EFET

European Federation of Energy Traders

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

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

**EECS Certificates 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**").

# § 22Miscellaneous

## **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.

## **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 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:

### 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;

### 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

### 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.

## **Amendments**

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

## **Partial Invalidity**

: If, at any time, any provision of this EECS Certificates Master Agreement or an Individual Contract is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this EECS Certificates 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.

## **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 any such third party rights that might otherwise be implied.

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 2**

**Election Sheet**

**to the**

**EECS Certificates Master Agreement**

with an Effective Date of ………………………..

between…………………………and …………………………………….

**("Party A") ("Party B")**

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

**§1**

**Subject of Agreement**

**§1.2 Pre-Existing Contracts:** [ ] § 1.2 shall apply, or

 [ ] § 1.2 shall not apply

**§2**

**Definitions and Construction**

**§ 2.4 References to Time:** time references shall be: [ ] as provided in the EECS Certificates Master Agreement

 (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

 [ ] § 3.4 shall not apply to Party A

 [ ] § 3.4 shall apply to Party B and shall be as designated in Annex \_\_\_\_\_\_\_\_, or

 [ ] § 3.4 shall not apply to Party B

**§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, or

 [ ] § 6.1 shall not apply as written but instead shall be as follows:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§9
Term and Termination Rights**

**§ 9.2** **Expiration Date:** [ ] § 9.2 shall apply and the Expiration Date shall be:
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_, or
 [ ] § 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
 [ ] § 9.4 shall not apply to Party A
 [ ] § 9.4 shall apply to Party B, with termination effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or
 [ ] § 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
[ ] § 9.5(b)(i) shall apply to Party B, or
[ ] § 9.5(b)(i) shall not apply to Party B

[ ] § 9.5(b)(ii) shall apply to Party A and the Threshold Amount for Party A shall be: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or
[ ] § 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
[ ] § 9.5(b)(ii) shall not apply to Party B

**§ 9.5(c)** **Winding-up/lnsolvency/Attachment:**

[ ]§ 9.5(c) (iv) shall apply and the applicable time period is within \_\_\_ calendar days, or
[ ] § 9.5(c) (iv) shall not apply

**§ 9.5(d)** **Failure to Deliver or Accept:**

[ ] § 9.5(d) shall apply, or
[ ] § 9.5(d) shall not apply

**§ 9.5** **Other Material Reasons:** [ ] Material Reasons shall be limited to those stated in the General Agreement, or
 [ ] the following additional Material Reasons shall apply to Party A: \_\_\_\_\_\_\_\_\_\_
 [ ] the following additional Material Reasons shall apply to Party B: \_\_\_\_\_\_\_\_\_\_

**§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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§12
Invoicing and Payment**

**§ 12.2** **Payment:** initial billing and payment information for each Party is set out in § 22 of this Election Sheet

**§ 12.5** **Interest Rate:** the Interest Rate shall be the one month EURIBOR interest rate for 11:00 a.m. on the Due Date, plus \_\_\_\_\_\_\_\_\_\_\_\_ percent (\_%) per annum

.

**§ 12.6** **Disputed Amounts:** [ ]§ 12.6 (a) shall apply, or
 [ ]§ 12.6 (b) shall apply

**§13
VAT and Other Taxes**

**§ 13.8** **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 shall only apply in the following circumstances:

 [ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_]

**§ 134.9** **Withholding Tax:** [ ] § 13.9 shall apply, or

 [ ] § 13.9 shall not apply

**§15
Guarantees and Credit Support**

**§ 15 Credit Support Documents:** Party Ashall provide Party B with the following Credit Support Document(s):

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§16
Performance Assurance**

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

 [ ] § 16.2 (a) **(Credit Rating)**, 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)**, and

[ ] the relevant time period shall be \_\_\_\_\_\_\_\_ , or
 [ ] no time period shall apply;
[ ] § 16.2 (f) **(Failure of Performance Assurance or Credit Support)**;
[ ] § 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 Changeshall apply to Party B:

 [ ] § 16.2 (a) **(Credit Rating)**, 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)**, and

