



Standard Terms and Conditions

Registry for Guarantees of Origin in France

Release 2 – 10th April 2016

The undersigned:

Powernext SA, a French limited company (*société anonyme*) having its registered office at 5 boulevard Montmartre, 75002 Paris, France, registered on the Paris Companies Register under the number B 438 750 440, represented by Dr. Egbert LAEGE, in his capacity as Chief Executive Officer,

hereafter **“POWERNEXT”**

the Party of the First Part

and

The company [name and legal form] _____,
having its registered office at _____

Registered on _____,

Under the number _____,

Represented by _____,

In his/her capacity as _____.

hereafter **the “Account Holder”**

the Party of the Second Part

Hereinafter Powernext and the Account Holder separately referred to as a “Party” and jointly referred to as the “Parties”.

1. DEFINITIONS

TERM	MEANING
Association of Issuing Bodies or “AIB”	The international scientific association constituted in accordance with the Belgian law of 25 October 1919 (as amended) under the name of “Association of Issuing Bodies” with a company number of 0.864.645.330;
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 the Hub Com;
Certification	A legislative, administrative and/or contractual framework

Scheme	establishing a system of Certificates;
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;
Competent Body	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;
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 Body;
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	European Energy Certificate System : a commercially funded, integrated European framework for issuing, holding, transferring and otherwise processing electronic records (EECS Certificates) certifying, in relation to specific quantities of output from production devices, attributes of its source and/or the method and quality of its production;
EECS Certificate	A unique electronic Certificate specifying and representing the quality and method of production of a specific quantity of Output, which is maintained on a EECS Registration Database and Issued in accordance with the provisions of the EECS Rules;
EECS-GO	An EECS Certificate corresponding to a type of Guarantee of Origin ("GO");
EECS Registration Database	A database operated by a Hub user or a Registry Operator on behalf of a Hub user, comprising: (a) Transferable and Cancellation Accounts and the EECS Certificates in those Accounts; (b) details of Production Devices and information provided in connection with the registration of those Production Devices; (c) details of EECS Certificates which have been transferred out of

	that EECS Registration Database;
EECS Rules	Principles and rules of operation of the European Energy Certificate System;
EECS Scheme	Arrangements established by a Section of PART IV of the EECS Rules for the acceptance of Products in relation to a type of Output into EECS;
Guarantee of Origin (or "GO")	An electronic document (Certificate) issued by a Competent Body 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 : (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;
Hub user	A Competent Body or Registry Operator which uses the Hub for Transactions;
Hub Com	The document known as "Hub User Compliance Protocol" and subtitled "EECS Rules - Subsidiary Document AIB-PRO-SD03: EECS Registration Databases";
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;
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;
Participant	A Registrant or Account Holder;
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;
Production Device	A separately measured device or group of devices that produces an Output;
Registrant	Account Holder in whose name a Production Device is registered from time to time in an EECS Registration Database for the purposes of the Issue of one or more EECS Products.
Transaction	Any communication (issuing, transferring, cancelling) made and

	identified as a transfer between Registries regarding GOs, to which an electronic message refers.
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Any other terms used in capitalized letter and not defined here shall have the meaning provided in the latest version of the EECS Rules, which can be found at <http://www.aib-net.org>.

The present Standard Terms and Conditions, hereafter “the Contract”, are to be interpreted in compliance with the EECS Rules and with the Domain Protocol.

2. PURPOSE

This Contract sets out the terms and conditions upon which POWERNEXT will provide the Transaction services regarding GOs to the Account Holder via the AIB Communication Hub, as contemplated by the Principles and Rules of Operation of the European Energy certificate System (the EECS Rules), the rules described in the Domain Protocol, the HubCom Protocol issued by the AIB and in compliance with the relevant articles of the French Energy Code and its implementing decrees.

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

3. COMPLIANCE WITH THE DOMAIN PROTOCOL

Account Holders that are Registrants of Production Devices become eligible to receive EECS GO under a specific Legislative Certification Scheme subject to the signature the present Contract and the compliance with the rules described in the Domain Protocol which has been provided in its current version to the Account Holder at the time of signature and which updated versions will be available on the AIB website¹.

The Account Holder will also be subject to applicable legislation. In case of conflict between the Domain Protocol and the present Contract, the former shall prevail.

4. OBLIGATION TO INFORM

Each Party shall cooperate for the implementation of this Contract, to the extent that both Parties shall provide each other without delay all necessary information required for the performance of this Contract. If the operation of a Production Device of the Account Holder no longer conforms to the reported information, the Account Holder shall inform POWERNEXT immediately about the change.

5. INFORMATION SYSTEMS

¹ http://www.aib-net.org/portal/page/portal/AIB_HOME/FACTS/AIB%20Members/Domain_Protocols

POWERNEXT issues EECS-GO by using an electronic registry ("EECS Registration Database").

The Account Holder shall arrange, at his own cost, the necessary information technology architecture and interfaces which the Account Holder needs in order to use the EECS Registration Database.

The Account Holder 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 EECS Registration Database in compliance with the measures foreseen in the Domain Protocol.

The Account Holder agrees to comply with the procedures for accessing Powernext information systems. In particular, it shall not conceal its true identity or appropriate another's identity; nor shall it transmit information with a view to causing a system malfunction or overload.

POWERNEXT has the right to change the information technology prerequisites for the use of the EECS Registration Database. POWERNEXT shall inform the Account Holder in writing at least thirty (30) calendar days prior to the implementation of material changes. In urgent cases, changes can be made without prior notice. POWERNEXT shall then inform the Account Holder in writing as soon as possible after the change has been made.

POWERNEXT shall make its best effort to inform the Account Holder two (2) days in advance of planned unavailability of the EECS Registration Database. The Account Holder shall be informed of other unavailability preventing the use of the EECS Registration Database as soon as possible.

Powernext shall respect the technical requirements and rules of conduct described in the Domain Protocol.

POWERNEXT has the right to prevent or restrict the use of the EECS Registration Database service by the Account Holder if there is misuse of the system or if the Account Holder has not fulfilled its contractual obligations pursuant to this Contract.

6. LIABILITY

The Account Holder shall at all times act in accordance with the applicable legal provisions and the Domain Protocol for France.

Powernext is not liable for losses incurred by the Account Holder, except in case of Powernext's gross negligence, willful default or fraud.

If the Account Holder suffers a loss due to the gross negligence or willful misconduct or fraud by Powernext, the Account Holder must direct the claim for compensation only against Powernext. If the Account Holder suffers a loss due to gross negligence by a Hub user, Competent Body, Participant or third party, the Account Holder must direct the claim for compensation only against the relevant Hub user, Competent Body, Participant or third party that has caused the damage. The AIB, other Hub users or their representatives are not liable for the actions of Powernext.

In case of a claim based on non-contractual liability of AIB, AIB member or any other Hub User, the liability will be governed by the law of the country where the liable party is established.

The Account Holder has a duty to do everything possible to prevent or limit the extent of the damage. If the Account Holder does not implement adequate measures to prevent or limit the extent of the damage, compensation may be reduced.

Claims against Powernext or any Hub user for any damage, loss, cost or expense incurred by the Account Holder in relation to Transactions with EECS GOs, excluding indirect or consequential damage, such as, but not limited to commercial damage, loss of profit, claims of other third parties, shall be limited to ten thousand (10,000) euro per year. Such limitation will however not apply in case of gross negligence, willful default or fraud.

No claim can be made against certificates held in other Account Holders' accounts.

Claims against the AIB for any damage, loss, cost or expense incurred by the Account Holder and caused by gross negligence by the AIB in relation to Transactions with GOs [or other EECS Certificates] shall be limited to thousand (1000) Euros per year per 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 willful misconduct or intentional default or fraud. 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 applicable legislation, these provisions will be applied insofar allowed by applicable law.

7. ERRORS IN ISSUING

If POWERNEXT or the Account Holder discovers an error in issuing, transferring, cancelling or processing of an EECS GO, the other Party shall be informed as soon as possible.

If there is an error in the course of issuing, transferring cancelling or processing of a EECS GO or an error due to any unauthorised access to or malfunction of an EECS Registration Database, Powernext and the Account Holder shall co-operate and use all reasonable endeavors to ensure that no unjust enrichment occurs as a result of the error. If there is an error, the EECS GOs held in the Account Holder's account may be withdrawn or amended by Powernext. If not enough EECS GOs have been issued in order to compensate the error, Powernext will issue the EECS GO as soon as it receives the correct information.

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

8. TERMINATION OF POWERNEXT'S SERVICE

As provided by the Arrêté of December 19th 2012, duration of Powernext's service as Competent Body will last until April 30th 2018 – unless otherwise terminated - and will be extended in case Powernext is re-appointed as Competent Body. The Account Holder has no right to receive any refund of the paid contractual fees.

If Powernext ceases to serve as the Competent Body for EECS GOs, Powernext has the right to transfer the Contract to the new designated Competent Body or to terminate the Contract.

If POWERNEXT stops serving as the Competent Body for GOs in accordance with a Legislative Certification Scheme in France, the Account Holder has the right to retrieve its data.

As a consequence of service termination, Production Devices registration will cease.

