



## **CERTIFICATE TRADE AGREEMENT (New York Law)**

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For information, comments or concerns regarding this Template Agreement, contact MiQ at [contracts@miq.org](mailto:contracts@miq.org).

Further information about MiQ is available at [www.miq.org](http://www.miq.org). Further information about the MiQ Registry is available at [www.miqregistry.org](http://www.miqregistry.org).



# CERTIFICATE TRADE AGREEMENT: COVER SHEET

## SELLER

### COMPANY

Name : \_\_\_\_\_

### ADDRESS

Physical address : \_\_\_\_\_

Contact person : \_\_\_\_\_

Phone : \_\_\_\_\_

Fax : \_\_\_\_\_

E-mail : \_\_\_\_\_

### BANK DETAILS

Bank name : \_\_\_\_\_

Bank account no. : \_\_\_\_\_

Routing no. : \_\_\_\_\_

## BUYER

### COMPANY

Name : \_\_\_\_\_

### ADDRESS

Physical address : \_\_\_\_\_

Contact person : \_\_\_\_\_

Phone : \_\_\_\_\_

Fax : \_\_\_\_\_

E-mail : \_\_\_\_\_

### REGISTRY DETAILS

Buyer's Account no. : \_\_\_\_\_

### TRANSACTION DETAILS

Delivery Date	Quantity of Certificates	Certificate Price	Contract Price
<b>Total Quantity:</b>			
<b>Total Contract Price:</b> [in the Applicable Currency]			

**Allowable Grades:** *(these are the MiQ Grades that are required in addition to any certification under the EO100™ Standard that may apply to Certificates – check all that apply)*

- A                       B                       C  
 D                       E                       F

**Certificate Region** : \_\_\_\_\_

**Maximum number of whole calendar months between Certificate Production Month to Delivery Date** : \_\_\_\_\_

- Transfer type:**
- Electronic Transfer shall apply; **or**
  - Transfer by Retirement Statement shall apply





# CERTIFICATE TRADE AGREEMENT: STANDARD TERMS

## THIS CERTIFICATE TRADE AGREEMENT IS MADE BETWEEN:

- (1) **[insert full name of Seller]**, a company incorporated in **[insert country]** having its registered office at **[insert city and country]** with corporate registration number **[insert number]** ("**Seller**"); and
- (2) **[insert full name of Buyer]**, a company incorporated in **[insert country]** having its registered office at **[insert city and country]** with corporate registration number **[insert number]** ("**Buyer**").

## IT IS AGREED:

### 1. SUBJECT OF THIS AGREEMENT; DEFINITIONS

- 1.1 The purpose of this Agreement is to set out the terms and conditions for one transaction with one or multiple Delivery Date(s), entered into by and between the Seller and the Buyer (referred to jointly as the "**Parties**", and individually referred to as a "**Party**"), where the Seller agrees to sell and Deliver and the Buyer agrees to buy and accept Delivery of a Quantity of Certificates.
- 1.2 This "**Agreement**" shall comprise of this Certificate Trade Agreement ("**General Terms**") and the Certificate Trade Agreement – Cover Sheet ("**Cover Sheet**").
- 1.3 Capitalised terms not defined elsewhere in this Agreement shall have the following meanings given to them:

"**Account**" means a data store within the Registry that is attributed directly to a single entity for the purpose of recording the holding of Certificates within the Registry that have not been Retired;

"**Administrator Event**" means the suspension of all or some of the processes in respect of the Registry (i) where that Registry is not operated and maintained in accordance with the provisions of the Applicable Law, or (ii) for the purposes of carrying out scheduled or emergency maintenance, or (iii) where there has been or following reasonable suspicion of, a breach of security which threatens the integrity of the registries system (including any back up facilities);

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

"**Allowable Grade**" has the meaning specified on the Cover Sheet;

"**Applicable Currency**" has the meaning specified on the Cover Sheet;