[ ] the relevant time period shall be \_\_\_\_\_\_\_\_ , or
 [ ] no time period shall apply;
[ ] § 16.2 (f) **(Failure of Performance Assurance or Credit Support)**;
[ ] § 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 shall deliver annual reports, or
 [ ] Party A need not deliver annual reports, and
 [ ] 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

**§ 17.2** **Tangible Net Worth**: [ ] Party A shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or
 [ ] Party A shall have no duty to notify as provided in §18.2, and
 [ ] Party B shall have a duty to notify as provided in §18.2, and the applicable figure for it shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, or
 [ ] Party B shall have no duty to notify as provided in §18.2

**§18
Assignment**

**§ 18.2 Assignment to Affiliates:** [ ] Party A may assign in accordance with § 18.2, or
 [ ] Party A may not assign in accordance with § 18.2, and
 [ ] Party B may assign in accordance with § 18.2, or
 [ ] Party B may not assign in accordance with § 18.2

**§19
Confidentiality**

**§ 19.1** **Confidentiality Obligation:** [ ] § 19 shall apply, or
 [ ] § 19 shall not apply

**§20
Representation and Warranties**

The Following Representations and Warranties are made:

|  |  |  |
| --- | --- | --- |
|  | **by Party A:** | **by Party B:** |
| § 20(a) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 20(b) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 20(c) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 20(d) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 20(e) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 20(f) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(g) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(h) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(i) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(j) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(k) | [ ] yes [ ] no | [ ] yes [ ] no |
| § 21(l) | [ ] yes [ ] no | [ ] yes [ ] no |

In addition Party A represents and warrants the following: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_
In addition Party B represents and warrants the following: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§21
Governing Law and Arbitration**

**§ 21.1** **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:
 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**§22
Miscellaneous**

**§ 22.2** **Notices, Invoices and Payments:**

|  |  |  |
| --- | --- | --- |
| (a) **to Party A:** |  |  |
|  **Notices & Correspondence** |  |  |
|  Address: |  |  |
|  Telephone No: |  |  |
|  Fax No: |  |  |
|  Attention: | [Job Title] |  |
|  **Invoices** |  |  |
|  Fax No: |  |  |
|  Attention: | [Job Title] |  |
|  **Payments** |  |  |
|  Bank account details |  |  |

|  |  |  |
| --- | --- | --- |
| (b) **to Party b:** |  |  |
|  **Notices & Correspondence** |  |  |
|  Address: |  |  |
|  Telephone No: |  |  |
|  Fax No: |  |  |
|  Attention: | [Job Title] |  |
|  **Invoices** |  |  |
|  Fax No: |  |  |
|  Attention: | [Job Title] |  |
|  **Payments** |  |  |
|  Bank account details |  |  |

**Part II: Additional Provisions To The EECS CERTIFICATES 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 Master Agreement**

**Confirmation of Individual Contract**

between

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

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as Buyer.

concluded on: \_\_/\_\_/\_\_\_\_, \_\_. \_\_ hours

|  |  |
| --- | --- |
| **Certificate:** | [ ] An EECS Certificate issued as an EECS GO under the Electricity Scheme of the EECS Rules in the Domain of Production.[ ] An EECS Certificate issued as a RECS Certificate under the Electricity Scheme of the EECS Rules in the Domain of Production.[ ] Any other certificate which is a valid certificate pursuant to the EECS Rules.Where one EECS Certificate equals 1 MWh. |
| **Certificate Details:** |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Production Year** | **Quantity (MWh)** | **Technology** | **Price per Certificate** | **Delivery Date** |
|  |  |  |  |  |
|  |  |  |  |  |
| **Total Contract Price** | **(Total)** |  |

 |
| **Domain of Production:** | Domain |  |
| Authorised Issuing Body |  |
| **Domain for Delivery:** | Domain /Applicable EECS Registration Database for the Buyer |  |
| Authorised Issuing Body |  |
| Buyer’s Account number |  |
| **Transfer by Cancellation Statement:** | [shall apply] / [shall not apply] |
| **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):** |  |

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

Date: Signature: