

Authors: Uco Joustra, Rene van der Vugt & Malin Andreasson

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**R-ACES Contract Template**

Agreement for the Sale and Purchase of Energy

## Article 1. Parties, Definitions and Scope

### Parties

This Agreement is made between:

[●] having its registered office at [●] , company number [●], (the “Seller”), and is hereunder signed for its agreement by:

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

Name: [●]

Title: [●]

Date: [●]

and

[●] having its registered office at [●] , company number [●], (the “Buyer”), and is hereunder signed for its agreement by:

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

Name: [●]

Title: [●]

Date: [●]

This Agreement may be singed electronically, and in separate documents. The signing date of this Agreement is the last date of signing by Party above.

### Definitions and Construction

Annex 1 provides the definitions of the Capitalized terms and rules for interpretation and construction of this Agreement.

### Scope

This Agreement relates to the delivery of Energy:

[●] (insert project specific details)]

The Energy Installation is [●], as further described in Annex 2.

## Article 2. Energy, Profile and Volume

### Sale of Energy

Seller hereby sells to Buyer and Buyer hereby purchases from Seller, at the Delivery Point:

[ ] Electricity

[ ] Heat

[ ] Cooling

[ ] Natural Gas

[ ] Hydrogen

[ ] Steam

### Profile

The Energy will be transferred in the following profile:

[ ] As Measured, Buyer driven.

[ ] As Measured, Seller driven.

[ ] Scheduled Daily Profile via Scheduling and further specified in Annex 3.

The maximum capacity of the Energy delivered is [..]Energy/Scheduling Period.

### Minimum Annual Volume

[ ] None: there is no minimum annual volume.

[ ] Buyer: The minimum aggregate annual quantities that Buyer is committed to Accept is [●] Units/Year Buyer Annual Volume (“BAV”).

[ ] Seller: The minimum aggregate annual quantities that Seller is committed to Deliver is [●] Units/Year Seller Annual Volume (“SAV”).

## Article 3. Price

### **Energy Price**:

Buyer is liable to pay to Seller:

[ ] Fixed price

The Energy Price (“EP”) shall be [●]€/Unit.

[ ] as of 1 January each year, the price is corrected for inflation. The inflation index used is [●] and [●] is the Base Year.

[ ] Indexed

The Energy Price (“EP”) shall be in €/Unit and based on the Price Index [●] (“PI”) times Multiplier (“M”) and Surcharge/Discount (“SD”) of [●] according to the following formula:

$$EP=M\*PI+SD$$

[ ] Set Periodically

The price for the Energy shall be set [●] annually] by the Seller based on the costs incurred and set through the process described in Annex 5.

### [ ] Fixed Monthly Fee:

In addition to any other amounts due under this Agreement, Buyer is liable to pay to Seller the Fixed Monthly Fee.

The Fixed Monthly Fee (“FMF”) is [●] €/Month.

[ ] as of 1 January each year, the price is corrected for inflation. The inflation index used is [●] with [●] as Base Year.

### [ ] Annual Volume Make-up Fee

[ ] *If a Buyer Annual Volume applies*] If the sum of the Contract Quantities in a calendar year is less than the Buyer Annual Volume (*BAV*) then the Buyer will be liable to pay the Seller for the shortfall in volume against [●] % of the average annual Energy Price as follows:

Buyer Annual Volume Make-up Fee (“BAVMF”)

$$BAVMF=\left(BAV- \sum\_{Year}^{}CQ\right)\*\left[..\right]\%\*avg(EP)$$

The BAVMF will be corrected for the days that the Seller has failed to Deliver (if any), by multiplying the BAVMF with the days that Seller has *not* failed to Deliver divided by the number or days in the calendar year.

[ ] *If a Seller Annual Volume applies*] If the sum of the Contract Quantities in a given calendar year is less than the Seller Annual Volume (*SAV*) then the Seller will be liable to pay the Buyer for the shortfall in volume against [●] % of the average annual Energy Price as follows:

Seller Annual Volume Make-up Fee (“SAVMF”)

$$SAVMF=-\left(SAV- \sum\_{Year}^{}CQ\right)\*\left[..\right]\%\*avg(EP)$$

The SAVMF will be corrected for the days that the Seller has failed to deliver (if any), by multiplying the SAVMF with the number of days that Seller has *not* failed to Accept divided by the number of days in the calendar year.

