

DATED [●]

[●]

and

[●]

**AGREEMENT FOR THE PROVISION OF BALANCING AND RELATED SERVICES
[AND THE SALE OF CAPACITY GUARANTEES]**

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THIS AGREEMENT is made between:

- (1) [*PRODUCER*], a [*type of company*], incorporated under the laws of [*jurisdiction of incorporation*], with a share capital of [●], whose registered office is [*address*], [*postal code*] [*city*], France, registered at the [*competent trade or company registry*] under number [●], represented by the person identified on the signature page hereof (the **Producer**);
- (2) [*SERVICE PROVIDER*], a [*type of company*], incorporated under the laws of [*jurisdiction of incorporation*], with a share capital of [●], whose registered office is [*address*], [*postal code*] [*city*], [*country*], registered at the [*competent trade or company registry*] under number [●], represented by the person identified on the signature page hereof (the **Service Provider**).

The Producer and the Service Provider shall hereinafter be referred to together as the **Parties** and individually as a **Party**.

In the presence of:

[*BUYER*], a [*type of company*], incorporated under the laws of [*jurisdiction of incorporation*], with a share capital of [●], whose registered office is [*address*], [*postal code*] [*city*], [*country*], registered at the [*competent trade or company registry*] under number [●], represented by the person identified on the signature page hereof (the **Buyer**)

IT IS AGREED as follows:

- (A) The Producer is a power producer which operates the [*name of the Wind Farm*], further described in Annex 1 thereto (the **Wind Farm**).
- (B) [With respect to this Wind Farm, the Producer is eligible to benefit from the energy premium (*complément de rémunération*) regime within the meaning of subparagraph 2 of article L.314-19 and article R.314-29 of the French *Code de l'énergie* (the **Energy Premium Regime**) and entered into or is to enter into an energy premium contract (*contrat de complément de rémunération relative aux installations de production d'électricité utilisant l'énergie mécanique du vent*) with EDF setting forth the terms and conditions under which the Producer shall be entitled to receive the energy premiums (the **Energy Premium Contract**).]
- (C) The Producer entered into a corporate power purchase agreement with the Buyer on [●] (the **CPPA**).
- (D) Pursuant to the CPPA, the Producer shall join the entity designated as Balance Responsible Entity by the Buyer, in accordance with article L.321-15 of the French *Code de l'énergie*.

- (E) The Buyer has designated the Service Provider as Balance Responsible Entity and the Service Provider agrees to provide balancing services to the Producer.
- (F) *[if the sale of capacity guarantees option is included]* In addition, the Service Provider intends to acquire all the Producer's Capacity Guarantees.]
- (G) The Service Provider has necessary skills to enable it to provide the services *[if the sale of capacity guarantees option is included]* and purchase capacity guarantees from renewable energy sources].
- (H) The purpose of this Agreement is to set out the terms and conditions of the provision of the Services *[if the sale of capacity guarantees option is included]* and of the sale and purchase of the Capacity Guarantees].

IT IS HEREBY AGREED AS FOLLOWS:

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

"Affected Party" has the meaning ascribed to it in Clause 11.1.

"Affiliate" means, in respect of any person, any entity:

- (a) which controls such person;
- (b) over which such person has control; or
- (c) which an entity referred to in paragraph (a) above controls,

where "control" means control (*contrôle*) within the meaning of article L.233-3-I of the French Code de Commerce.

"Agreement" means this agreement, including its recitals and annexes.

"Balance Responsible Entity" means an entity which has entered into a participation agreement (*accord de participation*) with the Transmission System Operator to act as a balance responsible entity (*responsable d'équilibre*) in accordance with the Balance Responsible Party Regulations.

"Balance Responsible Entity Regulations" means the balance responsible party regulations entitled "*Règles relatives au dispositif de Responsable d'Equilibre*" issued by RTE dated 1 April 2017 (as amended from time to time).

“**Balancing Group**” means, in accordance with article L.321-15 of the French *Code de l’énergie* and the Balance Responsible Entity Regulations, all means of power injection into and of power withdrawal from the transmission or distribution network the Balance Responsible Entity is responsible for.

“**Balancing Services**” means the balancing services provided by the Service Provider to the Producer as Balance Responsible Entity.

“**Business Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in Paris [and in [●]].

“**Buyer**” has the meaning ascribed to it in paragraph (C) of the Recitals.

[if the sale of capacity guarantees option is included “**Capacity Certification Contract**” means any capacity certification contract (*contrat de certification de capacité*) entered into between the Producer as producer and the Transmission System Operator pursuant to the provisions of article R.335-15 of the French *Code de l’énergie*.]

[if the sale of capacity guarantees option is included “**Capacity Guarantee**” means any capacity guarantee (*garantie de capacité*) (within the meaning of article R.335-1 of the French *Code de l’énergie*) issued by the Transmission System Operator pursuant to the provisions of articles L.335-3 and R.335-36 of the French *Code de l’énergie* and freely transferable (*échangeable et cessible*) pursuant to the provisions of article L.335-3 III of the French *Code de l’énergie*.]

[if the sale of capacity guarantees option is included “**Capacity Guarantee Purchase Price**” means the Capacity Guarantee purchase price payable by the Service Provider to the Producer pursuant to Clause 2.8.]

[if the sale of capacity guarantees option is included “**Capacity Guarantee Registry**” means the capacity guarantee registry (*registre des garanties de capacité*) (within the meaning of article R.335-1 of the French *Code de l’énergie*) opened in the books of the Transmission System Operator to which are credited all Capacity Guarantees pursuant to the provisions of article R.335-36 of the French *Code de l’énergie*.]

[if the sale of capacity guarantees option is included “**Capacity Mechanism Rules**” means the provisions of articles R.335-1 et seq. of the French *Code de l’Énergie* together with the *arrêté* dated 29 November 2016 defining the rules of the capacity mechanism and the deliberations of the CRE issued in application of the aforementioned provisions of the French *Code de l’Énergie*.]

[if the sale of capacity guarantees option is included “**Capacity Portfolio Manager**” (*responsable de périmètre de certification*) means the entity which shall be liable for the settlement of capacity

imbalances (*responsable des écarts entre la capacité certifiée et la capacité effective*) of capacity operators in its portfolio pursuant to the provisions of article L.335-3 of the French *Code de l'énergie* by entering into an agreement with the Transmission System Operator.]

“**CARD**” means the consumer network access contract (*contrat d'accès au réseau de distribution*) (CARD), referred to in article L.111-91 of the French *Code de l'énergie*, entered into between the Producer and a Distribution System Operator with respect to the Wind Farm.

“**CART**” means the consumer network access contract (*contrat d'accès au réseau de transport*) (CART), referred to in article L.111-91 of the French *Code de l'énergie*, entered into between the Producer and the Transmission System Operator with respect to the Wind Farm.

[*if the sale of capacity guarantees option is included* “**Certified Volume**” has the meaning ascribed to it in Clause 2.8(a).]

“**Change in Law**” has the meaning ascribed to it in Clause 12.2.

“**Confidential Information**” has the meaning ascribed to it in Clause 13.1.

[*if the sale of capacity guarantees option is included* “**Contract Price**” has the meaning ascribed to it in Clause 2.8(a).]

“**CPPA**” has the meaning ascribed to it in paragraph (C) of the Recitals.

“**CRE**” means *Commission de régulation de l'énergie*.

“**Day**” means the twenty-four (24)-hour period - twenty-three (23) or twenty-five (25) during the biennial legal time change - commencing every day at 00:00 hour and ending at 23:59:59 hours.

“**Day-Ahead Price**” means the power price for the day-ahead period displayed on the relevant page of the EPEX's website (or any replacement EPEX's page which displays that price) or on the appropriate page of such other information service which publishes that price from time to time in place of EPEX. If such page or service ceases to be available, the Parties shall agree upon another page or service displaying the relevant price.

“**Delivery Point**” means the physical delivery point (*point de livraison*) as at the date hereof where the power produced or consumed by the Wind Farm is injected into or withdrawn from the power grid, respectively, as specified in the grid connection agreement in accordance with the provisions of article D.342-11 of the French *Code de l'énergie*.

[*if the sale of capacity guarantees option is included* “**Delivery Volume**” has the meaning ascribed to it in Clause 2.8(a).]

[if the sale of capacity guarantees option is included “**Delivery Year**” has the meaning ascribed to it in Clause 2.8(a).]

“**Distribution System Operator**” means any distribution system operator (*gestionnaire des réseaux publics de distribution*) competent with respect to the Wind Farm, being as of the date hereof Enedis [**Option** : [●], a local distribution company (*entreprise locale de distribution*)].

“**EDF**” means Electricité de France, a *société anonyme* incorporated under the laws of France, having its registered office at 22-30 avenue de Wagram, 75008 Paris

[“**Energy Premium Contract**” has the meaning ascribed to it in paragraph (B) of the Recitals.

“**Energy Premium Regime**” has the meaning ascribed to it in paragraph (B) of the Recitals.]

“**Force Majeure Event**” has the meaning ascribed to it in Clause 11.1.

“**Hour**” means any period of time equal to sixty (60) consecutive minutes starting and ending on the hour.

“**Inadequate Reduction Notification**” has the meaning ascribed to it in Clause 2.9(a)(ii).

