or
- (b) National Scheme Certificates to the Delivery Point in accordance with the National Scheme Rules,

("Electronic Transfer").

3 ~~3~~ **Transfer by Cancellation Statement:** If the Parties so specify in the ~~Confirmation to the~~ Individual Contract, the Seller shall Schedule the initiation of the cancellation of the ~~relevant Contract Quantity of EECS~~ Certificates held in the ~~EECS Registration Database specified in the Confirmation to an Individual~~ Registry equalling the Contract and specifying Quantity to be Delivered. The Seller shall, for the purposes of the Cancellation Statement to be issued by the applicable Registry Operator, specify the Buyer as the named recipient of the cancelled ~~EECS~~ Certificates. By no later than the Delivery Date, the Seller shall ~~notify the Buyer in writing by sending~~ submit a statement in an agreed format to the Delivery Point, including information on the:

- (a) ~~-~~quantity of ~~EECS~~ Certificates cancelled;
- (b) ~~-~~cancelling Domain (in the case of EECS Certificates);
- (c) ~~-~~recipient of the cancelled ~~EECS~~ Certificates; and
- (d) ~~-~~cancellation purpose; and
~~-provide a copy of the Cancellation Statement.~~

For the avoidance of doubt, the Parties will not specify in the ~~Confirmation to the~~ Individual Contract that ~~Transfer~~ transfer by Cancellation Statement shall apply unless:

- (e) in the case of EECS Certificates, there is a Cancellation Agreement in place between the cancelling Domain and the Domain of Delivery specified in the ~~Confirmation to the~~ Individual Contract; ~~a Cancellation Agreement~~; or
- (f) in the case of National Scheme Certificates, the National Scheme Rules expressly permit transfer by Cancellation Statement.

~~4. Definition of Schedule: "Schedule" shall mean, those actions necessary for a Party to effect its Delivery or acceptance (if applicable) obligations, which may include nominating, initiating, requesting and confirming with the Registry Operator of the Applicable EECS Registration Database (and if applicable, the other Party) the Contract Quantity of EECS Certificates, the EECS Certificate Details (including, the relevant Production Device I.D.(s), the relevant production periods, the usage for any cancellation, the face values, as applicable), the account I.D. of the Buyer's Account and any other relevant terms of the Individual contract in accordance with the EECS Rules and the Relevant Domain Protocol and any other customary industry practices and procedures to ensure that all applicable requirements for effecting Delivery 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 Applicable EECS Registration Database are properly established in time to discharge their respective Delivery, cancellation or acceptance obligations under an Individual Contract.~~

§ 5

Transfer, Risk and No Encumbrances

~~1. No Encumbrances: In respect of each Individual Contract by each Delivery Date the Seller shall Deliver to the Buyer at the Delivery Point, the Contract Quantity of EECS Certificates free and clear of any liens, security interests, encumbrances or similar adverse claims by any person (the "No Encumbrances Obligation"). Where a Party is in breach of the No Encumbrances Obligations, the following shall apply:~~

- ~~(a) The EECS Certificates Master Agreement and all other Individual Contracts agreed by the parties under this EECS Certificates Master Agreement shall continue unaffected; and~~
- ~~(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 Transfer 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 reasonable 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 Individual Contracts 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 each 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, which amount shall bear interest in accordance with § 12.4 (*Default Interest*). 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 § 5.1.~~

4 ~~2-Documentation of Actual Deliveries and Receipts:~~ Upon reasonable request of Buyer, The Seller shall:~~(a) provide any~~the documentation necessary to the Buyer:

(a) as may be prescribed by any applicable laws or regulation Applicable Law; and/or

(b) provide any documentation with reference relating to the EECS

Certificates to be transferred pursuant to this Agreement, in each case as specified in

~~any relevant Confirmation~~the Election Sheet or the Individual Contract.

5 ~~3-Reimbursement of External Costs:~~ In the event a Party, at the request of the other Party or to resolve a dispute raised by the other Party, incurs reasonable external expenses in verifying that the other Party has failed to properly perform its obligations under the terms of an Individual Contract, such expenses shall be reimbursed upon demand by the Party that failed to perform.

§ 5

Transfer, Risk, No Encumbrances and Ineffectiveness

1 Transfer of Title and Risk: Subject to § 14.3 (*Event of Change in Law and Ineffectiveness*):

(a) for Electronic Transfer, risk and title in the Certificates shall pass from the Seller to the Buyer at the Delivery Point; and

(b) for transfer by Cancellation Statement, risk and title in the attributes conferred by the cancelled Certificates as well as in the Cancellation Statement shall pass from the Seller to the Buyer at the Delivery Point.

2 No Encumbrances: In respect of each Individual Contract, by each Delivery Date the Seller shall Deliver to the Buyer at the Delivery Point, the Contract Quantity free and clear of any liens, security interests, encumbrances or similar adverse claims by any person ("No Encumbrances Obligation").

3 Breach of the No Encumbrances Obligation: Where a Party is in breach of the No Encumbrances Obligation in relation to Certificates under one or more Individual Contracts, the following shall apply:

(a) the Certificate Master Agreement and all Individual Contracts agreed by the Parties under the Certificate Master Agreement shall continue unaffected; and

(b) the Buyer shall send to the Seller written notice of that breach (irrespective of how long after the relevant transfer date such notice is provided) and the Buyer shall at its sole discretion either:

- (i) request that such Certificate is replaced within twenty (20) Business Days of the date of such notice. Where the Buyer has not yet paid for such Certificate, the Buyer shall not be obliged to pay for such Certificate until ten (10) Business Days following receipt by the Buyer of the replacement Certificate. Where the Seller is in breach of this obligation, § 5.3(b)(ii) shall apply; or
- (ii) without prejudice to any defences available to the Seller (including but not limited to any defences of statutes of limitation or similar), the Buyer shall:
 - (a) determine the Encumbrance Loss arising from that breach ("Encumbrance Loss Amount") either on the date such notice is deemed to be received or as soon as reasonably practicable thereafter; and
 - (b) notify the Seller of such Encumbrance Loss Amount due in the form of an invoice, including detailed support for its calculation.

The Buyer is not required to enter into one or more replacement transaction(s) in order to determine the Encumbrance Loss Amount.

4 Ineffectiveness: If a Certificate is or becomes Ineffective, the following shall apply:

- (a) where a Certificate is or becomes Ineffective as a result of any act or omission by the Buyer, the Buyer shall remain liable to pay for it; and
- (b) where a Certificate is or becomes Ineffective as a result of any act or omission by the Seller, the Buyer shall send to the Seller written notice thereof (irrespective of how long after the relevant transfer date such notice is provided) and the Party specified in the Election Sheet shall determine that:
 - (i) the Seller shall replace such Certificate within twenty (20) Business Days of the date of such notice. Where the Buyer has not yet paid for such Certificate, the Buyer shall not be obliged to pay for such Certificate until ten (10) Business Days following receipt by the Buyer of the replacement Certificate. Where the Seller is in breach of this obligation, § 5.4(b)(ii) shall apply; or
 - (ii) without prejudice to any defences available to the Seller (including but not limited to any defences of statutes of limitation or similar), the Buyer shall:
 - (a) determine the Ineffectiveness Loss Amount; and
 - (b) notify the Seller of such Ineffectiveness Loss Amount due in the form of an invoice, including detailed support for its calculation.

The Buyer is not required to enter into one or more replacement transaction(s) in order to determine the Ineffectiveness Loss Amount.

5 Payment of Encumbrance Loss Amount or Ineffectiveness Loss Amount: By no later than the tenth (10th) Business Day after the later of:

- (a) receipt of detailed support of the Buyer's calculation of the Encumbrance Loss Amount and/or Ineffectiveness Loss Amount; and
- (b) receipt of a valid invoice in connection with each Encumbrance Loss Amount and/or Ineffectiveness Loss Amount.

the Seller shall pay the Encumbrance Loss Amount and/or Ineffectiveness Loss Amount to the Buyer, which amount shall bear interest in accordance with § 12.4 (Default Interest). Upon payment

of the Encumbrance Loss Amount and/or the Ineffectiveness Loss Amount by the Seller, the Parties shall have no further obligations in respect of that Individual Contract and that breach.

6 Exclusive Remedies: The Buyer acknowledges that its exclusive remedies in respect of a breach of the No Encumbrances Obligation and in cases of Ineffectiveness are those set out in this § 5.

§ 6

Non-Performance Due to Force Majeure

1 ~~1~~ **Definition of Force Majeure** Unless otherwise specified in the Election Sheet, for purposes of the Agreement, "Force Majeure" means an occurrence beyond the reasonable control of the Party claiming Force Majeure (~~the~~ "Claiming Party") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its Delivery or acceptance obligations, including, but without limitation:

(a) for Electronic Transfer:

(i) in the case of EECS Certificates, due to the suspension, failure or malfunction of the EECS Transfer System, Transfer Links or, the AIB Communication Hub which prevents the Electronic Transfer or acceptance of the, or an individual EECS Registration Database; or

(ii) in the case of National Scheme Certificates, the suspension, failure or malfunction of the Registry;

(b) for transfer by Cancellation Statement, a delay or a rejection of the cancellation of Certificates by the Registry Operator;

(c) if the Individual Contract specifies that Certificates are to be delivered from a specific Production Device, a failure of the Authorised Issuing Body to create, issue and give legal effect to such Certificates; or

(d) any other event or circumstance specified in the Election Sheet.

2 ~~2~~ **Release From Delivery and Acceptance Obligations:** If a Party is fully or partly prevented due to Force Majeure from performing its obligations of Delivery or acceptance under one or more Individual Contracts and such Party complies with the requirements of § 6.3 (*Notification and Mitigation of Force Majeure*), no breach or default on the part of the Claiming Party shall be deemed to have occurred and it shall be released (and not merely suspended) from those obligations for the period of time and to the extent that such Force Majeure prevents its performance. No obligation to pay damages pursuant to § 7 (*Remedies for Failure to Deliver and Accept*) will accrue to the Claiming Party with respect to those quantities not Delivered or ~~received~~ accepted.

3 ~~3~~ **Notification and Mitigation of Force Majeure:** The Claiming Party shall, as soon as practical after learning of the Force Majeure, notify the other Party of the commencement of the Force Majeure and provide reasonable evidence thereof. To the extent then available, ~~the Claiming Party~~ shall provide to ~~the other Party~~ a non-binding estimate of the extent and expected duration of its inability to perform. The Claiming Party shall use all commercially reasonable efforts to mitigate the effects of the Force Majeure and shall, during the continuation of the Force Majeure, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform.

4 ~~4~~ **Effects of Force Majeure on Other Party:** In the event, and to the extent, ~~the Seller's~~ Delivery obligations are released by Force Majeure, the Buyer's corresponding acceptance and payment obligations shall also be released. In the event and to the extent ~~the Buyer's~~ acceptance obligations are released by Force Majeure, ~~the Seller's~~ corresponding Delivery obligations shall also be released.

5 ~~5~~ **Long Term Force Majeure:** If the Claiming Party is unable to Deliver or accept Delivery for reasons of Force Majeure and this inability lasts for more than thirty (30) consecutive calendar days, the other Party may, by notice in writing to the Claiming Party, and subject to the provisions of § 6.3 (*Notification and Mitigation of Force Majeure*), either:

- (a) extend the period of release for such longer period and on so many occasions as may be specified by the other Party, acting reasonably; or
- (b) terminate the affected Individual Contract(s).

No obligation to pay damages pursuant to this Agreement will accrue to the Claiming Party with respect to those quantities not Delivered or accepted due to the occurrence of Force Majeure under this § 6.

§ 7

Remedies for Failure to Deliver and Accept

1 ~~1~~ **Failure to Deliver:** To the extent that the Party obliged to Deliver ~~an EECS Certificate(s) (the Certificates ("Delivering Party"))~~ fails to Deliver the Contract Quantity ~~of EECS Certificates~~ in whole or in part in accordance with the terms of an Individual Contract, and such failure is not remedied within ~~one (1) Business Day of the Delivery Date~~ Days after receipt by the Delivering Party of a written notice from the other Party ("Accepting Party") to remedy such failure or is not excused by an event of Force Majeure or the ~~other~~ Accepting Party's non-performance, the Delivering Party shall pay the ~~other Party (the "Accepting Party")~~ as compensation for damages an amount for such quantity of undelivered ~~EECS~~ Certificates equal to the product of:

- (a) the amount, if positive, by which the price; ~~(if any)~~ at which the Accepting Party acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered ~~EECS~~ Certificates exceeds the Contract Price; and
- (b) the quantity of undelivered ~~EECS~~ Certificates.

