

STANDARD TERMS AND CONDITIONS

These STANDARD TERMS AND CONDITIONS are entered into by
and

BETWEEN

the Institut Luxembourgeois de Régulation,
as the Luxembourg Competent Authority and Hub user,
(hereinafter called « ILR »)

AND

[THE MARKET PARTICIPANT],

(hereinafter individually referred to as a « Party » and jointly as the « Parties »).

1. Definitions

In case of any discrepancy or conflict in the meaning between the definitions mentioned below and the definitions of the EECS Rules, the latter shall prevail.

Term	Meaning
AIB Communications Hub or “Hub”	A commercial website operated on behalf of AIB which provides coordination and synchronisation services, distributing messages and acknowledgements between the registries of Hub users. The Hub is defined in detail in Document HubCom;
Association of Issuing Bodies or “AIB”	The international scientific association constituted in accordance with the Belgian law of 25 October 1921 (as amended), with a company number of 0.864.645.330, under the name of “Association of Issuing Bodies”;
Certificate	A certificate, record or guarantee (in any form including an electronic form) in relation to: (a) attributes of the Input consumed in the production of a quantity of Output, and/or (b) attributes of the method and quality of the production of a quantity of Output;
Certification Scheme	A legislative, administrative and/or contractual framework establishing a system of Certificates;

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Term	Meaning
Competent Authority	In relation to the exercise or discharge of any legislative, governmental, regulatory or administrative function with respect to any Domain, the body duly authorised under the laws and regulations of the state (and, as the case may be, region) in which such Domain is situated to exercise or discharge that function, and, in relation to any Guarantee of Origin or Support Certificate the body duly authorised by the State under the relevant Legislative Certification Scheme to issue that Guarantee of Origin;
Contract	These standard terms and conditions between the ILR , the Luxembourg Competent Authority, with registered office at 17, rue du Fossé, L-2922 Luxembourg , duly represented by XXX and [THE MARKET PARTICIPANT] , with registered office at XXX, XXX, XXX , pursuant to which the EECS Electricity Domain Protocol for Luxembourg is made binding between the Parties and any and all amendments, supplements and modifications thereof;
Data Log	The record of Transactions of the AIB Communication Hub (the Transfer Log);
Domain	An area containing Production Devices with respect to which a Hub user is a Competent Authority;
Domain Protocol	In connection with a Domain, a document describing the procedures and regulatory provisions regarding GOs [and/or other EECS Certificates according to non-Legislative Certification Schemes] for that Domain;
EECS Rules	The Principles and Rules of Operation of the European Energy Certificate System;
Guarantee of Origin (or “GO”)	An electronic document (Certificate) issued by a Competent Authority under the laws of a State as a guarantee of the nature and origin of energy for the purpose of providing proof to a final customer that a given share or quantity of energy, as the case may be : <ul style="list-style-type: none"> (i) was produced from the energy source to which the guarantee relates; (ii) was produced by the specified technology type to which the guarantee relates; and/or (iii) has, or the Production Device(s) which produced it has (or have) other attributes to which the guarantee relates;
HubCom Protocol	The document known as “Hub User Compliance Protocol” and subtitled “EECS Rules - Subsidiary Document AIB-PRO-SD03: EECS Registration Databases”;
Hub user	A Competent Body, its duly authorised agent or a Registry Operator appointed by it, which may or may not be a member of the AIB, and which uses the Hub for Transactions;
Input	An amount of a specific type of energy or material goods consumed by a Production Device using combustion technology in the production of Output;

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Integrity	The accuracy and consistency of retained and transmitted data, indicated by an absence of any alteration in data during its retention and its transmission from a Sender to a Receiver. Data integrity is maintained through the use of error checking and validation routines;
Legislative Certification Scheme	A Certification Scheme implemented pursuant to the law of any EU Member State or a State bound to the EU by a Treaty requiring the mutual recognition of GO's;
Output	An amount of energy or material goods yielded by a Production Device and measured by a Measurement Body, being either (i) electricity, (ii) fuel, or (iii) heat;
Market Participant	A Registrant or Account Holder;
Production Device	A separately measured device or group of devices that produces an Output;
Registrant	A person in whose name a Production Device is registered from time to time in a Registry for the purposes of the Issue of Certificates;
Registration Database (or "Registry")	A database operated by a Hub user or a Registry Operator on behalf of a Hub user, comprising: (a) Transferables and Cancellation Accounts and the Certificates in those Accounts; (b) details of Production Devices and information provided in connection with the registration of Production Devices; (c) details of Certificates which have been transferred out of that Registry;
Transaction	Any communication made and identified as a transfer between Registries regarding GOs [and/or other EECS Certificates according to non-Legislative Certification Schemes], to which an electronic message refers.

2. Purpose

This Contract sets out the standard terms and conditions upon which *ILR* provides Transaction services regarding GOs to *[THE MARKET PARTICIPANT]* via the AIB Communication Hub as contemplated by the rules described in the Domain Protocol for Luxembourg and the HubCom Protocol issued by the AIB.

Where Transactions are performed upon the request of *[THE MARKET PARTICIPANT]* or involving *[THE MARKET PARTICIPANT]*, in accordance with this Contract, the rules described in the Domain Protocol for Luxembourg and all applicable technical requirements, and the Parties involved do not claim in due time that the Transaction was in any way erroneous, *[THE MARKET PARTICIPANT]* shall in good faith accept the legal consequences of such Transaction.

3. Compliance with the rules described in the Domain Protocol

Registrants of Production Devices become eligible to receive Guarantee of Origin (GO) Certificates under Luxembourg law by contractually committing themselves with *ILR* (under *ILR*'s Standard Terms and Conditions) to comply with the rules described in the Domain Protocol for Luxembourg. The Registrant will also be subject to Luxembourg law. In case of conflict between the Domain Protocol and the terms and conditions the former shall prevail.

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4. Obligation to inform

Each Party shall contribute to the implementation of this Contract, to the extent that both Parties shall provide each other without delay all necessary information required by the application of this Contract. If the operation of a Production Device of *[THE MARKET PARTICIPANT]* no longer conforms to the reported information, *[THE MARKET PARTICIPANT]* shall inform *ILR* immediately about the change.

5. Information systems

ILR issues GOs by using an electronic registry (Registration Database).

[THE MARKET PARTICIPANT] shall arrange, at his own cost, the necessary information technology architecture and interfaces which *[THE MARKET PARTICIPANT]* needs in order to use the Registration Database. *[THE MARKET PARTICIPANT]* shall be responsible for sufficient and state of the art methods and technologies that safeguard data security and integrity relating to the use of the Registration Database.

ILR has the right to change the IT prerequisites for the use of the Registration Database. *ILR* shall inform *[THE MARKET PARTICIPANT]* in writing at least 30 calendar days prior to the implementation of material changes. In urgent cases changes can be made without prior notice. *ILR* shall then inform *[THE MARKET PARTICIPANT]* in writing as soon as possible after the change has been made.

ILR shall inform *[THE MARKET PARTICIPANT]* 5 days in advance of planned unavailability of the Registration Database. *[THE MARKET PARTICIPANT]* shall be informed of other unavailability preventing the use of the Registration Database as soon as possible.

[THE MARKET PARTICIPANT] shall respect the technical requirements and rules of conduct described in the Domain Protocol.

ILR has the right to prevent or restrict the use of the Registration Database service by *[THE MARKET PARTICIPANT]* if there is misuse of the system or if *[THE MARKET PARTICIPANT]* has not fulfilled its contractual obligations.

6. Liability

[THE MARKET PARTICIPANT] shall at all times act in accordance with Luxembourg law and the Domain Protocol for Luxembourg. *[THE MARKET PARTICIPANT]* shall be liable for any damage incurred by *ILR* resulting from a breach of its obligations under this Contract and the Domain Protocol for Luxembourg.

ILR or any other Hub user is not liable for losses incurred by *[THE MARKET PARTICIPANT]*, except in case of *ILR*'s or the Hub user's gross negligence.

If *[THE MARKET PARTICIPANT]* suffers a loss due to gross negligence by *ILR*, *[THE MARKET PARTICIPANT]* must direct the claim for compensation only against *ILR*.

If *[THE MARKET PARTICIPANT]* suffers a loss due to gross negligence by a Hub user, Competent Body, another Market Participant or third party, *[THE MARKET PARTICIPANT]* must direct the claim for compensation only against the relevant Hub user, Competent Body, Market Participant or third party that has caused the damage.

The AIB, other Hub users or their representatives are not liable for the actions of the negligent Hub user, Competent Body, Market Participant or third party.

[THE MARKET PARTICIPANT] has a duty to do everything possible to prevent or limit the extent of the damage. If *[THE MARKET PARTICIPANT]* does not implement adequate measures to prevent or limit the extent of the damage, compensation may be reduced.

Claims against any Hub user for any damage, loss, cost or expense incurred by *[THE MARKET PARTICIPANT]* in relation to Transactions with GOs shall be limited to five thousand (5000) Euros per year excluding indirect or consequential damage, such as, but not limited to commercial damage, loss of profit, claims of other third parties. Such limitation will however not apply in case of wilful misconduct or intentional damage.

Claims against the AIB for any damage, loss, cost or expense incurred by *[THE MARKET PARTICIPANT]* and

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caused by gross negligence by the AIB in relation to Transactions with GOs shall be limited to thousand (1000) Euros per year per Market Participant, excluding indirect or consequential damage, such as, but not limited to commercial damage, loss of profit, claims of other third parties. Such limitation will however not apply in case of wilful misconduct or intentional damage. Any performance that is provided in conformity with the AIB's service level agreement cannot be regarded as gross negligence.

However, if this paragraph 6 is not applicable or not valid due to Luxembourg law, these provisions will be applied insofar allowed by applicable law.

7. Errors in Issuing

If *ILR* or *[THE MARKET PARTICIPANT]* discovers an error in issuing, cancelling or processing of a GO, the other Party shall be informed as soon as possible.

If there is an error in the course of issuing, cancelling or processing of a GO or an error due to any unauthorised access to or malfunction of a Registration Database, *ILR* and *[THE MARKET PARTICIPANT]* shall co-operate and use all reasonable endeavours to ensure that no unjust enrichment occurs as a result of the error. If there is an error, the GOs held in *[THE MARKET PARTICIPANT]*'s account may be withdrawn or amended by *ILR*. If not enough GOs have been issued, *ILR* will issue the GOs as soon as it receives the correct information.

If it transpires that the data in any GO is inaccurate (whether or not through an act or omission of the Registrant of the originating Production Device), *ILR* is entitled to – provided that such GOs are, at the time of such withdrawal, in the Transferable Account of that Registrant – withdraw those GOs, and other GOs of the same type.

8. Expiry of *ILR*'s services relating to GOs

If *ILR*'s right to serve as the Competent Authority for GOs in accordance with Luxembourg law in the Luxembourg Domain expires, *ILR* has the right to transfer the Contract to a new Competent Authority. If there is no new Competent Authority, *ILR* has the right to terminate the Contract. *[THE MARKET PARTICIPANT]* has no right to receive any refund of any paid fees.

If *ILR* no longer acts as Luxembourg Competent Authority *[THE MARKET PARTICIPANT]* has the right to retrieve its data.

9. Fees

Any cost incurred by *ILR* shall be covered by the fees set on a yearly basis and published in the *Mémorial* in accordance with article 62 of the Luxembourg act of 1st August 2007 concerning the organisation of the electricity market, as amended.

10. Breach of the Contract

If *[THE MARKET PARTICIPANT]* is in material breach of the Contract, including his obligation to pay the fees to *ILR*, *ILR* is entitled to terminate or suspend the execution of this Contract and thus to stop issuing, cancelling or otherwise processing certificates.

11. Force majeure

Neither Party shall be held liable nor be deemed in default under this Contract for any delay or failure in performance of any of their respective obligations if such delay or failure is the result of causes beyond the control and without negligence of such Party. Such causes shall include, without limitation, acts of war, civil war, riots, acts of terrorism, general strikes or lockouts, insurrections, sabotage, embargoes, blockades, acts or failures to act of any governmental or regulatory body (whether civil or military, domestic or foreign, national or supranational), communication line failures, power failures, fires, explosions, floods, accidents, epidemics, earthquakes or other natural or man-made disasters, and all occurrences similar to the foregoing (collectively referred to as "Force Majeure").

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The Party affected by an event of Force Majeure, upon giving prompt written notice to the other Party, shall be excused from performance hereunder on a day-to-day basis to the extent prevented by Force Majeure and the direct consequences thereof (and the other Party shall likewise be excused from performance of its obligations on a day-to-day basis to the extent that such obligations relate to the performance so prevented), provided that the Party so affected shall use its best efforts to avoid or remove such causes of non-performance and to minimize the consequences thereof and the Parties shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

In the event that the Force Majeure continues to persist for a period exceeding one (1) month, then either Party shall have the right to terminate the Contract by giving twenty (20) business days written notice of termination to the other Party.

12. Amendment of the Contract

If Luxembourg or European legislation or the AIB require that the Domain Protocol for Luxembourg be amended, the Parties agree to make all the required changes to this Contract in order to make it coherent with the Domain Protocol for Luxembourg. The Parties acknowledge and understand that the AIB Communication Hub is used by many Hub users and Market Participants, and that modifications to the Hub or the regulatory environment must be applied by all parties involved.

13. Confidentiality and Intellectual Property

Information of commercial, technical, strategic, financial or otherwise sensitive nature, which is not publicly known and is usually considered as valuable and confidential, whether or not it is explicitly indicated as confidential, shall be treated as confidential information by both Parties. Disclosure of such information requires the prior written consent of the other Party.

For the avoidance of doubt, this confidentiality clause does not prevent *ILR* to give information to authorities including but not limited to the tax authorities and the police of Luxembourg and the registration's country of *[THE MARKET PARTICIPANT]*, and Europol.

The software that is used to enable the operation of the Registration Database and the Transactions, together with all included tools, know-how and related intellectual property rights, is and shall remain the exclusive property of *ILR*, the AIB or their service providers or licensors. The software code, documentation and in general all related know-how must be considered confidential information, even if not explicitly disclosed as such. *[THE MARKET PARTICIPANT]* shall use the services and the related software only for the purposes of this Contract and shall not copy, reproduce, reverse engineer, decompile nor alter, adapt or modify any part of the software or related documentation.

14. Assignment and Duration of the Contract

Each Party may assign this Contract only with the written consent of the other Party. Such consent cannot be withheld with undue reason. Each Party may, however, without consent at any time assign this contract to an affiliated company subject to the prior notification of *ILR*.

Each Party may, at any time, terminate this Contract by giving one (1) month's written notice to the other Party.

15. Law and Dispute resolution

This Contract shall be governed by Luxembourg law and the courts of Luxembourg shall have exclusive jurisdiction to settle any dispute which may arise from or in connection with it.

In case of disputes, the AIB Hub's Data Log may provide evidence as to the data that have been transferred through the Hub and the time thereof and in such case *[THE MARKET PARTICIPANT]* shall accept the statement of the AIB as a binding statement.

This Contract is duly executed by the Parties in two original copies in English language, one for each Party.

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Date:

Date:

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Institut Luxembourgeois de Régulation
Claude RISCHETTE
Deputy Director

.....
[THE MARKET PARTICIPANT]

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Annex 1

The EECS Electricity Domain Protocol for Luxembourg