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EFET

European Federation of Energy Traders

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Biogas Certificates Standard Agreement for Single Trade

WAIVER: THE FOLLOWING BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE WAS PREPARED BY EFET'S MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE 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 BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE 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 BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE AVAILABLE ON THE EFET AND CEGH WEBSITE.

—

Biogas Certificates Standard Agreement for Single Trade

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")
entered into on _____ ("Effective Date").

PART I – Individual Terms of the Biogas Certificates Standard Agreement for Single Trade

SECTION A: COMMERCIAL PROVISIONS

General information

Certificates data:	Seller:	Authorised Issuing Body: <i>[insert]</i>
		Certificates Registry: <i>[insert]</i>
		Account number or Account name: <i>[insert number]</i>
	Buyer:	Certificates Registry: <i>[insert]</i>
		Account number or Account name: <i>[insert number]</i>

Certificate: A Biogas Guarantee of Origin issued by the Authorised Issuing Body in accordance with Article 2(12) and Article 19 RED II and Applicable Law to evidence the production of renewable source Biogas which meets the Certificate Details ("Certificate").

Certificate Details:

Production Year	Subsidised / non-subsidised	Feedstock Type	Product Type	Carbon Intensity	Quantity (MWh)	Price per Certificate (EUR)	Delivery Date
Total Contract Price						(Total)	

Specific Production Device: _____

Minimum validity of the Certificates upon Delivery: _____

Earmark/s: _____

Additional quality: _____

Commercial details

Designated Purpose:	☐ Appendix 2 – Greenhouse Gas Protocol
	☐ Appendix 3 – EU ETS Scheme (as transposed by Applicable Law)
	☐ Appendix 4 – National Fuels Quota Scheme
	☐ Appendix 5 – National Emissions Trading Scheme
	☐ other: <i>[specify, if applicable]</i>
	☐ none of the above
Delivery Point:	with respect to Transfer of Certificates by Electronic Transfer (if applicable): ☐ _____ <i>[specify]</i> ; otherwise Buyer's Account
	with respect to Cancellation Statements (if applicable): ☐ _____ <i>[specify]</i> ; otherwise receipt of email (with copy of Cancellation Statement attached) by Buyer in accordance with § 19.1 (<i>Notices and Communications</i>)

Documentation of Actual Deliveries and Receipts:	<i>[specify in accordance with § 3.4, if applicable]</i>
Additional requirements:	<i>[specify, if any]</i>

SECTION B: ELECTION SHEET

For the customization of the Biogas Certificates Standard Agreement for Single Trade

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

§ 3

Primary Obligations For Delivery and Acceptance of Certificates

§ 3.2 Electronic Transfer of Certificates:

☐ § 3.2 shall apply;
otherwise § 3.2 shall not apply and § 3.3 shall apply.

§ 5

Non-Performance Due to Force Majeure

§ 5.1 Definition of Force Majeure:

☐ § 5.1 (a), (b), (c), (d) or (e) shall not apply as written but instead shall be as follows:

_____;
otherwise § 5.1 shall apply as written in the Biogas Certificates Standard Agreement.

§ 8

Term and Termination Rights

§ 8.4(b) Cross Default and Acceleration:

☐ § 8.4(b) shall apply to Party A and the Threshold Amount for Party A shall be: _____;
otherwise § 8.4(b) shall not apply to Party A

☐ § 8.4(b) shall apply to Party B and the Threshold Amount for Party A shall be: _____;
otherwise § 8.4(b) shall not apply to Party B

§ 8.4 Definition of Material Reason:

☐ the following additional Material Reasons shall apply to Party A:
 _____;

otherwise the Material Reasons for Party A shall be limited to those stated in the Biogas Certificates Standard Agreement

[] the following additional Material Reasons shall apply to Party B:

otherwise the Material Reasons for Party B shall be limited to those stated in the Biogas Certificates Standard Agreement

§ 9

Calculation of the Termination Amount

§ 9.2(c) Settlement Amount (Losses):

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

§ 10

Limitation of Liability

§ 10 Application of Limitation: [] § 10 shall be amended or replaced in its entirety as follows:

otherwise § 10 shall apply as written in Part II (*General Provisions of the Biogas Certificates Standard Agreement*).

§ 11

Invoicing and Payment

§ 11.2 Payment:

initial billing and payment information for each Party is set out in § 19 of this Election Sheet

[] the currency shall be _____;
otherwise the currency shall be EURO

§ 11.3 Default Interest:

the Interest Rate shall be the one month (the “**Designated Maturity**”) EURIBOR interest rate for 11:00 a.m. CET on the Due Date *plus* _____ percent (_ %) per annum, provided that if the Interest Rate would otherwise be less than zero, the Interest Rate shall be floored at zero and any margin applied thereto

§ 11.4 Disputed Amounts:

[] § 11.4(a) shall apply; or
[] § 11.4(b) shall apply

§ 12

VAT and Other Taxes

§ 12.5 Withholding Tax:

[] § 12.5 shall apply, in the case of § 12.5(b)(ii) the documents shall be _____;
otherwise § 12.5 shall not apply

§ 13

Change in Law or Standard

§ 13.2 Change in Law or Standard and Price Adjustments:

[] § 13.2 shall apply;
otherwise § 13.2 shall not apply

§ 13.3 Event of Change in Law or Standard and Ineffectiveness:

☐ § 13.3(b) shall apply;
otherwise § 13.3(a) shall apply

§ 14

Guarantees and Credit Support

§ 14 Credit Support Documents:

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

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

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

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

§ 15

Assignment

§ 15.2 Assignment to Affiliates: ☐ Party A may assign in accordance with § 15.2; or
☐ Party A may assign in accordance with § 15.2, provided that the Affiliate is incorporated in the same jurisdiction as Party A;
otherwise Party A may not assign in accordance with § 15.2

☐ Party B may assign in accordance with § 15.2;
☐ Party B may assign in accordance with § 15.2, provided that the Affiliate is incorporated in the same jurisdiction as Party B;
otherwise Party B may not assign in accordance with § 15.2

§ 16

Confidentiality

§ 16.1 Confidentiality Obligation: ☐ § 16 shall not apply;
otherwise § 16 shall apply

§ 17

Representation and Warranties

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

§ 17.1(a)	☐ no, <i>otherwise</i> yes
§ 17.1(b)	☐ no, <i>otherwise</i> yes
§ 17.1(c)	☐ no, <i>otherwise</i> yes

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

	by Party A:	by Party B:
§ 17.2(a)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(b)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(c)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(d)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(e)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(f)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(g)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(h)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(i)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(j)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(k)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(l)	☐ no, <i>otherwise</i> yes	☐ no, <i>otherwise</i> yes
§ 17.2(m)		

☐ In addition, Party A represents and warrants the following:

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

§ 18

Governing Law and Arbitration

§ 18.1 Governing Law: Governing law shall be the substantive law of:

§ 18.2 Arbitration: ☐ § 18.2 shall apply and the language of the arbitration shall be:

otherwise § 18.2 shall not apply and the following shall apply:

§ 18.3 Expert Determination: ☐ § 18.3 shall apply;
otherwise § 18.3 shall not apply

§ 19

Miscellaneous

§ 19.1 Notices, Invoices and Payments:

(a) **TO PARTY A:**

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:**

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: ADDITIONAL 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]

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

[SELLER]

[BUYER]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

PART II – General Provisions of the Biogas Certificates Standard Agreement for Single Trade

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§ 1.
Subject of Agreement

1 Subject of Agreement: This Biogas Certificates Standard Agreement and its Appendices governs the transaction the Parties shall enter into for the purchase, sale, Delivery and acceptance of Certificates.

§ 2.
Definitions and Construction

1 Definitions: Capitalised terms used in the Agreement shall have the meanings set out in Appendix 1 (*Defined Terms*) of the Biogas Certificates Standard Agreement.

2 Inconsistencies: In the event of any inconsistency between the provisions of the Election Sheet and the other provisions of this Biogas Certificates Standard Agreement, the Election Sheet shall prevail.

3 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.

4 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 and in accordance with the modalities of transfer set out in § 3.2 (*Electronic Transfer of Certificates*) or § 3.3 (*Transfer by Cancellation Statement*), and the provisions of the Certificate Issuance and Registry Rules, the Seller shall Schedule, sell and Deliver, or cause to be Delivered, the Contract Quantity of Certificates 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 Electronic Transfer of Certificates: If "Electronic Transfer of Certificates" is specified to apply in Section A of Part I (*Election Sheet*), 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 Certificate Issuance and Registry Rules ("Electronic Transfer").

3 Transfer by Cancellation Statement: Unless "Electronic Transfer of Certificates" is specified to apply in Section A of Part I (*Election Sheet*), no later than on the relevant Delivery Date, the Seller shall Schedule the initiation of the cancellation of the Certificates held in the Certificate Registry equalling the Contract Quantity to be Delivered. The Seller shall, for the purposes of the Cancellation Statement to be issued by the applicable Certificate Registry Operator, specify the Buyer as the named recipient of the cancelled Certificates. By no later than the Delivery Date, the Seller shall submit a statement in an agreed format to the Delivery Point, including information on the:

- (a) quantity of Certificates cancelled;
- (b) recipient of the cancelled Certificates; and
- (c) cancellation purpose.

4 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 A of Part I (Commercial Provisions).

5 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 and No Encumbrances

1 Transfer of Title and Risk:

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

2 No Encumbrances: 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 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 Payment of Encumbrance Loss Amount: By no later than the tenth (10th) Business Day after the later of:

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

the Seller shall pay the Encumbrance Loss Amount to the Buyer, which amount shall bear interest in accordance with § 11.3 (*Default Interest*). Upon payment of the Encumbrance Loss Amount ~~Amount~~ by the Seller, the Parties shall have no further obligations in respect of that breach.

5 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.

Non-Performance Due to Force Majeure

1 Definition of Force Majeure: Unless otherwise specified in Section B of Part I (*Election Sheet*), 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) for Electronic Transfer, the suspension, failure or malfunction of the Certificates Registry;
- (b) for transfer by Cancellation Statement, a delay or a rejection of the cancellation of Certificates by the Certificates Registry Operator;
- (c) if Section A of Part I (*Commercial Provisions*) specifies that Certificates are to be delivered from a specific Production Device, a failure of the Authorised Issuing Body to create, issue and give legal effect to such Certificates;
- (d) if in Section A of Part I (*Commercial Provisions*) Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*) are specified as applying, the suspension, failure or malfunction of the Voluntary Sustainability Certification Scheme or the suspension, failure or malfunction of the PoS Database;
- (e) if in Section A of Part I (*Commercial Provisions*) Appendix 4 (*National Fuels Quota Scheme*) is specified as applying, the suspension, failure or malfunction of the Union Database; or
- (f) any other event or circumstance specified Section B of Part I (*Election Sheet*).

2 Release From Delivery and Acceptance Obligations: If a Party is fully or partly prevented due to Force Majeure from performing its obligations of Delivery or acceptance under this Agreement 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 § 6 (*Remedies for Failure to Deliver and 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 (*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.

Remedies for Failure to Deliver and Accept

1 Failure to Deliver: To the extent that the Party obliged to Deliver Certificates ("**Delivering Party**") fails to Deliver the Contract Quantity in whole or in part in accordance with the terms of this Agreement, and such failure is not remedied within three (3) Business Days after receipt by the Delivering Party of a written notice from the other Party ("**Accepting Party**") to remedy such failure or is not excused by an event of Force Majeure or the Accepting Party's non-performance, the Delivering Party shall pay the Accepting Party as compensation for damages an amount for such quantity of undelivered Certificates equal to the product of:

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

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

2 Failure to Accept: To the extent that the Accepting Party fails in whole or in part to accept the Contract Quantity, and such failure is not remedied within three (3) Business Days after receipt by the Accepting Party of a written notice from the Delivering Party to remedy such failure or is not excused by an event of Force Majeure or the Delivering Party's non-performance, the Accepting Party shall pay the Delivering Party as compensation for damages an amount for the quantity of non-accepted Certificates equal to the product of:

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

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

3 Amounts Payable: Amounts that are due according to this § 6 shall be invoiced and paid in accordance with § 11 (*Invoicing and Payment*).

§ 7.

Remedies for Ineffectiveness

1 Ineffectiveness: A Certificate is Ineffective, if any of the following events or circumstances occurs:

- (a) the Certificate has been invalidated, revoked, suspended or withdrawn by the Competent Authority or the Authorised Issuing Body (as appropriate);
- (b) the Certificate has already been cancelled other than in agreement with the Buyer;

- (c) where § 3.3 (*Transfer by Cancellation Statement*) applies, the issuance of a Cancellation Statement is refused by the Registry Operator, the invalidation, revocation or withdrawal of a Cancellation Statement, or the Buyer or a third party designated by the Buyer not being listed or recognised as beneficiary of a Cancellation Statement,
- (d) the Certificate is not recognised or has been rejected by a Competent Body for the Designated Purpose; or
- (e) a document or information to be delivered by Seller to Buyer in accordance with Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*), as applicable, is incomplete, invalid, is not recognised or has been rejected by a Competent Body for the Designated Purpose or Seller fails to deliver such document in accordance with Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*), as applicable;

2 Remedies for Ineffectiveness: Subject to § 13.3 (*Event of Change in Law or Standard and 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 upon choice of the Buyer:
 - (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. For the avoidance of doubt, such replacement Certificate shall include delivery of all documents and information to be delivered by Seller to Buyer in accordance with Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*), as applicable; or
 - (ii) only in case of ~~an~~ Ineffectiveness pursuant to § 7.1(d) or § 7.1(e), the Buyer has the right to request a reduction of the Certificate Contract Price which restores the economic balance of the Agreement in light of the failure to achieve the Designated Purpose; or
 - (iii) the Buyer may terminate the Agreement in accordance with § 8 (*Term and Termination Rights*) and § 9 (*Calculation of the Termination Amount*) shall apply.