Such amount shall not be increased by any costs and expenses incurred by the Accepting Party as a result of the Delivering Party's failure.

2 ~~2~~ **Failure to Accept:** To the extent that the Accepting Party fails in whole or in part to accept the Contract Quantity ~~of EECS Certificates~~ in accordance with an Individual Contract, and such failure is not remedied within ~~one (1) Business Day of the Delivery Date~~ Days after receipt by the Accepting Party of a written notice from the Delivering Party to remedy such failure or is not excused by an event of Force Majeure or the ~~other~~ Delivering Party's non-performance, the Accepting Party shall pay the Delivering Party as compensation for damages an amount for ~~such~~ the quantity of non-accepted ~~EECS~~ Certificates equal to the product of:

- (a) the amount, if positive, by which the Contract Price exceeds the price (if any) at which the Delivering Party is or would be able to sell the quantity of non-accepted ~~EECS~~ Certificates in the market acting in a commercially reasonable manner; and
- (b) the quantity of the non-accepted ~~EECS~~ Certificates.

Such amount shall not be increased by any costs and expenses incurred by the Delivering Party as a result of the Accepting Party's failure.

3 ~~3~~ **Amounts Payable:** Amounts that are due according to this § 7 shall be invoiced and paid in accordance with § 12 (*Invoicing and Payment*).

§ 8

Suspension of Delivery

In addition to any other rights or remedies available to a Party (~~the "Non-Defaulting Party"~~), should a Party (~~the "Defaulting Party"~~) default on any payment that is due under the Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Performance Assurance required pursuant to the Agreement or any Credit Support Document, the Non-Defaulting Party shall be entitled, no earlier than three (3) Business Days after sending a written notice to the Defaulting Party to immediately cease further Deliveries of ~~EECS~~ Certificates (and be released (and not merely suspended) from its underlying

10 Workshare 10.0 comparison of EFET EECS Master Agreement 2013.pdf and EFET EECS MA version 1.1 September 2020 Final - 29.09.2020.pdf. Performed on 9/29/2020.

Delivery obligations) under all Individual Contracts until such time as the Non-Defaulting Party⁷ has received either the required collateral or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Non-Defaulting Party.

§ 9

Term and Termination Rights

1 ~~1~~ **Term:** ~~This EECS Certificates~~ The Certificate Master Agreement shall come into force as of the Effective Date. It may be terminated in accordance with either § 9.2 (*Expiration Date and 30 Day Termination Notice*) or § 9.3 (*Termination for Material Reason*) ~~through to~~ § 9.5 (*Definition of Material Reason*) ~~(inclusive)~~.

2 ~~2~~ **Expiration Date and 30 Day Termination Notice:** ~~This EECS Certificates~~ The Certificate Master Agreement will terminate on the Expiration Date (if one is specified in the Election Sheet) or if no Expiration Date has been specified in the Election Sheet, by a Party by giving the other Party thirty (30) calendar days prior written notice of termination (in both cases "**Ordinary Termination**"). In the event of Ordinary Termination, the ~~EECS Certificates~~ Certificate Master Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under the Agreement prior to the date of the Ordinary Termination are fully performed or discharged by both Parties.

3 ~~3~~ **Termination for Material Reason:**

- (a) If a Material Reason (~~as defined below~~) with respect to a Party has occurred and is continuing, the other Party (~~the "Terminating Party"~~) may terminate the Agreement ("**Early Termination**") by giving the other Party notice. A notice of Early Termination may be given by telephone if that notice is confirmed in writing within two (2) Business Days.
- (b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (~~the "Early Termination Date"~~). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under the Agreement nor later than twenty (20) calendar days after such day. With effect from the Early Termination Date, all further payments and performance in respect of all Individual Contracts shall be released (and not merely suspended) and existing duties and obligations of the Parties shall be replaced by the obligation of one Party to pay damages for non-fulfilment to the other Party in an amount (if any) calculated in accordance with § ~~10-110~~ (~~Termination Amount~~) ~~(Calculation of the "Termination Amount")~~.
- (c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On, or as soon as practicable after, the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner, and shall notify the other Party of, the Termination Amount (if any) to be received or paid by it ~~deriving from aggregating all Settlement Amounts as stipulated, determined~~ in accordance with § 10 (*Calculation of the Termination Amount*).
- (d) The Termination Amount shall be payable by the relevant Party to the other Party within three ~~(3)-~~ (3) Business Days of its notification by the Terminating Party.
- (e) The Terminating Party may take into account any Performance Assurance or credit support available pursuant to the Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this § 9.3 (~~Termination for Material Reason~~) is in addition to any other remedies available under the Agreement or at ~~law~~ Law.

4 ~~4~~ **Automatic Termination If "Automatic Termination":** § 9.4 is specified as applying to a Party in the Election Sheet, and upon the occurrence of a Material Reason described in § 9.5(c) (*Winding-up/Insolvency/Attachment*), the Terminating Party need not send that Party any notice of the

designation of an Early Termination Date, and the Early Termination Date in such event shall be as specified in the Election Sheet. Except as provided in this § 9.4, Early Termination by virtue of operation of Automatic Termination shall be as provided in § 9.3 (*Termination for Material Reason*).

5 ~~5~~ **Definition of Material Reason:** The Agreement may be terminated at any time for one or more of the following reasons (each, a "Material Reason"):

(a) **Non-Performance:** ~~The~~ Except where such obligation is released pursuant to § 6 (Non-Performance Due to Force Majeure), the failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Performance Assurance or to perform any other material obligation ~~(other than when such obligation is released pursuant to § 6 (Non-Performance Due to Force Majeure), except for a Material Reason set out in § 9.5(d) (Failure to Deliver or Accept) and § 9.5(e) (Representation or Warranty):~~

- (i) under the Agreement, provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand;
- (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
- (iii) under any Performance Assurance in accordance with § 16 (*Performance Assurance*).

(b) **Cross Default and Acceleration** ~~Unless otherwise specified in the Election Sheet;~~

- (i) any payment default under any Specified Indebtedness with an aggregate outstanding principal balance equal, ~~at the date of default,~~ to three percent (3%) of the Tangible Net Worth of (aa) such ~~(aa) Party's,~~ or (bb) such Party's Credit Support Provider (if such Party has a Credit Support Provider) or (cc) such Party's Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party), as the case may be, as of the date of the default; or
- (ii) the failure of a Party or its Credit Support Provider or Controlling Party to make one or more payments in an aggregate amount (individually or collectively) of not less than the Threshold Amount specified in the Election Sheet for that Party under such agreements or instruments entered into between such Parties or their Affiliates (after giving effect to any applicable notice requirement or grace period thereunder).

(c) **Winding-up/Insolvency/Attachment:** A Party or its Credit Support Provider:

- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
- (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
- (iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency ~~law~~ Law or other similar ~~law~~ Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in the Election Sheet, is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet;
- (v) has a resolution passed for its winding-up, official management or liquidation (other

than pursuant to a consolidation, amalgamation or merger);

- (vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;
 - (vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets;
 - (viii) causes or is subject to any event with respect to it which, under the ~~applicable laws~~ Applicable Laws of any jurisdiction, has an analogous effect to any of the events specified in ~~clauses § 9.5(c)~~ (i) to (vii) (inclusive); or
 - (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 9.5(c).
- (d) **Failure to Deliver or Accept** If specified as applying in the Election Sheet, :except where such obligation is released pursuant to § 6 (Non-Performance Due to Force Majeure). the failure of a Party to comply with its obligation to Deliver or accept the ~~EECS~~ Certificates under an Individual Contract, ~~(other than, when such obligation is released pursuant to § 6 (Non-Performance Due to Force Majeure))~~ for more than seven (7) consecutive days or for more than seven (7) days in aggregate on the Delivery Date(s) specified in the Election Sheet, such failure having not been remedied within any grace period of sixty (60) days pursuant to § 7 (Remedies for Failure to Deliver and Accept).
- (e) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this ~~EECS~~ Certificates Master Agreement or an Individual Contract or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

Unless otherwise specified in the Election Sheet, the above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 9.

§ 10

Calculation of the Termination Amount

1 ~~1~~ **Termination Amount:** The Terminating Party shall calculate an amount (~~the~~ "**Termination Amount**") to be paid in accordance with § 9.3 (*Termination for Material Reason*) and § 9.4 (*Automatic Termination*) by calculating the sum (whether positive or negative) of all Settlement Amounts for all Individual Contracts *plus* any or all other amounts payable between the Parties under or in connection with the Agreement.

2 ~~2~~ **Settlement Amount:** The "**Settlement Amount**" for an Individual Contract shall be the Gains *less* the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of the Individual Contract. For the purpose of this provision:

- (a) "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace a terminated Individual Contract and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of such Individual Contract;
- (b) "**Gains**" means an amount equal to the present value of the economic benefit to the Terminating Party; ~~(if any)~~ (exclusive of Costs), resulting from the termination of an Individual Contract, determined in a commercially reasonable manner; and
- (c) "**Losses**" means an amount equal to the present value of the economic loss to the Terminating Party; ~~(if any)~~ (exclusive of Costs), (which if specified as applicable in the Election Sheet shall include losses associated with the payment of regulatory fines in case the Designated Purpose

of the Certificates was the compliance with a regulatory obligation, and the Terminating Party was not able, acting reasonably and with reasonable speed, to procure an adequate number of replacement Certificates so as to avoid the imposition of such fines) resulting from its termination of an Individual Contract, determined in a commercially reasonable manner.

In calculating the Settlement Amounts, the Terminating Party shall calculate its Gains and Losses as at the Early Termination Date, without being required to enter into any replacement transactions, or if such date is not reasonably practicable, at the earliest date after the Early Termination Date.

§ 11 **Limitation of Liability**

1 ~~1-Application of Limitation:~~ This § 11 will apply unless otherwise specified by the Parties in the Election Sheet.

2 ~~2-Exclusion of Liability:~~ Subject to § 11.3 (~~Consequential Damages~~Damage and Limitation of Liability) and § 11.4 (~~Intentional Default, Fraud and Fundamental Rights~~) and except in respect of any amounts payable under § 7 (~~Remedies for Failure to Deliver and Accept~~) or § 9.3 (~~Termination for Material Reason~~), a Party and its employees, officers, contractors and/or agents, are not liable to the other Party for any loss, cost, expense or damages ("**Damages**"); (including, without limitation, any liability due to the irregularities in the supply of ~~EECS~~ Certificates under an Individual Contract) incurred by the other Party under or in connection with the Agreement, 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 Agreement.

3 ~~3-Consequential Damage and Limitation of Liability:~~ Subject to § 11.4 (~~Intentional Default, Fraud and Fundamental Rights~~), the liability of a Party under or in connection with this Agreement:

- (a) does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and
- (b) is limited to an amount equal to an amount as specified in the Election Sheet as either:
 - (i) the amounts payable for ~~EECS~~-Certificates supplied or to be supplied by a Party under any relevant Individual Contract; or
 - (ii) the Limitation Amount.

provided in either case that such limitation shall not apply to payments under § 7 (~~Remedies for Failure to Deliver and Accept~~) and § 10 (~~Calculation of the Termination Amount~~).

4 ~~4-Intentional Default, Fraud and Fundamental Rights:~~ Nothing in the Agreement operates to exclude or limit a Party's liability for:

- (a) intentional default;
- (b) fraud; or
- (c) any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations ("~~Kardinalspflichten~~").

5 ~~5-Duty to Mitigate Losses:~~ For the avoidance of doubt, and subject to ~~applicable law~~Applicable Law, each Party agrees that it has a duty to mitigate its Damages and covenants that it will use commercially reasonable efforts to minimise any Damages that it may incur under or in connection with the Agreement.

§ 12 **Invoicing and Payment**

1 ~~1~~-**Invoice:** Each Party who is a Seller of ~~EECS~~-Certificates in an Individual Contract shall transmit to the other Party in the course of the calendar month following a Delivery of ~~EECS~~-Certificates for the previous month an invoice setting forth the total quantities of ~~EECS~~ Certificates that were sold by it under Individual Contracts in the previous calendar month. In connection with such invoice the Party may state all amounts then owed between the Parties pursuant to the Individual Contracts including, without limitation, all amounts owed for the purchase and sale of ~~EECS~~ Certificates, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties and, if applicable, any net amount due for payment pursuant to § 12.3 (*Payment Netting*).