"**Applicable Law**" means any law, statute, statutory instrument, regulation, instruction, direction, rule or requirement (in each case) of any Competent Authority (but, for the avoidance



of doubt, only to the extent having force of law) which applies in the jurisdiction of the Buyer or the Seller;

**"Base Interest Rate"** means "GBP-SONIA-COMPOUND", "SONIA" being a reference rate equal to the overnight rate as calculated by the Bank of England, unless otherwise specified on the Cover Sheet;

**"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;

**"Certificate"** means a verified record representing certification against one or both the MiQ Standard and the EO100™ Standard of a unit of Energy Commodity recorded in the Registry pursuant to the MiQ Program Guide;

**"Certificate Grade"** has the meaning given to it in the MiQ Program Guide;

**"Certificate Region"** has the meaning given to it in the MiQ Program Guide;

**"Change in Law"** means the enactment, promulgation, execution or ratification of, or any change in or amendment to, or repeal or other cancellation of, any Applicable Law (or in the application or official interpretation of any Applicable Law by a judgment or decision of any Competent Authority);

**"Competent Authority"** means (a) the government of any country in which either Party operates or has its seat, or any governmental authority, agency or department thereof; (b) any entity having jurisdiction in relation to the Certificates; or (c) any court or other tribunal of any country in which either Party operates or has its seat;

**"Contract Price"** has the meaning specified in "Transaction Details" on the Cover Sheet;

**"Control"** and **"Controlled"** means ownership of more than fifty percent (50%) of the voting power of a Party or entity;

**"Delivery"** means, as applicable, the transfer of Certificates from the Seller's Account into the Buyer's Account (for the purposes of Electronic Transfer) or the transfer of the Retirement Statement from the Seller to the Buyer (for the purposes of Transfer by Retirement Statement), in either case in accordance with the terms of this Agreement;

**"Delivery Date"** has the meaning specified on the Cover Sheet;

**"Delivery Point"** means, as applicable, receipt of Certificates in the Buyer's Account (for the purposes of Electronic Transfer) or receipt by the Buyer in accordance with Clause 13 of an email with a copy of the Retirement Statement attached (for the purposes of Transfer by Retirement Statement);

**"Energy Commodity"** means natural gas, whereby a unit for the purpose of a Certificate is one (1) million British thermal unit (MMBtu);

**"Grade Status"** has the meaning given to it in the MiQ Program Guide;

**"Interest Rate"** has the meaning specified on the Cover Sheet;

"**MiQ Program Guide**" means the rules of use of the MiQ Program and the Registry, available at [www.miq.org/documents](http://www.miq.org/documents), as amended from time to time;

"**Quantity**" has the meaning specified on the Cover Sheet;

"**Registry**" means the electronic register of Certificates;

"**Registry Operation**" means the establishment of and continuing functioning of the Registry pursuant to the MiQ Program Guide;

"**Registry Operator**" means the entity responsible for the operation of the Registry;

"**Retire**" or "**Retirement**" means the act of assigning a Beneficiary to a Certificate for the purpose of making a disclosure statement, whereby the Certificate is removed from circulation on the Registry;

"**Retirement Statement**" means a document provided by the Registry Operator in a standardised form that confirms that a quantity of Certificates have been Retired by the Seller pursuant to this Agreement, and includes information on the quantity of Certificates Retired and confirmation of the Buyer or a third party nominated by the Buyer as beneficiary of the Retired Certificates;

"**Schedule**" means 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 Registry Operator (and if applicable, the other Party) the Quantity, the Certificate details, the Buyer's Account in the case of Electronic Transfer, the identification of the Buyer or a third party nominated by the Buyer in the case of Transfer by Retirement Statement, any other relevant terms of this Agreement, and any other customary industry practices and procedures to ensure that all applicable requirements for effecting Delivery from the Seller to the Buyer (or a third party nominated by the Buyer, as appropriate) by the Delivery Date are met. For the avoidance of doubt, the Parties' obligations to Schedule shall include the obligation to ensure their respective Accounts in the Registry are properly established in time to discharge their respective Delivery, Retirement or acceptance obligations under this Agreement; and

"**Total Contract Price**" has the meaning specified on the Cover Sheet.

## 2. DELIVERY AND ACCEPTANCE

- 2.1 No later than on the relevant Delivery Date, the Seller shall schedule, sell and Deliver, or cause to be Delivered, the Quantity of Certificates in accordance with the "Transaction Details" as set out on the Cover Sheet, and the Buyer shall purchase and accept Delivery, or cause such Delivery to be accepted, the Quantity and pay to the Seller the relevant Contract Price.
- 2.2 Where "Electronic Transfer" is specified as applying on the Cover Sheet, the Seller shall Schedule the Delivery of the Contract Quantity of Certificates to the Delivery Point in accordance with the MiQ Program Guide ("**Electronic Transfer**").
- 2.3 Where "Transfer by Retirement Statement" is specified as applying on the Cover Sheet, the Seller shall Schedule the initiation of the Retirement of the Certificates held in the Registry equalling the Contract Quantity to be Delivered. The Seller shall, for the purposes of the Retirement Statement to be issued by the Registry Operator, specify the Buyer or a third party nominated by the Buyer as the named beneficiary of the Retired Certificates. By no later than

the Delivery Date, the Seller shall submit a Retirement Statement to the Delivery Point ("**Transfer by Retirement Statement**").

2.4 Title and risk to:

- (a) the Certificates (for the purposes of Electronic Transfer) shall pass from the Seller to the Buyer at the Delivery Point; and
- (b) the attributes conferred by the Retired Certificates as well in the Retirement Statement (for the purposes of Transfer by Retirement Statement) shall pass from the Seller to the Buyer or a third party nominated by the Buyer at the Delivery Point.

**3. FAILURE TO DELIVER AND ACCEPT**

3.1 If the Seller fails to deliver the Quantity, in whole or in part, by the relevant Delivery Date and this is not:

- (a) remedied within three (3) Business Days after receipt by the Seller of a written notice from the Buyer; or
- (b) excused by Force Majeure or the non-performance of the Buyer,

the Seller shall pay the Buyer as compensation an amount equal to the difference, if positive, between: (A) the price at which Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered Certificates with the reasonably similar transaction terms as those set out in the Cover Sheet; and (B) the relevant Certificate Price multiplied by the quantity of undelivered Certificates. This compensation shall be increased by any reasonable transaction costs and expenses which the Buyer incurs as a result of such failure to deliver the Quantity.

3.2 If the Buyer fails to accept delivery of the Quantity, in whole or in part, on the Delivery Date and this is not:

- (a) remedied within three (3) Business Days after receipt by the Buyer of a written notice from the Seller; or
- (b) excused by an event of Force Majeure or the non-performance of the Seller,

the Buyer shall pay the Seller as compensation the difference, if positive, between: (A) the relevant Certificate Price multiplied by the quantity of non-accepted Certificates; and (B) the price at which the Seller is or would be able to sell the non-accepted Certificates in the market acting in a commercially reasonable manner. This compensation shall be increased by any reasonable transaction costs and expenses which the Seller incurs as a result of such failure to accept the Quantity.

**4. INVOICING AND PAYMENT**

4.1 The Seller will invoice the Buyer for the Certificates delivered in respect of a specific Delivery Date after Delivery.

4.2 The "**Invoice Due Date**" shall be the tenth (10<sup>th</sup>) Business Day after receipt of an invoice.

- 4.3 The Buyer shall pay the Contract Price on or before the Invoice Due Date to the Seller's bank account specified in the Cover Sheet, free of any expenses and without any withholdings and deductions. Payment shall be remitted by bank transfer. Such payment shall be made in the currency of the Certificate Price.
- 4.4 From the Invoice Due Date, the Seller shall be entitled to charge default interest at the Interest Rate. Interest may be charged from, and including, the Invoice Due Date and to, and excluding, the date of complete payment.
- 4.5 If a Party, in good faith, disputes the accuracy of an invoice, it shall on or before the Invoice Due Date provide a written explanation of the basis for the dispute and shall pay the undisputed amount invoiced no later than the Invoice 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 five (5) Business Days of such determination, along with interest as specified in Clause 4.4.