9. FEES

The fees associated to the service rendered by Powernext are set by Arrêté by the French Ministry of Energy as amended from time to time. As of 1st May 2013, tariffs are defined as follows:

- 2,000 euro per year and per Account Holder;
- 450 euro per Production Device registered for three years;
- 0.03 euro per MWh for EECS-GO issuance;
- 0.01 euro per MWh for EECS-GO transfer;
- 0.01 euro per MWh for EECS-GO export;
- 0.01 euro per MWh for EECS-GO import;
- 0.01 euro per MWh for EECS-GO cancellation.

Any amendment of the price list will be made available in due time on the Powernext website.

All the invoices are issued on the last day of each month and have to be paid within thirty (30) days of the invoice date by bank transfer on the POWERNEXT banking account.

- The admission fees are invoiced once the admission is validated for the calendar year, prorated depending on the admission date;
- The fees for registering a Production Device are invoiced once the Production Device is activated for a three-year period;
- Other fees are invoiced on a monthly basis.

If the amounts invoiced are not paid in full within the specified deadline, the sums owed are increased, by right, and without the need for a formal notice to pay, of late penalties fees calculated on the basis of the interest rate applied by the Central European Bank to its most recent refinancing operation plus 10 percentage points. These penalties concern the total amount of the claim (amount of the invoiced VAT charged without reduction). In case of late payment, the Account Holder is, by law, in debt towards POWERNEXT of a fixed rate for recovery fees of forty (40) euros.

10. BREACH OF THE CONTRACT

If the Account Holder is in material breach of the present Contract including the Domain Protocol, POWERNEXT is entitled to terminate or suspend the performance of this Contract and thus to stop issuing, transferring or cancelling, or otherwise processing EECS-GO.

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").

The Party affected by an event of Force Majeure, upon giving prompt 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 the national or European legislation or the AIB require that the Domain Protocol of France be amended, the Parties agree to make all the required changes to this Contract in order to make it coherent with the Domain Protocol. The Parties acknowledge and understand that the AIB Communication Hub is used by many Hub users and Account Holders, and that modifications to the Hub or the regulatory environment must be applied by all parties involved.

POWERNEXT can also modify the Contract. In such a case, POWERNEXT informs the Account Holders and provides them the updated Contract stressing out the reasons of the modifications. In case of disagreement with the updated Contract, the Account Holder may terminate the Contract within ten (10) days following the communication of the updated Contract.

13. CONFIDENTIALITY AND INTELLECTUAL PROPERTY

Any information provided for the performance of the Contract shall be treated as confidential information by both Parties. Disclosure of such information requires prior written consent.

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 Powernext to give

information to authorities including but not limited to the tax authorities and the police of France and the registration's country of the Account Holder, and Europol.

The software that is used to enable the operation of the EECS 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 Powernext, 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 Account Holder 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.EFFECTIVE DATE

This Contract shall be effective from its signature date and shall last until April 30th 2018 – unless otherwise terminated - and will be renewed in case Powernext is re-appointed as Competent Body.

15.ASSIGNMENT AND TERMINATION OF THE CONTRACT

Each Party may assign this Contract only with the written consent of the other Party. Such consent cannot be unreasonably withheld.

Each Party may, however, without consent at any time assign this Contract to an affiliated company as defined under article L.233-3 of the French commercial Code. In such a case, it shall nevertheless inform the other Party of such assignment.

Notwithstanding the provisions of Article 8 and 10, each Party can terminate this Contract with one (1) month's written notice.

In case of termination, the Account Holder is responsible for paying any outstanding payments to POWERNEXT. Unless specified explicitly otherwise, the Account Holder is not entitled for any refund of fees already paid to or owed to POWERNEXT.

16.APPLICABLE LAW

This Contract is governed by French law.

17.DISPUTE RESOLUTION

All disputes arising out of or in connection with the validity, interpretation, performance, non-performance or termination of this Contract shall be submitted to mediation according to the CMAP's² Rules of Mediation and, in the event that no settlement is thereby reached, to arbitration according to the CMAP's Rules of Arbitration, to which the parties undertake to adhere.

² Centre for Mediation and Arbitration of Paris, Paris Chamber of Commerce and Industry - 39, avenue Franklin D. Roosevelt, 75008 Paris

In case of disputes, Powernext may provide the AIB Hub’s Data Log as evidence as to the data that have been transferred through the Hub and the time thereof and in such case the Account Holder shall accept the AIB Hub’s Data Log as a reliable evidence.

Done in TWO originals,

For the Account Holder	For Powernext
In _____	In Paris
On _____	On _____
Name:	Name:
Position:	Position:
Signature:	Signature: