[EFET Logo] [HyXchange Logo]

EFET

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in cooperation with

(Add)

Hydrogen Certificate Single Trade Agreement

WAIVER: THE FOLLOWING CERTIFICATE TRADE AGREEMENT WAS PREPARED BY EFET'S MEMBERS AND HYXCHANGE EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, HYXCHANGE, THEIR 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 CERTIFICATE TRADE 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 CERTIFICATE TRADE AGREEMENT ARE URGED TO CONSULT RELEVANT LEGAL OPINIONS MADE AVAILABLE THROUGH EFET AS WELL AS THEIR OWN COUNSEL.

~~[~~USERS ARE REFERRED TO THE GUIDANCE NOTE TO THIS CERTIFICATE TRADE AGREEMENT AVAILABLE ON THE EFET AND HYXCHANGE WEBSITES.~~]~~

EFET

European Federation of Energy Traders

PART I (*Individual Terms*) of the
Hydrogen Certificate Single Trade Agreement

between:

____

having its registered office at ____

(“**Seller**“”); and

____

having its registered office at ____

(“**Buyer**“”)

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

on the date ____________________________ (“**Effective Date**“”), where the commercial terms of this Hydrogen Certificate Single Trade Agreement are set forth below in this Part I (*Individual Terms*), and the general provisions of which are set forth below in Part II (*General Provisions*), and which incorporate by reference herein, and form a part hereof.

SECTION A: COMMERCIAL PROVISIONS

Database data:	Seller's Account number:
	Buyer's Account number:

[Commercial details on following page]

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Certificate Details:

~~Production Year~~Country of issue	Production year	Subsidised / non-subsidised	Production type	~~[Production type]~~EAN-code production installation	Quantity (MWh)	Price per Certificate	Delivery Date
Total Contract Price						**(Total)**	

~~Minimum validity of the Certificates upon Delivery: ______________________________________~~

~~[Earmark/s: ______________________________________]~~

~~Additional quality: ______________________________________~~

Commercial details	
Designated Purpose:	*[specify for the Certificates, e.g. regulatory compliance purpose, in connection with Ineffectiveness definition]*
Ineffectiveness Loss Amount:	*[specify amount or formula]*
Ineffectiveness (days after Delivery Date):	*[specify where § 15.3(b) is specified as applying in Section B of Part I (Individual Terms)]*
Documentation of Actual Deliveries and Receipts:	*[specify in accordance with § 3.2, if applicable]*
Additional requirements:	*[specify, if any]*

Minimum validity of the Certificates upon Delivery: ____
Earmark/s: ____
Additional quality: ____

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SECTION B: ELECTIONS FOR THE PURPOSES OF PART II (*GENERAL PROVISIONS*)

§ 3
Primary Obligations For Delivery and Acceptance of Certificates

§ 3.2 Documentation of Actual Deliveries and Receipts:

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

§ 4
Transfer, Risk, No Encumbrances and Ineffectiveness

§ 4.4 Ineffectiveness: the Party responsible for the determination of either § 4.4(b)(i) or § 4.4(b)(ii) shall be __________________

§ 5
Non-Performance Due to Force Majeure

§ 5.1 Definition of Force Majeure:

[ ] § 5.1(a), § 5.1(b) or § 5.1(c) shall not apply as written but instead shall be as follows:
____;

otherwise § 5.1 shall apply as written in this Agreement, whereby:

- [ ] § 5.1(a) shall apply;
- [ ] § 5.1(b) shall apply; and/or
- [ ] § 5.1(c) shall apply and shall be as follows:
____

§ 6
Suspension Events

§ 6.1 Applicability: [ ] § 6 shall apply;
otherwise § 6 shall not apply

§ 6.5 Cost of Carry on Delayed Deliveries:

The "**Cost of Carry Rate**" shall be: _____________ *[specify percentage, which may include reference to index or "Interest Rate"]*

§ 9
Compliance Penalty and Compliance Penalty Equivalent

§ 9.1 Applicability: [ ] Compliance Penalty shall apply;
otherwise Compliance Penalty shall not apply

[ ] Compliance Penalty Equivalent shall apply;
otherwise Compliance Penalty Equivalent shall not apply

§ 10
Term and Termination Rights

~~**0 Automatic Termination:**~~ ~~[ ] 0 shall apply to Party A, with termination effective ________________;~~
~~***otherwise*** 0 shall not apply to Party A~~

~~[ ] 0 shall apply to Party B, with termination effective ________________;~~
~~***otherwise*** 0 shall not apply to Party B~~

~~§ 10.4(b)~~§ 10.4(b) Cross Default and Acceleration:

[ ] ~~§ 10.4(b)(i)~~§ 10.4(b)(i) shall not apply to ~~Party A~~Seller;
otherwise ~~§ 10.4(b)(i)~~§ 10.4(b)(i) shall apply to ~~Party A~~Seller,

[ ] ~~§ 10.4(b)(i)~~§ 10.4(b)(i) shall not apply to ~~Party B~~Buyer;
otherwise ~~§ 10.4(b)(i)~~§ 10.4(b)(i) shall apply to ~~Party B~~Buyer

[ ] ~~§ 10.4(b)(ii)~~§ 10.4(b)(ii) shall apply to ~~Party A~~Seller and the Threshold Amount for ~~Party A~~Seller shall be: _________________________;
otherwise ~~§ 10.4(b)(ii)~~§ 10.4(b)(ii) shall not apply to ~~Party A~~Seller

[ ] ~~§ 10.4(b)(ii)~~§ 10.4(b)(ii) shall apply to ~~Party B~~Buyer and the Threshold Amount for ~~Party A~~Seller shall be: _________________________;
otherwise ~~§ 10.4(b)(ii)~~§ 10.4(b)(ii) shall not apply to ~~Party B~~Buyer

~~§ 10.4(c)~~§ 10.4(c) Winding-up/Insolvency/Attachment:

[ ] ~~§ 10.4(c)(iv)~~§ 10.4(c)(iv) shall apply and the applicable time period is within ___ calendar days;
otherwise ~~§ 10.4(c)(iv)~~§ 10.4(c)(iv) shall not apply

~~§ 10.4(d)~~§ 10.4(d) Failure to Deliver or Accept:

[ ] ~~§ 10.4~~§ 10.4 shall apply and the number of permitted occasions is __________,
[ ] consecutively; or

[ ] in aggregate;
otherwise ~~§ 10.4~~§ 10.4 shall not apply

~~§ 10.4~~§ 10.4 Definition of Material Reason:

[ ] the following additional Material Reasons shall apply to ~~Party A~~Seller: ______________________________;
otherwise the Material Reasons for ~~Party A~~Seller shall be limited to those stated in this Agreement

[ ] the following additional Material Reasons shall apply to ~~Party B~~Buyer: ______________________________;
otherwise the Material Reasons for ~~Party B~~Buyer shall be limited to those stated in this Agreement

§ 12
Limitation of Liability

§ 12 Application of Limitation: [ ] § 12 shall be amended or replaced in its entirety as follows: ______________________________;
otherwise § 12 shall apply as written in this Agreement

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

[ ] § 12.3(b)(i) shall apply; or
[ ] § 12.3(b)(ii) shall apply and the Limitation Amount shall be __________

§ 13
Invoicing and Payment

§ 13.2 Payment: initial billing and payment information for each Party is set out in § 20 of this Section B of Part I (*Individual Terms*)

§ 13.3 Default Interest: 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

~~§ 13.6~~§ 13.6 Disputed Amounts: [ ] ~~§ 13.6(a)~~§ 13.6(a) shall apply; or
[ ] ~~§ 13.6(b)~~§ 13.6(b) shall apply

§ 14
VAT and Taxes

§ 14.4 Withholding Tax: [ ] § 14.4 shall apply and the declaration, certificate, or other document pursuant to § 14.4(b)(ii) shall be ______________________________;
otherwise § 14.4 shall not apply

§ 15
Change in Law

§ 15.2 Change in Law and Price Adjustments:

[ ] § 15.2 shall apply;
otherwise § 15.2 shall not apply

§ 15.3 Event of Change in Law and Ineffectiveness:

[ ] § 15.3(b) shall apply and

[ ] § 15.3(b)(i) shall apply with the number of days after the Delivery Date being ______________; or
[ ] § 15.3(b)(ii) shall apply with the number of days after the Delivery Date being __________;
otherwise § 15.3(a) shall apply

§ 16
Assignment

§ 16.2 Assignment to Affiliates: [ ] ~~Party A~~Seller may assign in accordance with § 16.2; or
[ ] ~~Party A~~Seller may assign in accordance with § 16.2, provided that the Affiliate is incorporated in the same jurisdiction as ~~Party A~~Seller;
otherwise ~~Party A~~Seller may not assign in accordance with § 16.2

[ ] ~~Party B~~Buyer may assign in accordance with § 16.2;
[ ] ~~Party B~~Buyer may assign in accordance with § 16.2, provided that the Affiliate is incorporated in the same jurisdiction as ~~Party B~~Buyer;
otherwise ~~Party B~~Buyer may not assign in accordance with § 16.2

§ 17
Confidentiality

§ 17.1 Confidentiality Obligation: [ ] § 19 shall not apply;
otherwise § 19 shall apply

§ 18
Representation and Warranties

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

§ 18.1(a)	[ ] no, ***otherwise*** yes
§ 18.1(b)	[ ] no, ***otherwise*** yes
§ 18.1(c)	[ ] no, ***otherwise*** yes

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

	by ~~Party A~~Seller:	by ~~Party B~~Buyer:
§ 18.2(a)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(b)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(c)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(d)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(e)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(f)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(g)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(h)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(i)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(j)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(k)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes
§ 18.2(l)	[ ] no, ***otherwise*** yes	[ ] no, ***otherwise*** yes

§ 18.2(m)

[ ] In addition, ~~Party A~~Seller represents and warrants the following:

____

[ ] In addition, ~~Party B~~Buyer represents and warrants the following:

____

§ 19
Governing Law and Arbitration

§ 19 Governing Law and Arbitration:

[ ] Option A shall apply and
[ ] the language of the arbitration shall be: ______________________;
otherwise § 19.2 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 arbitration

____

§ 19.3 Expert Determination: [ ] § 19.3 shall apply;
otherwise § 19.3 shall not apply

§ 20
Miscellaneous

§ 20.2 Notices and Communications:

(a) **TO ~~PARTY A~~SELLER:**

Contact and Bank Details

Notices & Correspondence

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:

(b) **TO ~~PARTY B~~BUYER:**

Contact and Bank Details

Notices & Correspondence

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:

SECTION C: AMENDMENTS TO PART II (*GENERAL PROVISIONS*)

~~[~~This section may be used to include additional provisions and local requirements, as well as recitals to set out the economic balance between the Parties, in particular in relation to a Change in Law in accordance with § 15 (Change in Law)~~]~~

Executed by the duly authorised representative of each Party.

[SELLER]	***[BUYER]***
[Name of Signatory/ies]	*[Name of Signatory/ies]*
[Title of Signatory/ies]	*[Title of Signatory/ies]*

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PART II (*General Provisions*) of the Hydrogen Certificate Single Trade Agreement

§ 1.
Subject of Agreement

Subject of Agreement: This Agreement governs the transaction entered into by the Parties for the purchase, sale, Delivery and acceptance of Certificates.

§ 2.
Definitions and Construction

1 **Definitions:** Capitalised terms used in this Agreement shall have the meanings set out in Annex 1.

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

3 **References to Time:** References to time shall be to Central European Time.

§ 3.
Primary Obligations For Delivery and Acceptance of Certificates

1 **Delivery and Acceptance:** No later than on the relevant Delivery Date, the Seller shall Schedule the Delivery of the Contract Quantity of Certificates to the Delivery Point in accordance with the Issuance and Registry Rules, and the Buyer shall purchase and accept, or cause to be accepted, the Contract Quantity and pay to the Seller the relevant Contract Price.

2 **Documentation of Actual Deliveries and Receipts:** The Seller shall provide the documentation necessary to the Buyer:

(a) as prescribed by any Applicable Law; and/or

(b) relating to Certificates to be transferred pursuant to this Agreement,

in each case as specified in Section B of Part I (*Individual Terms*).

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 this Agreement, such expenses shall be reimbursed upon demand by the Party that failed to perform.

§ 4.
Transfer, Risk, No Encumbrances and Ineffectiveness

1 **Transfer of Title and Risk:** Subject to § 15.3 (*Event of Change in Law and Ineffectiveness*), risk and title in the Certificates shall pass from the Seller to the Buyer at the Delivery Point.

2 **No Encumbrances:** By the 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~~the Seller is in breach of the No Encumbrances Obligation in relation to any Certificate, the following shall apply:

(a) this 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, § 4.3(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 Section B of Part I (*Individual Terms*) 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, § 4.3(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 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 (10^{th}) 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 § 13.3 (*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 Delivery of Certificates 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 ~~§ 4.5~~§ 4.5.

§ 5.
Non-Performance Due to Force Majeure

1 **Definition of Force Majeure:** Unless otherwise specified in Section B of Part I (*Individual Terms*), for purposes of the Agreement, "**Force Majeure**~~“~~”" means an occurrence beyond the reasonable control of the Party claiming Force Majeure ("**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) unless § 6 (*Suspension Event*) is specified as applying in Section B of Part I (*Individual Terms*), the suspension, failure or malfunction of the Registry;

(b) if the Parties agree that Certificates are to be Delivered from a specific Source, a failure of the Administrator to create, issue and give legal effect to such Certificates; or

(c) any other event or circumstance specified in Section B of Part I (*Individual Terms*).

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 and such Party complies with the requirements of § 5.3 (*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 (*Failure to Deliver*) or § 8 (*Failure to Accept*) will accrue to the Claiming Party with respect to those quantities not Delivered or accepted.

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 **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 **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 ~~§ 5..3~~§ 5.3 (*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 this Agreement.

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 § 5.

§ 6.
Suspension Events

1 **Applicability:** This § 6 will apply only if specified by the Parties in Section B of Part I (*Individual Terms*).

2 **Definition of Suspension Event:** "**Suspension Event**" means the occurrence of any of the following events which makes it impossible for a Party affected by the Suspension Event ("**SE Affected Party**") to perform its Deliver or acceptance of Deliver obligations in accordance with the terms of the Delivery and the Applicable Rules:

(a) absence of Registry Operation; or

(b) the occurrence of an Administrator Event.

For the avoidance of doubt, if an event or circumstance which would otherwise constitute or give rise to Force Majeure also constitutes a Suspension Event, it will be treated as a Suspension Event and will not constitute a Force Majeure event.

3 **Suspension of Delivery and Acceptance Obligations:** If a Party is prevented due to a Suspension Event from performing its obligations of Deliver or acceptance of Deliver, as applicable, under a Delivery ("**SE Affected Delivery**"), no breach or default on the part of the SE Affected Party shall be deemed to have occurred and the obligations of both Parties with respect to the Delivery affected by the Suspension Event will be suspended for the duration of the Suspension Event and, subject to § 6.6 (*Settlement of Delivery Prevented by Suspension Event*) below, will not be required to be performed until the day that is ten (10) Delivery Business Days after the Suspension Event is overcome or ceases to subsist ("**Delayed Delivery Date**"). Subject to § 6.6 (*Settlement of Delivery Prevented by Suspension Event*) below, upon the Suspension Event being overcome or ceasing to subsist, both Parties will resume full performance of their obligations (including, for the avoidance of doubt, any suspended obligations) under the Agreement in respect of the relevant Delivery.

4 **Notification and Mitigation of Suspension Event:** The first Party learning of the occurrence of a Suspension Event shall, as soon as practicable, notify the other Party of the commencement of the Suspension Event. Each Party shall then undertake in good faith to determine, and notify the other Party with, to the extent then available, a non-binding estimate of the extent and expected duration of the Suspension Event and its impact on performance of all Deliveries affected by the Suspension Event. The SE Affected Party shall use all commercially reasonable efforts to mitigate the effects of the Suspension Event and shall, during the continuation of the Suspension Event, provide the other Party with reasonable updates, when and if available, of the extent and expected duration of its inability to perform. Each Party agrees in good faith to immediately notify the other Party once the Suspension Event is overcome or ceases to subsist.**Cost of Carry on Delayed Deliveries:** In the event that all or part of the Contract Quantity of a SE Affected Delivery is Delivered to Buyer on or before the Delayed Delivery Date, Buyer shall pay to Seller an additional amount ("**Cost of Carry Amount**") calculated at the Cost of Carry Rate for the Cost of Carry Calculation Period on the product of the number of Certificates so Delivered and the Contract Price for the relevant Delivery, divided by three hundred and sixty (360). Such Cost of Carry Amount shall be identified in the relevant invoice.**Settlement of Delivery Prevented by Suspension Event:** Where a Suspension Event for a SE Affected Delivery continues to exist on the applicable Long Stop Date, the SE Affected Delivery shall be deemed affected by Force Majeure and either Party may, by written notice to the other Party, terminate all (but not less than all) of the SE Affected Certificate Deliveries in accordance with ~~§ 10.4(f)~~§ 10.4(f) (*Definition of Material Reason*).

§ 7.
Failure to Deliver

1 **Two Delivery Business Days Grace Period:** When the Seller fails to Deliver to the Buyer the Contract Quantity, in whole or in part, on a Delivery Date as required in accordance with the terms of an Delivery,

and such failure is not excused by an event of Force Majeure, Suspension Event or the Buyer's non-performance, the Seller may remedy such failure by Scheduling and Delivering such Contract Quantity (or undelivered portion thereof) to the Buyer on the second Delivery Business Day following the Delivery Date, provided that such day is not on or after the Compliance Deadline following the relevant Delivery Date, and further subject to the additional obligation of the Seller to pay the Buyer, as compensation for its late Deliver, interest at the Interest Rate specified in § 13.3 (*Default Interest*) calculated:

(a) as follows for the two Delivery Business Day grace period; and

(b) as set forth in the applicable subpart of this § 7 for any longer period the Seller fails to deliver the Certificates thereafter.

2 **Buyer's Cover Costs:** In the event that the Seller fails to Deliver to the Buyer all or any portion of a Contract Quantity as required by § 7.1 *(Two Delivery Business Days Grace Period)* in accordance with the terms of a Delivery and the Buyer has not agreed to a Deferred Delivery Date as provided for in § 7.3 (*Buyer's Right to Waive Its Cover Costs*), the Seller shall incur the obligation to pay the Buyer, as compensation for its failure to Deliver, an amount ("**Buyer's Cover Costs**") equal to either:

(a) if no Compliance Penalty or Compliance Penalty Equivalent is applicable to the Certificate Delivery, the sum of:

(i) the price, if any, in excess of the portion of the Total Contract Price applicable to the Certificates not Delivered to the Buyer by the Seller, which the Buyer, acting in a commercially reasonable manner either did, or would have been able to, pay to purchase or otherwise acquire in an arm's length transaction from a third party or parties, a quantity of Certificates necessary to replace the Certificates not Delivered by the Seller;

(ii) such reasonable additional incidental costs as the Buyer incurred in attempting to make or making such replacement purchase of Certificates to the extent those costs and expenses are not recovered under § 7.2(a)(i); and

(iii) interest accrued during the two (2) Delivery Business Day grace period as provided in § 7.1; plus interest~~, at the Interest Rate specified in § 13.3 (*Default Interest*),~~ accrued from (and including) the Delivery Business Date following the Delivery Date, to (but excluding) the receipt by the Buyer of damages for the Seller's failure to Deliver (interest in both cases calculated at the Interest Rate specified in § 13.3 (*Default Interest*)), such amount calculated using the following formula:

Amount on which interest accrues = UC x [(RP – CP)]

where: **UC** means Undelivered Certificates, the total number of Certificates the Seller failed to Deliver;

RP means Replacement Price, the price the Buyer paid (or, if it could have procured replacement Certificates but did not do so, the first price which the Buyer would have been able to pay) for each replacement Certificate in the UA; and

CP means the aggregate Contract Price that the Buyer would have been required to pay to the Seller for all Undelivered Certificates comprising the UA had the Seller not defaulted on its Delivery obligation,

or

(b) if a Compliance Penalty or a Compliance Penalty Equivalent has been made applicable to the Delivery and has arisen, and further subject to the fulfilment of all applicable requirements imposed in § 9 (*Compliance Penalty and Compliance Penalty Equivalent*), the amount calculated using the following formula:

(i) the price at which the Buyer, using reasonable endeavours and in (an) arm's length transaction(s), is or would be able to purchase, as soon as reasonably possible following the Compliance Deadline, replacement Certificates in the quantity of those not Delivered to it by the Seller (such quantity reduced, if applicable, by the number of Certificates the Buyer was able to purchase prior to the Compliance Deadline as contemplated by § 7.2(a)), damages for the cost of which being recoverable pursuant to element (G) of this formula, herein below) (the net resulting number of Certificates corresponding to the, as applicable, Compliance Penalty or Compliance Penalty Equivalent, being referred to hereinafter as the "**Undelivered Compliance Penalty Amount**~~“~~”" or "**UCPA**~~“~~”");

(ii) minus the price that the Buyer would have been required to pay the Seller for those Certificates comprising the UCPA, had the Seller Delivered those Certificates to the Buyer in accordance with this Agreement;

(iii) plus the amount of, as applicable, the Compliance Penalty or Compliance Penalty Equivalent on the UCPA;

(iv) plus interest accrued during the two Delivery Business Day grace period, calculated as provided in § 7;

(v) plus interest, at the Interest Rate specified in § 13.3 *(Default Interest*), accrued from (and including) the first date on which the Buyer would be able to purchase, following the Compliance Deadline, the UCPA of next Compliance Year replacement Certificates, to (but excluding) the date of the Buyer's receipt of damages for the Seller's failure to Deliver, on the amount determined using the following formula:

Amount on which interest accrues = UCPA x (RCPP – CP)

where: **UCPA** has the meaning set forth above;

RCPP means the Replacement Compliance Penalty Price, which shall be the (per Certificate) price of next Compliance Year Certificates calculated pursuant to § 7.2(b)(i)), above; and

CP means the per Certificate Contract Price that the Buyer would have been required to pay to the Seller for each Undelivered Certificates comprising the UCPA had the Seller not defaulted on its Delivery obligation;

(vi) plus such reasonable additional incidental costs as the Buyer incurred in, as applicable, both attempting unsuccessfully to make purchase of replacement Certificates in order to avoid the accrual of an Compliance Penalty or Compliance Penalty Equivalent, and in making replacement purchase(s) of next compliance year Certificates as described in § 7.2(b)(i); to the extent those costs and expenses are not recovered via § 7.2(a)(i) (which additional incidental damages, for the avoidance of doubt, may also include interest accrued at the Interest Rate specified in § 13.3 (*Default Interest*), from (and including) the date on which an Compliance Penalty or Compliance Penalty Equivalent is paid, to (but excluding) the receipt by the Buyer of damages for the Seller's failure to Deliver);

(vii) plus, if applicable, the Buyer's Cover Costs incurred in replacing that portion of Certificates not Delivered to the Buyer by the Seller for which the Buyer did not incur an Compliance Penalty or Compliance Penalty Equivalent (and thus not comprising the UCPA) (such portion of Certificates not Delivered being the "**Non-UCPA**~~“~~”"), calculated in accordance with the methodology set forth in § 7.2(a)), which methodology shall apply equally to this § 7.2(b)(vii); and

(viii) plus interest accrued on the value of the Non-UCPA calculated in accordance with the methodology set forth in § 7.2(a)(iii), but in this context calculated on the amount of the Non-UCPA, rather than the amount of the UA,

provided, always, that in the event that the number calculated through application of elements (i) through (viii) of the formula set forth immediately above in this § 7.2(b) results in a negative number, such number shall be deemed to be zero and no damages will be owed in respect of such elements of this damages formula.

3 **Buyer's Right to Waive Its Cover Costs:** The Buyer shall be entitled to invoice the Seller for damages payable pursuant to § 7.2 (*Buyer's Cover Costs*) in accordance with § 13 (*Invoicing and Payment*). However, the Buyer may alternatively, but shall be under no obligation to, defer the due date on the payment of such damages for a reasonable period of time (but in no event beyond the applicable Compliance Deadline) if the Seller has indicated to the Buyer an intent to attempt to cure its Deliver default within a period of time acceptable to the Buyer.

(a) At any time prior to the due date applicable to the payment of damages due to the Buyer under § 7.2, the Seller may offer to Deliver to the Buyer replacement Certificates on a new Delivery Date ("**Deferred Delivery Date**~~“~~”) for those it originally failed to Deliver. The Buyer may, but is not required to, agree to accept such Deliver of replacement Certificates in lieu of the damages it is entitled to recover under § 7.2, provided that in such case the Buyer shall be entitled to invoice the Seller for interest for the intervening period calculated as the sum of interest accrued during the two Delivery Business Day grace period as provided in § 7 (*Two Delivery Business Days Grace Period*); plus interest, at the Interest Rate specified in § 13.3 (*Default Interest*), from (and including) the first Delivery Business Day following the Delivery Date, to (but excluding) the date of actual Deliver of the previously undelivered Certificate(s), accrued on the amount calculated in accordance with the formula set forth in § 7.2(a)(iii).

(b) If the Buyer agrees to accept the Seller's offer for Delivery of replacement Certificates on a Deferred Delivery Date as provided above in subparagraph (i), but the Seller again defaults on its deferred Deliver obligation, the Buyer shall be entitled to invoice the Seller for an amount calculated in accordance with § 7.2 save that the amount it may so invoice the Seller shall account for both:

(i) interest, (1) in the event that the Buyer is subsequently able to make a replacement purchase of Certificates, calculated as provided in § 7.2(a)(iii); or (2) in the event the Buyer is unable to make a replacement purchase of Certificates before the relevant Compliance Deadline, calculated as provided in § 7.2(b)(iv); and

(ii) any increase in the Buyer's Cover Costs reflecting higher market prices pertaining to replacement Certificates on the Deferred Delivery Date when compared to those available in the market on the original Delivery Date.

§ 8.
Failure to Accept

1 **Two Delivery Business Days Grace Period:** When the Buyer fails to accept Delivery of a Contract Quantity in whole or in part on a Delivery Date as required in accordance with the terms of ~~an~~a Delivery, and such failure is not excused by an event of Force Majeure, Suspension Event or the Seller's non-performance, the Seller shall afford the Buyer an opportunity to remedy its failure by again attempting to Schedule and Deliver such Contract Quantity (or undelivered portion thereof) to the Buyer on the second Delivery Business Day following the Delivery Date, provided that such day is not on or after the Compliance Deadline applicable to the undelivered Certificate(s), and further subject to the additional obligation of the Buyer to pay the Seller, as compensation for its failure to accept Delivery of the Certificates, interest calculated: (i) as follows for the two (2) Delivery Business Day grace period; and (ii) as set forth in the applicable subpart of this § 8.1 for any longer period the Buyer fails to accept the Certificates thereafter.

Interest for the two (2) Delivery Business Day grace period shall accrue at the Interest Rate specified in § 13.3*(Default Interest)* for the period from (and including) the Delivery Date to (but excluding) the second Delivery Business Day following the Delivery Date on the Total Contract Price of the Certificates not accepted by the Buyer, such Total Contract Price calculated as follows: the number of Certificates not accepted by the Buyer multiplied by a fraction determined by dividing the Total Contract Price by the Contract Quantity.

2 **Seller's Cover Costs:** In the event that the Buyer fails to accept Delivery of all or any portion of a Contract Quantity as required by § 8.1 *(Two Delivery Business Days Grace Period)* in accordance with the terms of ~~an~~a Delivery and the Seller has not agreed to a Deferred Acceptance Date as provided for in § 8.3 *(Seller's Right to Waive Its Cover Costs)*, the Buyer shall incur the obligation to pay the Seller, as compensation for its failure to accept Delivery of the Certificates, an amount ("**Seller's Cover Costs**~~"~~") equal to the sum of:

(a) the price, if any, less than the portion of the Total Contract Price applicable to the Certificates not accepted by the Buyer, which the Seller, acting in a commercially reasonable manner either did, or would have been able to, receive, in an arm's length transaction with a third party or parties, from the resale of the Certificates not accepted by the Buyer;

(b) such reasonable additional incidental costs as the Seller incurred in attempting to make or making such resale of the Certificates; and

(c) interest accrued during the two Delivery Business Day grace period as provided in § 8.1; plus interest, at the Interest Rate specified in § 13.3 *(Default Interest)*, accrued from (and including) the first Delivery Business Date following the Delivery Date, to (but excluding) the date of receipt by the Seller of damages for the Buyer's failure to accept, such amount calculated using the following formula:

Amount on which interest accrues = CNA x CP

where: CNA means Certificates not accepted, the total number of Certificates the Buyer failed to accept; and

CP means the aggregate Contract Price that the Buyer would have been required to pay to the Seller for all Certificates not accepted by it.

3 **Seller's Right to Waive Its Cover Costs:** The Seller shall be entitled to invoice the Buyer for damages payable pursuant to § 8.2 *(Seller's Cover Costs)* in accordance with § 13 (*Invoicing and Payment*). However, the Seller may alternatively, but shall be under no obligation to, defer the due date on the payment of such damages for a reasonable period of time (but in no event beyond the applicable Compliance Deadline) if the Buyer has indicated to the Seller its intent to attempt to cure its acceptance default within a period of time acceptable to the Seller.

(a) At any time prior to the due date applicable to the payment of damages due to the Seller under § 8.2, the Buyer may offer to accept Delivery from the Seller on a new Delivery Date ("**Deferred Acceptance Date**~~"~~") of the Certificates it failed to accept Delivery of on the original Delivery Date. The Seller may, but is not required to, agree to attempt to again Deliver such replacement Certificates to the Buyer on the Deferred Acceptance Date. If it so agrees, the Seller, in lieu of the damages it is entitled to recover under § 8.2, shall be entitled to both Deliver and receive payment of the Contract Price for the Certificates on the Deferred Acceptance Date and to further invoice the Buyer for interest for the intervening period calculated as the sum of the interest accrued during the two Delivery Business Day grace period as provided in § 8.1 plus interest at the Interest Rate specified in § 13.3 *(Default Interest)*, from (and including) the second Delivery Business Day following the Delivery Date to (but excluding) the date of actual acceptance of Delivery of the Certificate(s) previously not accepted, accrued on the amount calculated in accordance with the formula set forth in § 8.2(c)).

(b) If the Seller agrees to the Buyer's offer to accept Delivery of the Certificates on a Deferred Acceptance Date as provided above in subparagraph (a), but the Buyer again defaults on its acceptance of Deliver obligation, the Seller shall be entitled to invoice the Buyer for an amount calculated in accordance with § 8.2 *(Seller's Cover Costs)* save that the amount it may so invoice the Buyer shall account for both:

(i) interest, calculated as provided in § 8.2(c); and

(ii) any depreciation in the Seller’s Cover Costs reflecting lower prevailing market prices available for the resale of Certificates on the Deferred Acceptance Date when compared to those available in the market on the original Delivery Date.

§ 9.
Compliance Penalty and Compliance Penalty Equivalent

1 **Applicability:** This § 9 shall apply only if either ~~"~~“Compliance Penalty~~"~~” and/or ~~"~~“Compliance Penalty Equivalent~~"~~” are specified as applying in Section B of Part I (*Individual Terms*).

2 **Compliance Penalty:** If Compliance Penalty is applicable, the Buyer may invoice the Seller in the amount of a Compliance Penalty it incurs as the result of the Seller’s failure to Deliver to it Certificates when required pursuant to this Agreement.

3 **Compliance Penalty Equivalent:** If Compliance Penalty Equivalent is applicable, the Buyer may invoice the Seller for a Compliance Penalty Equivalent it incurs as the result of the Seller’s failure to Deliver to it Certificates when required pursuant to this Agreement.

4 **Duty to Mitigate:** The Seller’s obligation to pay the Compliance Penalty or the Compliance Penalty Equivalent is subject always to the Buyer’s overriding obligation to use commercially reasonable endeavours (including, without limitation, making use of any excess Certificates it may have available to it at the time, and/or procuring such Certificates as are available in the market) to satisfy its obligation to surrender the required number of Certificates necessary to avoid or otherwise mitigate its Compliance Penalty or Compliance Penalty Equivalent liability. For the avoidance of doubt, the Buyer’s duty to mitigate its Compliance Penalty or Compliance Penalty Equivalent exposure is limited to management of its Certificate portfolio and shall not impose upon it any further obligation regarding its operation of any installation with an obligation to surrender Certificates to the Competent Authority.

5 **Evidence of Commercially Reasonable Efforts:** Upon request, the Buyer shall confirm to the Seller:

(a) that it has incurred Compliance Penalty or Compliance Penalty Equivalent consequent upon the Seller’s failure to Deliver Certificates to it;

(b) the extent to which the requirement for the Buyer to pay the Compliance Penalty or the Compliance Penalty Equivalent results from the Seller’s failure to make such a Delivery; and

(c) that it was unable to mitigate its Compliance Penalty or Compliance Penalty Equivalent exposure,

and shall provide the Seller with evidence:

(d) that the Compliance Penalty or Compliance Penalty Equivalent, as applicable, was incurred by it;

(e) that such Compliance Penalty or Compliance Penalty Equivalent was incurred as a result of the Seller’s failure to perform its Delivery obligation; and

(f) of its commercially reasonable endeavours to mitigate its exposure to such Compliance Penalty or Compliance Penalty Equivalent as it has invoiced to the Seller; provided, however, that should the Seller elect to challenge the Buyer in respect of any of the above matters, then the burden for demonstrating:

(i) that such Compliance Penalty or Compliance Penalty Equivalent was not actually incurred by the Buyer;

(ii) that such Compliance Penalty or Compliance Penalty Equivalent was not incurred by the Buyer as a result of the Seller’s non-performance; and/or

(iii) the insufficiency, lack of thoroughness or unreasonableness of such endeavours shall be on the Seller,

and, if § 19.3 *(Expert Determination)* is specified as applying in Section B of Part I (*Individual ~~Terns~~Terms*) the process by which such challenge will be determined shall be in accordance with the procedures set forth in § 19.3 *(Expert Determination)*.

6 **Later Mitigation of Recovered Compliance Penalty or Compliance Penalty Equivalent:** To the extent an initially assessed and recovered Compliance Penalty is later reduced and/or fully or partly returned or credited to the Buyer by a Competent Authority for any reason whatsoever, only such reduced and finally assessed Compliance Penalty shall apply. Compliance Penalty recovered by the Buyer in the form of damages under this § 9 which are later reduced or returned to such Buyer shall be returned upon demand to the Seller who paid such damages, and the Buyer shall provide the Seller with prompt notification of any such reduction or return. Similarly, in the event the Seller has made the Buyer whole for a Compliance Penalty Equivalent, and all or any portion of the underlying Compliance Penalty or Compliance Penalty Equivalent upon which the Seller's Compliance Penalty Equivalent payment was based is later returned to the Buyer by its resale customer, the Buyer shall return an equivalent amount of its own Compliance Penalty Equivalent payment to the Seller.

§ 10.
Term and Termination Rights

1 **Term:** This Agreement shall come into force as of the Effective Date. It may be terminated in accordance with either § 10.2 (*Termination through Expiry*) or § 10.3 (*Termination for Material Reason*) to ~~§ 10.4~~§ 10.4 (*Definition of Material Reason*) (inclusive).

2 **Termination through Expiry:** This Agreement will terminate on the fulfilment of both Party's obligations in relation to the Delivery and acceptance of the Contract Quantity of Certificates pursuant to the terms of this Agreement.

3 **Termination for Material Reason:**

(a) If a Material Reason with respect to a Party has occurred and is continuing, the other Party ("**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 ("**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 future Deliveries 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 § 11 (*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, determined in accordance with § 11 (*Calculation of the Termination Amount*).

(d) The Termination Amount shall be payable by the relevant Party to the other Party within three (3) Business Days of its notification by the Terminating Party.

(e) The Terminating Party may take into account any credit support available pursuant to the Agreement.

(f) The right to designate an Early Termination Date under this ~~§ 10..3~~§ 10.3 is in addition to any other remedies available under the Agreement or at Law.

~~4 [**Automatic Termination:** If § 0 is specified as applying to a Party in Section B of Part I (*Individual Terms*), and upon the occurrence of a Material Reason described in § 10.4 (*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 Section B of Part I (*Individual Terms*). Except as provided in this0, Early Termination by virtue of operation of Automatic Termination shall be as provided in § 10.3 (*Termination for Material Reason*).]~~

4 ~~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**: Except where such obligation is released pursuant to § 5 (*Non-Performance Due to Force Majeure*), the failure of a Party, when required, to make a payment or to perform any other material obligation, except for a Material Reason set out in ~~§ 10.4(d)~~§ 10.4(d) (*Failure to Deliver or Accept*) and ~~§ 10.4(e)~~§ 10.4(e) (*Representation or Warranty*), 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.

(b) **Cross Default and Acceleration:** Unless otherwise specified in Section B of Part I (*Individual Terms*):

(i) any payment default under any Specified Indebtedness with an aggregate outstanding principal balance equal to three percent (3%) of the Tangible Net Worth of such Party or such Party's Controlling Party, as of the date of the default; or

(ii) the failure of a Party or its Controlling Party to make one or more payments in an aggregate amount (individually or collectively) of not less than the Threshold Amount specified in Section B of Part I (*Individual Terms*) 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:

(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 or other similar Law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in Section B of Part I (*Individual Terms*), is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in Section B of Part I (*Individual Terms*);

(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 of any jurisdiction, has an analogous effect to any of the events specified in ~~§ 10.4(c)(i)~~§ 10.4(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 ~~§ 10..4(c)~~§ 10.4(c).

(d) **Failure to Deliver or Accept:** If specified as applying in Section B of Part I (*Individual Terms*), except where such obligation is released pursuant to § 5 (*Non-Performance Due to Force Majeure*), the failure of a Party to comply with its obligation to Deliver or accept the Certificates on the Delivery Date(s) specified in Section B of Part I (*Individual Terms*), such failure having not been remedied within any grace period pursuant to § 7 (*Failure to Deliver*) or § 8 (*Failure to Accept*).

(e) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

(f) **Force Majeure:** This Agreement is terminated pursuant to § 5 (*Non-Performance Due to Force Majeure*), whereby the "Termination Amount" pursuant to § 11.1 (*Termination Amount*) shall be zero (0)

Unless otherwise specified in Section B of Part I (*Individual Terms*), the above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 10.

§ 11.
Calculation of the Termination Amount

1 **Termination Amount:** The Terminating Party shall calculate ~~an amount ("~~the Termination Amount~~")~~ to be paid in accordance with § 10.3 (*Termination for Material Reason*) ~~and 0 (*Automatic Termination*) by calculating the sum (whether positive or negative) of all Settlement Amounts *plus* any or all other amounts payable between the Parties under or in connection with the Agreement~~.

2 **~~Settlement~~Calculation of the Termination Amount:** The "**~~Settlement~~Termination Amount**~~"~~" shall be the Gains *less* the aggregate of the Losses and Costs which the Terminating Party incurs as a result of the termination of this Agreement. 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 this terminated Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of this Agreement;

(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 this Agreement, 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 Section B of Part I (*Individual Terms*) shall include, if applicable, any Compliance Penalty or Compliance Penalty Equivalent) resulting from its termination of this Agreement, determined in a commercially reasonable manner.

In calculating the ~~Settlement Amounts~~Termination Amount, 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.

§ 12.
Limitation of Liability

1 **Application:** This § 12 will apply unless otherwise specified by the Parties in Section B of Part I (*Individual Terms*).

2 **Exclusion of Liability:** Subject to ~~§ 12..3~~§ 12.3 (*Consequential Damage and Limitation of Liability*) and ~~§ 12..4~~§ 12.4 (*Intentional Default~~,~~ and Fraud~~ and Fundamental Rights~~*) and except in respect of any amounts payable under § 7 (*Failure to Deliver*) or § 8 (*Failure to Accept*) or § 10..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 Certificates this Agreement) 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 **Consequential Damage and Limitation of Liability:** Subject to ~~§ 12..4~~§ 12.4 (*Intentional Default~~,~~ and 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 Section B of Part I (*Individual Terms*) as either:

(i) the amounts payable for Certificates supplied or to be supplied by a Party under this Agreement; or

(ii) the Limitation Amount,

provided in either case that such limitation shall not apply to payments under ~~**Error! Reference source not found.** (*Remedies for*~~§ 7 (*Failure to Deliver~~ and Accept~~*) and § 11 (*Calculation of the Termination Amount*).

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

~~(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 **Duty to Mitigate Losses:** For the avoidance of doubt, and subject to 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.

§ 13.
Invoicing and Payment

1 **Invoice:** The Seller shall transmit to the Buyer in the course of the calendar month following a Delivery of Certificates for the previous month an invoice setting forth the total quantities of Certificates that were sold by the Seller in the previous calendar month. In connection with such invoice the Seller may state all amounts then owed between the Parties including, without limitation, all amounts owed for the

purchase and sale of Certificates, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties.

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 ("**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 Section B of Part I (*Individual Terms*). Such payment shall be made in EURO, and subject to § 14 (*VAT and Taxes*), and the remitter shall pay its own bank charges.

3 **Default Interest:** Overdue payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment, at the Interest Rate, provided that if the interest rate would otherwise be less than zero, the interest rate shall be floored at zero (0) and any margin applied thereto. For this purpose the "**Interest Rate**~~“~~”" shall be the rate of interest specified in Section B of Part I (*Individual Terms*).

4 **No Index Cessation Effective Date with respect to EURIBOR:** If, by 11:00 a.m. CET (or the amended publication time for EURIBOR, if any, as specified by the EURIBOR benchmark administrator in the EURIBOR benchmark methodology) on that Reset Date, EURIBOR for a period of the Designated Maturity in respect of the Reset Date has not been published on the Reuters Screen EURIBOR01 Page and an Index Cessation Effective Date with respect to EURIBOR has not occurred, then, references to EURIBOR will be deemed to be references to the last provided or published EURIBOR. If by 3:00 p.m., CET (or four (4) hours after the amended publication time for EURIBOR), on that Reset Date, neither the administrator of EURIBOR nor an authorized distributor has provided or published EURIBOR for a period of the Designated Maturity in respect of the Reset Date and an Index Cessation Effective Date has not occurred, then, unless otherwise agreed by the Parties, the rate for that Reset Date will be:

(a) a rate formally recommended for use by the administrator of EURIBOR; or

(b) a rate formally recommended for use by the supervisor which is responsible for supervising EURIBOR or the administrator of EURIBOR,

in each case, during the period of non-publication of EURIBOR and for so long as an Index Cessation Effective Date has not occurred. If a rate described in sub-paragraph (A) is available, that rate shall apply. If no such rate is available but a rate described in sub-paragraph (B) is available, that rate shall apply. If neither a rate described in sub-paragraph (A) nor a rate described in sub-paragraph (B) is available, then the Calculation Agent shall determine a commercially reasonable alternative for EURIBOR, taking into account any rate implemented by central counterparties and/or futures exchanges, in each case with trading volumes in derivatives or futures referencing EURIBOR that the Calculation Agent considers sufficient for that rate to be a representative alternative rate.

5 **Index Cessation Effective Date with respect to EURIBOR:** If an Index Cessation Effective Date occurs with respect to EURIBOR, then the rate for a Reset Date occurring two or more TARGET Settlement Days after the Index Cessation Effective Date will be such rate as replaces EURIBOR pursuant to the prevailing fallbacks mechanics ISDA (the International Swaps and Derivatives Association), or any successor to ISDA, has in place (the "**Applicable Fallback Rate**"), as at the Index Cessation Effective Date, after the Calculation Agent has made such adjustments as are necessary to account for any difference in term structure or tenor of the Applicable Fallback Rate and all provisions in this section shall be read as though references to EURIBOR are instead references to the Applicable Fallback Rate.