## 5. APPLICABLE TAX

All amounts referred to in this Agreement are exclusive of any taxes ("**Applicable Tax**"). In the case of any Applicable Tax, if the cost of such Applicable Tax is charged or passed on by the Seller to the Buyer, the Buyer shall pay this amount of such Applicable Tax to the Seller, provided that such amount of such Applicable Tax is identified separately on the invoice issued by the Seller and confirmation is received by the Buyer, where applicable, that such amount of Applicable Tax has been duly paid or accounted for to the Competent Authority for taxation, as appropriate.

## 6. REPRESENTATIONS AND WARRANTIES

Each Party represents and warrants to the other Party as of the Effective Date that, which will be deemed repeated on each Delivery Date:

- (a) it is duly organised and existing under the laws of the jurisdiction of its organisation and has full power and legal right to execute, deliver and perform under this Agreement or any other documents relating to this Agreement to which it is a party;
- (b) its execution, delivery and performance of this Agreement or any other documents relating to this Agreement to which it is a party does not constitute a violation of any law, governmental regulation, its memorandum and articles of association, other agreements or undertakings, and that it possesses the necessary knowledge in order to be able to perform pursuant to this Agreement or any other documents relating to this Agreement to which it is a party, and the person signing this Agreement or any other documents relating to this Agreement to which it is a party, is authorised and empowered to do so;
- (c) it has obtained or submitted any authorisation or approval or other action by, or notice to or filing with, any governmental authority or regulatory body that is required for the due execution, delivery and performance of this Agreement or any other documents relating to this Agreement to which it is a party;
- (d) this Agreement or any other documents relating to this Agreement to which it is a party (as applicable) has been duly and validly executed and delivered by it and constitutes a legal, valid and binding obligation enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganisation,

moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law);

- (e) there are no pending or threatened legal or administrative proceedings to which it is a party, which to the best of its knowledge would materially adversely affect its ability to perform its obligations under this Agreement or any other documents relating to this Agreement to which it is a party;
- (f) it has entered into this Agreement or any other documents relating to this Agreement to which it is a party in connection with its line of business and the terms hereof have been individually tailored and negotiated;
- (g) it is not relying upon any representation or warranty of the other Party other than those expressly set forth in this Agreement or any other documents relating to this Agreement to which it is a party;
- (h) it has entered into this Agreement or any other documents relating to this Agreement to which it is a party as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (i) it has entered into this Agreement or any other documents relating to this Agreement to which it is a party with a full understanding of the material terms and risks hereof, and is capable of assuming those risks;
- (j) it has made its investment and trading decisions (including regarding the suitability hereof) based upon its own judgement and any advice from such advisors as it has deemed necessary, and not in reliance upon any view expressed by the other party; and
- (k) the other Party is not acting as a fiduciary or an advisor for it, nor has given to it any assurance or guarantee as to the expected performance or result of this Agreement or any other documents relating to this Agreement to which it is a party.

## **7. LIMITATION OF LIABILITY**

7.1 Other than as provided by Applicable Law, nothing in this agreement limits any liability which cannot legally be limited, including but not limited to liability for:

- (a) death or personal injury caused by negligence; or
- (b) fraud or fraudulent misrepresentation.

7.2 Subject to Clauses 7.1 and 21, except in respect of any amounts payable under Clause 3 or Clause 10, the liability of each Party, irrespective of from whatever legal base it might be claimed, for any actions, omissions or failures of itself, its employees, officers, contractors and/or agents, that causes any damage, loss, cost or expense incurred by the other Party, is limited to an amount equal to the Total Contract Price.