3 Exclusive Remedies: The Buyer acknowledges that its exclusive remedies in cases of Ineffectiveness are those set out in this § 7.

§ 8.

Term and Termination Rights

1 Term: The Biogas Certificates Standard Agreement shall come into force as of the Effective Date. It may be terminated in accordance with either § 8.2 (*Termination through Expiry*) or § 8.3 (*Termination for Material Reason*) to § 8.4 (*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 the Agreement 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 § 9 (*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 § 9 (*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 credit support available pursuant to the Agreement or any Credit Support Document.
- (f) The right to designate an Early Termination Date under this § 8.3 is in addition to any other remedies available under the Agreement or at Law.

4 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 or its Credit Support Provider, when required, to make a payment, or to perform any other material obligation, except for a Material Reason set out in § 8.4(d) (*Failure to Deliver or Accept*) and § 8.4(~~ef~~) (*Representation or Warranty*):
 - (i) under the Agreement, provided that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand; or
 - (ii) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder).
- (b) **Cross Default and Acceleration:** If specified in Section B of Part I (*Election Sheet*): the failure of a Party or its Credit Support Provider 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 (*Election Sheet*) for that Party under such agreements or instruments entered into between such Parties or their Affiliates (after giving effect to any applicable notice requirement or grace period thereunder).

- (c) **Winding-up/Insolvency/Attachment:** To the extend permissible under Applicable Law, a Party or its Credit Support Provider:
- (i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
 - (ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
 - (iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
 - (iv) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
 - (v) 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;
 - (vi) 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;
 - (vii) 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 § 8.4(c)(i) to § 8.4(c)(vi) (inclusive); or
 - (viii) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 8.4(c).
- (d) **Failure to Deliver or Accept:** 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 under this Agreement on the Delivery Date(s) specified in Section A of Part I (Commercial Provisions), such failure having not been remedied within any grace period pursuant to § 6 (*Remedies for Failure to Deliver and Accept*).
- (e) **Ineffectiveness:** The Ineffectiveness of a Certificate, if the Buyer executes its right to terminate the Agreement in accordance with § 7.2(b)(iii) (*Remedies for Ineffectiveness*).
- (f) **Representation or Warranty:** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to this Agreement or by its Credit Support Provider in a Credit Support Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

Unless otherwise specified in Section B of Part I (*Election Sheet*), the above Material Reasons shall constitute the exclusive reasons for Early Termination under this § 8.

§ 9.

Calculation of the Termination Amount

1 Termination Amount: The Terminating Party shall calculate an amount ("**Termination Amount**") to be paid in accordance with § 8.3 (*Termination for Material Reason*) by calculating the sum (whether positive or negative) of all Settlement Amounts for all amounts payable between the Parties under or in connection with the Agreement.

2 Settlement Amount: The "**Settlement 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 the 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 the terminated Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its termination of the 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 the 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 (Election Sheet) shall include losses associated with the payment of regulatory fines in case the Designated Purpose of the Certificates was the compliance with a regulatory obligation, and the Terminating Party was not able, acting reasonably and with reasonable speed, to procure an adequate number of replacement Certificates so as to avoid the imposition of such fines resulting from its termination of the Agreement, determined in a commercially reasonable manner.

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

§ 10. Limitation of Liability

1 Application of Limitation: This § 10 will apply unless otherwise specified by the Parties in the Election Sheet.

2 Exclusion of Liability: Subject to § 10.3 (*Intentional Default, Fraud and Fundamental Rights*) and except in respect of any amounts payable under § 6 (*Remedies for Failure to Deliver and Accept*), § 7 (*Remedies for Ineffectiveness*) or § 8.3 (*Termination for Material Reason*), a Party and its employees, officers, contractors and/or agents used by such Party in performing its obligations under this Agreement are not liable to the other Party

- (a) for any loss, cost, expense or damages ("**Damages**") (including, without limitation, any liability due to the irregularities in the supply of Certificates) incurred by the other Party under or in connection with the Agreement; and
- (b) any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving incurred by the other Party under or in connection with this Agreement.

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

- (a) intentional default;
- (b) gross negligence;
- (c) personal injury;
- (d) fraud;
- (e) any action which endangers the fundamental legal rights of a Party or which violates a Party's fundamental contractual obligations (*Kardinalspflichten*); or
- (f) any other matter in respect of which liability cannot be excluded under Applicable Law.

4 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.

§ 11.

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 it 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 (*Election Sheet*). Unless otherwise specified in Section B of Part I (*Election Sheet*), such payment shall be made in EURO, and subject to § 12 (*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. For this purpose, the "**Interest Rate**" shall be the rate of interest specified in Section B of Part I (*Election Sheet*).

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 § 11.4(a) is specified as applying in Section B of Part I (*Election Sheet*), the full amount invoiced no later than the Due Date; or
- (b) if this § 11.4(b) is specified as applying in Section B of Part I (*Election Sheet*), the undisputed amount invoiced no later than the Due Date.

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

§ 12.

VAT and Taxes

1 VAT: All amounts referred to in the Agreement are exclusive of VAT. The VAT treatment of the supply of Certificates 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 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 § 12.1(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, 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 § 12.2(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 under 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 under this Agreement arising after the transfer of risk and title at the Delivery Point. Subject to § 11.2 (*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 New Taxes: If any New Tax is applicable to Deliveries under the Agreement, and the Buyer is, by the use of reasonable endeavours, able to obtain any available exemption or relief therefrom or is contractually able to pass the same through to or be reimbursed in respect thereof by a third party, the Buyer shall pay or cause to be paid, or reimburse the Seller if the Seller has paid, such New Tax, and the Buyer shall indemnify, defend and hold harmless the Seller from and against any claims for such New Tax.

5 Withholding Tax: If § 12.5 is specified as applying in Section B of Part I (*Election Sheet*), the following shall apply between the Parties:

- (a) **Payments Free and Clear:** All payments 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 the Biogas Certificates Standard Agreement, any Confirmation or any Credit Support Document;
 - (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 (Election Sheet) in a form reasonably satisfactory to the Paying Party; or
 - (iii) which is only imposed as a result of any Tax representation made by the Receiving Party in the Election Sheet for the purposes of this § 12.5 failing or ceasing to be true and accurate provided that this § 12.5(b)(iii) shall not apply (and the Paying Party shall be obliged to increase the amount of any payment pursuant to this § 12.5(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 date on which the Agreement is entered; or
 - (bb) any action taken by a Competent Authority for taxation, or brought in a court of competent jurisdiction, on or after the date on which the Agreement is entered into.

§ 13.

Change in Law or Standard

1 **Change in Law or Standard:** In case of any Change in Law or Standard 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;
- (e) prevents or impedes in full or in part the fulfilment of the Designated Purpose; or
- (f) without prejudice to § 13.1(a) to § 13.1(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:

- (g) preserve the economic intent of this Agreement as of the Effective Date, as specified in Section A of Part I (Commercial Provisions); and
- (h) 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 § 13.1 within thirty (30) calendar days after notification, either Party may elect to refer the dispute to Expert Determination (if § 18.3 (*Expert Determination*) is specified as applying in Section B of Part I (*Election Sheet*)).

Where neither Party exercises its right to refer such dispute within fifteen (15) further calendar days or § 18.3 (*Expert Determination*) is not specified as applying in Section B of Part I (*Election Sheet*), either Party may terminate the Agreement. No obligation to pay damages pursuant to this Agreement will accrue to either Party with respect to any quantities of Certificates or Cancellation Statements not Delivered or accepted due to the occurrence of Change in Law or Standard under this § 13.1.

2 Change in Law or Standard and Price Adjustments: If § 13.2 is specified as applying in Section B of Part I (*Election Sheet*), any amendments made to this Agreement in accordance with § 13.1 (*Change in Law or Standard*) shall not include any upward or downward adjustments to the Contract Price.

3 Event of Change in Law or Standard and Ineffectiveness:

- (a) unless § 13.3(b) is specified as applying in Section B of Part I (*Election Sheet*), if an event or circumstance that would otherwise constitute or give rise to a Change in Law or Standard also constitutes an Ineffectiveness, it is to be treated as a Change in Law or Standard and shall not constitute an Ineffectiveness; or
- (b) if § 13.3(b) is specified as applying in Section B of Part I (*Election Sheet*), if an event or circumstance that would otherwise constitute or give rise to a Change in Law or Standard also constitutes an Ineffectiveness, where such event or circumstance occurs:
 - (i) within the number of days specified in Section A of Part I (*Election Sheet*) after the Delivery Date (inclusive), it is to be treated as an Ineffectiveness and shall not constitute a Change in Law or Standard; or
 - (ii) after the number of days after the Delivery Date, it is to be treated as a Change in Law or Standard and shall not constitute an Ineffectiveness.

4 Expert Determination: If the Parties are unable to agree pursuant to § 13.1 (*Change in Law or Standard*), 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 or Standard: Where an agreement or determination under § 13.1 (*Change in Law or Standard*) or § 13.4 (*Expert Determination*) occurs after the Change in Law or Standard, 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 or Standard.

6 Further Undertakings Following Change in Law or Standard: Without prejudice to the other provisions of this § 13, 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

or Standard (and such circumstance shall constitute Force Majeure for the purposes of § 5 (*Non-Performance Due to Force Majeure*));

- (b) subject to § 13.6(a), the occurrence of a Change in Law or Standard 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 or Standard on the performance of its obligations under this Agreement.

§ 14.

Guarantees and Credit Support

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

§ 15.

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 § 15.2 is specified as applying in Section B of Part I (*Election Sheet*), each Party shall be entitled to assign its rights and obligations under the Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness, provided that, if specified as applying in Section B of Part I (*Election Sheet*), 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 and provided that any Credit Support Document issued or agreed on behalf of the assigning Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

§ 16.

Confidentiality

1 Confidentiality Obligation: Unless § 16 is specified as not applying in the *Election Sheet*, and subject to § 16.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of the 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 Authorised Issuing Body or to the Registry Operator;
- (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 § 16; 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 in respect of the terms of this Agreement under this § 16 shall expire one (1) year after the expiration of the Agreement.

§ 17.

Representations and Warranties

1 Representations and Warranties of the Seller: If specified as applying to a Party in Section B of Part I (Election Sheet), the Seller hereby represents and warrants to the Buyer in respect of each Certificate on the relevant Delivery Date that:

- (a) the Seller is entitled to dispose of the Certificates;
- (b) the Certificates fulfil and correspond to the specifications agreed by the Parties, in particular to the requirements for the Designated Purpose; and
- (c) where Transfer by Cancellation Statement has been specified, after a Delivery Date and the successful discharge of its Delivery obligation, the Seller shall not request a Cancellation Statement in respect of these cancelled Certificates to any other person or to any third party.

2 Additional Representations and Warranties: If specified as applying to a Party in Section B of Part I (Election Sheet), that Party hereby represents and warrants to the other Party upon entering into the 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 the Agreement, any Credit Support Document to which it is a party, and the carrying out of the transactions contemplated therein shall not violate any provision of its constitutional documents;
- (c) it has the power and is authorised to execute, deliver and perform its obligations under the Agreement and any Credit Support Document to which it is a party and has taken all necessary action to authorise that execution, delivery, performance and its entry into the Agreement and its execution, delivery and the performance of the Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party, any constitutional document or rule applicable to it, or Applicable Law;
- (d) no Material Reason for termination as outlined in § 8.4 (*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 and any Credit Support Document to which it is a party;
- (f) it has negotiated, entered into and executed the Agreement and any Credit Support Document to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (g) it regularly enters into agreements for the trading of 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 the Agreement, and, as to whether the 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 or any Credit Support Document to which it is a party;
- (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 or public power system 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 the Agreement or any Credit Support Document to which it is party, such that it could become insolvent; and
- (m) any other representations and warranties applying to a Party specified in ~~the~~ Section B of Part I (Election Sheet).

§ 18.

Governing Law and Arbitration

1 Governing Law: This Agreement and any non-contractual obligations arising out of or in connection with it shall be construed and governed by the law specified in Section B of Part I (Election Sheet).²

2 Arbitration: All disputes or claims arising out of or in connection with this contract, including disputes relating to its validity, breach, termination or nullity, shall be finally settled under the Rules of Arbitration (Vienna Rules) of the Vienna International Arbitral Centre (VIAC) of the Austrian Federal Economic Chamber by three (3) arbitrators appointed in accordance with the said Rules, ousting the jurisdiction of the ordinary courts. The arbitration shall be conducted in the language specified in Section B of Part I (Election Sheet).

3 Expert Determination:

(a) General:

- (i) This § 18.3 shall only apply if specified in the Election Sheet.
- (ii) Whenever any matter is to be referred to Expert determination in accordance with this Agreement or the Parties otherwise agree in writing that a dispute in connection with this Agreement will be determined by an Expert, such matter or dispute shall be submitted to administered expertise proceedings in accordance with the Rules for Expertise of the International Chamber of Commerce ("**ICC Expertise Rules**"), which, save as modified by this § 18.3, 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 § 18.3 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 § 18.3(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 § 18.3 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 § 18.3(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 § 18.3(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 § 18.3(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 § 18.3(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 § 18.3(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 § 18.3(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 § 18.3 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 § 18.3 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.

§ 19.

Miscellaneous

1 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 (Election Sheet). Each Party may change its notice information by written notice to the other. Written notices, declarations and invoices shall be deemed received and effective:

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

2 Amendments: Any amendments or additions to the Agreement shall be made only in writing signed by both Parties.

3 Partial Invalidity: Subject to § 13 (*Change in Law or Standard*), if at any time any provision of the 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 the 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.

4 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.

[Name of Party]

[Name of Party]

[Name of Signatory/ies]

[Name of Signatory/ies]

[Title of Signatory/ies]

[Title of Signatory/ies]

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BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE

APPENDIX 1

Defined Terms

Terms used in the Agreement shall have the following meanings:

"Accepting Party" has the meaning specified in § 6.1 (*Failure to Deliver*);

"Account" means an account on the Registry;

"Affiliate" means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly that Party or any Entity directly or indirectly under the common Control of a Party;

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

"Appendix" means Appendix 1 (*Defined Terms*), Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 *EU ETS Scheme as transposed by Applicable Law*, Appendix 4 (*National Fuels Quota Scheme*) or Appendix 5 (*National Emissions Trading Scheme*) to the Biogas Certificates Standard Agreement, as applicable;

"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 § 18.3(b)(i) (*Commencement*);

"Application" has the meaning as specified in § 18.3(b)(iv) (*Commencement*);

"Authorised Issuing Body" the body competent to issue Certificates as specified in Section A of Part I (*Commercial Provisions*);

"Biogas" means in accordance with Article 2(28) of RED II gaseous fuels produced from biomass;

"Biogas Certificates Standard Agreement" means this agreement in its entirety, including Appendix 1 (*Defined Terms*), and Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 *EU ETS Scheme as transposed by Applicable Law*, Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*) if specified as applicable;

"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 the Agreement;

"Buyer's Account" has the meaning specified in Section A of Part I (*Commercial Provisions*);

"Cancellation Statement" means a statement made in relation to the cancellation of a Certificate in a form:

- (a) pursuant to the Certificate Issuance and Registry Rules; or
- (b) agreed between the Parties;

"Carbon Intensity" means the greenhouse gas emission score of the Biogas [injected into the gas grid] which shall be calculated according to the methodology described in Annex V part C of RED II: $E = e_{cc} + e_l + e_p + e_{td} + e_u - e_{sca} - e_{ccs} - e_{ccr}$;

"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 Certificate as specified in Section A of Part I (*Commercial Provisions*);

"Certificate Details" means the specification of the Certificates provided in Section A of Part I (*Commercial Provisions*);

"Certificates Issuance and Registry Rules " means *[insert]*;

"Certificates Registry" means the entity specified in Section A of Part I (*Commercial Provisions*) through which a Party is obliged to perform its Delivery, acceptance or cancellation obligation, as applicable;

"Certificates Registry Operator" means the entity specified in Section A of Part I (*Commercial Provisions*) which is responsible for the operation of the Certificates Registry;

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

"Competent Body for the Designated Purpose" means an entity or authority competent to recognise or reject Certificates for the Designated Purpose, as specified in Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 *EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*), as applicable;

"Confidential Information" has the meaning specified in § 16.1 (*Confidentiality Obligation*);

"Contract Price" means the price agreed between the Parties;

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

"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 § 9.2(a) (*Settlement Amount*);

"Credit Rating" means in respect of an Entity any of the following: (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating; (ii) the debt issuer's credit rating; or (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

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

"Credit Support Provider" has the meaning specified with respect to a Party specified in the Election Sheet;

"Damages" has the meaning specified in § 10.2 (*Exclusion of Liability*);

"Decision" has the meaning as specified in § 18.3(f)(ii) (*The Decision*);

"Delivering Party" has the meaning specified in § 6.1 (*Failure to Deliver*);

"Delivery" means (whether used as a verb or noun) the:

- (a) transfer of the relevant Certificate from one Account in the Certificate Registry to another Account; or
- (b) removal of the relevant Certificate from one Account in the Certificate Registry and subsequent crediting of such Certificate to another Account,

under and in accordance with the Certificate Issuance and Registry Rules or, where specified as applying in an Individual Contract, the delivery of the required statement and documentation in accordance with § 3.3 (*Transfer by Cancellation Statement*), and **"Deliver"** and **"Delivered"** will be construed accordingly;

"Delivery Date" means the Delivery date agreed between the Parties;

"Delivery Point" has the meaning as specified in Section A of Part I (*Commercial Provisions*) with respect to Certificates and Cancellation Statements;

"Designated Maturity" has the meaning specified in Section B of Part I (*Election Sheet*);

"Designated Purpose" has the meaning as specified in Section A of Part I (*Commercial Provisions*);

"Due Date" has the meaning specified in § 11.2 (*Payment*);

"Early Termination" has the meaning specified in § 8.3(a) (*Termination for Material Reason*);

"Early Termination Date" has the meaning specified in § 8.3(b) (*Termination for Material Reason*);

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

"Effective Date" has the meaning set out on the first page of the Biogas Certificates Standard Agreement;

"Electronic Transfer" has the meaning specified in § 3.2 (*Electronic Transfer of Certificates*);

"Encumbrance Loss" means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an Individual Contract, including but not limited to any loss of bargain, cost of funding or, at the election of the Buyer but without duplication, loss or costs incurred as a result of it terminating, liquidating, obtaining or re-establishing any hedge or related trading position. Such amount shall include losses and costs in respect of any payment already made under an Individual Contract prior to delivery of the written notice by the Buyer and the Buyer's legal fees and out-of-pocket expenses, but does not include any amount which the Buyer must pay to a third party in respect of any such penalty payable to any other party (including any Competent Authority) by that third party;

"Encumbrance Loss Amount" has the meaning specified in § 4.3(b)(i) (*Breach of the No Encumbrances Obligation*);

"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 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;

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 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;

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;

"Expert" means an individual who is professionally specialised in the issuance and transfer of Certificates, appointed by the Parties in accordance with § 18.3(c) (*Appointment of an Expert*);

"Expert Notice" has the meaning as specified in § 18.3(b)(i) (*Commencement*);

"Feedstock Type" means the feedstock specified in Section A of Part I (*Commercial Provisions*);

"Force Majeure" has the meaning specified in § 5.1 (*Definition of Force Majeure*);

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

"Gains" has the meaning specified in § 9.2(b) (*Settlement Amount*);

"Guarantee of Origin" means a certificate compliant to Article 2(12) and Article 19 of RED II (*"an electronic document which has the sole function of providing evidence to a final customer that a given share or quantity of energy was produced from renewable sources"*);

"ICC" means the International Chamber of Commerce with seat in Paris, France;

"ICC Expertise Rules" has the meaning as specified in § 18.3(a)(i) (*General*);

"Ineffectiveness" has the meaning as specified in § 7.1 (*Ineffectiveness*), and **"Ineffective"**, the opposite form **"Effective"** and other cognate expressions shall be construed accordingly;

"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;

"Interest Rate" has the meaning specified in § 11.3 (*Default Interest*);

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

- (a) Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources as amended from time to time;
- (b) Directive 2009/73/EC concerning common rules for the internal market in natural gas as amended from time to time;
- (c) national implementing legislation of such Directives (as applicable on the Effective Date);
- (d) national or regional legislation regulating the issuance, transfer, cancellation and use of Certificates; and

- (e) any other law specified as applicable in Appendix 3 (EU ETS Scheme as transposed by Applicable Law), Appendix 4 (National Fuels Quota Scheme) and/or Appendix 5 (National Emissions Trading Scheme), if applicable;

"Losses" has the meaning specified in § 9.2(c) (*Settlement Amount*);

"Material Reason" has the meaning specified in § 8.4 (*Definition of Material Reason*);

"No Encumbrances Obligation" has the meaning specified in § 4.2 (*No Encumbrances*);

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

"Party" and **"Parties"** have the meaning set out on the first page of the Biogas Certificates Standard Agreement;

"Party A" means the Party identified as such in Section B of Part I (Election Sheet);

"Party B" means the Party identified as such in Section B of Part I (Election Sheet);

"Paying Party" has the meaning specified in § 12.5(a) (*Payments Free and Clear*);

"Product Type" means the type of processing of Biogas as specified in Section A of Part I (Commercial Provisions), if any;

"Production Device" means the generation device or group of devices registered in accordance with the Certificate Issuance and Registry Rules;

"Proof of Sustainability" or **"PoS"** has the meaning given to it in Appendix 3 (EU ETS Scheme as transposed by Applicable Law), Appendix 4 (National Fuels Quota Scheme) and/or Appendix 5 (National Emissions Trading Scheme), as applicable;

"PoS Database" means the entity specified in Appendix 3 (EU ETS Scheme as transposed by Applicable Law), Appendix 4 (National Fuels Quota Scheme) and/or Appendix 5 (National Emissions Trading Scheme), if applicable, through which a Party is obliged to perform its PoS delivery and acceptance obligation;

"Receiving Party" has the meaning specified in § 12.5(a) (*Payments Free and Clear*);

"RED II" means Directive (EU) 2018/2001 of 11 December 2018 on the promotion of the use of energy from renewable sources, as amended from time to time;

"Reply" has the meaning as specified in § 18.3(b)(v) (*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 Certificate Registry Operator (and if applicable, the other Party) the Contract Quantity, the Certificate Details (including, the relevant Production Device I.D.(s), the relevant production periods, the usage for any cancellation, the face values, as applicable), the account I.D. of the Buyer's Account in accordance with the Certificate 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 Certificate Registry or Registries are properly established in time to discharge their respective Delivery, cancellation or acceptance obligations;

"Seller" means the person identified as such in this Agreement;

"Settlement Amount" has the meaning specified in § 9.2 (*Settlement Amount*);

"Standard" means the codes, rules, regulations, policies, instructions or other such documentation as issued by the Competent Authority, including but not limited to the Certificate Issuance and Registry Rules, and/or the Competent Body for the Designated Purpose, the latter as specified in Appendix 2 (*Greenhouse Gas Protocol*), Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*), Appendix 4 (*National Fuels Quota Scheme*) and/or Appendix 5 (*National Emissions Trading Scheme*), if applicable;

"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 any Individual Contract or under this Agreement, and **"Taxes"** shall be construed accordingly. For the avoidance of doubt, Tax shall exclude; (i) any tax on net income or wealth; (ii) a stamp, registration, documentation or similar tax; and (iii) VAT;

"Terminating Party" has the meaning specified in § 8.3(a) (*Termination for Material Reason*);

"Termination Amount" has the meaning specified in § 9.1 (*Termination Amount*);

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

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

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

"Union Database" means the database for gaseous and liquid biofuels in the transport sector set up by the European Commission in accordance with Article 28(2) and (4) RED II and Commission Implementing Regulation (EU) 2022/996 on rules to verify sustainability and greenhouse gas emissions saving criteria and low indirect land- use change-risk criteria for;

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

"VAT Rules" means any VAT Law or the interpretation thereof; and

"Voluntary Sustainability Certification Scheme" means any voluntary sustainability certification scheme which is compliant to and approved by the European Commission according to criteria set out in RED II, published under Voluntary schemes (europa.eu);

"Zero-Rated" means, in respect of a supply, a tax exempt export or tax-free export under applicable VAT Rules and **"Zero-Rating"** shall be construed accordingly.

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APPENDIX 2

Greenhouse Gas Protocol

- 1 **Subject Matter:** If selected as applicable in Section A of Part I (Commercial Provisions), this Appendix 2 (*Greenhouse Gas Protocol*) forms integral part of the Biogas Certificates Standard Agreement.
- 2 **Definitions:** The following additional definitions shall apply:
 - (a) **"GHG Protocol"** means the framework organisation establishing the GHG Protocol Corporate Accounting and Reporting Standard and other relevant documentation for accounting of greenhouse gas emissions;
 - (b) **"GHG Protocol Corporate Accounting and Reporting Standard"** means the corporate standard on the accounting and reporting of greenhouse gases published by the World Business Council for Sustainable Development and the World Resources Institute, in the version published on Corporate Standard | Greenhouse Gas Protocol (ghgprotocol.org), as amended from time to time;
 - (c) **"Standard"** has the meaning given to it in Appendix 1 (*Defined Terms*) and includes the following:
 - (i) the GHG Protocol Corporate Accounting and Reporting Standard;
 - (ii) any other relevant documentation or guidance falling under the scope of the GHG Protocol.
- 3 **Specific Undertaking:** The Seller undertakes that the Certificates are compliant with:
 - (a) the GHG Protocol Corporate Accounting and Reporting Standard;
 - (b) any other relevant documentation or guidance falling under the scope of the GHG Protocol.

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APPENDIX 3

EU ETS Scheme as transposed by Applicable Law – AUSTRIA

- 1 **Subject Matter:** If selected as applicable in Section A of Part I (*Commercial Provisions*), this Appendix 3 (*EU ETS Scheme as transposed by Applicable Law*) forms integral part of the Biogas Certificates Standard Agreement.
- 2 **Definitions:** The following additional definitions shall apply:
 - (a) **"Applicable National Legislation":** national legislation transposing the EU ETS Directive and RED II, in particular:
 - (i) ~~the Austrian Emissions Certificate Act (*Emissionszertifikatgesetz 2011 – EZG 2011*) as amended from time to time;~~
 - (ii) the Austrian Biomass Energy Sustainability Ordinance (*Biomasseenergie-Nachhaltigkeitsverordnung – BMEN-VO*);
 - (iii) the Austrian Sustainable Forestry Biomass Ordinance (*Nachhaltige forstwirtschaftliche Biomasse-Verordnung – NFBioV*); and
 - (iv) the Austrian Sustainable Agricultural Feedstock Ordinance (*Nachhaltige landwirtschaftliche Ausgangsstoffe-Verordnung – NLAV*) as amended from time to time;
 - (b) **"Buyer's PoS Database":** [*insert if applicable, otherwise delete*];
 - (c) **"Buyer's Account Number with the PoS Database":** [*insert if applicable, otherwise delete*];
 - (d) **"Competent Body for the Designated Purpose":** [*insert, if traded into Austria or within Austria: Umweltbundesamt GmbH*]
 - (e) **"EU ETS Directive"** means Directive 2003/87/EC establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, as amended from time to time;
 - (f) **"EU MRR"** means Commission Implementing Regulation (EU) 2018/2066 on the monitoring and reporting of greenhouse gas emissions pursuant to Directive 2003/87/EC of the European Parliament and of the Council and amending Commission Regulation (EU) No 601/2012, as amended from time to time;
 - (g) **"Law"** has the meaning given to it in Appendix 1 (*Defined Terms*) and includes the following:
 - (i) EU ETS Directive;

- (ii) EU MRR;
- (iii) Applicable National Legislation;
- (h) **"Mass Balance"** means the relationship between input and output of Biogas within the European natural gas network in which the output from the grid cannot exceed the input into the grid;
- (i) **"Proof of Sustainability"** or **"PoS"** means a final sustainability declaration of the Seller for any Certificate to state the information on sustainability and compliance with the Voluntary Sustainability Certification Scheme through the supply chain according to the requirements of the Voluntary Sustainability Certification Scheme comprising the unique number of the PoS, the number of the Seller's certification, the Buyer's contract number, the list of feedstocks and the related greenhouse gas emissions;
- (j) **"PoS Database Rules"** means *[insert if applicable, otherwise delete]*;
- (k) **"Standard"** has the meaning given to it in Appendix 1 (*Defined Terms*) and includes the following:
 - (i) If 5(b)(i) "Electronic Transfer of PoS" is specified to apply, PoS Database Rules.

3 Specific Undertakings: The Seller undertakes that the Certificates fulfil the following conditions in accordance with EU ETS Directive, EU MRR and Applicable National Legislation:

- (a) **Evidence of Mass Balance:** The quantity of Biogas corresponding to the Contract Quantity of Certificates is determined from purchase which provide evidence of an uninterrupted supply chain from the Biogas producer to the Seller including an appropriate audit of the Mass Balance by a Voluntary Sustainability Certification Scheme in accordance with Article 30 RED II and Applicable National Legislation;
- (b) **Proof of Sustainability:** The quantity of Biogas corresponding to the Contract Quantity of Certificates complies with the sustainability and greenhouse gas saving criteria laid down in Article 29 RED II and Applicable National Legislation;
- (c) **Grid Connection:** The producer of the Biogas is connected to the European natural gas network.
- (d) **National Quality Criteria:** The quantity of Biogas corresponding to the Contract Quantity of Certificates fulfils the additional quality criteria set out by Applicable National Legislation, if any.

4 Delivery and Acceptance of Evidence of Mass Balance:

- (a) **Delivery and Acceptance:** No later than three (3) days after the Delivery Date the Seller shall deliver the Evidence of Mass Balance via e-mail to the Buyer's e-mail address indicated in Section B of Part I (Election Sheet).
- (b) **Transfer of Title and Risk:** Title and risk in the Evidence of Mass Balance shall pass from Seller to Buyer with receipt of email (with copy of Evidence of Mass Balance attached) by Buyer.

5 Delivery and Acceptance of Proof of Sustainability:

- (a) **Delivery and Acceptance:** No later than three (3) days after the Delivery Date and in accordance with the modalities of transfer set out in 5(b) (*Modalities of Transfer*), the Seller shall deliver, or cause to be delivered, and the Buyer shall accept, or cause to be accepted, the Proof of Sustainability corresponding to the Contract Quantity of Certificates.

- (b) **Modalities of Transfer:** In accordance with the Parties' choice, the modalities of transfer shall be as follows:
- (i) [] **Electronic Transfer of PoS:** If "Electronic Transfer of PoS" is specified to apply, the Seller shall deliver the PoS in accordance with the provisions of the PoS Database Rules.
 - (ii) **otherwise Transfer of PoS by E-Mail:** Unless "Electronic Transfer of PoS" is specified to apply, Seller shall deliver the Proof of Sustainability via e-mail to the Buyer's e-mail address indicated in Section B of Part I (*Election Sheet*).
- (c) **Transfer of Title and Risk:** Title and risk in the Proof of Sustainability shall pass from the Seller to the Buyer with respect to Electronic Transfer of PoS with the crediting of the PoS to the Buyer's account with the PoS Database; and with respect to Transfer of PoS by E-Mail, with receipt of email (with copy of Proof of Sustainability attached) by the Buyer.

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BIOGAS CERTIFICATES STANDARD AGREEMENT FOR SINGLE TRADE

APPENDIX 4

National Fuels Quota Scheme – AUSTRIA

- 1 **Subject Matter:** If selected as applicable in Section A of Part I (Commercial Provisions), this Appendix 4 (National Fuels Quota Scheme - AUSTRIA) forms integral part of the Biogas Certificates Standard Agreement.
- 2 **Definitions:** The following additional definitions shall apply:
 - (a) **"Applicable National Legislation":** national legislation transposing RED II and Directive 98/70/EC, in particular:
 - (i) Austrian Fuel Ordinance (*Kraftstoffverordnung 2012 – KVO*);
 - (ii) Austrian Renewables Expansion Act (*Erneuerbaren-Ausbau-Gesetz – EAG*);
 - (iii) the Austrian Biomass Energy Sustainability Ordinance (*Biomasseenergie-Nachhaltigkeitsverordnung – BMEN-VO*);
 - (iv) the Austrian Sustainable Forestry Biomass Ordinance (*Nachhaltige forstwirtschaftliche Biomasse-Verordnung – NFBioV*); and
 - (v) the Austrian Sustainable Agricultural Feedstock Ordinance (*Nachhaltige landwirtschaftliche Ausgangsstoffe-Verordnung – NLAV*)
as amended from time to time;
 - (b) **"Buyer's PoS Database"** [*insert if applicable, otherwise delete*];
 - (c) **"Buyer's Account Number with the PoS Database":** [*insert if applicable, otherwise delete*];
 - (d) **"Competent Body for the Designated Purpose":** [*insert, if traded into Austria or within Austria: Umweltbundesamt GmbH*]
 - (e) **"Directive 98/70/EC"** means Directive 98/70/EC relating to the quality of petrol and diesel fuels, as amended from time to time;
 - (f) **"Mass Balance"** ~~means~~ means the relationship between input and output of Biogas within the European natural gas network in which the output from the grid cannot exceed the input into the grid;
 - (g) **"Member State"** means member state of the European Union;
 - (h) **"Law"** has the meaning given to it in Appendix 1 (*Defined Terms*) and includes the following:

- (i) Directive 98/70/EC;
 - (ii) Applicable National Legislation;
- (i) **"Proof of Sustainability" or "PoS"** means a final sustainability declaration of the Seller for any Certificate to state the information on sustainability and compliance with the Voluntary Sustainability Certification Scheme through the supply chain according to the requirements of the Voluntary Sustainability Certification Scheme comprising the unique number of the PoS, the number of the Seller's certification, the Buyer's contract number, the list of feedstocks and the related greenhouse gas emissions;
 - (j) **"PoS Database Rules"** means [*insert if applicable, otherwise delete*];
 - (k) **"Standard"** has the meaning given to it in Appendix 1 (*Defined Terms*) and includes the following:
 - (i) If 7(b)(i) "Electronic Transfer of PoS" is specified to apply, the PoS Database Rules.
- 3 Specific Undertakings:** The Seller undertakes that the Certificates fulfil the following conditions in accordance with RED II and Applicable National Legislation:
- (a) **Evidence of Mass Balance:** The quantity of Biogas corresponding to the Contract Quantity of Certificates is determined from purchase which provide evidence of an uninterrupted supply chain from the Biogas producer to the Seller including an appropriate audit of the Mass Balance by a Voluntary Sustainability Certification Scheme in accordance with Article 30 RED II and Applicable National Legislation.
 - (b) **Proof of Sustainability:** The quantity of Biogas corresponding to the Contract Quantity of Certificates complies with the sustainability and greenhouse gas saving criteria laid down in Article 29 RED II and Applicable National Legislation.
- 4 Additional Country of Origin Requirements:** If Austria is the country of origin, the Seller undertakes that the following additional requirements in accordance with the Austrian Fuel Ordinance are met:
- (a) The Evidence of Mass Balance shall in particular contain the following information in accordance with section 10 Austrian Fuel Ordinance:
 - (i) clear information on the allocation of purchased feedstocks or traded and sold biofuels to sellers and buyers, respectively, allowing for a clear identification of buyers and sellers;
 - (ii) dates of purchase and sale of biofuels or feedstocks for biofuel production;
 - (iii) data on the type and quantity, the year of harvest and the countries of cultivation of the feedstocks;
 - (iv) information on the sustainability of the biomass used in accordance with section 12 Austrian Fuel Ordinance;
 - (v) a value for the greenhouse gas reduction potential of the biofuel produced, traded or used in accordance with the provisions of section 12(3) Austrian Fuel Ordinance;
 - (vi) in the case of the use of default values, a clear description of the feedstock used;
 - (b) The quality of feedstock complies with the sustainability criteria set out in section 12 in conjunction with Annex XI Austrian Fuel Ordinance, the Austrian Sustainable Agricultural Feedstock Ordinance and the legal requirements on forestry feedstock in accordance with section 12 Austrian Fuel Ordinance;

- (c) The Biogas has a reduction ratio of life cycle greenhouse gas emissions compliant with section 12(3) Austrian Fuel Ordinance (for installations that went into operation after 5 October 2015, at least 60%, for installations operational on or before 5 October 2015 at least 50% and for installations operational on or after 1 January 2021 at least 65%, each compared to the reference value set out in section 19(4) Austrian Fuel Ordinance);
- (d) The Biogas or the underlying Proof of Sustainability has not been counted towards the obligation pursuant to Article 25(1) RED II in another Member State; and
- (e) The Proof of Sustainability complies with the requirements set out in section 13 Austrian Fuel Ordinance, in particular it contains all of the data required in section 13(6) Austrian Fuel Ordinance.

5 Additional Country of Use Requirements: If Austria is the country of use, but not the country of origin, the Seller undertakes that the Proof of Sustainability is eligible to be counted against the targets set out in section 5, 6 and 7 Austrian Fuel Ordinance in accordance with section 17 Austrian Fuel Ordinance.

6 Delivery and Acceptance of Evidence of Mass Balance:

- (a) **Delivery and Acceptance:** No later than three (3) days after the Delivery Date, the Seller shall deliver the Evidence of Mass Balance via e-mail to the Buyer's e-mail address indicated in Section B of Part I (Election Sheet).
- (b) **Transfer of Title and Risk:** Title and risk in the Evidence of Mass Balance shall pass from the Seller to the Buyer with receipt of email (with copy of Evidence of Mass Balance attached) by the Buyer.

7 Delivery and Acceptance of Proof of Sustainability:

- (a) **Delivery and Acceptance:** No later than three (3) days after the Delivery Date and in accordance with the modalities of transfer set out in 7(b) (*Modalities of Transfer*), the Seller shall deliver, or cause to be delivered, and the Buyer shall accept, or cause to be accepted, the Proof of Sustainability corresponding to the Contract Quantity of Certificates.
- (b) **Modalities of Transfer:** In accordance with the Parties' choice, the modalities of transfer shall be as follows:
 - (i) ☐ **Electronic Transfer of PoS:** If "Electronic Transfer of PoS" is specified to apply, the Seller shall deliver the PoS in accordance with the provisions of the PoS Database Rules.
 - (ii) **otherwise Transfer of PoS by E-Mail:** Unless "Electronic Transfer of PoS" is specified to apply, Seller shall deliver the Proof of Sustainability via e-mail to the Buyer's e-mail address indicated in Section B of Part I (Election Sheet).
- (c) **Transfer of Title and Risk:** Title and risk in the Proof of Sustainability shall pass from the Seller to the Buyer with respect to Electronic Transfer of PoS with the crediting of the PoS to the Buyer's account with the PoS Database; and with respect to Transfer of PoS by E-Mail, with receipt of email (with copy of Proof of Sustainability attached) by the Buyer.

8 ☐ Union Database and PoS-ID (if specified to apply, the following applies):

- (a) **"PoS-ID"** means the unique Proof of Sustainability identification number issued by the Union Database for a given volume of Biogas injected into the grid;

- (b) **Transfer of PoS-ID:** No later than three (3) days after the Delivery Date the Seller shall transfer via e-mail to the Buyer's e-mail address indicated in Section B of Part I (Election Sheet) the PoS-ID(s) for the Biogas corresponding to the Contract Quantity of Certificates;
- (c) **Specific Representations and Warranties of Seller:** The Seller represents and warrants the following with regards to the PoS-ID(s) to be transferred to the Buyer:
 - (i) The Biogas corresponding to the Contract Quantity of Certificates has been injected into the grid and the injection has been duly registered in the Union Database;
 - (ii) The data inserted in the Union Database regarding the Biogas corresponding to the Contract Quantity of Certificates is complete and correct;
 - (iii) The PoS-ID(s) has/have not been obtained fraudulently;
 - (iv) The Biogas corresponding to the Contract Quantity of Certificates has not been marked as consumed by any third party and the Buyer has the exclusive right to mark the Biogas corresponding to the Contract Quantity of Certificates as consumed in the Union Database.

In case of breach of this 8(c), § 7.2 (*Remedies for Ineffectiveness*) and § 7.3 (*Exclusive Remedies*) shall apply.

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APPENDIX 5

National Emissions Trading Scheme – AUSTRIA

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