6 ~~4~~ **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:

(a) if this ~~§ 13.6(a)~~§ 13.6(a) is specified as applying in Section B of Part I (*Individual Terms*), the full amount invoiced no later than the Due Date; or

(b) if this ~~§ 13.6(b)~~§ 13.6(b) is specified as applying in Section B of Part I (*Individual Terms*), 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.

§ 14.
VAT and Taxes

1 **VAT:** All amounts referred to in the Agreement are exclusive of VAT. The VAT treatment of the supply of Certificates under this Agreement shall be determined pursuant to the VAT 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 Law, any supplies under this Agreement 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 Competent Authority for taxation) to ensure that such supply is Zero-Rated or subject to the reverse charge for the purposes of such 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 § 14.1(a) above, the Seller reserves the right to charge local VAT.

2 **Other Taxes:** All amounts referred to in 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 Competent Authority for taxation, as appropriate.

Where, in accordance with EU and/or national Law, there is an exemption or other relief, as applicable, from Other Taxes in respect of any supplies under this Agreement, 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 Competent Authority for tax) to ensure that such supply is exempt from Other Taxes for the purposes of such 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 § 14.2(a) above, the Seller reserves the right to charge Other Taxes.

3 **Seller's and Buyer's Tax Obligation:** The Seller shall pay or cause to be paid all Tax on or with respect to Certificates Delivered pursuant to this Agreement 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 Certificates Delivered pursuant to this Agreement arising after the transfer of risk and title at the Delivery Point. Subject to § 13.2 (*Payment*), the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with Applicable Laws. In the event that the Seller is required by 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 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 ~~[~~**Withholding Tax:** If § 14.4 is specified as applying in Section B of Part I (*Individual Terms*), the following shall apply between the Parties:

(a) **Payments Free and Clear:** All payments under this Agreement 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. 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 Competent Authority all amounts withheld or deducted by it. If a receipt or other evidence can be issued evidencing the payment to the 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 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 Agreement;

(ii) which could have been avoided if the Receiving Party had delivered to the Paying Party or to the Competent Authority as reasonably requested by the Paying Party, any declaration, certificate, or other documents specified in Section B of Part I (*Individual Terms*) 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 Section B of Part I (*Individual Terms*) for the purposes of this § 14.4 failing or ceasing to be true and accurate provided that this § 14.4(b)(iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 14.4(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 Applicable Law, enactment, directive, or published practice of any Competent Authority for taxation being a change occurring on or after the Effective Date; or

(bb) any action taken by a Competent Authority for taxation, or brought in a court of competent jurisdiction, on or after the Effective Date.~~]~~

§ 15.
Change in Law

1 **Change in Law:** In case of any Change in Law that:

(a) renders it impossible 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 § 15.1(a) to § 15.1(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 agree the amendments which should be made to this Agreement as are necessary to:

(f) preserve the economic intent of this Agreement and the balance of rights and obligations between the Parties as applicable on the Effective Date; 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 § 15.1 within thirty (30) calendar days after notification, either Party may elect to refer the dispute to Expert Determination (if § 19.3 (*Expert Determination*) is specified as applying in Section B of Part I (*Individual Terms*)).

Where neither Party exercises its right to refer such dispute within fifteen (15) further calendar days, either Party may terminate this Agreement. No obligation to pay damages pursuant to this Agreement will accrue to either Party with respect to any quantities of Certificates not Delivered or accepted due to the occurrence of Change in Law under this § 15.1.

2 **Change in Law and Price Adjustments:** If § 15.2 is specified as applying in Section B of Part I (*Individual Terms*), any amendments made to this Agreement in accordance with § 15.1 (*Change in Law*) shall not include any upward or downward adjustments to the Contract Price.

3 **Event of Change in Law and Ineffectiveness:**

(a) unless § 15.3(b) is specified as applying in Section B of Part I (*Individual Terms*), if an event or circumstance that would otherwise constitute or give rise to a Change in Law also constitutes an Ineffectiveness, it is to be treated as a Change in Law and shall not constitute an Ineffectiveness; or

(b) if § 15.3(b) is specified as applying in Section B of Part I (*Individual Terms*), 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 Section B of Part I (*Individual Terms*) (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 Section B of Part I (*Individual Terms*), 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 § 15.1 (*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 § 15.1 (*Change in Law*) or § 15.4 (*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 § 15, 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 § 5 (*Non-Performance Due to Force Majeure*));

(b) subject to § 15.6(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.

§ 16.
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 § 16.2 is specified as applying in Section B of Part I (*Individual Terms*), 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 Section B of Part I (*Individual Terms*), such Affiliate is incorporated in the same jurisdiction as the assigning and transferring Party. Such assignment shall only become effective upon notice being received by the other Party.

§ 17.
Confidentiality

1 **Confidentiality Obligation:** Unless § 17 is specified as not applying in Section B of Part I (*Individual Terms*), and subject to § 17.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of this Agreement ("**Confidential Information**~~“~~") to a third party.

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 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 Administrator;

(d) is disclosed to comply with any Applicable Law, or rule of any exchange, system operator or 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 or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;

(e) is in or lawfully comes into the public domain other than by a breach of this § 17; or

(f) 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 **Expiration:** A Party's obligation under this § 17 shall expire one (1) year after the expiration or termination of this Agreement.

§ 18.
Representations and Warranties

1 **Representations and Warranties of the Seller:** If specified as applying to a Party in Section B of Part I (*Individual Terms*), the Seller hereby represents and warrants to the Buyer 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 § 3.1 (*Delivery and Acceptance*); and

(c) the Certificates fulfil and correspond to the specifications agreed by the Parties as applicable and set out in Section B of Part I (*Individual Terms*).

2 **Additional Representations and Warranties:** If specified as applying to a Party in Section B of Part I (*Individual Terms*), that Party hereby represents and warrants to the other Party upon entering into this Agreement as follows:

(a) it is an Entity duly organised, validly existing and in good standing under the Laws of its jurisdiction of incorporation or organisation;

(b) the signing and the entering by it into of this Agreement 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 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 do not violate or conflict with any other term or condition of any contract to which it is a party, any constitutional document or rule applicable to it, or Applicable Law;

(d) no Material Reason for termination as outlined in ~~§ 10.4~~§ 10.4 (*Definition of Material Reason*), with respect to it has occurred and is continuing, 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;

(f) it has negotiated, entered into and executed the Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);

(g) it regularly enters into agreements for the trading of 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 Agreement, and, as to whether this Agreement 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;

(k) ~~[~~with respect to a Party that is a governmental Entity, such governmental Entity 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 are for a proper public purpose within the meaning of relevant constitutional or other governing documents and 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;~~]~~

(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 its obligations under this Agreement, such that it could become insolvent; and

(m) any other representations and warranties applying to a Party specified in Section B of Part I (*Individual Terms*).

§ 19.
Governing Law and Arbitration

OPTION A

1 **Governing Law:** If Option A is specified in Section B of Part I (*Individual Terms*), this Agreement and any non-contractual obligations arising out of or in connection with it shall be construed and governed by 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 **Arbitration:** If Option A is specified in Section B of Part I (*Individual Terms*), 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 Section B of Part I (*Individual Terms*), 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, the Parties hereby waiving their right (if any) to recover such damages.

OPTION B

1 **Governing Law:** If Option B is specified in Section B of Part I (*Individual Terms*), 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 Netherlands, excluding any application of the "United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980".

2 **Arbitration:** If Option B is specified in Section B of Part I (*Individual Terms*), 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 ~~[insert arbitration forum]~~Netherlands Arbitration Institute (NAI) 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 Section B of Part I (*Individual Terms*).

DEFAULT RULE

If neither Option A nor Option B is specified in Section B of Part I (*Individual Terms*) and the Parties' agreed choice of law and dispute resolution procedure is not specified in Section B of Part I (*Individual Terms*), then § 19.1 (*Governing Law*) and § 19.2 (*Arbitration*) of Option ~~A~~B shall apply.

3 ~~[~~**Expert Determination:**

(a) **General:**

(i) This § 19.3 shall only apply if specified in Section B of Part I (*Individual Terms*).

(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 § 19.3, 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 § 19.3 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 § 19.3(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 § 19.3 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 § 19.3(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 § 19.3(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 § 19.3(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 § 19.3(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 § 19.3(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 § 19.3(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 § 19.3 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 § 19.3 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.~~]~~

§ 20.
Miscellaneous

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 **Notices and Communications:** Except as otherwise provided herein, 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 specified in Section B of Part I (*Individual Terms*). 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 (2^{nd}) Business Day after the date of posting, or if sent from one country to another on the fifth (5^{th}) 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 **Amendments:** Any amendments or additions to this Agreement shall be made only in writing signed by both Parties.

4 **Partial Invalidity:** Subject to § 15 (*Change in Law*), if at any time any provision of this Agreement 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 Agreement, 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 **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.

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.

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

SELLER	**BUYER**
[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
Certificate Trade Agreement

Defined Terms

Terms used in the Agreement shall have the following meanings:

“**Account**~~“~~” means an account on the Registry as specified in Section A of Part I (*Individual Terms*);

“**Administrator**~~“~~” means ~~Vertogas BV~~VertiCer B.V., with its seat at [Concourslaan 17, 9727 KC, Groningen, registered with the Dutch Chamber of Commerce under number ~~011 8153~~88033600011 8153 or any successor entity and / or other subsequent body mandated by the Dutch Government to issue Certificates];

“**Administrator Event**” means the suspension of all or some of the processes in respect of the Registry in accordance with the Issuance and Registry Rules by a Competent Authority:

(a) where that Registry is not operated and maintained in accordance with the provisions of the Issuance and Registry Rules,

(b) for the purposes of carrying out scheduled or emergency maintenance, or

(c) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities);

“**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 (*Subject of Agreement*);

“**Applicable Fallback Rate**” has the meaning specified in § 13.3 (*Index Cessation Effective Date with respect to EURIBOR*);

“**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 § 19.3(b)(i) (*Commencement*);

“**Application**~~“~~” has the meaning as specified in § 19.3(b)(iv) (*Commencement*);

~~“**Automatic Termination**“ has the meaning specified in 0 (*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**~~“~~” has the meaning specified in Section A of Part I (*Individual Terms*);

“**Buyer's Account**~~“~~” has the meaning specified in Section A of Part I (*Individual Terms*);

“**Buyer’s Cover Costs**” has the meaning specified in § 7.2 (*Failure to Deliver*);

“**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 a ~~[~~guarantee of origin issued by the Administrator to evidence the production of renewable source hydrogen~~]~~ issued in accordance with the Issuance and Registry Rules (“**Certificate**~~“~~”), where one Certificate equals 1 MWh.

“**Change in Law**~~“~~” means the enactment, promulgation, execution or ratification of, or any change in or amendment to, or 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 § 5.1 (*Definition of Force Majeure*);

“**Competent Authority**~~“~~” means:

(a) in respect of the ~~[~~Buyer's or a relevant third party's~~]~~ compliance with the Designated Purpose~~,~~ ~~[insert relevant~~ the authority~~]~~ or other legal person designated to operate the scheme stated in the Designated Purpose; or

(b) in respect of any other right or obligation, any national, federal, regional, European Union, 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), including without limitation the Autoriteit Consument & Markt, Nederlandse Emissieautoriteit and Rijksdienst voor Ondernemend Nederland;

“**Compliance Deadline**” means ~~[insert]~~the date and time by which the Certificates need to be surrendered, submitted or cancelled in order to comply with the scheme stated in the Designated Purpose;

“**Compliance Penalty**~~“~~” means a financial payment required to be made by the Buyer to a Competent Authority where the Designated Purpose of the Certificate purchase was compliance with a regulatory obligation under a scheme stated in the Designated Purpose:

“**Compliance Penalty Equivalent**” means an amount which the Buyer must pay to a third party in respect of any amount payable by that third party which arose as a result of the Buyer’s failure to transfer the required Certificates to that third party and which in turn was a consequence of the Seller’s failure to Deliver the Contract Quantity to the Buyer under this Agreement;

“**Compliance Year**” means ~~[insert]~~the year for which compliance with a regulatory obligations needs to be demonstrated in accordance with the rules set by the scheme stated in the Designated Purpose;

“**Confidential Information**~~“~~” has the meaning specified ~~in * MERGEFORMAT~~ § 17.1 (*Confidentiality Obligation*);

“**Contract Price**~~“~~” means the price agreed between the Parties;

“**Contract Quantity**~~“~~” means a quantity of Certificates equal to the quantity expressed in MWh agreed between the Parties in Section A of Part I (*Individual Terms*);

“**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;

“**Costs**~~“~~” has the meaning specified in § 11.2(a) (~~*Settlement*~~*Calculation of the Termination Amount*);

“**Cost of Carry Amount**” has the meaning specified in § 6.5 (*Suspension Event*);

“**Cost of Carry Calculation Period**” means the number of calendar days from and including the original Due Date which would have applied but for delayed delivery to, but excluding, the delayed Due Date resulting from delayed Delivery;

“**Cost of Carry Rate**” means ~~[insert interest rate applicable to Suspension Events]~~the meaning agreed between the Parties in Section A of Part I (*Individual Terms*);

“**Damages**~~”~~” has the meaning specified in § 12.2 (*Exclusion of Liability*);

“**Decision**~~”~~” has the meaning as specified in § 19.3(f)(ii) (*The Decision*);

“**Deferred Acceptance Date**” has the meaning specified in § 8.3(a) (*Failure to Accept*);

“**Deferred Delivery Date**~~”~~” has the meaning specified in § 7.3(a) (*Buyer's Right to Waive Its Cover Costs*);

“**Delayed Delivery Date**” has the meaning specified in § 6.3 (*Suspension Events*);

~~* MERGEFORMAT~~ “**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 Certificate from one Account in the Registry and subsequent crediting of such Certificate to another Account,

under and in accordance with the Issuance and Registry Rules, and “**Deliver**~~”~~”, “**Delivered**~~”~~” and “**Undelivered**~~”~~” will be construed accordingly;

“**Delivery Business Day**~~”~~” means a Business Day in the jurisdiction in which each Party has its seat;

“**Delivery Date**~~”~~” means the Delivery date agreed between the Parties and specified in Section A of Part I (*Individual Terms*);

“**Delivery Point**~~”~~” means ~~the crediting of a Certificate in~~ the Buyer's Account;

“**Designated Purpose**~~”~~” has the meaning as specified in Section A of Part I (*Individual Terms*);

“**Due Date**~~”~~” has the meaning specified in § 13.2 (*Payment*);

“**EAN-code**” means European Article Numbering code, a unique 18-digit number that serves to identify a production facility or a connection of a production facility or a renewable gas production unit.

“**Early Termination**~~”~~” has the meaning specified in § 10.3(a) (*Termination for Material Reason*);

“**Early Termination Date**~~”~~” has the meaning specified in § 10.3(b) (*Termination for Material Reason*);

“**Effective Date**~~”~~” has the meaning set out on the first page of this Agreement;

“**Encumbrance Loss**~~”~~” means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with this Agreement, 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 this Agreement 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 Competent Authority) by that third party;

“**Encumbrance Loss Amount**~~”~~” has the meaning specified in § 4.3(b)(ii) (*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 Union as it exists from time to time;

“**EURIBOR**” means that the rate for a Reset Date will be EURIBOR (the Euro wholesale funding rate known as the Euro Interbank Offered Rate provided by the European Money Markets Institute, as the administrator of the benchmark (or a successor administrator)) for the period agreed between the Parties (the “**Designated Maturity**”) which appears on the Reuters Screen EURIBOR01 Page as of 11:00 a.m., CET (or any amended publication time as specified the benchmark administrator in the EURIBOR benchmark determination methodology), on the day that is two TARGET Settlement Days preceding that Reset Date;

“**Expert**~~“~~” means an individual who is professionally specialised in the issuance and transfer of Certificates, appointed by the Parties in accordance with § 19.3(c) (*Appointment of an Expert*);

“**Expert Notice**~~“~~” has the meaning specified in § 19.3(b)(i) (*Commencement*);

“**Expiry**” has the meaning specified in § 10.2 (*Termination through Expiry*);

“**Force Majeure**~~“~~” has the meaning specified in § 5.1 (*Definition of Force Majeure*);

“**Gains**~~“~~” has the meaning specified in § 11.2(b) (~~*Settlement*~~*Calculation of the Termination Amount*);

“**ICC**~~“~~” means the International Chamber of Commerce with seat in Paris, France;

“**ICC Expertise Rules**~~“~~” has the meaning as specified in § 19.3(a)(i) (*General*);

“**Index Cessation Effective Date**” means, in respect of an Index Cessation Event, the first date in respect of which EURIBOR, or (if an Applicable Fallback Rate is being used) such Applicable Fallback Rate, is no longer provided. If EURIBOR, or, as the case may be, such Applicable Fallback Rate, ceases to be provided on the same day that it is required to determine the rate for a Reset Date pursuant to the terms of the contract but it was provided at the time at which it is to be observed pursuant to the terms of the contract (or, if no such time is specified in the contract, at the time at which it is ordinarily published), then the Index Cessation Effective Date will be the next day on which the rate would ordinarily have been published.

“**Index Cessation Event**” means, in respect of EURIBOR or, in the event an Applicable Fallback Rate is being used, such Applicable Fallback Rate:

(a) a public statement or publication of information by or on behalf of the administrator of the index announcing that it has ceased or will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index; or

(b) a public statement or publication of information by the regulatory supervisor for the administrator of the index, the central bank for the currency of the index, an insolvency official with jurisdiction over the administrator for the index, a resolution authority with jurisdiction over the administrator for the index or a court or an entity with similar insolvency or resolution authority over the administrator will cease to provide the index permanently or indefinitely, provided that, at the time of the statement or publication, there is no successor administrator that will continue to provide the index.

“**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 Administrator (as appropriate);

(b) the Certificate has already been cancelled other than in agreement with the Buyer; or

(c) the Certificate is not recognised or has been rejected by a Competent Authority for the Designated Purpose,

and “**Ineffectiveness**~~“~~”, the opposite form “**Effective**~~“~~” and other cognate expressions shall be construed accordingly;

“**Ineffectiveness Loss Amount**~~“~~” means the calculation specified in Section A of Part I (*Individual Terms*);

“**Interest Rate**~~“~~” has the meaning specified in § 13.3 (*Default Interest*);

“**Issuance and Registry Rules**~~“ means [insert legislation or rules enacted by the Competent Authority];~~” means the rules established by the Administrator regarding the operation of the Registry, including without limitation the rules regarding the issuance, transfer and cancellation of Certificates, including without limitation any rules agreed in contract with the Buyer or the Seller regarding the use of the Registry;

“**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) Wet van 1 juni 2022, houdende Regels omtrent garanties van oorsprong voor energie uit hernieuwbare bronnen (Wet implementatie EU-richtlijn hernieuwbare energie voor garanties van oorsprong) (*Eng*: Act of 1 June 2022 containing Rules on Guarantees of Origin for Energy from Renewable Sources (Act Implementing the EU Renewable Energy Directive for Guarantees of Origin));

(b) Regeling van de Minister van Economische Zaken van 9 december 2014, nr. WJZ/14198645, houdende regels omtrent garanties van oorsprong voor energie uit hernieuwbare energiebronnen en HR-WKK-elektriciteit (Regeling garanties van oorsprong voor energie uit hernieuwbare energiebronnen en HR-WKK-elektriciteit) (*Eng*: the Regulations governing Guarantees of Origin of Electricity Produced from Renewable Sources);

(c) Regeling van de Staatssecretaris van Infrastructuur en Waterstaat van 17 december 2021, nr. IENW/BSK-2021/303801, tot wijziging van de Regeling energie vervoer in verband met de implementatie van Richtlijn (EU) 2018/2001 van het Europees Parlement en de Raad van 11 december 2018 ter bevordering van het gebruik van energie uit hernieuwbare bronnen en ter uitvoering van het Klimaatakkoord (*Eng*: an amendment to the Renewable Energy for Transport Regulations);

(d) Besluit van 16 oktober 2007, houdende regels inzake de verstrekking van subsidies ten behoeve van de productie van hernieuwbare elektriciteit, hernieuwbaar gas en elektriciteit opgewekt door middel van warmtekrachtkoppeling (Besluit stimulering duurzame energieproductie), (*Eng*: Sustainable Energy Production (Promotion) Decree);

(e) any related and / or subsequent legislation to paragraphs (a) to (d) (inclusive) above;

(f) ~~(a)~~ any other European (primary law), national or regional legislation regulating the issuance, transfer, cancellation and use of Certificates; and

(g) ~~(b)~~ the Issuance and Registry Rules~~; and~~.

~~(c) [insert relevant Dutch law, if not already reflected above];~~

“**Limitation Amount**~~“~~” has the meaning specified in Section B of Part I (*Individual Terms*) (if applicable);

“**Long Stop Date**” means, in respect of a Suspension Event that occurs in relation to a Delivery or acceptance obligation that would otherwise be required to be performed in a compliance period ~~for~~pursuant to the scheme stated in the Designated Purpose~~, [insert period of time following expiry of such compliance period]~~;

“**Losses**~~“~~” has the meaning specified in § 11.2(c) (~~*Settlement*~~*Calculation of the Termination Amount*);

“**Material Reason**~~“~~” has the meaning specified in ~~§ 10.4~~§ 10.4 (*Definition of Material Reason*);

“**No Encumbrances Obligation**~~“~~” has the meaning specified in § 4.2 ~~* MERGEFORMAT~~ (*No Encumbrances*);

“**Non-UCPA**” has the meaning specified in § 7.2(b)(vii) (*Failure to Deliver*);

“**Other Tax**~~“~~” means any energy Tax or excise duty, but not including Taxes targeted at end users;

“**Party**~~“~~” and “**Parties**~~“~~” have the meanings set out on the first page of this Agreement;

~~“**Party A**“ means the Party identified as such in Section A of Part I (*Individual Terms*);~~

~~“**Party B**“ means the Party identified as such in Section A of Part I (*Individual Terms*);~~

“**Paying Party**~~“~~” has the meaning specified in § 14.4(a) (*Payments Free and Clear*);

“**Receiving Party**~~“~~” has the meaning specified in § 14.4(a) (*Payments Free and Clear*);

“**Registry**~~“~~” means the ~~Vertogas~~ registry as operated by the Administrator, through which a Party is obliged to perform its Delivery, acceptance or cancellation obligation under and in accordance with this Agreement;

“**Registry Operation**” means the establishment of and continuing functioning of the Registry pursuant to the Issuance and Registry Rules;

“**Replacement Compliance Penalty Price**” or “**RCPP**” has the meaning specified in § 7.2(b)(v) (*Failure to Deliver*);

“**Replacement Price**” or “**RP**” has the meaning specified in § 7.2(a)(iii) (*Failure to Deliver*);

“**Reply**~~“~~” has the meaning specified in § 19.3(b) (*Commencement*);

“**Reset Date**” means the date payment becomes overdue, and the same date each period of the Designated Maturity thereafter until the date on which the other Party receives payment of the overdue amount and all interest that has accrued, provided that if a relevant month does not contain such number of days, the Reset Date for such month shall be the last day of such month;

“**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 Administrator (and if applicable, the other Party) the Contract Quantity, the Certificate details, the account I.D. of the Buyer's Account and any other relevant terms of this Agreement 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 this Agreement;

“**SE Affected Delivery**” has the meaning specified in § 6.3 (*Suspension Events*);

“**SE Affected Party**” has the meaning specified in § 6.2 (*Suspension Events*);

“**Seller**~~“~~” means the person identified as such in Section A of Part I (*Individual Terms*);

“**Seller’s Cover Costs**” has the meaning specified in § 8.2 (*Failure to Accept*);

~~“**Settlement Amount**“ has the meaning specified in **Error! Unknown switch argument.** (*Settlement Amount*);~~

“**Source**” means the:

(a) device or group of devices responsible for the production of renewable source hydrogen registered with the Administrator for issuance of Certificates in accordance with the Issuance and Registry Rules; or

(b) the point of import for renewable source hydrogen registered with the Administrator for the issuance of Certificates in accordance with the Issuance and Registry Rules;

“**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);

“**Suspension Event**” has the meaning specified in § 6.2 (*Suspension Events*);

“**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 Party or the Party’s Controlling Party ascribed for such purposes of the Party or the Party’s Controlling Party and any accumulated earnings *less* any accumulated retained losses and intangible assets including, but not limited to, goodwill;

“**TARGET Settlement Day**” means any day on which TARGET2 (the Trans-European Automated Real-time Gross settlement Express Transfer system) is open for the settlement of payments in Euro.

“**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 Competent Authority for tax (whether or not for its benefit) in respect of any payment, nomination and allocation 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) VAT;

“**Terminating Party**~~“~~” has the meaning specified in § 10.3(a) (*Termination for Material Reason*);

“**Termination Amount**~~“~~” has the meaning specified in ~~§ 11.1 (~~§ 11.2 (*Calculation of the Termination Amount*);

“**Total Contract Price**” means the price set out in Section A of Part I (*Individual Terms*);

“**Threshold Amount**~~“~~” with respect to a Party, shall have the meaning as specified for that Party pursuant to ~~§ 10.4(b)(ii)~~ § 10.4(b)(ii);

“**Undelivered Certificates**” or “**UC**” has the meaning specified in § 7.2(a)(iii) (*Failure to Deliver*);

“**Undelivered Compliance Penalty Amount**” or “**UCPA**” has the meaning specified in § 7.2(b)(i) (*Failure to Deliver*);

“**VAT**~~“~~” means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties; and

~~“**VAT Rules**“ means any VAT 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~~Laws and “**Zero-Rating**~~“~~” shall be construed accordingly.

Summary report: **Litera Compare for Word 11.2.0.54 Document comparison done on 26.05.2023 12:53:09**	
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Original filename: NL Hydrogen CTA draft 17 05 2022.docx	
Modified filename: Hydrogen CTA draft 24 05 2023.docx	
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~~Delete~~	309
~~Move From~~	0
Move To	0
Table Insert	7
~~Table Delete~~	0
Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	1
Embedded Excel	0
Format changes	0
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