7.3 The liability of a Party to the other shall in no event include any indirect or consequential damages, loss of profit, business opportunity, goodwill or anticipated savings.

7.4 Each Party shall use best effort to mitigate in a commercially reasonable manner its damage, loss, cost or expense in connection with this Agreement.

## 8. FORCE MAJEURE

- 8.1 **"Force Majeure"** means any event or circumstance beyond the reasonable control of the Party claiming the Force Majeure ("**Claiming Party**") which it could not reasonably have avoided or overcome and which makes it impossible for the Claiming Party to perform the transfer or acceptance of the Certificates under this Agreement including but not limited to a suspension, failure or malfunction of the Registry Operation, and for Transfer by Retirement Statement, a delay or a rejection of the Retirement of Certificates by the Registry Operator.
- 8.2 If the Claiming Party is fully or partly prevented, hindered or delayed in its performance of any of its obligations under this Agreement by reason of Force Majeure, then the Claiming Party is relieved of such obligations to the extent that it is prevented by Force Majeure from complying with them, subject to the remaining provisions of this Clause, as long as:
- (a) the Claiming Party advises the other Party in writing as soon as reasonably practicable of:
    - (i) the event or circumstance constituting Force Majeure;
    - (ii) its estimate of the likely effect of that Force Majeure on its ability to perform its obligations; and
    - (iii) its non-binding estimate of the likely period of that Force Majeure; and
  - (b) the Claiming Party uses all reasonable efforts to terminate or overcome the event or circumstance constituting Force Majeure and resumes full performance of its obligations as soon as reasonably practicable.
- 8.3 If the Claiming Party is relieved from its obligations due to Force Majeure, the corresponding obligations of the other Party shall also be relieved.

## 9. CONFIDENTIALITY

- 9.1 Neither Party shall disclose the terms of this Agreement or any other documents relating to this Agreement to which it is a party ("**Confidential Information**") to a third party.
- 9.2 Notwithstanding Clause 9.1, a Party is permitted to disclose Confidential Information exclusively in the following cases:
- (a) with the other Party's prior written consent;
  - (b) to the Registry Operator;
  - (c) to such Party's directors, employees, Affiliates, agents, professional advisers, bank or other financing institution, rating agency or intended assignee;
  - (d) 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 Applicable Law or rule, use reasonable efforts to prevent or limit the disclosure and to give the other Party prompt notice of it;

- (e) to price reporting agencies or for the calculation of an index provided that such disclosure shall not include the identity of the other Party; or
  - (f) in respect of information which lawfully is in or comes into the public domain.
- 9.3 Where a Party is in breach of this confidentiality obligation and if the other Party determines in good faith that any damages available under this Agreement and Law are insufficient, it may seek injunctive relief with respect to the Party in breach in any necessary jurisdictions.
- 9.4 This confidentiality obligation shall expire one (1) year after the last Delivery Date.
- 10. TERM AND TERMINATION EVENT**
- 10.1 This Agreement comes into force as of the Effective Date. Unless terminated earlier in accordance with its terms, this Agreement shall remain in force until all rights and obligations under this Agreement are fully performed or discharged by both Parties ("**Term**").
- 10.2 This Agreement may be terminated at any time upon the occurrence of one or more of the following events (each, a "**Termination Event**"):
  - (a) bankruptcy, insolvency or liquidation of a Party whether voluntarily or involuntarily or any other event, which, under the jurisdiction of the relevant Party has an analogous effect to such causes;
  - (b) failure of a Party to make a payment when due and required, which is not cured within five (5) Business Days after the receipt of a written demand;
  - (c) failure of a Party to initiate transfer of one or more Certificates on the relevant Delivery Date or failure of a Party to accept transfer of one or more Certificates on the relevant Delivery Date and such failure is not cured within ten (10) Business Days after the receipt of a written demand;
  - (d) any other material breach of this Agreement which is not cured within ten (10) Business Days after the receipt of a written demand;
  - (e) a Party is unable to Deliver or accept Delivery for reasons of a Force Majeure and such inability has lasted for more than ninety (90) consecutive calendar days; or
  - (f) a Change in Law which is not resolved in accordance with Clause 11.
- 10.3 If a Termination Event with respect to a Party has occurred and is continuing, the other Party may terminate this Agreement without any juridical intervention ("**Early Termination**") by giving the other Party written notice.
- 10.4 The notice of Early Termination shall specify the relevant Termination Event and 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 this Agreement and not later than twenty (20) Business Days after such date. With effect from the Early Termination Date, there shall be no obligation to Deliver or accept any Certificates under this Agreement.
- 10.5 In the case of a Termination Event pursuant to Clauses 10.2(a) to 10.2(d) (inclusive), the Party which has terminated this Agreement and is not the Defaulting Party ("**Non-Defaulting**")

**Party**"), shall be entitled to receive a termination amount from the other Party ("**Defaulting Party**") as follows:

- (a) if the Seller is the Defaulting Party, the "**Termination Amount**" shall be an amount equal to the difference (if positive) between: (A) the price at which Buyer acting in a commercially reasonable manner is or would be able to purchase or otherwise acquire in the market the quantity of undelivered Certificates; and (B) the Certificate Price multiplied by the quantity of Certificates not Delivered. This Termination Amount shall be increased by any reasonable transaction costs and expenses which the Buyer incurs as a result of such failure to deliver the Quantity; or
- (b) if the Buyer is the Defaulting Party, the "**Termination Amount**" shall be an amount equal to the difference (if positive) between: (A) the Certificate Price multiplied by the quantity of non-accepted Certificates; and (B) the price at which the Seller is or would be able to sell the quantity of non-accepted Certificates in the market acting in a commercially reasonable manner. This Termination Amount shall be increased by any reasonable transaction costs and expenses which the Seller incurs as a result of such failure to accept the Quantity. For the avoidance of doubt, the Seller may additionally claim any outstanding amounts owed with respect to Deliveries of Certificates made prior to the Early Termination Date.

With effect as of the Early Termination Date, the Non-Defaulting Party shall calculate the Termination Amount.

10.6 In the case of a Termination Event pursuant to Clauses 10.2(e) or 10.2(f), each Party will determine its own "**Close-out Amount**", which shall be the Gains less the aggregate of the Losses and Costs which such Party incurs as a result of the termination of this Agreement (whether positive or negative). For the purpose of this provision:

- (a) "**Costs**" means brokerage fees, commissions and other third party costs and expenses reasonably incurred by a 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 such Party in connection with its termination of this Agreement;
- (b) "**Gains**" means an amount equal to the present value of the economic benefit to the Party, if any (exclusive of Costs), resulting from the termination of this Agreement, determined in a commercially reasonable manner; and
- (c) "**Losses**" means an amount equal to the present value of the economic loss to the Party, if any (exclusive of Costs), resulting from its termination of this Agreement, determined in a commercially reasonable manner.

The "**Termination Amount**" will be an amount equal to:

- (d) the sum of (i) one half of the difference between the higher Close-out Amount (the determining Party being "**Party A**") and the lower Close-out Amount (the determining Party being "**Party B**") and (ii) the sum of any amounts owed by Party B to Party A pursuant to this Agreement upon the Early Termination Date; less
- (e) the sum of any amounts owed by Party A to Party B pursuant to this Agreement upon the Early Termination Date.

If the Termination Amount is a positive number, Party B will pay it to Party A; if it is a negative number, Party A will pay the absolute value of the Termination Amount to Party B.

- 10.7 The Termination Amount calculated pursuant to Clauses 10.5 or 10.6 shall be deemed to be the sole and all-inclusive compensation for any damages and costs incurred by the Parties as a result of the Early Termination. The Termination Amount will be invoiced to the relevant Party and payment shall be due within five (5) Business Days after receipt of the invoice. By paying the Termination Amount the relevant Party will be released from its obligations to Deliver or accept and thereafter no other remedies are enforceable towards the other Party under this Agreement.

## **11. CHANGE IN LAW**

- 11.1 In case of any Change in Law after the Effective Date that:

- (a) renders it impossible or unlawful to give effect to this Agreement; or
- (b) makes it impossible for a Party to perform its Delivery or acceptance obligations under this Agreement,

the Parties shall, both acting reasonably and in good faith, seek to agree the amendments which should be made to this Agreement as are necessary to, to the extent possible, permit the Parties to continue to perform their obligations under this Agreement in accordance with Applicable Law.

- 11.2 If the Parties fail to agree on the necessary amendments after a period of thirty (30) calendar days, either Party may then terminate this Agreement at no liability to the other Party with exception of any amounts owed with respect to Deliveries made prior to the Change in Law.

- 11.3 Where an event or circumstance that would otherwise constitute Force Majeure also constitutes Change in Law, it is to be treated as Change in Law and not as Force Majeure.

## **12. ASSIGNMENT**

- 12.1 Subject to Clause 12.2, neither Party shall be entitled to assign any of its rights or obligations under this Agreement to any person without the prior written consent of the other Party. Such consent may not be unreasonably refused, withheld or delayed.

- 12.2 Each Party shall be entitled to assign or transfer its rights or obligations without the prior consent of the other Party to an Affiliate of an equivalent or greater creditworthiness, provided that such Affiliate is incorporated in the same jurisdiction as the assigning and transferring Party.

- 12.3 Such an assignment shall only become effective upon notice being received by the other Party. Any purported assignment, charge or transfer in violation of this Clause shall be void.

## **13. NOTIFICATIONS AND CORRESPONDENCE TERMS**

- 13.1 All notices or other correspondence under this Agreement shall be in writing, in English and shall be deemed to have been received by a Party:

- (a) if delivered by hand or courier, on the Business Day of delivery or on the first Business Day after the date of delivery if delivered on a day other than a Business Day;

- (b) if posted, on the fifth (5<sup>th</sup>) Business Day after the day of posting;
- (c) if sent by fax, 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 on the first Business Day after transmission; or
- (d) if delivered by email, on the day of receipt if received before 17.00 hours (recipient's time) on a Business Day, or otherwise on the first (1<sup>st</sup>) Business Day after receipt.

13.2 All such notices and other communications shall be addressed as set out above in the Cover Sheet, unless a Party has provided another address or number which may be reasonably relied upon by the other Party.

#### **14. TELEPHONE RECORDINGS AND PERSONAL DATA PROTECTION**

Each Party is entitled to record telephone conversations held in connection with this Agreement. Each Party waives further notice of such recording and acknowledges that it has obtained all necessary consents of its officers and employees to such recording.

#### **15. SEVERABILITY**

Subject to Clause 11, in the event that any provision of this Agreement is declared invalid or unenforceable by a court of competent jurisdiction in any jurisdiction, such provision shall, as to such jurisdiction, be ineffective to the extent declared invalid or unenforceable without affecting the validity or enforceability of the other provisions of this Agreement, and the remainder of this Agreement shall remain binding on the Parties hereto. However, in the event that any such provision shall be declared unenforceable due to its scope, breadth or duration, then it shall be modified to the scope, breadth or duration permitted by Law or Competent Authority and shall continue to be fully enforceable as so modified.

#### **16. AMENDMENT**

Any amendments or additions to this Agreement shall be made in writing and shall have no effect unless signed by the duly authorised representatives of the Parties.

#### **17. THIRD PARTY RIGHTS**

Other than as provided by Applicable Law or expressly provided otherwise by this Agreement, this Agreement shall not give rise to any rights for third parties to enforce any term of this Agreement.

#### **18. 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 as well as the performance of the transaction contemplated under this Agreement.

#### **19. GOVERNING LAW AND DISPUTE RESOLUTION**

**19.1 THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER (INCLUDING ANY CLAIMS SOUNDING IN CONTRACT LAW OR TORT LAW ARISING OUT OF THE SUBJECT MATTER HEREOF AND ANY DETERMINATIONS WITH RESPECT TO POST-JUDGMENT INTEREST) SHALL**

BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD RESULT IN THE APPLICATION OF ANY LAW OTHER THAN THE LAW OF THE STATE OF NEW YORK.

- 19.2 SUBJECT TO CLAUSE (V) OF THE FOLLOWING SENTENCE, ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO OR ANY OTHER RELATED DOCUMENT, OR ANY OF THE OBLIGATIONS, SHALL BE BROUGHT IN ANY FEDERAL COURT OF THE U.S. SITTING IN THE BOROUGH OF MANHATTAN OR, IF THAT COURT DOES NOT HAVE SUBJECT MATTER JURISDICTION, IN ANY STATE COURT LOCATED IN THE CITY AND COUNTY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY (I) ACCEPTS GENERALLY AND UNCONDITIONALLY THE EXCLUSIVE (SUBJECT TO CLAUSE (V) BELOW) JURISDICTION AND VENUE OF SUCH COURTS; (II) WAIVES ANY DEFENSE OF FORUM NON CONVENIENS; (III) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH CLAUSE 13; (IV) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (III) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT; AND (V) AGREES THAT EACH PARTY RETAINS THE RIGHT TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR TO BRING PROCEEDINGS AGAINST ANY PARTY IN THE COURTS OF ANY OTHER JURISDICTION IN CONNECTION WITH THE EXERCISE OF ANY RIGHTS UNDER ANY DOCUMENT OR AGAINST ANY COLLATERAL OR THE ENFORCEMENT OF ANY JUDGMENT, AND HEREBY SUBMITS TO THE JURISDICTION OF, AND CONSENTS TO VENUE IN, ANY SUCH COURT.
- 19.3 EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT IN ANY COURT REFERRED TO IN CLAUSE 19 EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS CLAUSE 19.3 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- 19.4 EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN CLAUSE 13. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

## 20. WAIVER OF JURY TRIAL

**EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER RELATED DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS CLAUSE.**

## 21. SURVIVAL

- 21.1 All representations and warranties made hereunder or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the respective Party, regardless of any investigation made by any such Party or on their behalf and notwithstanding that any Party may have had notice or knowledge of any default at the time of this Agreement, and shall continue in full force and effect as long as any other obligation hereunder shall remain unsatisfied.
- 21.2 Further, the provisions of Clauses **Error! Reference source not found.**, 4 and 5 shall survive and remain in full force and effect regardless of performance of this Agreement, the expiration or termination of the commitments herein set forth or the termination of this Agreement or any provision hereof.

## 22. ELECTRONIC EXECUTION OF ASSIGNMENTS AND CERTAIN OTHER DOCUMENTS

The words "execution", "signed", "signature", and words of like import in any assignment and assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

## 23. COUNTERPARTS; INTEGRATION; EFFECTIVENESS

- 23.1 This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract.
- 23.2 This Agreement and the other related documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and



understandings, oral or written, relating to the subject matter hereof. Except as otherwise stated herein, this Agreement shall become effective as of the Effective Date once it shall have been executed by Buyer and Seller and when each respective Party shall have received counterparts from the respective counterparty that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

[Signature Pages Follow]



**IN WITNESS WHEREOF**, each of the Buyer and Seller have caused this Agreement to be executed and delivered by its officer thereunto duly authorized, as of the later of the two signature dates below (such date being the "**Effective Date**").

**BUYER:**

[Insert Company Name]

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SELLER:**

[Insert Company Name]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_