**FRENCH CAPACITY CERTIFICATES APPENDIX
(POWER)**

to the General Agreement Concerning

the Delivery and Acceptance of Electricity

Version 2.1/December 20, 2000 and Version 2.1(a)/September 21, 2007

dated as of [\*\*\*]

(the **“French Capacity Certificates Appendix Effective Date**”)

Between

[\*\*\*]

(“**Party A**”)

and

[\*\*\*]

(“**Party B**”)

|  |
| --- |
| **Check the applicable box and fill in date ONLY if you are using this French Capacity Certificates Appendix to modify and supplement a previously executed General Agreement between the Parties:****[ ]** By executing this French Capacity Certificates Appendix in the signature block at the end hereof, the Parties hereby modify, supplement and amend the terms of that certain previously executed General Agreement entered into and dated as of [\*\*\*] to provide that the terms of this French Capacity Certificates Appendix shall be incorporated therein, and shall be applicable to and thereafter govern all FR Capacity Certificates Transactions.[ ] All FR Capacity Certificates Transactions entered into by the Parties for and concerning the delivery of Capacity Certificates, which were entered into prior to the French Capacity Certificates Appendix, but which remain either fully or partially unperformed as of the French Capacity Certificates Appendix Effective Date (each such transaction a “**Pre-Existing FR Capacity Certificates** **Transaction**”) shall, as of the French Capacity Certificates Appendix Effective Date:**[ ]** become a FR Capacity Certificates Transaction hereunder, subject to the terms and conditions of the Agreement, as modified by this French Capacity Certificates Appendix; or**[ ]** not become a FR Capacity Certificates Transaction hereunder and instead shall remain governed by and subject only to their original terms and conditions.  |

**Part II:**

**Elections for Customization of Provisions in the CAPACITY Appendix:**

**§ 7**

**Non-Performance Due to Force Majeure**

**§ 7.4(b) Force Majeure Termination Payment:** [ ] § 7.4(b)(i) **(No Termination Payment)** shall apply; or

 [ ] § 7.4(b)(iii) **(Two-Way Loss Termination Payment)** shall

apply

**§ 13**

**Invoicing and Payment**

**§ 13.2 Payment:** [ ] Payment Cycle A shall apply, or

[ ] Payment Cycle B shall apply

**§ 13.3.1 Cross Product Payment Netting:** [ ] Payments due in relation to Individual Contracts in respect

of Electricity shall be netted against payments due in relation

to Capacity Transactions*.*

**§ 14**

**VAT and Taxes**

**§ 14.3 Fixed Establishment:**

|  |  |  |
| --- | --- | --- |
|  | Jurisdiction | VAT Identification Number |
| Party A: | … | … |
| Party B: | … | … |

**§ 17**

**Governing law and Jurisdiction**

**§ 17.1 Governing law:** [ ] shall apply, or

**§ 17.2 Jurisdiction:** [ ] §17.2(a) Jurisdiction of courts or France shall apply, or

[ ] §17.2(b) Arbitration shall apply and the arbitration court shall be [ ] and the language is [ ].

**Annex 1**

**Delivery Business Day:** Relevant placefor Party A shall be [ ]

Relevant place forParty B shall be [ ]

**Annex 1**

**to the**

**Capacity Appendix**

**Defined Terms**

|  |  |
| --- | --- |
| “**Capacity Certificate**” | means an intangible personal property, fungible, negotiable and transferable, corresponding to a normative Unite Power Value, created by the public transmission system operator and issued to a capacity operator after a capacity has been certified and valid for a given Compliance Period. |
| “**Compliance** **Period**” | means the delivery year for which the Capacity Certificate(s) is issued in accordance with the Rules as specified by the Parties in the Confirmation to the FR Capacity Certificates Transaction. |
| “**Contract Quantity**” | means, in respect of an FR Capacity Certificates Transaction, the number of Capacity Certificates of one or more Compliance Periods, where applicable, as agreed to be bought and sold between the Parties. |
| **“CRE”** | means the Commission de régulation de l’énergie. |
| “**Collection Deadline**” | means in respect of a FR Capacity Certificates Transaction, the 15 February in any calendar year in relation to the delivery year three years before, or as otherwise specified in the Rules for the surrender of Capacity Certificates in respect of a Compliance Period. |
| **“Delayed Delivery Date”** | has the meaning specified in § 7.2 provided, however, that such two Delivery BusinessDay grace period does not extend the Delayed Delivery Date in respect of an FR Capacity Certificates Transaction to a day that is on or after the Collection Deadline following the relevant Delayed Delivery Date; or (ii) on or after the Transfer Deadline in respect of the relevant FR Capacity Certificates Transaction. |
| “**Delivery Business Day**” | means for the purposes of this French Capacity Certificates Appendix only, any day which is not a Saturday or Sunday, on which commercial banks are open for general business at the places where each Party specifies as applying to it in Part II of this French Capacity Certificates Appendix and France. In the event that a Party does not so specify a place in Part II of this French Capacity Certificates Appendix, then (that/those) place(s) shall be deemed to be the Seller andthe Buyer’s addresses, as applicable, specified in § 23.2 ***(Notices, Invoices and Payments)*** of the General Agreement or, if no such addresses have been specified in § 23.2, at the place(s) where (that/those) Party(ies) (has/have) (its/their) registered office. |
| **“Delivery Date”** | means, in respect of a FR Capacity Certificates Transaction, the day agreed between the Parties on which the relevant Transfer from the Seller to the Buyer is to take place at the Delivery Point, subject to any adjustment in accordance with §7.2 ***(Suspension of Delivery and Acceptance Obligation)***. If the Delivery Date is not a Delivery Business Day, it shall be deemed to be the first Delivery Business Day following the agreed day. |
| **“Electronic Transfer”** | Has the meaning given in §4.2 of the French Capacity Certificates Appendix. |
| “**Encumbrance Loss Amount**” | means an amount reasonably determined by the Buyer in good faith to be its total losses and costs in connection with an FR Capacity Certificates Transaction 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 FR Capacity Certificates Transaction prior to delivery of the written notice by the Buyer and the Buyer’s legal fees and out-of-pocket expenses but does not include any amount which the Buyer must pay to a third party in respect of any such penalty payable to any other party (including any government authority or regulator) by that third party. |
| “**Holding** **Account**” | means the form of record maintained by and in the Registry to record the allocation (if applicable), Transfer and holding of Capacity Certificates. |
| “**Loss**” | means an amount that each Party reasonably determines in good faith to be its total losses and costs (or gain, in which case it shall be expressed as a negative number) in connection with the termination of the applicable FR Capacity Certificates Transaction(s), or any unperformed portions thereof, any loss of bargain, cost of funding (based on the actual costs of such Party whether or not greater than market costs) or, without duplication, loss or cost incurred as a result of its terminating, liquidating, obtaining or re-establishing any related trading position (or any gain resulting from any of them). Loss shall not include legal fees or similar out-of-pocket expenses. Each Party may (but need not) determine its Loss by reference to quotations of average relevant rates or prices from two or more leading Dealers. |
| **“Payment Cycle”** | means either Payment Cycle A or Payment Cycle B as defined in § 13.2 (***Payment***). |
| “**Registry**” | means the registry established and operated by the Relevant Authority of France, in accordance with the Rules, in order to ensure the accurate accounting of the issue, holding, Transfer, acquisition, surrender, cancellation and replacement of Capacity Certificates. |
| “**Relevant** **Authority**” | means the entity appointed, pursuant to the Rules to implement, manage the Capacity Certificates market and or Certificates Registry in France and any administrative authority, governmental bodies however described which has jurisdiction to modify, amend, suspend, terminate or affect in any way the Rules. |
| “**Rules**” | meansthe Decree No 2012-1405 as of 14 December 2012 “relatif à la contribution des fournisseurs à la sécurité d'approvisionnement en électricité et portant création d'un mécanisme d'obligation de capacité dans le secteur de l'électricité” as amended and/or supplemented from time to time andany governmental decisions, regulations, decrees, laws, and any relevant decisions, guidelines, modalities and procedures made pursuant to them (whether made at the direction of a government, governmental body, regulator, competent authority or otherwise) as modified, amended and/or supplemented from time to time relating to the trade of Capacity Certificates as contemplated by this French Capacity Certificates Appendix. |
| “**Transfer**” | means (whether used as a verb or a noun) the sale and transfer of Capacity Certificates at a Contract Price from one Holding Account to another under and in accordance with the Rules for Transaction of Guarantees (*Transaction de Garanties*) and Transferable, Transferring and Transferred are to be construed accordingly. |
| “**Transfer Deadline**” | means, in respect of a FR Capacity Certificates Transaction the transfer deadline determined in accordance with the Rules, being specified that if the Rules do not provide for any Transfer Deadline, then Transfer Deadline shall be the Collection Deadline. |
| **“Unit Power Value”** | means 0.1 MW. |

**ADDITIONAL Provisions Applicable Only To FR CAPACITY Certificates Transactions:**

**This page need ONLY be executed by Parties that checked and completed one of the two boxes on the first page hereof. Those appending this Capacity Appendix to a General Agreement at the time of its execution need only append it to the General Agreement.**

IN WITNESS whereof this Capacity Appendix has been duly executed by the authorized representatives of each Party on the respective dates set out below with effect from the Capacity Appendix Effective Date.

**“Party A” “Party B”**

[\*\*\*] [\*\*\*]

Name: Name:

Title: Title:

**Annex 2 (A)**

**to the**

**FRENCH CAPACITY CERTIFICATES APPENDIX (POWER)**

**CONFIRMATION OF**

**FR CAPACITY CERTIFICATES TRANSACTION**

***(Fixed price )***

between

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

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as **Buyer**

as Parties to the

EFET General Agreement Concerning the Delivery and Acceptance of Electricity entered into and dated as of \_\_\_\_\_\_\_\_\_\_ , \_\_\_\_\_\_\_

FR Capacity Certificates Transaction concluded on:\_\_\_\_\_\_\_(**Trade Date**)

Name of Broker (if applicable): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Delivery Schedule**

(Delivery Date to each Delivery Point for each Contract Quantity and Compliance Period.)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | **Delivery Point(s):** | **Compliance Period**  | **Contract Quantity** | **Delivery Date** | **Price per Capacity Certificate**  |
|  | Holding Account number of Buyer: | [\*\*\*] | [\*\*\*] | [\*\*\*] | [\*\*\*] |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |

Reporting of FR Capacity Certificates Transaction to CRE according to Rules: [ ]

This Confirmation confirms the FR Capacity Certificates Transaction entered into pursuant to the EFET General Agreement Concerning the Delivery and Acceptance of Electricity between the Parties (General Agreement) as modified, supplemented and amended by the French Capacity Certificates Appendix between the Parties and forms part of that General Agreement. In case of any inconsistencies between the terms of this Confirmation and the FR Capacity Certificates Transaction, please contact us immediately.

If the Confirmation that you sent or will send contains additional or deviating terms from those agreed in the FR Capacity Certificates Transaction and/or terms set out in this Confirmation and/or General Agreement, including any provision providing for the deemed acceptance of those terms, then this Confirmation shall serve as an objection to those additional or deviating terms, and such terms shall only become part of FR Capacity Certificates Transaction if we expressly agree to them in writing.

|  |  |
| --- | --- |
| Date:  | Signature: Name: Title: Company:  |

|  |  |
| --- | --- |
| Date:  | Signature: Name: Title: Company:  |