2 ~~2~~-**Payment:** On or before the later to occur of (a) the twentieth (20th) calendar day of the calendar month or if not a Business Day the immediately following Business Day or (b) the fifth (5th) Business Day following receipt of an invoice (~~the "Due Date"~~), a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party as specified in the Election Sheet. ~~Such~~Unless otherwise specified in the Election Sheet, such payment shall be made, ~~unless otherwise agreed,~~ in EURO, and subject to § 13 (*VAT and Taxes*), and the remitter shall pay its own bank charges.

3 ~~3~~-**Payment Netting:** If this § 12.3 is specified as applying in the Election Sheet, if on any day the Parties are each required to pay one or more amounts in the same currency (for which purpose all EURO currencies shall be considered a single currency) under one or more Individual Contracts, then such amounts with respect to each Party 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 shall pay the other Party the difference between the amounts owed.

4 ~~4~~-**Default Interest:** Overdue payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment, at the Interest Rate. For this purpose the "**Interest Rate**" shall be the rate of interest specified in the Election Sheet.

5 ~~5~~-**Disputed Amounts:** If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay ~~the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.~~

- (a) if this § 12.5(a) is specified as applying in the Election Sheet, the full amount invoiced no later than the Due Date. ~~If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited;~~ or
- (b) if this § 12.5-(b) is specified as applying in the Election Sheet, the undisputed amount invoiced no later than the Due Date.-

If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) calendar days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, ~~but excluding,~~ the date paid or credited.

§ 13 VAT and Taxes

1 ~~1~~-**VAT:** All amounts referred to in ~~this EECS-Certificates Master~~the Agreement are exclusive of VAT. The VAT treatment of the supply of ~~EECS~~-Certificates under an Individual Contract shall be determined pursuant to the VAT ~~laws~~Laws of the jurisdiction where a taxable transaction for VAT purposes is deemed to take place. If VAT is payable on any such amounts, the Buyer shall pay to the Seller an amount equal to the VAT at the rate applicable from time to time, ~~provided that such amount shall only be required to be paid once~~

the Seller provides the Buyer with a valid VAT invoice (applicable in the jurisdiction of supply) in relation to that amount.

Where, in accordance with EU and/or national ~~legislation~~Law, any supplies under an Individual Contract may be Zero-Rated and/or subject to the reverse charge in accordance with Articles 44, 196 or 199a of Council Directive 2006/112/EC, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the ~~relevant taxing authority~~Competent Authority for taxation) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such ~~legislation~~Law;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in [§ 13.1](#)(a) above, the Seller reserves the right to charge local VAT.

2 ~~2.~~**Other Taxes:** All amounts referred to in ~~this EECS Certificates Master~~the Agreement are exclusive of Other Taxes. In the case of Other Taxes, if the cost of an Other Tax is charged or passed on by the Seller to the Buyer, the Buyer shall pay this amount of Other Tax to the Seller, provided that such amount of Other Tax is identified separately on the invoice issued by the Seller and confirmation is received by the Buyer, where applicable, that such amount of Other Tax has been duly paid or accounted for to the ~~relevant Tax authority~~Competent Authority for taxation, as appropriate.

Where, in accordance with EU and/or national ~~legislation~~Law, there is an exemption or other relief, as applicable, from Other Taxes in respect of any supplies under an Individual Contract, the following shall apply:

- (a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the ~~relevant taxing authority~~Competent Authority for tax) to ensure that such supply is exempt from Other Taxes for the purposes of such ~~legislation~~Law;
- (b) in the event that the Buyer or the Seller fails to comply with such obligation, the non-complying Party shall indemnify the other Party in respect of any and all Other Taxes, penalties and interest incurred by the other Party as a result of the non-complying Party's failure to comply with the above covenant; and
- (c) in the absence of the Buyer providing any documentation as referred to in [§ 13.2](#)(a) above, the Seller reserves the right to charge Other Taxes.

3 ~~3.~~**Seller's and Buyer's Tax Obligation:** The Seller shall pay or cause to be paid all Tax on or with respect to ~~EECS Certificates~~Delivered pursuant to an Individual Contract arising before the transfer of risk and title at the Delivery Point. The Buyer shall pay or cause to be paid all Tax on or with respect to the ~~EECS Certificates~~Delivered pursuant to an Individual Contract arising after the transfer of risk and title at the Delivery Point. Subject to [§ 12.2 \(Payment\)](#), the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with ~~applicable local laws~~Applicable Laws. In the event that the Seller is required by ~~law~~Law to pay any Tax which is properly for the account of the Buyer, the Buyer shall promptly indemnify or reimburse the Seller in respect of such Tax. In the event that the Buyer is required by ~~law~~Law to pay any Tax which is properly for the account of the Seller, the Buyer may deduct the amount of any such Tax from the sums due to the Seller under the Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.

4 ~~4.~~**New Taxes:** If any New Tax is applicable to an Individual Contract, and the Buyer is, by the use of reasonable endeavours, able to obtain any available exemption or relief therefrom or is contractually able to pass

the same through to or be reimbursed in respect thereof by a third party, the Buyer shall pay or cause to be paid, or reimburse the Seller if the Seller has paid, such New Tax, and the Buyer shall indemnify, defend and hold harmless the Seller from and against any claims for such New Tax.

5 ~~5~~ **Termination for New Tax** Unless otherwise specified in the Election Sheet or in the terms of an Individual Contract, the provisions of this § 13.5 shall only apply in respect of an Individual Contract if the period from the date on which the Parties concluded such Individual Contract pursuant to § 3.1 (*Conclusion of Individual Contracts*) to the end of the Total Supply Period exceeds two (2) years.

Where the provisions of this § 13.5 apply in respect of an Individual Contract and:

- (a) a New Tax is imposed on a Party (~~the~~ "**Taxed Party**") in respect of the Contract Quantity;
- (b) having used reasonable endeavours to do so, the Taxed Party is unable to contractually ~~to~~ pass on the cost of the New Tax to the other Party or a third party; and
- (c) the total amount of the New Tax that would be payable in respect of the balance of the ~~EECS~~ Certificates to be Delivered during the remainder of the Total Supply Period (~~the~~ "**Remaining Contract Quantity**"), unless otherwise specified in the Election Sheet, shall exceed five percent (5%) of the product of the Remaining Contract Quantity and the Contract Price.

then, the Taxed Party shall be entitled to terminate the Individual Contract, subject to the following conditions:

- (a) the Taxed Party must give the other Party (~~the~~ "**Non-Taxed Party**") at least five (5) Business Days' prior written notice (~~the~~ "**Negotiation Period**") of its intent to terminate the Individual Contract (and which notice shall be given no later than one hundred and eighty (180) calendar days after the later of the enactment, or the effective date of the relevant New Tax), and prior to the proposed termination date the Taxed Party and the Non-Taxed Party shall attempt to reach an agreement as to the sharing of the New Tax;
- (b) if such agreement is not reached, the Non-Taxed Party shall have the right, but not the obligation, upon written notice to the Taxed Party within the Negotiation Period, to pay the New Tax for any continuous period that it so elects on a calendar month to calendar month basis, and in such case the Taxed Party shall not have the right during such continuous period to terminate the Individual Contract on the basis of the New Tax;
- (c) should the Non-Taxed Party elect to pay the New Tax on a calendar month to calendar month basis, the Non-Taxed Party may elect to cease the payment of the New Tax upon giving ~~five (5)~~ (5) Business Days' prior written notice to the Taxed Party of its election to cease payment of such New Tax, in which case the Non-Taxed Party shall indemnify the Taxed Party for the New Tax and related interest and penalties that may be incurred by the Taxed Party in respect of the period during which the Non-Taxed Party had elected to pay the New Tax and the Taxed Party shall again be subject to the provisions of this § 13.5 (~~Termination for New Tax~~) as if the New Tax had an effective date as of the date on which the Non-Taxed Party ceased payment of such New Tax;
- (d) if an agreement as to sharing a New Tax is not reached and the Non-Taxed Party does not elect to pay the New Tax for any period of time within the Negotiation Period, the Individual Contract affected shall be terminated on the expiry of the Negotiation Period; and
- (e) upon termination of the Individual Contract, the provisions of § 10 (*Calculation of the Termination Amount*) relating to the calculation and payment of the Termination Amount shall apply but only in respect of the Individual Contract(s) so terminated, and for these purposes:
 - (i) the Non-Taxed Party shall be understood to be the Terminating Party for the calculation of the Termination Amount; and
 - (ii) the effect (if any) of the relevant New Tax on the calculation of the Termination

Amount (or any Settlement Amount) shall be expressly excluded.

6 ~~6-Withholding Tax~~ If ~~this~~: § 13.6 is specified as applying in the Election Sheet, the following shall apply between the Parties:

- (a) **Payments Free and Clear:** All payments under an Individual Contract shall be made without any withholding of or deduction for or on account of any Tax unless such withholding or deduction is required by ~~law~~Law. If a Party is so required to withhold or deduct Tax from a payment to be made by it, then that Party ("**Paying Party**") shall notify the other Party ("**Receiving Party**") immediately of such requirement and pay to the ~~appropriate authorities~~Competent Authority all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the ~~authorities~~Competent Authority, the Paying Party shall Deliver such evidence (or a certified copy thereof) to the Receiving Party.
- (b) **Grossing-Up:** The Paying Party shall increase the amount of any payment which is required to be made subject to a withholding or deduction to the extent necessary to ensure that, after the making of the required withholding or deduction, the Receiving Party receives the same amount it would have received had no such withholding or deduction been made or required to be made, except that no increase shall be made in respect of any Tax:
- (i) which is only imposed as a result of a connection between the Receiving Party and the jurisdiction of the ~~authority~~Competent Authority imposing the Tax (including, without limitation, a connection arising from the Receiving Party having or having had a permanent establishment or other fixed place of business in that jurisdiction, or having been present or engaged in business in that jurisdiction) other than the mere execution or delivery of ~~this EECS Certificate~~the Certificate Master Agreement, any Confirmation or any Credit Support Document; ~~or~~
- (ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the ~~appropriate authority~~Competent Authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in the Election Sheet in a form reasonably satisfactory to the Paying Party; or
- (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in the Election Sheet for the purposes of this § 13.6 ~~(Withholding Tax)~~ failing or ceasing to be true and accurate provided that this ~~paragraph~~ § 13.6(b)(iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 13.6(b)) if such representation has failed or ceased to be true and accurate by reason of:
- (aa) any change in, or in the application or interpretation, of any ~~relevant law~~Applicable Law, enactment, directive, or published practice of any ~~relevant Tax authority~~Competent Authority for taxation being a change occurring on or after the date on which the relevant Individual Contract is entered; or
- (bb) any action taken by a ~~Tax authority~~Competent Authority for taxation, or brought in a court of competent jurisdiction, on or after the date on which the relevant Individual Contract is entered into.

§ 14 Change in Law

1 ~~1-Change in Law:~~ In case of any Change in Law that ~~(i)~~:

- (a) renders ~~an Individual Contract illegal, or (ii) makes it impossible for a Party to perform its Delivery or acceptance obligations under any Individual Contract, the Parties shall use reasonable endeavours, acting~~or unlawful to give effect to this Agreement;

- (b) renders any material matter required to be ascertained under this Agreement impossible to ascertain;
- (c) causes the provisions of this Agreement to become inconsistent with Applicable Law (including where any word or expression defined in this Agreement is defined by reference to its meaning in any Applicable Law);
- (d) introduces, replaces, modifies or extinguishes any scheme which confers benefits on holders of Certificates and/or alters the transfer arrangements in respect thereof which materially and adversely affects either Party in relation to this Agreement; or
- (e) without prejudice to § 14.1(a) to § 14.1(d) (inclusive), materially and adversely affects the benefit of this Agreement to either or both of the Parties.

then either Party may serve a notice on the other Party requesting that the Parties meet to discuss such circumstances in good faith and seek to find an agreement within thirty (30) days of the entry into force of such Change in Law. Should the Parties fail to agree on necessary amendments to the EECS Certificates Master agree the amendments which should be made to this Agreement as are necessary to:

- (f) preserve the economic intent of the this Agreement as of the Effective Date, as specified in an Individual Contract then no breach or default of either Party shall be deemed to have occurred and each Party shall be released from its obligations in respect of that; and
- (g) to the extent possible, permit the Parties to continue to perform their obligations under this Agreement in accordance with Applicable Law.

Where the Parties fail to agree amendments to the Agreement pursuant to this § 14.1 within thirty (30) calendar days after notification, either Party may elect to refer the dispute to Expert Determination (if § 21.3 (Expert Determination) is specified as applying in the Election Sheet).

Where neither Party exercises its right to refer such dispute within fifteen (15) further calendar days, either Party may terminate the affected Individual Contract to the extent the Change in Law prevents such performance(s). No obligation to pay damages pursuant to § 7 (Remedies for Failure to Deliver and Accept) this Agreement will accrue to either Party with respect to those EECS any quantities of Certificates or Cancellation Statements not Delivered or received accepted due to the occurrence of a Change in Law under this § 14.1.

2 Change in Law and Price Adjustments: If § 14.2 is specified as applying in the Election Sheet, any amendments made to this Agreement in accordance with § 14.1 (Change in Law) shall not include any upward or downward adjustments to the Contract Price.

3 ~~2~~ Event of Change in Law and Force Majeure. Ineffectiveness:

- (a) unless § 14.3(b) is specified as applying in the Election Sheet, if an event or circumstance that would otherwise constitute or give rise to a Change in Law also constitutes a Force Majeure or Ineffectiveness, it is to be treated as a Change in Law and shall not constitute Force Majeure or Ineffectiveness; or
- (b) if § 14.3(b) is specified as applying in the Election Sheet, if an event or circumstance that would otherwise constitute or give rise to a Change in Law also constitutes an Ineffectiveness, where such event or circumstance occurs:
 - (i) within the number of days after the Delivery Date specified in the Individual Contract (inclusive), it is to be treated as an Ineffectiveness and shall not constitute a Change in Law; or
 - (ii) after the number of days after the Delivery Date specified in the Individual Contract, it is to be treated as a Change in Law and shall not constitute an Ineffectiveness.

4 Expert Determination: If the Parties are unable to agree pursuant to § 14.1 (Change in

Law), then either Party may refer the issue for determination by an Expert to determine the amendments which should be made to this Agreement as are necessary to achieve the economic intent of this Agreement as of the Effective Date.

5 Parties Agreement Following Change in Law: Where an agreement or determination under § 14.1 (Change in Law) or § 14.4 (Expert Determination) occurs after the Change in Law, such agreement or determination should take into account any reconciliation required in order to put the Parties in the position in which they would have been if such agreement or determination had occurred immediately prior to the relevant Change in Law.

6 Further Undertakings Following Change in Law: Without prejudice to the other provisions of this § 14, the Parties agree that:

- (a) neither Party shall be liable to the other Party for a failure to perform any obligation under this Agreement which becomes prohibited or impossible to perform by reason of a Change in Law (and such circumstance shall constitute Force Majeure for the purposes of § 6 (Non- Performance Due to Force Majeure));
- (b) subject to § 14.6(a), the occurrence of a Change in Law will not of itself constitute an event of Force Majeure, or otherwise entitle either Party to suspend or terminate its obligations under this Agreement; and
- (c) each of them shall use its reasonable endeavours to minimise and mitigate the consequences of a Change in Law on the performance of its obligations under this Agreement.

§ 15

Guarantees and Credit Support

To address each Party's risk relating to the creditworthiness of the other Party, and to secure the prompt fulfilment of all obligations resulting from ~~this EECS Certificates~~ the Certificate Master Agreement and Individual Contracts, the Parties may agree, on or at any time after the Effective Date, or at the time of the concluding of each Individual Contract, upon the circumstances in which Credit Support Documents ~~as specified in the Election Sheet~~ may be required to be provided for the benefit of a Party, including, the form of Credit Support Documents, the amount of credit support, and the identity of one or more acceptable Credit Support Providers ~~as specified in the Election Sheet~~.

§ 16

Performance Assurance

1 ~~+~~**Right to Require Performance Assurance:** At any time and from time to time, when a Party (~~the~~ **"Requesting Party"**) believes in good faith that a Material Adverse Change has occurred in respect of the other Party, the Requesting Party shall be entitled to require, by written notice, that the other Party provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Requesting Party (each a **"Performance Assurance"**). Upon receipt of such written notice, the other Party shall within three (3) Business Days provide to the Requesting Party the Performance Assurance required.

2 ~~2.~~**Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing insofar as such event is specified as applying to a Party in the Election Sheet:

- (a) **Credit Rating:** If the Credit Rating of an Entity listed in § 16.2(a)(i)-to (iii), each such Entity being a **"Relevant Entity"** of such Party, is withdrawn or downgraded below the rating set out for such Party in the Election Sheet:
 - (i) the other Party (unless all of that other Party's financial obligations under the Agreement are fully guaranteed or assured under a Credit Support Document);
 - (ii) the other Party's Credit Support Provider (other than a bank); or

- (iii) if specified as applying in the Election Sheet, any Entity who is a party to a control and/or profit transfer agreement (*Berherrschungs-Gewinnabführungsvertrag*) within the meaning of the German Stock Corporation Act (*Aktiengesetz; AktG*) (~~⊕~~ **"Control and Profit Transfer Agreement"**) with the other Party and such other Party is in relation to such Entity, its subsidiary over which such Entity has control (~~⊕~~ **"Controlling Party"**); ~~⊕~~
- (b) **Credit Rating of a Credit Support Provider that is a Bank:** If the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the Credit Rating ~~set out~~ as specified in the Election Sheet;
- (c) **Financial Covenants:** Insofar as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not ~~fulfill~~ fulfil any of the following financial requirements as determined by reference to its most recent financial statement~~s~~;
- (i) ~~⊕~~ **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet;
- (ii) ~~⊕~~ **Funds from Operations:** ~~-~~ The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet; or
- (iii) ~~⊕~~ **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in the Election Sheet;
- (d) ~~⊕~~ **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in the Election Sheet;
- (e) ~~⊕~~ **Expiry of Performance Assurance or Credit Support Document:** If any Performance Assurance or any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under the Agreement, or, if a Performance Assurance or Credit Support Document is due to expire or terminate within the period of time, (if any), specified in the Election Sheet, or the failing or ceasing of such Credit Support Document to be in full force or effect for the purpose of the Agreement (in each case other than in accordance with the its terms or the terms of the Agreement) before the satisfaction of all outstanding obligations of such other Party under the Agreement to which such Credit Support Document relates, without the written consent of the Requesting Party;
- (f) ~~⊕~~ **Failure of Performance Assurance or Credit Support Document:** If any Credit Support Provider or Performance Assurance provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document or Performance Assurance provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document or Performance Assurance, and such failure is continuing after any applicable grace or cure period;
- (g) ~~⊕~~ **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Control and Profit Transfer Agreement entered into by it, or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement;
- (h) ~~⊕~~ **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under the Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired; or

- (i) ~~(+)~~**Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:
- (i) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
 - (ii) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under the Agreement or any Credit Support Document to which it or its predecessor was a party by either operation of ~~law~~Law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
 - (iii) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under the Agreement.

§ 17

Provision of Financial Statements and Tangible Net Worth

1 ~~(+)~~**Provision of Financial Statements** Unless otherwise specified in the Election Sheet, if requested by a ~~party:~~Party, the other Party shall deliver:

- (a) within one hundred and twenty (120) calendar days following the end of each fiscal year, a copy of such other Party's, or for such period the other Party's ~~obligation~~obligations are supported by a Credit Support Provider or if it is a party to a Control and Profit Transfer Agreement, its Credit Support Provider's or its Controlling Party's, as the case may be, annual report containing audited consolidated financial statements for such fiscal year; and
- (b) within sixty (60) calendar days after the end of each of its first three fiscal quarters of each fiscal year, a copy of its quarterly report containing unaudited consolidated financial statements.

2 ~~(-)~~**Decline in Tangible Net Worth** ~~If this: § 17.2 is specified as applying in the Election Sheet,~~ as soon as it becomes aware of such decline, each Party shall promptly notify the other Party of the occurrence of a decline in its Tangible Net Worth or the Tangible Net Worth of its Credit Support Provider or Controlling Party, to a level below the amount specified in the Election Sheet.

3 ~~(-)~~**Accounting Principles:** In all cases, the financial statements referred to in this § 17 ~~(Provision of Financial Statements and Tangible Net Worth)~~ shall be prepared in accordance with generally accepted accounting principles in the relevant jurisdiction.

§ 18

Assignment

1 ~~(+)~~**Prohibition:** Neither Party shall be entitled to assign its rights and obligations under the Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.

2 ~~(-)~~**Assignment to Affiliates** ~~If this: § 18.2 is specified as applying in the Election Sheet,~~ each Party shall be entitled to assign its rights and obligations under the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness, provided that, if specified as applying in the Election Sheet, such Affiliate is incorporated in the same jurisdiction as the assigning and transferring Party. Such ~~Assignment~~assignment shall only become effective upon notice being received by the other Party and; provided that any Credit Support Document issued or agreed on behalf of the assigning Party

has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

§ 19 Confidentiality

1 ~~+Confidentiality Obligation Unless this:~~ § 19 is specified as not applying in the Election Sheet, and subject to § 19.2 (Exclusions from Confidential Information), neither Party shall disclose the terms of an Individual Contract ("Confidential Information") to a third party.

2 ~~2-Exclusions from Confidential Information:~~ Confidential Information shall not include information which:

- (a) is disclosed with the other Party's prior written consent;
- (b) is disclosed by a Party to ~~the Relevant Domain Protocol, relevant issuing body,~~ its directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;
- (c) is disclosed by a Party to the Authorised Issuing Body or the Registry Operator;
- (d) ~~(e)~~ is disclosed to comply with any ~~applicable law, regulation~~ Applicable Law, or rule of any exchange, system operator or ~~regulatory body~~ Competent Authority, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such ~~law, regulation, Law~~ Law or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;
- (e) ~~(d)~~ is in or lawfully comes into the public domain other than by a breach of this § 19-
~~(Confidentiality)~~; or
- (f) ~~(e)~~ is disclosed to price reporting agencies or for the calculation of an index, provided that such disclosure shall not include the identity of the other Party.

3 ~~3-Expiration:~~ A Party's obligation in respect of an Individual Contract under this § 19 ~~(Confidentiality)~~ shall expire one (1) year after the expiration of such Individual Contract.

§ 20 Representations and Warranties

1 Representations and Warranties of the Seller: If specified as applying to a Party in the Election Sheet, the Seller hereby represents and warrants to the Buyer in respect of each Individual Contract on the relevant Delivery Date that:

- (a) the Seller is entitled to dispose of the Certificates;
- (b) the Certificates are capable of being Delivered in accordance with § 4.2 (Electronic Transfer of Certificates);
- (c) the Certificates fulfil and correspond to the specifications agreed by the Parties as applicable and set out in the Individual Contract; and
- (d) where Transfer by Cancellation Statement has been specified in the Individual Contract, after a Delivery Date and the successful discharge of its Delivery obligation, the Seller shall not request a Cancellation Statement in respect of the cancelled Certificates which are the subject of the Individual Contract to any other person or to any third party.

2 ~~1-Additional~~ Additional Representations and Warranties: If specified as applying to a Party in the Election Sheet, that Party hereby represents and warrants to the other Party upon entering into ~~this EECS Certificates~~ the Certificate Master Agreement and each time it enters into an Individual Contract as follows:

- (a) it is an Entity duly organised, validly existing and in good standing under the ~~laws~~Laws of its jurisdiction of incorporation or organisation;
- (b) the signing and the entering by it into of the ~~EECS Certificates~~Certificate Master Agreement, any Credit Support Document to which it is a party, and each Individual Contract, and the carrying out of the transactions contemplated therein, shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to execute, deliver and perform its obligations under the Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery, performance and its entry into the Agreement and its execution, delivery and the performance of the Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party ~~or~~, any constitutional document, ~~or~~ rule, ~~law or regulation~~ applicable to it, or Applicable Law;
- (d) no Material Reason for termination as outlined in § 9.5 (with respect to it has occurred and is continuing *Definition of Material Reason*), and no such event or circumstance would occur as a result of its entering into or performing its obligations under the Agreement;
- (e) it has all governmental and regulatory authorisations, approvals and consents necessary for it to legally perform its obligations under the Agreement and any Credit Support Document to which it is a party;
- (f) it has negotiated, entered into and executed the Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (g) it regularly enters into agreements for the trading of ~~EECS~~ Certificates as contemplated by the Agreement, and does so on a professional basis in connection with its principal line of business, and may be reasonably characterised as a professional market party;
- (h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into ~~this EECS Certificates~~the Certificate Master Agreement and each Individual Contract, and, as to whether ~~this EECS Certificates~~the Certificate Master Agreement and each such Individual Contract is appropriate or proper for it based upon its own judgement, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of, and understands and accepts, the terms, conditions and risks of the Agreement;
- (i) the other Party is not acting as its fiduciary or adviser;
- (j) it is not relying upon any representation made by the other Party other than those expressly set forth in the Agreement or any Credit Support Document to which it is a party;
- (k) with respect to a Party that is a governmental Entity or public power system, such governmental Entity or public power system represents and warrants to the other Party as follows: (i) all acts necessary for the valid execution, delivery and performance of the Agreement, including without limitation, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures have or shall be taken and performed; (ii) entry into and performance of the Agreement by a governmental Entity or public power system are for a proper public purpose within the meaning of relevant constitutional or other governing documents and ~~applicable law~~Applicable Law; and (iii) the term of the Agreement does not extend beyond any applicable limitation imposed by any relevant constitutional or other governing documents and ~~applicable law~~Applicable Law; ~~and~~
- (l) with respect to a Party, it is not insolvent, and there are no pending or threatened legal or

administrative proceedings to which it is a party which to the best of its knowledge would materially adversely affect its ability to perform any Individual Contract under the Agreement or any Credit Support Document to which it is party, such that it could become insolvent;

~~2. Warranties of the Seller: Seller hereby represents and warrants to Buyer in respect of each Individual Contract on the relevant Delivery Date that:~~

~~(a) Seller is entitled to dispose of the EECS Certificates;~~

~~(b) the EECS Certificates are capable of being Delivered in accordance with § 4.2 (Electronic Transfer of EECS Certificates);~~

~~(c) the EECS Certificates fulfil and correspond to the specifications agreed by the Parties as applicable and set out in the Confirmation for the applicable Individual Contract; and~~

~~(m) (d) after a Delivery Date and successful discharge of its Delivery obligation, the Seller shall not request a Cancellation Statement in respect of the cancelled EECS Certificates which are the subject of the Individual Contract where Transfer by Cancellation Statement has been any other representations and warranties applying to a Party specified in the Confirmation, to any other person or to any third party Election Sheet.~~

§ 21

Governing Law and Arbitration

OPTION A

1 ~~1~~ **Governing Law** If Option A is specified in the Election Sheet, this Agreement and any non-contractual obligations arising out of or in connection with it shall be construed and governed by ~~English law~~ the laws of England & Wales, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980."

2 ~~2~~ **Arbitration** If Option A is specified in the Election Sheet, any dispute arising out of or in connection with this Agreement and any non-contractual obligations arising out of or in connection with it, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three (3), each Party having the right to nominate one arbitrator. The place of arbitration shall be London, England, where all hearing and meetings shall be held, unless the Parties agree otherwise. Unless otherwise specified in the Election Sheet, the language to be used in the arbitral proceedings shall be English and the Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under the relevant ~~applicable law~~ Applicable Law, the ~~parties~~ Parties hereby waiving their right, (if any,) to recover such damages.

OPTION B

1 ~~1~~ **Governing Law** If Option B is specified in the Election Sheet, this Agreement and any non-contractual obligations arising out of or in connection with it shall be construed and governed by the substantive law of the Federal Republic of Germany, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980."

2 ~~2~~ **Arbitration** If Option B is specified in the Election Sheet, any disputes which arise in connection with the Agreement and any non-contractual obligations arising out of or in connection with it shall be referred for resolution to the German Institution of Arbitration (:Deutsche Institution für Schiedsgerichtsbarkeit (DIS) e.V.) and decided according to its rules, ousting the jurisdiction of the ordinary courts. The number of arbitrators shall be three (3). The arbitration shall be conducted in the language specified in the Election Sheet.

DEFAULT RULE

If neither Option A nor Option B is specified in the Election Sheet and the Parties' agreed choice of law and

dispute resolution procedure is not specified in the Election Sheet or in the terms of the Individual Contract, then § 21.1 (*Governing Law*) and § 21.2 (*Arbitration*) of Option A shall apply.

3 Expert Determination:

(a) General:

- (i) This § 21.3 shall only apply if specified in the Election Sheet.
- (ii) Whenever any matter is to be referred to Expert determination in accordance with this Agreement or the Parties otherwise agree in writing that a dispute in connection with this Agreement will be determined by an Expert, such matter or dispute shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce ("**ICC Expertise Rules**"), which, save as modified by this § 21.3, shall apply to the selection and appointment of any Expert and the administration of any expertise proceedings.
- (iii) Any valid reference by a Party to an Expert for determination in accordance with this § 21.3 may only be withdrawn by the written agreement of the Parties.

(b) Commencement: The procedure for commencing Expert determination is as follows:

- (i) The Party wishing to appoint an Expert in accordance with a right granted by this Agreement ("**Applicant**") shall give notice to the other Party ("**Expert Notice**") along with full details of the matter for which it is seeking Expert determination.
- (ii) Within ten (10) Business Days of delivery of an Expert Notice, each Party shall nominate one (1) Expert meeting the criteria set out in § 21.3(b)(iii) below, following which the two (2) nominated Experts shall meet to discuss the selection of a third (3rd) Expert, with a view to reaching agreement on such selection within thirty (30) calendar days following delivery of the Expert Notice.
- (iii) The criteria for selection of each Expert are that he or she is:
 - (aa) available and willing to act upon the terms of this § 21.3 within twenty (20) Business Days of appointment;
 - (bb) an independent natural person possessing expert knowledge applicable to the matters to be resolved by an Expert as set out in the Expert Notice;
 - (cc) sufficiently fluent in English to conduct the Expert determination and deliver the Decision in the English language; and
 - (dd) independent of the Parties and has no conflict of interest in acting as an Expert.
- (iv) Following agreement on the selection of the Experts or if the Parties do not agree on the selection of any Expert pursuant to § 21.3(c) (*Appointment of an Expert*), the Parties may apply in writing to the ICC to select and appoint one or more Experts (as may be applicable) to resolve the matter or dispute ("**Application**"), enclosing a copy of this Agreement, a statement describing the nature and circumstances of the matter or dispute and, if the Parties do not agree on the selection of an Expert pursuant to § 21.3(c) (*Appointment of an Expert*), any matters that the Applicant wishes to bring to the attention of the ICC for the purpose of selecting the Expert (including the required criteria for selecting an Expert as set out in § 21.3(c) (*Appointment of an Expert*)). The Application shall be simultaneously copied to the other Party.

- (v) Within thirty (30) calendar days of service of the Application, the other Party to this Agreement shall send to the ICC, with simultaneous copy sent to the Applicant, a reply to any matters raised by the Applicant in the Application ("Reply").
- (c) **Appointment of an Expert:**
- (i) The Parties shall use reasonable endeavours to procure that the ICC appoints the Experts within ten (10) Business Days of service of the Reply or as soon as reasonably practicable thereafter.
- (ii) Without prejudice to a Party's entitlement to challenge the appointment of an Expert pursuant to § 21.3(c)(iii) and except where selected by the Parties, the decision of the ICC as to the identity of any Expert shall be final.
- (iii) Prior to their appointment, each Expert shall provide the Parties and the ICC with a written resume of his or her past and present professional positions, shall agree in writing a fee rate conforming to the ICC Expertise Rules and shall sign a declaration to the effect that there are no circumstances known to him or her likely to give rise to justifiable doubts as to his or her independence and impartiality. The Experts shall each assume a continuing duty to disclose any such circumstances to the ICC and to the Parties, if such circumstances should arise after the date of such declaration and before the Expert determination is concluded.
- (iv) An Expert shall act as an expert to determine a point of fact and not as an arbitrator.
- (d) **Further Written Submissions:** The filing of written submissions in addition to the Application and the Reply shall be upon the application of a Party and at the discretion of the Experts.
- (e) **Hearing:** Unless otherwise agreed by the Parties, the Experts shall fix a date, time and venue for a hearing which, unless such time limit is extended in accordance with § 21.3(h) (*Challenges*), shall be no later than sixty (60) calendar days after the latest date on which any written submission may be served pursuant to § 21.3(b)(iv) (*Commencement*) or no later than sixty (60) calendar days of the appointment of the Experts if no further written submissions are to be filed. Otherwise, the Experts may adopt such procedures and may conduct their determination in such manner as they consider appropriate.
- (f) **The Decision:**
- (i) Where the Experts fail to agree on any issue, the Experts shall decide that issue by a majority.
- (ii) The Experts shall endeavour to issue their decision in writing ("**Decision**") with written reasons for the Decision to the Parties within thirty (30) calendar days of the hearing, or as soon as reasonably practicable thereafter.
- (iii) The Decision shall (unless fraud or manifest error is shown) be final and binding on the Parties.
- (iv) All matters under this § 21.3 must be conducted, and the Decision and the written reasons for the Decision shall be written, in the English language.
- (g) **Communications and Time Limits:**
- (i) All communications between the Parties concerning the Expert determination shall be:

(aa) copied to the ICC and, once appointed, to each of the Experts; and

(bb) be by fax or email, with a hard copy following by post.

(ii) The time limits set out in this § 21.3 may be extended only by written agreement by the Parties or by the Experts.

(h) **Challenges:** The Experts may be challenged by either Party if circumstances exist that give rise to justifiable doubts as to any of their impartiality or independence. In such circumstances the challenge shall be brought by written notice to the ICC copied to the other Party within fourteen (14) calendar days of the appointment of the relevant Expert or within fourteen (14) calendar days of the challenging Party becoming aware of the circumstances giving rise to the challenge. Unless the challenged Expert withdraws, or whichever of the Parties that has not brought the challenge agrees to the challenge, within fourteen (14) calendar days of the challenge, the ICC shall decide the challenge and, if appropriate, shall appoint a replacement Expert in accordance with the criteria set out herein.

(i) **Costs:**

(i) The costs of the Expert determination shall be in accordance with the ICC Expertise Rules and shall be borne in such proportions as the Expert shall determine, in his or her absolute discretion.

(ii) The Parties shall bear their own legal and other costs incurred in connection with the Expert determination.

§ 22

Miscellaneous

1 ~~1~~ Recording Telephone Conversations: Each Party is entitled to record telephone conversations held in connection with the Agreement 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.

2 ~~2~~ Notices and Communications: Except as otherwise provided herein or agreed with respect to an Individual Contract, all notices, declarations or invoices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile ~~as provided~~ specified in the Election Sheet. Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

- (a) if delivered by hand, on the Business Day delivered, or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;
- (b) if sent by first class post, on the second (2nd) Business Day after the date of posting, or if sent from one country to another, on the fifth (5th) Business Day after the day of posting; or
- (c) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

3 ~~3~~ Amendments: Except as provided in § 3 (*Concluding and Confirming Individual Contracts*) with respect to Confirmations, any amendments or additions to ~~this EECS Certificates~~ the Certificate Master Agreement shall be made only in writing signed by both Parties.

4 ~~4~~ Partial Invalidity: ~~If~~ Subject to § 14 (Change in Law), if at any time, any provision of ~~this EECS Certificates~~ the Certificate Master Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the ~~law~~ Law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of ~~this EECS Certificates~~ the Certificate Master Agreement or of any

Individual Contract, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

5 ~~5~~ **Third Party Rights:** The Parties do not intend that any third party shall have any rights under, or be able to enforce, the Agreement and the Parties exclude to the extent permitted under ~~applicable law~~ Applicable Law any such third party rights that might otherwise be implied.

6 **Transaction Costs:** The Seller and the Buyer will each bear its own fees and expenses incurred in connection with the negotiations, preparation and execution of this Agreement and the transactions contemplated by this Agreement. In the case of EECS Certificates, the Seller will furthermore bear all transfer costs up to the AIB Hub while the Buyer will bear all transfer costs from the AIB Hub to its Account.

Executed by the duly authorised representative of each Party effective as of the Effective Date.

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

EFET

European Federation of Energy Traders

Annex 1 to the ~~EECS Certificates~~ Certificate

Master Agreement Defined

Terms

Terms used in the ~~EECS Certificates Master~~ Agreement shall have the following meanings:

"**Accepting Party**" has the meaning specified in § 7.1 (*Failure to Deliver*);

"Account"

- (a) in the case of EECS Certificates, has the meaning as specified in the EECS Rules; or
- (b) in the case of National Scheme Certificates, means an account on the Registry as specified in an Individual Contract;

"**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 or any Entity directly or indirectly under the common Control of a Party;

"**Agreement**" has the meaning specified in § 1.1 (*Subject of Agreement*);

"AIB" or "Association of Issuing Bodies" means the Association of Issuing Bodies IVZW with its registered address at Koning Albert II – Jaan 20 bus 19, B-1000 Brussels Belgium;

"AIB Hub" has the meaning as specified in the EECS Rules;

"Annex" means annex 1, 2 or 3 to the Certificate Master Agreement, as applicable;

~~"Applicable EECS Registration Database" means, the EECS Registration Database through which a Party is obliged to perform its Delivery, acceptance or cancellation obligation under and in accordance with the Confirmation to the~~ "Applicable Law" means, with respect to any Party, any constitutional provision, Law, statute, rule, regulation, ordinance, treaty, order, decree, judgment, decision, holding, injunction, registration, or guideline enforceable at law or in equity, including the interpretation and administration thereof by any relevant Competent Authority;

"Applicant" has the meaning as specified in § 21.3(b)(i)

(Commencement); "Application" has the meaning as specified in §

21.3(b)(iv) (Commencement); "Authorised Issuing Body"

- (a) in the case of EECS Certificates, has the meaning as specified in the EECS Rules;
- (b) in the case of National Scheme Certificates, has the meaning as specified in an Individual Contract;

"**Automatic Termination**" has the meaning specified in § 9.4 (*Automatic Termination*);

"**Business Day**" means a day (other than Saturday or Sunday) on which commercial banks are open for general business at the places where each Party has its registered office;

"**Buyer**" ~~means~~ has the ~~person identified as such~~ meaning specified in the ~~Confirmation to the~~ Individual Contract;
"**Buyer's Account**" has the meaning specified in the ~~Confirmation to the~~ Individual Contract;

"Cancellation Agreement" has the meaning as specified in the EECS Rules;

"**Cancellation Statement**" means a statement made in relation to the ~~standard format~~ cancellation ~~statement~~ issues by the Registry Operator of the Applicable EECS Registration Database of a Certificate in a form;

(a) pursuant to the ~~Relevant Domain Protocol~~ Issuance and Registry Rules; or

(b) agreed between the Parties;

"**Central European Time**" or "**CET**" means Central European Time and shall include Central European Winter Time and Central European Summer Time as applicable;

"Certificate" means an EECS Certificate or a National Scheme Certificate, as applicable;

"Certificate Master Agreement" means this agreement, excluding the Election Sheet and any Individual Contract;

"**Change in Law**" means: ~~(a) a change in law in the Domain of the Applicable EECS Registration Database including (without limitation) enactment, promulgation, execution or ratification of, or any change in or amendment to, or revision of EU Directive 2009/28/EC repeal or other cancellation of, any Law (or in the application or official interpretation of any Law by a judgment or decision of any court, tribunal or regulatory bodies);~~

"**Claiming Party**" has the meaning specified in § 6.1 (*Definition of Force Majeure*);-

"Competent Authority" means any national, federal, regional, local or other authority, ministry, inspectorate, department, court, arbitral tribunal, administrative agency or commission or any other governmental, municipal, administrative or regulatory body (in each case to the extent each of the foregoing has jurisdiction over either or both of the Parties, this Agreement and/or the subject matter of this Agreement);

"**Confidential Information**" has the meaning specified in § 19.1 (*Confidentiality*);

Obligation); "**Confirmation**" has the meaning specified in § 3.1 (*Conclusion of Individual*

Contracts); "**Contract Price**" means, in respect of an Individual Contract, the price agreed between the Parties;

"**Contract Quantity**" means, in respect of an Individual Contract, a quantity of Certificates, or one or more Cancellation Statements representing a quantity of Certificates, equal to the quantity expressed in MWh agreed between the Parties, ~~expressed in MWh~~ an Individual Contract;

"**Control**" means ownership of more than fifty per cent (50%) of the voting power of a Party or Entity and "**Controlled**" or "**Controlling**" shall be construed accordingly;-

"**Control and Profit Transfer Agreement**" has the meaning specified in § 16.2(a)(iii) (*Credit Rating*);

"**Controlling Party**" has the meaning specified in § 16.2(a)(iii) (*Credit Rating*);

"**Costs**" has the meaning specified in § 10.2(a) (*Settlement Amount*);

"**Credit Rating**" means in respect of an Entity any of the following: (i) the long-term unsecured, unsubordinated

(unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

"**Credit Support Documents**" has the meaning specified with respect to a Party specified in the Election Sheet, which may include, without limitation, a parent guarantee, bank guarantee, letter of awareness, letter of credit or any credit support agreement;

"**Credit Support Provider**" has the meaning specified with respect to a Party specified in the Election Sheet; "**Damages**" has the meaning specified in § 11.2 (*Exclusion of Liability*); "**Decision**" has the meaning as specified in § 21.3(f)(ii) (*The Decision*); "**Defaulting Party**" has the meaning specified in § 8 (*Suspension of Delivery*); "**Delivering Party**" has the meaning specified in § 7.1 (*Failure to Deliver*); "**Delivery**" means (whether used as a verb or noun) the:

(a) transfer of the relevant Certificate from one Account in the Registry to another Account; or

(b) removal of the relevant EECS-Certificate from one ~~account~~Account in the ~~Applicable EECS-Registration Database~~Registry and subsequent crediting of such Certificate to another ~~account~~Account.

under and in accordance with the ~~EECS~~Issuance and Registry Rules ~~and the Relevant Domain Protocol~~ or, where specified as applying in an Individual Contract, the delivery of the required statement and documentation in accordance with § 4.3 (*Transfer by Cancellation Statement*), and "**Deliver**" and "**Delivered**" will be construed accordingly;

"**Delivery Date**" means, in respect of an Individual Contract, the Delivery date agreed between the Parties and specified in the Confirmation;

"**Delivery Point**" ~~means, in~~has the meaning with respect ~~of~~to Certificates and Cancellation Statements as specified in the Individual Contract;

"**Designated Purpose**" has the meaning as specified in an Individual Contract, ~~the~~;

"**Domain for Delivery in**" has the ~~Buyer's Applicable EECS-~~

~~Registration Database~~meaning as specified in the ~~Confirmation to the~~

~~Individual Contract~~EECS Rules; "Domain Protocol" has the

meaning as specified in the EECS Rules; "**Due Date**" has the

meaning specified in § 12.2 (*Payment*);

"**Early Termination**" has the meaning specified in § 9.3-(a) (*Termination for Material Reason*);

"**Early Termination Date**" has the meaning specified in § 9.3-(b) (*Termination for Material Reason*);

"**EBIT**" means earnings before interest and taxes which shall be, in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity); *plus* the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity;

"**EECS Certificate**" ~~means a certificate of~~has the meaning as specified in the EECS Rules, the type of which may be specified in ~~the Confirmation to~~ the Individual Contract;

"~~EECS Certificates Master Agreement~~" ~~means this agreement;~~ "**Disclosure Certificate**" has the meaning as specified in the EECS Rules;

"EECS GO" has the meaning as specified in the EECS Rules;

"EECS Registration Database" has the meaning as specified in the EECS Rules;

"EECS Rules" means the EECS Rules (updated from time to time) as published by the Association of Issuing Bodies for the European Energy Certificate System at <https://www.aib-net.org/eecs/eecsr-rules>;

"EECS Transfer System" has the meaning as specified in ~~§ 2.1 (Definitions)~~the EECS Rules;

"Effective Date" has the meaning set out on the first page of ~~this EECS Certificate~~the Certificate Master Agreement; "Election Sheet" has the meaning specified in § 1.1 (*Subject of Agreement*);

"Electricity Scheme" has the meaning as specified in the EECS Rules;

"Electronic Transfer" has the meaning specified in § 4.2 (*Electronic Transfer of ~~EECS~~Certificates*);-

"Encumbrance Loss" means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an Individual ~~contract~~Contract, 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 Individual Contract 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~~Competent Authority) by that third party;

"Encumbrance Loss Amount" has the meaning specified in § 5.1(b)(i) (*No Encumbrances*);

"Entity" means an individual, government or state or division thereof, government or state agency, corporation, partnership or such other entity as the context may require;

"EU" means the European ~~Community~~Union as it exists from time to time;

"Expert" means an individual who is professionally specialised in the issuance and transfer of Certificates, appointed by the Parties in accordance with § 21.3(c) (Appointment of an Expert);

"Expert Notice" has the meaning as specified in § 21.3(b)(i) (Commencement);

"Expiration Date" has the meaning specified in § 9.2 (*Expiration Date and 30 Day Termination Notice*);

"Force Majeure" has the meaning specified in § 6.1 (*Definition of Force Majeure*);

"Funds from Operations" means the amount of cash generated or employed by the Relevant Entity in its operating activities;

"Gains" has the meaning specified in § 10.2(b) (*Settlement Amount*);

~~"Interest Rate~~ICC" means the International Chamber of Commerce with seat in

Paris, France; "ICC Expertise Rules" has the meaning as specified in § ~~12.4~~

~~(Default Interest~~21.3(a)(i) (General)); "Individual Contract" has the meaning

specified in § 1.1 (*Subject of Agreement*);

"Ineffective" means, in respect of a Certificate, that any of the following events or circumstances occurs:

- (a) the Certificate has been invalidated, revoked, suspended or withdrawn by the Competent Authority or the Authorised Issuing Body (as appropriate);

- (b) the Certificate has already been cancelled other than in agreement with the Buyer;
- (c) the Certificate is not recognised or has been rejected by a Competent Authority for the Designated Purpose; or
- (d) where § 4.3 (Transfer by Cancellation Statement) applies, the issuance of a Cancellation Statement is refused by the Registry Operator, the invalidation, revocation or withdrawal of a Cancellation Statement, or the Buyer or a third party designated by the Buyer not being listed or recognised as beneficiary of a Cancellation Statement,

and "Ineffectiveness", the opposite form "Effective" and other cognate expressions shall be construed accordingly; "Ineffectiveness Loss Amount" means the calculation specified in an Individual Contract;

"Interest Rate" has the meaning specified in § 12.4 (Default Interest);

"Issuance and Registry Rules" means:

- (a) in the case of EECS Certificates, the EECS Rules and the Relevant Domain Protocol(s); or
- (b) in the case of National Scheme Certificates, the National Scheme Rules;

"Law" means any law (including the common law), statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance of doubt, only to the extent having force of law), which shall include without limitation:

- (a) Directive 2009/28/EC or Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources (as applicable on the Effective Date);
- (b) Directive 2009/72/EC or Directive (EU) 2019/944 on common rules for the internal market for electricity (as applicable on the Effective Date);
- (c) Directive 2009/73/EC concerning common rules for the internal market in natural gas;
- (d) national implementing legislation of such Directives (as applicable on the Effective Date);
- (e) national or regional legislation regulating the issuance, transfer, cancellation and use of National Scheme Certificates; and
- (f) the Issuance and Registry Rules;

"Letter of Credit" means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in the Election Sheet as provided in § 16.2(b) (*Credit Rating of a Credit Support Provider that is a Bank*);

"Limitation Amount" has the meaning specified in the Election Sheet (if applicable);

"Losses" has the meaning specified in § 10.2(c) (*Settlement Amount*);

"Material Adverse Change" has the meaning specified in § 16.2 (*Material Adverse Change*);-

"Material Reason" has the meaning specified in § 9.5 (*Definition of Material Reason*);

"National Scheme Certificate" means a tradable electronic certificate to evidence the origin of energy produced (including but not limited to renewable origin electricity or gas) regulated by the National Scheme Rules, as specified in an Individual Contract;

"National Scheme Rules" means national or regional Law which creates and gives legal effect to, and regulates the issuance, transfer and retirement of National Scheme Certificates, as specified in an Individual Contract;

"Negotiation Period" has the meaning specified in § 13.5 (*Termination for New Tax*);

"New Tax" means in respect of an Individual Contract, any Tax enacted and effective after the date on which the Individual Contract is entered into, or that portion of an existing Tax which constitutes an effective increase (taking effect after the date on which the Individual Contract is entered into) in applicable rates, or extension of any existing Tax to the extent that it is levied on a new or different class of persons as a result of any ~~law, order, rule, regulation, decree or concession~~ Law or the interpretation thereof by the ~~relevant taxing authority~~ Competent Authority for taxation, enacted and effective after the date on which the Individual Contract is entered into;

"No Encumbrances Obligation" has the meaning specified in § 5.1 (*No Encumbrances*);

"Non-Defaulting Party" has the meaning specified in § 8 (*Suspension of Delivery*);

"Non-Taxed Party" has the meaning specified in § 13.5 (*Termination for New Tax*);

"Ordinary Termination" has the meaning specified in § 9.2 (*Expiration Date and 30 Day Termination Notice*);

"Other Tax" means any energy Tax or excise duty, but not including Taxes targeted at end users;

"Party" and "Parties" have the meaning set out on the first page of the Certificate Master Agreement;

"Party A" means the Party identified as such in the Election Sheet; "Party B" means the Party identified as such in the Election Sheet;

"Paying Party" has the meaning specified in § 13.6(a) (*Payments Free and Clear*);

"Performance Assurance" has the meaning specified in § 16.1 (*Right to Require Performance Assurance*);

"Production Device"

(a) in the case of EECS Certificates, has the meaning as specified in the EECS Rules; or

(b) in the case of National Scheme Certificates, means the generation device or group of devices registered with the Authorised Issuing Body for issuance of National Scheme Certificates in accordance with the Issuance and Registry Rules;

"RECS Certificate" has the meaning as specified in the EECS Rules;

"Receiving Party" has the meaning specified in § 13.6(a) (*Payments Free and Clear*);

"Relevant Domain Protocol" means the Domain Protocol approved by the AIB that governs the cancellation or transfer (including by way of export or import) ~~from the Applicable EECS Registration Database~~ of EECS Certificates from the Registry;

"Relevant Entity" has the meaning specified in § 16.2(a) (*Credit Rating*);

"Registry" means:

(a) in the case of EECS Certificates, the EECS Registration Database; or

(b) in the case of National Scheme Certificates, the issuance and registry rules as specified in an Individual Contract.

through which a Party is obliged to perform its Delivery, acceptance or cancellation obligation under and in accordance with the Individual Contract;

"Registry Operator" means:

- (a) in the case of EECS Certificates, a Scheme Member or the person appointed by the Scheme Member to administer the operation of the EECS Registration Database; or
- (b) in the case of National Scheme Certificates, the entity specified in the Individual Contract which is responsible for the operation of the Registry;

"Remaining Contract Quantity" has the meaning specified in § 13.5 (*Termination for New Tax*);-

"Reply" has the meaning as specified in § 21.3(b)(v) (Commencement);

"Requesting Party" has the meaning specified in § 16.1 (*Right to Require Performance Assurance*);

"Schedule" ~~has the meaning specified in § 4.4 (Definition of Schedule);~~ shall mean those actions necessary for a Party to effect its Delivery or acceptance (if applicable) obligations, which may include nominating, initiating, requesting and confirming with the Registry Operator (and if applicable, the other Party) the Contract Quantity, the Certificate details (including, the relevant Production Device I.D.(s), the relevant production periods, the usage for any cancellation, the face values, as applicable), the account I.D. of the Buyer's Account and any other relevant terms of the Individual Contract in accordance with the Issuance and Registry Rules, and any other customary industry practices and procedures to ensure that all applicable requirements for effecting Delivery 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 or Registries are properly established in time to discharge their respective Delivery, cancellation or acceptance obligations under an Individual Contract;

"Scheme Member" has the meaning as specified in the EECS Rules;

"Seller" means the person identified as such in ~~the Confirmation to~~ the Individual Contract;

"Settlement Amount" has the meaning specified in § 10.2 (*Settlement Amount*);

"Specified Indebtedness" means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions);

"Tangible Net Worth" means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill;

"Tax" means any present or future tax, levy, impost, duty, charge, assessment royalty, tariff or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other ~~taxing authority~~ Competent Authority for tax (whether or not for its benefit) in respect of any payment, nomination and allocation under any Individual Contract or under this Agreement, and "Taxes" shall be construed accordingly. For the avoidance of doubt, Tax shall exclude; (i) any tax on net income or wealth; (ii) a stamp, registration, documentation or similar tax; and ~~(iii)~~ (iii) VAT;

"Taxed Party" has the meaning specified in § 13.5 (*Termination for New Tax*);

"Terminating Party" has the meaning specified in § 9.3(a) (*Termination for Material Reason*);

"Termination Amount" has the meaning specified in § 10.1 (*Termination Amount*);

"Threshold Amount" with respect to a Party, shall have the meaning as specified for that Party

pursuant to § 9.5(b)(ii);

"Total Capitalisation" means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

"Total Debt" means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;-

"Total Supply Period" means, in respect of an Individual Contract, the supply period agreed between the Parties;

"Transfer Link" has the meaning as specified in the EECS Rules;

"VAT" means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties;

"VAT Rules" means any VAT ~~law, order, rule, regulation, decree or concession~~ [Law](#) or the interpretation thereof; and **"Zero-Rated"** means, in respect of a supply, a tax exempt export or tax-free export under applicable VAT Rules and **"Zero-Rating"** shall be construed accordingly.

EFET

European Federation of Energy Traders

Annex 2 ~~Election Sheet~~ to
the
~~EECS Certificates~~ Certificate Master Agreement Election Sheet
with an Effective Date of

between.....and.....
("Party A") ("Party B")

PART I: CUSTOMISATION OF PROVISIONS IN THE ~~EECS CERTIFICATES~~ CERTIFICATE MASTER AGREEMENT

§1 Subject of Agreement

§ 1.2 Pre-Existing Contracts: § 1.2 shall apply, ~~or~~;
 otherwise § 1.2 shall not apply

§2 Definitions and Construction

§ 2.4 References to Time: time references shall be:
to the following time zone:
.....
;
otherwise as ~~provided~~ written in the ~~EECS Certificates~~ Certificate Master
Agreement (i.e. CET), ~~or~~
 to the following time:

§3 Concluding and Confirming Individual Contracts

§ 3.4 Authorised Persons: § 3.4 shall apply to Party A and shall be as designated in Annex
~~or~~;
 otherwise § 3.4 shall not apply to Party A-

 § 3.4 shall apply to Party B and shall be as designated in Annex
.....
~~or~~;
 otherwise § 3.4 shall not apply to Party B

§4 Primary Obligations For Delivery and Acceptance of Certificates

§ 4.4 Documentation of Actual Deliveries and Receipts:

The documentation to be provided by the Seller pursuant to: §
4.4(a) shall be: _____; and § 4.4(b) shall be: _____

§5

Transfer, Risk, No Encumbrances and Ineffectiveness

§ 5.4 Ineffectiveness: _____ the Party responsible for the determination of either §
5.4(b)(i) or
§ 5.4(b)(ii) shall be _____

§6

Non-Performance Due to Force Majeure

§ 6.1 Definition of Force Majeure:

§ 6.1 ~~shall apply as written in the EECS Certificates Master Agreement (a), or~~
 ~~§ 6.1 (b), (c) or (d)~~ shall not apply as written but instead shall be as follows:

_____;
otherwise § 6.1 shall apply as written in the Certificate Master Agreement, whereby:
 § 6.1(a) shall
apply; § 6.1(b)
shall apply;
 § 6.1(c) shall apply; and/or § 6.1(d) shall apply and shall be
as follows:

§9

Term and Termination Rights

§ 9.2 Expiration Date and 30 Day Termination Notice:—

§ 9.2 shall apply and the Expiration Date shall be:
_____, ~~or~~;
 otherwise § 9.2 shall not apply and there shall be no Expiration Date

§ 9.4 Automatic Termination: § 9.4 shall apply to Party A, with termination effective
~~or~~;
 otherwise § 9.4 shall not apply to Party A-

§ 9.4 shall apply to Party B, with termination effective
_____, ~~or~~;
 otherwise § 9.4 shall not apply to Party B

§ 9.5(b) Cross Default and Acceleration:

~~§ 9.5(b)(i) shall apply to Party A, or~~ § 9.5(b)(i) shall not apply to Party A ~~or~~; otherwise § 9.5(b)(i) shall apply to Party B ~~A, or~~

§ 9.5(b)(i) shall not apply to Party B; otherwise § 9.5(b)(i) shall apply to Party B

§ 9.5(b)(ii) shall apply to Party A and the Threshold Amount for Party A shall be: _____, ~~or~~ ; otherwise § 9.5(b)(ii) shall not apply to Party A-

§ 9.5(b)(ii) shall apply to Party B and the Threshold Amount for

Party A shall be: _____, ~~or~~ ; otherwise § 9.5(b)(ii) shall not apply to Party B

§ 9.5(c) Winding-up/Insolvency/Attachment:

§ 9.5(c)-(iv) shall apply and the applicable time period is within _____ calendar days, ~~or~~ ; otherwise § 9.5(c)-(iv) shall not apply

§ 9.5(d) Failure to Deliver or Accept:

§ 9.5(~~d~~) shall apply, and the number of permitted occasions is _____, consecutively; or in aggregate; otherwise § 9.5(~~d~~) shall not apply

§ 9.5 Other Definition of Material Reasons: ~~— Material Reasons shall be limited to those stated in the General Reason:~~

~~Agreement, or~~ the following additional Material Reasons shall apply to Party A:

otherwise the Material Reasons for Party A shall be limited to those stated in the Certificate Master Agreement

the following additional Material Reasons shall apply to Party B:

otherwise the Material Reasons for Party B shall be limited to those stated in the Certificate Master Agreement

§11

Calculation of the Termination Amount

§ 10.2(c) Settlement Amount (Losses):

losses associated with regulatory fines shall apply; otherwise losses associated with regulatory fines shall not apply

§11

Limitation of Liability

§ 11 Application of Limitation: ~~§ 11 shall apply as written in the EECS Certificates Master Agreement, or~~ § 11 shall be amended or replaced in its entirety as follows:

otherwise § 11 shall apply as written in the Certificate Master Agreement

§ 11.3(b) Consequential Damage and Limitation of Liability:

§ 11.3(b)(i) shall apply; or § 11.3(b)(ii) shall apply and the Limitation Amount shall be _____

§12

Invoicing and Payment

§ 12.2 Payment:
22 of this-

initial billing and payment information for each Party is set out in § Election Sheet

the currency shall be _____; otherwise the currency shall be _____

EURO

§ ~~12.5~~12.3 Payment Netting: § 12.3 shall apply; or
otherwise § 12.3 shall not apply

§ 12.4 Default Interest Rate: the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m.
CET on the Due Date, plus _____ percent (____%) per annum

§ ~~12.6~~12.5 Disputed Amounts: § ~~12.6~~12.5(a) shall apply; or
 § ~~12.6~~12.5(b) shall apply

§13
VAT and Other Taxes

§ ~~13.8~~13.5 Termination for New Tax: ~~unless otherwise specified in the terms of an Individual Contract the provisions of § 14.8 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 13.8, or~~ subject to the terms of an Individual Contract, the provisions of § ~~13.8~~13.5 shall only apply in the following circumstances:

[-

§ 13.9 _____;
otherwise the provisions of § 13.5 shall apply to such Individual Contract only in the circumstances specified in the first paragraph of § 13.5

§ 13.6 Withholding Tax: § ~~13.9~~13.6 shall apply, ~~or~~
 ~~§ 13.9~~in the case of § 13.6(b)(ii) the documents shall be _____;
otherwise § 13.6 shall not apply

§14
Change in Law

§ 14.2 Change in Law and Price Adjustments:

§ 14.2 shall apply; otherwise § 14.2 shall not apply

§ 14.3 Event of Change in Law and Ineffectiveness:

§ 14.3(b) shall apply; otherwise § 14.3(a) shall apply

§15
Guarantees and Credit Support

§ 15 Credit Support Documents:-

Party A shall provide Party B with the following Credit Support Document(s):

Party B shall provide Party A with the following Credit Support Document(s):

§ 15 Credit Support Provider: The Credit Support Provider(s) of Party A shall be:

The Credit Support Provider(s) of Party B shall be:

§16
Performance Assurance

§ 16.2 Material Adverse Change: the following categories of Material Adverse Change shall apply to Party A:

§ 16.2-(a) (*Credit Rating*), and the minimum rating shall be:

~~whereby: § 16.2(a)(iii)~~

shall apply;

otherwise § 16.2(a)(iii) shall not apply

§ 16.2(b) (*Credit Rating of Credit Support Provider that is a Bank*) and the minimum rating shall be:

~~§ 16.2 (b) (*Credit Rating of Credit Support Provider that is a Bank*);~~

~~§ 16.2-(c) (*Financial Covenants*), and the EBIT to Interest ratio shall be:~~

_____, the Funds From Operations to Total Debt ratio shall be: _____, and the Total Debt to Total Capitalisation ratio shall be: _____;

_____;

§ 16.2-(d) (*Decline in Tangible Net Worth*), and the relevant figure is:

~~_____;~~

§ 16.2-(e) (*Expiry of Performance Assurance or Credit Support Document*), and the relevant time period shall be _____, ~~or~~

otherwise no time period shall apply;

§ 16.2-(f) (*Failure of Performance Assurance or Credit Support Document*);

§ 16.2-(g) (*Failure of Control & Profit Transfer Agreement*); § 16.2-(h) (*Impaired Ability to Perform*); ~~and~~

§ 16.2-(i) (*Amalgamation/Merger*)

the following categories of Material Adverse Change shall apply to Party B:

§ 16.2-(a) (*Credit Rating*), and the minimum rating shall be:

~~whereby: § 16.2(a)(iii)~~

shall apply;

otherwise § 16.2(a)(iii) shall not apply

§ 16.2(b) (*Credit Rating of Credit Support Provider that is a Bank*) and the minimum rating shall be:

~~§ 16.2 (b) (*Credit Rating of Credit Support Provider that is a Bank*);~~

~~§ 16.2-(c) (*Financial Covenants*), and the EBIT to Interest ratio shall be:~~

_____, the Funds From Operations to Total Debt ratio shall be: _____, and the Total Debt to Total Capitalisation ratio shall be: _____;

_____;

§ 16.2-(d) (*Decline in Tangible Net Worth*), and the relevant figure is:

~~_____;~~

§ 16.2-(e) (*Expiry of Performance Assurance or Credit Support Document*)

Document), and the relevant time period shall be _____, ~~or~~ ;
otherwise no time period shall apply;

§ 16.2-(f) (*Failure of Performance Assurance or Credit Support Document*);
 § 16.2-(g) (*Failure of Control & Profit Transfer Agreement*); § 16.2-(h) (*Impaired Ability to Perform*); ~~and~~
 § 16.2-(i) (*Amalgamation/Merger*)

§17

Provision of Financial Statements and Tangible Net Worth

§ 17.1 (a) Annual Reports : Party A need not deliver annual reports;
otherwise Party A shall deliver annual reports, ~~or~~

Party ~~A~~B need not deliver annual reports, ~~and~~ ; otherwise Party B shall-
~~deliver annual reports, or~~
 ~~Party B need not~~ deliver annual reports

§ 17.1(b) Quarterly Reports : Party A ~~shall deliver quarterly reports, or~~
 ~~Party A need not deliver quarterly~~
~~reports, and Party B shall deliver~~
~~quarterly reports, or~~
 ~~Party B need not~~ deliver quarterly reports;

otherwise Party A shall deliver quarterly reports

Party B need not deliver quarterly reports; otherwise Party B shall deliver
quarterly reports

§ 17.2 Decline in Tangible Net Worth:—

Party A shall have a duty to notify as provided in § ~~18.2~~ 17.2, and
the applicable figure for it shall be _____, ~~or~~ ; otherwise Party A
shall have no duty to notify as provided in § ~~18.2, and~~ 17.2

Party B shall have a duty to notify as provided in § ~~18.2~~ 17.2, and
the applicable figure for it shall be _____, ~~or~~ ; otherwise Party B
shall have no duty to notify as provided in § ~~18.2~~ 17.2

§18

Assignment

§ 18.2 Assignment to Affiliates : Party A may assign in accordance with § 18.2; or
 Party A may assign in accordance with § 18.2, ~~or~~ provided that
the Affiliate is incorporated in the same jurisdiction as Party A; otherwise
Party A may not assign in accordance with § 18.2, ~~and~~

Party B may assign in accordance with § 18.2, ~~or~~ Party B
may assign in accordance with § 18.2, provided that the Affiliate is
incorporated in the same jurisdiction as Party B; otherwise Party B
may not assign in accordance with § 18.2

§19

Confidentiality

§ 19.1 Confidentiality Obligation: ~~§ 19 shall apply, or~~ § 19 shall not apply;

otherwise § 19 shall apply

**§20
Representation and Warranties**

The Following § 20.1 Representations and Warranties of the Seller: The following representations and warranties are made by the Seller:

- § 20(1)(a) no, otherwise yes
- § 20(1)(b) no, otherwise yes
- § 20(1)(c) no, otherwise yes
- § 20(1)(d) no, otherwise yes

§ 20.2 Additional Representations and Warranties: The following representations and warranties are made:

	by Party A:	by Party B:
§ 20(2)(a)	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>
§ 20(2)(b)	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>
§ 20(2)(c)	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>
§ 20(2)(d)	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>	<input checked="" type="checkbox"/> yes- <input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(e)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(f)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(g)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(h)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(i)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(j)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(k)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(l)</u>	<input type="checkbox"/> no, <u>otherwise yes</u>	<input type="checkbox"/> no, <u>otherwise yes</u>
<u>§ 20(2)(m)</u>		
<u>§ 20(e)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 20(f)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(g)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(h)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(i)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(j)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(k)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no
<u>§ 21(l)</u>	<input type="checkbox"/> yes <input type="checkbox"/> no	<input type="checkbox"/> yes <input type="checkbox"/> no

In addition, Party A represents and warrants the following:

In addition, Party B represents and warrants the following: _____

**§21
Governing Law and Arbitration**

§ 21.21 Governing Law and Arbitration:

Option A shall apply; or Option B shall apply and the language of the arbitration shall be:

_____ ; or

[] Neither Option A nor Option B shall apply, and the following provisions shall apply in respect of governing law and ~~dispute resolution: arbitration~~

§ 21.3 Expert Determination:

[] §21.3 shall apply; otherwise § 21.3 shall not apply

**§22
Miscellaneous**

§ 22.2 Notices, Invoices and Payments:

**~~§22~~
Miscellaneous**

~~(a)~~

(a) **TO PARTY A:**

Contact and Bank Details

Notices & Correspondence

~~Address:~~

Telephone No:

Fax No:

Attention: *[Job Title]*

With copy to: _____ *[Job Title]*

Invoices

Address:

Fax No:

Attention: *[Job Title]*

Payments

Bank account details

(b) General account number (subject to specification to the contrary in a Confirmation):

Confirmations

Attention: _____ *[Job Title]*

Fax Number:

E-Mail:

(b) **TO PARTY B:**

Contact and Bank Details

Notices & Correspondence

~~Address:~~

Telephone No:

Fax No:

Attention: *[Job Title]*

With copy to: _____ *[Job Title]*

Invoices

Address:

Fax No:

Attention: *[Job Title]*

Payments

Bank account details :

General account number (subject to specification to the contrary in a Confirmation):

Confirmations

Attention: _____ *[Job Title]*

Fax Number:

E-mail:

**PART II: ADDITIONAL PROVISIONS TO THE ~~EECS CERTIFICATES~~CERTIFICATE
MASTER AGREEMENT**

Executed by the duly authorised representative of each Party effective as of the Effective Date.

"Party A"

"Party B"

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

EFET

European Federation of Energy Traders

Annex 3 to the ~~EECS Certificates~~ Certificate Master

Agreement Confirmation of Individual Contract

between

_____ as Seller

and

_____ as Buyer.

concluded on: // _____, . hours

Trader/Contact person:

Deal-number:

<u>Database data:</u>	<u>Seller:</u>	<u>Authorised Issuing Body:</u>	
		<u>Account number or Account name:</u>	
	<u>Buyer:</u>	<u>Authorised Issuing Body:</u>	
		<u>Account number or Account name:</u>	
<u>Certificate:</u>	<u>An EECS Certificate issued:</u>		

as an EECS GO under the Electricity Scheme of the EECS Rules in the country of production, and which has the meaning given to "Guarantee of Origin" under Articles 2(j) and 15 of the Directive 2009/28/EC on the promotion of electricity produced from renewable energy sources in the internal electricity market (and any successor Law);

as a RECS Certificate under the Electricity Scheme of the EECS Rules in the Domain of Production; or

as an EECS-Disclosure Certificate under the Electricity Scheme of the EECS Rules in the Domain of Production; or

A _____ [specify national scheme certificate name] issued _____ by _____ [specify Authorised Issuing Body for national scheme certificates] to evidence the production of renewable source energy issued in accordance with the

National Scheme Rules, as specified in this Individual Contract ("National Scheme Certificate").

where one Certificate equals 1 MWh.

Energy source: _____ [specify in relation to Certificate, e.g. electricity, gas, fuel, heating, cooling, etc.]

Certificate Details:

Certificate:	<input type="checkbox"/> An EECS Certificate issued as an EECS GO under the Electricity Scheme of the EECS Rules in the Domain of Production. <input type="checkbox"/> An EECS Certificate issued as a RECS Certificate under the Electricity Scheme of the EECS Rules in the Domain of Production. <input type="checkbox"/> Any other certificate which is a valid certificate pursuant to the EECS Rules. Where one EECS Certificate equals 1 MWh.		
Certificate Details:			
Production Year	Production Quantity (MWh)	Technology	Quantity (MWh)
			Price per Certificate
			Delivery Date
	Total Contract Price (Total)		
Total Contract Price		(Total)	
Domain of Production:	Domain		
Domain for Delivery:	Autho- rised- Issuin- g- Body Domain /Appli- cable- EECS Registrat- ion- Databas- e for the- Buyer Aut- hori- sed- Issu- ing- Bod- y B- u- y- e- r- :- s- A- e- e- e- u- n		

	t n u m b e r
Transfer	[shall apply] / [shall not apply]
by Cancellation Statement:	
Applicable EECS Registration Database for issuance of Cancellation Statement:	[specify applicable Domain]
Version of the EECS Rules:	Version [Release 7, version 5] of the EECS Rules shall apply to this Individual Contract
Additional requirements (if any):	

Minimum validity of the Certificates upon delivery: _____

Earmark/s: _____

Additional quality: _____

For EECS Certificates:

Domain of Production: Domain/production device

Authorised Issuing Body

Domain for Delivery: Domain

Authorised Issuing Body

Transfer by Cancellation Statement: Transfer by Cancellation Statement shall apply; otherwise Electronic Transfer shall apply

Registry for issuance of Cancellation Statement: [specify applicable Domain]

Version of the EECS Rules: The version of the EECS Rules published by the AIB on the date of conclusion of the transaction shall apply to this Confirmation of Individual Contract

For National Scheme Certificates:

Authorised Issuing [specify]

Body:

Registry: [specify name and website of National Scheme Certificate Registry]

Registry Operator: [specify]

National Scheme Rules: [specify, which may include legislation or rules enacted by the Competent Authority]

Transfer by Cancellation Statement: [] shall apply, subject to a transfer by Cancellation Statement being possible under the National Scheme Rules; otherwise Electronic Transfer shall apply

For both EECS Certificates and National Scheme Certificates:

Delivery Point: with respect to Certificates:

[] [specify]; otherwise Buyer's Account
with respect to Cancellation Statements (if applicable):

[] [specify, e.g. facsimile]; otherwise receipt of email (with copy of Cancellation Statement attached) by Buyer in accordance with § 22.2 (Notices and Communications)

Economic intent of the Parties: [specify in accordance with § 14.1(f)]

Designated Purpose: [specify for the Certificates, e.g. regulatory compliance purpose, in connection with Ineffectiveness definition]

Competent Authority for the Designated Purpose [specify]

Ineffectiveness Loss Amount: [specify amount or formula]

Ineffectiveness (days after Delivery Date): [specify where § 14.3(b) is specified as applying in the Election Sheet]

Documentation of Actual Deliveries and Receipts: [specify in accordance with § 4.4, if applicable]

Additional requirements (if any):

This Confirmation confirms the Individual Contract entered into pursuant to the ~~EFET EECS Certificates~~ Certificate Master Agreement ~~Concerning the Delivery of EECS Certificates between the Parties (EECS Certificates Master Agreement)~~ and supplements and forms part of that ~~EECS Certificates~~ Certificate Master Agreement. In case of any inconsistencies between the terms of this Confirmation and the Individual Contract, please contact us immediately.

Date: _____ Signature: _____