## Article 4. Schedule, Delivery and Acceptance, Measurement

### Schedule and Delivery and Acceptance

The Seller shall Schedule and Deliver, and the Buyer shall Schedule and Accept the Energy at the Delivery Point.

The Parties shall adhere to the technical and operational standards applicable at the Delivery Point as identified in Annex 2.

Parties shall inform each other timely of any technical or operational matters that may impact the Delivery and/or Acceptance.

### Measurement

Measurement of the transferred Energy will occur at the Delivery Point.

The Unit of measurement will be [[●] kWh / MWh / MJ / GJ / m3]. The period for measurement reporting will be [[●] 15min / 30 min / hour / day / month].

[ ] Seller / [ ] Buyer is responsible for the Measurement.

The Party responsible for the Measurement will do so according to the industry standards and in reasonable timeframe (but at least monthly) inform the other Party in electronic format of the results and upon request provide additional documentation so that the other Party can verify the Measurement. The Parties shall take all reasonable efforts to swiftly resolve any dispute over measurements.

### Seller and Buyer Costs

Seller shall bear all risks associated with, and shall be responsible for, any costs or charges imposed on or associated with Scheduling, transmission and delivery of the Energy up to the Delivery Point. Buyer shall bear all risks associated with, and shall be responsible for any costs or charges imposed on or associated with acceptance and transmission of the Energy at and from the Delivery Point.

### Risk and Transfer of Rights of Title

The Energy shall be for risk of Seller up to the Delivery Point and the Energy shall be for risk of Buyer from the Delivery Point. All rights to title the Energy, free and clear of any adverse claims thereto, shall transfer from Seller to Buyer at the Delivery Point through Delivery and Acceptance.

## Article 5. Term and Termination

This Agreement shall come into force as of [●] (the “Effective Date).

[ ] This Agreement will terminate on [●] (the “Expiration Date”), being (“Ordinary Termination”).

[ ] This Agreement will terminate on midnight on 31 December of any year if a Party has given the other Party two (2) calendar months prior written notice of termination specifying this termination date, being (“Ordinary Termination”).

This Agreement may also be terminated in accordance with Article 11 (*Termination for Material Reason*).

## Article 6. Invoicing and Payment

### 6.1 Invoice

The Seller shall transmit to the Buyer, in each calendar month, an invoice setting forth the total quantities of energy that were delivered in the previous calendar month. In connection with such invoice the Seller may state all amounts then owed, without limitation, for the sale of energy and any fixed monthly fee, fees, charges, reimbursements, damages, interest, and other payments or credits owed between the Parties.

The Energy Fee (“EF”) is determined as the sum over the month for each Scheduling Period (“SP”) of the Energy Price (“EP”) times the Contract Quantity (“CQ”):

$$EF=\sum\_{all SP in Month}^{}EP\*CQ$$

In the first month of a calendar year the Annual Volume Make-up Fee, if any, shall be included in the invoice, as determined by Seller according to Article 3.3.

### Payment

On or before the later to occur of (a) the twentieth (20th) day of the calendar month or if not a Business Day the immediately following Business Day or (b) the tenth (10th) Business Day following receipt of an invoice (the “Due Date”), a Party owing an invoiced amount shall pay, by wire transfer in freely available funds, the amount set forth on such invoice to the payment address or bank account provided by the other Party. Such payment shall be made, unless otherwise agreed, in EURO, and subject to Article 7 (*VAT*) and 7.2 (*Other Taxes*) and the remitter shall pay its own bank charges.

### Invoicing and Payment of Measured Quantities

Invoicing and payment shall be based on Contract Quantities for the respective month. If Contract Quantities are not available, then Seller will make a reasonable estimate (“Estimated Quantities”) that will be used to determine the Energy Fee set out in 6.1. If data becomes available confirming the Energy transferred, invoicing and payment will be adjusted to reflect any deviations between the Estimated Quantities and Contract Quantities.

### Default Interest

Overdue payments shall accrue interest from, and including, the Due Date to, but excluding, the date of payment, at the rate of [Euribor 3 Months] plus [two (2) %] (“Interest Rate”).

### Disputed Amounts

If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Due Date provide a written explanation of the basis for the dispute and shall pay:

[ ] the full amount invoiced no later than the Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited.

[ ] the undisputed amount invoiced no later than the Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate from, and including, the date such amount was due, to the other Party, but excluding, the date paid or credited.

## Article 7. VAT and Other Taxes, Subsidies

### VAT

All amounts referred to in this Agreement are exclusive of VAT. The VAT treatment of the supply of Energy shall be determined pursuant to the VAT laws of the jurisdiction of the Delivery Point. 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 in relation to that amount.

### Other Taxes

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

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

(a) the Buyer and the Seller hereby covenant that they will do all such proper acts, deeds and things as are necessary (which may include and shall not be limited to providing to the Seller all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant taxing authority) to ensure that such supply is exempt from Other Taxes for the purposes of such legislation;

(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 (a) above the Seller reserves the right to charge Other Taxes.

### Seller’s and Buyer’s Tax Obligation

The Seller shall pay or cause to be paid all Tax arising before the transfer of risk and title at the Delivery Point. The Buyer shall pay or cause to be paid all Tax arising after the transfer of risk and title at the Delivery Point. Subject to article 7.3, the Parties shall pay all Tax arising at the transfer of risk and title at the Delivery Point in accordance with applicable local 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 this Agreement and the Seller shall promptly indemnify or reimburse the Buyer in respect of any such Tax not so deducted.

### New Taxes

If any New Tax is applicable to this Agreement, and the Buyer is, by the use of reasonable endeavors, 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.

### Renegotiations for New Tax

If a New Tax is imposed on a Party (the “Taxed Party”) in respect of the salle and purchase or transfer of Energy under this Agreement, and the New Tax cannot be exempted or contractually passed on to the Other Party or a third party, and shall exceed five percent (5%) of the sum for the remaining term of this Agreement of the Estimated Quantities times the Contract Price then the Taxed Party shall be entitled to require a renegotiation of this Agreement to mitigate these effects so that the New Tax does not significantly distort the economic balance of this Agreement at the Signing Date as evidenced from this Agreement.

### Renegotiation for Withdrawn Subsidies

If a Party has entered into this Agreement in reliance on a Subsidy, and such Subsidy is reduced or withdrawn, and the affected Party has used all reasonable efforts to prevent this, and the value of the reduction or withdrawal shall exceed five percent (5%) of the sum for the remaining term of this Agreement of the Estimated Quantities times the Contract Price then the affected Party shall be entitled to require a renegotiation of this Agreement to mitigate these effects so that the reduction or withdrawal does not significantly distort the economic balance of this Agreement at the Signing Date as evidenced from this Agreement.

## Article 8. [ ] Remedies for Failure to Deliver and Accept

### Failure to Deliver

To the extent that the Seller fails to Deliver the Contract Quantity as Scheduled under paragraph 2.2 and such failure is not excused by an event of Force Majeure or the Buyer non-performance, the Seller shall pay the Buyer as compensation for damages an amount for such quantity of undelivered Energy equal to the product of:

(a) the amount, if positive, by which the price, if any, at which the Buyer, acting in a commercially reasonable manner, would be able to purchase in the market or otherwise generate the quantity of undelivered Energy exceeds the Energy Price; and

(b) the quantity of undelivered Energy.

Such amount shall be increased by other reasonable and verifiable costs and expenses incurred by the Buyer as a result of the Seller’s failure.

### Failure to Accept

To the extent that the Buyer fails in whole or in part to Accept the Contract Quantity as Scheduled under paragraph 2.2 and such failure is not excused by an event of Force Majeure or the Seller non-performance, the Buyer shall pay the Seller as compensation for damages an amount for such quantity of undelivered Energy equal to the product:

(a) the amount, if positive, by which the Energy Price exceeds the price at which the Seller is or would be able to sell the quantity of non-Accepted energy in the market acting in a commercially reasonable manner; and

(b) the quantity of the non-Accepted Energy.

Such amount shall be increased by other reasonable and verifiable costs and expenses incurred by the Seller as a result of the Buyer’s failure.

### Amounts Payable

Amounts that are due according to this article shall be invoiced and paid in accordance with Article 6 (*Invoicing and Payment*).

## Article 9. Force Majeure

### Definition of Force Majeure

“Force Majeure” means an occurrence beyond the reasonable control of the Party claiming Force Majeure (the “Claiming Party”) which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform its Delivery or Acceptance obligations.

### Release From Delivery and Acceptance Obligations

If a Party is fully or partly prevented due to Force Majeure from performing its obligations of Delivery or Acceptance and such Party complies with the requirements of paragraph 9.3 (*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 Article 8 (*Remedies for Failure to Deliver and Accept*) will accrue to the Claiming Party with respect to those quantities not delivered or received.

### 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, to the extent then available, provide to it 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.

### Effects of Force Majeure on Other Party

In the event, and to the extent, a 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 a Buyer’s Acceptance obligations are released by Force Majeure, Seller’s corresponding Delivery obligations shall also be released.

## Article 10. Suspension of Delivery

In addition to any other rights or remedies available to the Seller, should the Buyer default on any payment that is due under this Agreement, or should it or its Credit Support Provider fail to provide, replace or increase the amount of any Performance Assurance required pursuant to this Agreement or any Credit Support Document, the Seller shall be entitled, no earlier than ten (10) Business Days after sending a written notice to the Buyer to immediately cease further deliveries of Energy until such time as the Seller, has received either the required collateral or full payment (including all applicable default interest and expenses) of all outstanding amounts owed to the Seller.

## Article 11. Termination for Material Reason

###  Termination for Material Reason

(a) If a Material Reason (as defined below) with respect to a Party has occurred and is continuing, the other Party (the “Terminating Party”) may terminate this Agreement (“Early Termination”) by giving the other Party notice.

(b) A notice of Early Termination shall specify the relevant Material Reason for the Early Termination and shall designate a day as an early termination date (the “Early Termination Date”). The Early Termination Date may not be earlier than the day the notice is deemed to have been received under this Agreement nor later than twenty (20) days after such day. With effect from the Early Termination Date all further payments and performance in respect of this 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 paragraph 11.3 (the “Termination Amount”).

(c) If notice designating an Early Termination Date is given, the Early Termination Date shall occur on the date so designated even if the applicable Material Reason is no longer continuing. On, or as soon as practicable after, the Early Termination Date, the Terminating Party shall calculate in a commercially reasonable manner, and shall notify the other Party of, the Termination Amount (if any) to be received or paid by it deriving as stipulated in paragraph 11.3 (*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 right to designate an Early Termination Date under this paragraph 11.1 (*Termination for Material Reason*) is in addition to any other remedies available under this Agreement.

###  Definition of Material Reason

This Agreement may be terminated at any time for one or more of the following reasons (each, a “Material Reason”):

(a) **Failure to pay or perform**: under this Agreement; provided, that in the case of a failure to pay, such failure is not cured within ten (10) Business Days of a written demand, or, in the case of any other failure of performance, such failure is not cured within ten (10) Business Days of a written demand;

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

(i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);

(ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;

(iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;

(iv) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights, or a petition is presented for its winding-up or liquidation and, is not withdrawn, dismissed, discharged, stayed or restrained within seven (7) Business Days;

(v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

(vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;

(vii) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;

(viii) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses (i) to (vii) (inclusive); or

(ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this paragraph 11.2.

(c) **Failure to Deliver or Accept:** The failure of a Party to comply with its obligation to Deliver or Accept Energy, (other than, when such obligation is released pursuant to paragraph Article 9 (*Force Majeure*)) for more than [seven (7)] consecutive days or for more than [seven (7) days] in aggregate within a period of [sixty (60)] days.

(d) **Force Majeure**: A Party is released from its obligations under this Agreement due to Force Majeure for more than thirty (30) consecutive days or for more than sixty (60) days in aggregate within a period of one calendar year.

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

The above Material Reasons shall constitute the exclusive reasons for Early Termination.

###  Calculation of the Termination Amount

In case the Seller is the Terminating Party then the amount (the “Termination Amount or “TA”) to be paid in accordance with paragraph 11.1 (*Termination for Material Reasons*) shall be the Annual Volume (“AV”) times Remaining Duration (“RD”) of this Agreement (in years) times Energy Price (“EP”) times Seller Termination Percentage (“STP”) of [●] %
$$TA=AV\*RD\*EP\*STP$$

The Energy Price shall be established in a commercially reasonable manner.

In case the Buyer is the Terminating Party then the amount (the “Termination Amount”) to be paid in accordance with paragraph 11.1 (*Termination for Material Reasons*) shall be the Annual Volume (“AV”) times Remaining Duration (“RD”) of this Agreement (in years) times the Alternative Price minus Energy Price (“EP”) times Buyer Termination Percentage (“BTP”) of [●] %:
$$TA=AV\*RD\*(AP-EP)\*BTP$$

The Alternative Price is the price that the Buyer will have to pay for the alternate source of Energy that replaces the Energy that would have been supplied for the remaining duration of this Agreement. The Alternative Price and the Energy Price shall be established in a commercially reasonable manner.

## Article 12. Index Prices and alternatives

###  Calculation of Indexed Prices

If the Energy Price is based on an index, exchange or any other kind of variable reference price (such price being an “Index Price”), the Energy Price shall be determined by the Seller according to Article 3 and included in the Invoice.

###  Index Price Disruption

If the Index Price is no longer available (“Index Price Disruption Event”), the Seller shall determine and use the Alternative Index Price according to the following order:

1. Fallback Index Price: as specified here:
Alternative 1: [●]
Alternative 2: [●];
2. Negotiated Fallback: Each Party shall promptly negotiate in good faith to agree with the other on an Alternative Index Price (or a method for determining the Alternative Index Price).

###  Definition of Index Price Disruption Event

“Index Price Disruption Event” under this paragraph 12.3 shall mean the events stipulated under paragraph 12.3 (a) through (c) (the existence of which shall be determined in a commercially reasonable manner by the Seller). For purposes of this paragraph 12.3, “Price Source” shall mean any institution determining and publishing the Index Price as stipulated in Article 3.

(a) the failure of any relevant Price Source to announce or publish information necessary for determining the Index Price;

(b) the temporary or permanent objective unavailability of any relevant Index Price;

1. a temporary or permanent closing of the Price Source of any relevant Index Price;

## Article 13. Limitation of Liability

###  Exclusion of Liability

Subject to paragraphs 13.2 and 13.3 and except in respect of any amounts payable under Article 8 (*Remedies for Failure to Deliver and Accept*) or paragraph 11.1 (*Termination for Material Reason*), a Party and its employees, officers, contractors and/or agents , are not liable to the other Party for any loss, cost, expense or damages (“Damages”), (including, without limitation, any liability due to the irregularities in the supply of Energy incurred by the other Party under or in connection with this Agreement, except where such Damages are due to gross negligence, intentional default or fraud of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under this Agreement.

###  Consequential Damage and Limitation of Liability

Subject to paragraph 13.3, the liability of a Party under or in connection with this Agreement:

(a) does not include liability for any indirect and/or consequential Damages, including, without limitation, loss of profit, goodwill, business opportunity or anticipated saving; and

(b) is limited to an amount equal to the amounts payable for Energy supplied or to be supplied by a Party under this Agreement provided that such limitation shall not apply to payments under Article 8 (*Remedies for Failure to Deliver and Accept*) and paragraph 11.3 (*Calculation of the Termination Amount*).

###  Intentional Default, Fraud

Nothing in this Agreement operates to exclude or limit a Party’s liability for:

(a) intentional default, or

(b) fraud;

of a Party or its employees, officers, contractors and/or agents used by such Party in performing its obligations under this Agreement.

###  Duty to Mitigate Losses

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 it may incur under or in connection with this Agreement.

## Article 14. Guarantees and Credit Support

###  Credit Support

To address the Sellers risk relating to the creditworthiness of the Buyer, and to secure the prompt fulfilment of all obligations resulting from this 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 Seller, including, the form of Credit Support Documents, the amount of credit support, and the identity of one or more acceptable Credit Support Providers.

At any time and from time to time, when the Seller believes in good faith that a Material Adverse Change has occurred in respect of the Buyer, the Seller shall be entitled to require, by written notice, that the Buyer provide to it or increase in amount: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form and amount reasonably acceptable to the Seller (each a “Performance Assurance”). Upon receipt of such written notice, the Buyer shall within seven (7) Business Days provide to the Seller the Performance Assurance required.

###  Material Adverse Change

Means any event, condition or change which materially and adversely affects or could reasonably be expected to materially and adversely affect the assets, liabilities, financial results of operations, financial conditions, Business or prospects of the Buyer or Seller causing reasonable doubt on such Parties ability to perform its obligations under this Agreement.

###  Provision of Financial Statements

If requested by a Party, the other Party shall deliver within four months following the end of each fiscal year, a copy of such other Party’s annual report containing audited consolidated financial statements for such fiscal year.

## Article 15. Confidentiality

###  Confidentiality Obligation

Subject to paragraph 15.2 (*Exclusions from Confidential Information*), neither Party shall disclose the terms of this Agreement (“Confidential Information”) to a third party.

###  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 Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended bona fide assignee;

(c) is disclosed to comply with any applicable law, regulation, or rule of any exchange, system operator or regulatory body, or in connection with any court or regulatory proceeding; provided that each Party shall, to the extent practicable and permissible under such law, regulation, or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;

(d) is in or lawfully comes into the public domain other than by a breach of this Article 15; or

(e) relates to capacity and delivery profile and to the extent reasonably required in connection with network operations or network, supply or demand development.

###  Expiration:

A Party’s obligation in respect of this Article 15 shall expire one (1) year after the expiration of this Agreement.

## Article 16. Assignment

###  Prohibition

Neither Party shall be entitled to assign its rights and obligations under this Agreement to a third party without the prior written consent of the other Party. Such consent shall not be unreasonably delayed, refused or withheld.

###  Assignment to Affiliates

Each Party shall be entitled to assign its rights and obligations under this Agreement without the prior written consent of the other Party to an Affiliate of an equivalent or greater creditworthiness. 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.

## Article 17. Representations and Warranties

Parties hereby represents and warrants to the other Party upon entering into this Agreement as follows:

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

(b) the signing and the entering by it into of this Agreement, any Credit Support Document to which it is a party 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 this 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 this Agreement and its execution, delivery and the performance of this Agreement and any Credit Support Document do not violate or conflict with any other term or condition of any contract to which it is a party or any constitutional document, rule, law or regulation applicable to it;

(d) no Material Reason for termination as outlined in paragraph 10.5 (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 this Agreement;

(e) it has all governmental and regulatory authorisations, approvals and consents necessary for it to legally perform its obligations under this Agreement and any Credit Support Document to which it is party;

(f) it has negotiated, entered into and executed this 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);

(h) it is acting for its own account (and not as advisor, agent, broker or in any other capacity, fiduciary or otherwise), has made its own independent decision to enter into this Agreement 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 this Agreement;

(j) it is not relying upon any representation made by the other Party other than those expressly set forth in this Agreement or any Credit Support Document to which it is a party;

(n) 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 this Agreement or any Credit Support Document to which it is party, such that it could become insolvent.

## Article 18. Governing Law and Dispute Resolution, Expert

###  Governing Law

This Agreement shall be construed and governed by the substantive law of the [●] Delivery Point.

###  Dispute Resolution

Any disputes which arise in connection with this Agreement and which can not be resolved amicably, shall be referred for resolution to [[●] the court having jurisdiction at the Delivery Point] (subject to appeals in accordance with the applicable court rules).

###  Expert

The matters specified below in this paragraph 18.3 shall be exclusively settled by Expert determination. Absent agreement between the Parties within fourteen (14) days following a notice by either Party seeking appointment, the Expert shall be appointed by the president of the court referred to in paragraph 18.2. The Expert shall be tasked to render decision within 6 weeks from appointment, and the decision of the Expert shall be final.

Matter for expert determination are:

[●] measurement disputes

[●] technical delivery standards disputes

[●] (..)

## Article 19. Miscellaneous

###  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 electronic means as provided in the notice information in Annex 4. 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 2nd Business Day after the date of posting, or if sent from one country to another, on the 5th Business Day after the day of posting, provided an electronic copy is send on the date of posting; or

(c) if sent by electronic means transmission and a valid report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient’s time) on a Business Day or otherwise at 09.00 hours (recipient’s time) on the first Business Day after transmission.

###  Amendments

Any amendments or additions to this Agreement shall be valid and binding only if made in writing signed by both Parties.

###  Partial Invalidity

If, at any time, any provision of this Agreement is or becomes illegal, invalid or unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Agreement shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision which comes as close as possible to the invalid provision as regards its economic intent.

###  Survival of terms

In the event of Ordinary Termination, this Agreement shall remain legally binding on the Parties until, but only in respect of, all rights and obligations already created or existing under this Agreement prior to the date of the Ordinary Termination are fully performed by both Parties.

###  Third Party Rights

The Parties do not intend that any third party shall have any rights under or be able to enforce this Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

###  Entire Agreement

This Agreement consists of [●] pages and [●] Annexes, which contain the entire agreement of the Parties in respect of its subject matter.

###  Business Ethics

The Parties undertake, in connection with this Agreement, to comply with all applicable laws and regulations, including without limitation the laws and regulations relating to anti-bribery corruption. The Parties undertake to adhere to the highest standards of business ethics including the UN Global Compact Principles.

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## Annex 1: Definitions and Interpretation

**1. Definitions**

Capitalized terms used in this Agreement shall have the following meanings:

“Accept” means taking, or in case of insufficient delivery: being ready to take, the Energy at the Delivery Point, Acceptance may be effected on behalf of Buyer by another Person.

“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” means this agreement including its Annexes;

“Alternative Index Price” has the meaning specified in paragraph 12.2 (*Index Price Disruption*);

“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” is the Party identified as such in paragraph 1.1;

“Central European Time” or “CET” means Central European Time and shall include Central European Winter Time and Central European Summer Time as applicable;

“Confidential Information” has the meaning specified in paragraph 15.1 (*Confidentiality*);

“Contract Quantity” means the amount of Energy measured in a Scheduling Period;

“Credit Support Documents” has the meaning, without limitation, a parent guarantee, bank guarantee, letter of awareness, letter of credit or any credit support agreement;

“Deliver” means having available for Acceptance at the Delivery Point;

“Delivery Point” is defined in Annex [2];

“Due Date” has the meaning specified in paragraph 6.2 (*Payment*);

“Early Termination” has the meaning specified in paragraph 11.1 (*Termination for Material Reason*);

“Early Termination Date” has the meaning specified in paragraph 11.1 (*Termination for Material Reason*);

“Effective Date” has the meaning set out in Article 5;

“Energy” means the energy that is being sold and purchased under this Agreement;

“Energy Price” means the price agreed between the Parties;

“EU” means the European Community as it exists from time to time;

“Force Majeure” has the meaning specified in paragraph 9.1 (*Definition of Force Majeure*);

“Interest Rate” has the meaning specified in paragraph 6.5 (*Default Interest*);

“Index Price Disruption Event” has the meaning specified in paragraph 12.2 (*Definition of Market Disruption Event*);

“Letter of Credit” means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating [●];

“Material Adverse Change” has the meaning specified in paragraph 14.2 (*Material Adverse Change*);

“Material Reason” has the meaning specified in paragraph 11.2 (*Definition of Material Reason*);

“New Tax” means any Tax enacted and effective after the Effective Date, or that portion of an existing Tax which constitutes an effective increase (taking effect after the Effective Date) in applicable rates, or extension of any existing Tax to the extent that it is levied on a new or different class of persons as a result of any law, order, rule, regulation, decree or concession or the interpretation thereof by the relevant taxing authority, enacted and effective after the Effective Date;

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

“Party” means a party to this Agreement;

“Performance Assurance” has the meaning specified in paragraph 17.1 (*Performance Assurance*);

“Price Source” has the meaning specified in paragraph 15.4 (*Definition of Market Disruption Event*);

“Schedule” shall mean those actions necessary for a Party to effect its Delivery and Acceptance obligations, which may include nominating, scheduling, notifying, requesting and confirming to the other Party, their respective designated agents and authorized representatives the Scheduled Quantity per Scheduling Period:

“Scheduling Period” is defined in paragraph 4.2;

“Seller” is the Party identified as such in paragraph 1.1;

“Tax” means any present or future tax, levy, impost, duty, charge, assessment royalty, tariff or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority (whether or not for its benefit) in respect of any payment, nomination and allocation under this Agreement. 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;

“Taxed Party” has the meaning specified in paragraph 7.5 (*Renegotiations for New Tax*);

“Terminating Party” has the meaning specified in paragraph 11.1 (*Termination for Material Reason*);

“Termination Amount” has the meaning specified in paragraph 11.1 (*Termination Amount*);

“Unit” means the unit of measurement and basis for financial settlement under this Agreement;

“VAT” means any value added tax or any tax analogous thereto but excluding any statutory late payment interest or penalties.

**2. Interpretation and Construction**

In this Agreement:

Title and Headings. The title and topical headings used in this Agreement are for convenience only and shall not be construed as having any substantive significance or as indicating that all of the provisions of this Agreement relating to any topic are to be found in any particular Article.

Derivatives. A capitalized derivative or other variation of a defined term will have a corresponding meaning and be construed accordingly.

Singular and Plural. Reference to the singular includes a reference to the plural and vice versa.

Gender. Reference to any gender includes a reference to all other genders.

Article. Unless otherwise provided, reference to any Article or an Annex means an Article or Annex of this Agreement.

Include. The terms “include”, “including”, “in particular”, “for example” or any similar expression shall be construed without limiting the generality of the description preceding such term and are used in an illustrative sense and not a limiting sense.

References to Time. References to time shall be to Central European Time (CET).

## Annex 2: Technical

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