“**Injection Period**” has the meaning ascribed to it in Clause 2.3(a).

“**Injection Period Commencement Date**” has the meaning ascribed to it in Clause 2.3(b).

“**Injection Period Suspension Event**” has the meaning ascribed to it in Clause 2.3(d).

“**Law**” has the meaning ascribed to it in Clause 12.2.

“**Lenders**” means the banks or financial institutions, trusts, funds or other entities which have granted facilities to the Producer for the construction of the Wind Farm, including their successors, transferees and assignees.

“**Long-Stop Date**” has the meaning ascribed to it in Clause 2.4.

“**Metering Data**” has the meaning ascribed to it in Clause 4.7.

“**Next Possible Technical Settlement Date**” means the earliest date on which the Wind Farm can be de-registered from the Service Provider’s balancing group.

“**Non-Affected Party**” has the meaning ascribed to it in Clause 11.3(a).

“**O&M Service Provider**” means the operation and maintenance services provider of the Wind Farm, the contact details of which shall be communicated by the Producer to the Service Provider.

“**Original Balance**” has the meaning ascribed to it in Clause 12.3.

“**Overlapping Reduction Period**” has the meaning ascribed to it in Clause 4.6(c)(iv).

“**Power**” means all the active power provided by the Wind Farm at the Delivery Point, as metered by the Distribution System Operator. For the avoidance of doubt, it is specified that the Power shall be net of self-consumption by the Wind Farm.

“**Power Generated During Negative Day-Ahead Price Period**” has the meaning ascribed to it in Clause 3.1.

[if the sale of capacity guarantees option is included “**PP2 Peak Period**” means any PP2 peak period (*période de pointe PP2*), as defined under article R.335-1 of the French *Code de l’énergie*.]

“**Reduction Notification Failure**” has the meaning ascribed to it in Clause 2.9(a)(i).

“**Reduction Period**” has the meaning ascribed to it in Clause 4.6(a).

“**Related Services**” means all the services elected by the Seller to be rendered by the Service Provider in Annex 2, paragraph 1, thereto.

“**Remote Control**” has the meaning ascribed to it in Clause 4.5(a).

“**Remuneration as Balance Responsible Party**” has the meaning ascribed to it in Clause 2.6.

“**SCADA Data**” has the meaning ascribed to it in Clause 4.9(c).

“**Services**” means the Balancing Services and the Related Services.

“**Supply Termination Date**” has the meaning ascribed to it in Clause 2.3(c).

“**Support Decree**” means the French decree no. 2016-682 of 27 May 2016 *relatif à l’obligation d’achat et au complément de rémunération prévus aux articles L.314-1 et L.314-18 du code de l’énergie et complétant les dispositions du même code relatives aux appels d’offres et à la compensation des charges de service public de l’électricité*.

“**Support Legal Framework**” means French law no. 2015-992 of 17 August 2015 *relative à la transition énergétique pour la croissance verte* as codified as at the date hereof partly in article L.314-18 et seq. of the French *Code de l’énergie*, articles R.314-1 et seq. and articles R.314-26 et seq. of the French *Code de l’énergie*, the Support Decree and the relevant implementing orders (*arrêtés d’application*).

“**System Operators**” means the Transmission System Operator and/or the Distribution System Operator, as applicable.

“**Testing Period**” has the meaning ascribed to it in Clause 2.2

“**Transmission System Operator**” means the transmission system operator (*gestionnaire du réseau public de transport*), being as of the date hereof *Réseau de transport d’électricité* (RTE).

“**Virtual Power Plant**” has the meaning ascribed to it in Clause 4.5(a).

“**Wind Farm**” has the meaning ascribed to it in paragraph (A) of the Recitals and is further described in Annex 1 thereto.

1.2 Constructions

- (a) Unless a contrary indication appears, any reference in this Agreement to:
- (i) the “Producer” or the “Service Provider” shall be construed so as to include its successors in title, permitted assigns and permitted transferees to, or of, its rights and/or obligations under the Agreement;
 - (ii) a “balancing group”, a “balance responsible entity”, a “capacity”, a “capacity certification contract”, a “capacity portfolio manager”, a “capacity guarantee”, a “capacity guaranty registry”, a “distribution system operator”, an “energy premium”, a “Producer”, an “installed capacity”, a “management premium”, a “metering point”, a “wind farm”, a “producer” and a “transmission system operator” shall be construed so as to have the meaning ascribed to their French translation under French law;
 - (iii) an “annex” shall, subject to any contrary indication, be construed as reference to an Annex to this Agreement and form an integral part thereof;
 - (iv) “assets” includes present and future properties, revenues and rights of every description;
 - (v) a “bank account” includes each sub or ledger account of that account and any replacement account;
 - (vi) a “Clause” shall, subject to any contrary indication, be construed as a reference to a clause of this Agreement;
 - (vii) “€”, “EUR”, “Euro” and “euro” means the single currency of the member states of the European Union that have the euro as their lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union;

- (viii) “FTP” means File Transfer Protocol;
 - (ix) “IP” means Internet Protocol;
 - (x) “law(s)” shall be construed as a reference to applicable law;
 - (xi) “MW” means megawatt;
 - (xii) “MWh” means megawatt hour;
 - (xiii) a “person” includes any person, firm, company, corporation, partnership, government, state or agency of a state or any association, joint venture, consortium or partnership or other entity (whether or not having separate legal personality) or two or more of the foregoing;
 - (xiv) a “regulation” includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any governmental, intergovernmental or supranational body, agency, department or of any regulatory, self-regulatory or other authority or organisation;
 - (xv) “VAT” means value added tax;
 - (xvi) a provision of law is a reference to that provision as amended or re-enacted; and
 - (xvii) unless a contrary indication appears, a time of day is a reference to Paris time.
- (b) Section, Clause and Annex headings are for ease of reference only.
 - (c) The words “include” and “including” are to be construed without limitation.
 - (d) Words incorporating the singular number include the plural and vice versa.

2 Effective date - Testing Period - Injection Period - Term

2.1 Effective date

This Agreement shall enter into force on its date of signature.

2.2 Testing Period

- (a) As from the execution date of this Agreement, the Producer shall be entitled to inject Power into the network provided that the following conditions precedent are fulfilled (the **Testing Period**):

- (i) the Wind Farm has been attached to a Balancing Group by way of designation by the Producer of the Service Provider (or the entity designated as Balance Responsible Entity by the Service Provider) as Balance Responsible Entity;
 - (ii) the Producer has notified the Service Provider in writing at least five (5) Business Days prior to such date of the beginning of the Testing Period.
- (b) The Testing Period shall be automatically terminated on the Injection Period Commencement Date, in accordance with the provisions of Clause 2.3 below.

2.3 Injection Period

- (a) Subject to paragraph (d) below, the injection of Power under this Agreement shall (i) commence on the Injection Period Commencement Date and (ii) cease on the Injection Termination Date (the **Injection Period**).
- (b) The date of commencement of the injection Period shall be the date notified by the Producer to the Service Provider, provided that the condition specified in Clause 2.2(a)(i) is still fulfilled (the **Injection Period Commencement Date**), at least five (5) Business Days prior to the Injection Period Commencement Date. Such notice shall be served by email with return receipt or registered letter with acknowledgement of receipt, substantially in the form attached in Annex 3 thereto. The Parties agree that the Injection Period Commencement Date shall be the first day of the month preceding or following the date on which the aforementioned notice is served.
- (c) The Injection Period shall cease on the date provided for in Clause 2.5 or on the date on which this Agreement is terminated pursuant to Clause 7 (the **Injection Termination Date**).
- (d) The Service Provider may suspend the Injection Period, meaning that no power shall be injected into the grid by the Producer and conversely the Service Provider shall not be bound by any obligations under this Agreement, in the following events (each, an **Injection Period Suspension Event**) and, in each case, for as long as the relevant Injection Period Suspension Event lasts:
 - (i) the power generated by the Wind Farm is fed into the balancing group of a Balance Responsible Entity not approved by the Service Provider (it being specified that under no circumstances should the Producer be entitled to remove the Wind Farm from the Balancing Group otherwise than in accordance with the provisions of Clause 9.2); or

- (ii) the Wind Farm has been de-registered from the Balancing Group for any reason which is not attributable to the Service Provider (such as a termination of the CARD or the CART (as applicable) pursuant to the provisions of paragraph 1 of article C.8.3.4 of the Balance Responsible Entity Regulations)

2.4 Long-Stop Date

In the event the Injection Period Commencement Date has not occurred within [twelve (12)] months from the execution date of this Agreement (the **Long-Stop Date**), either Party shall have the right to terminate this Agreement and each Party shall be discharged from its respective rights and obligations under this Agreement.

2.5 Term

- (a) Unless otherwise terminated pursuant to the provisions of Clause 7, this Agreement shall be for a period of [*duration determined by the Buyer*] from its execution date.
- (b) [This Agreement shall be tacitly renewable for additional periods of [*duration determined by the Buyer*].]

2.6 Price for the Balancing Services

During the Injection Period, the Producer shall pay for the Balancing Services a fee equal to [●] /MWh [*Price to be commercially agreed upon between the Parties*] delivered by the Producer to the Service Provider (the **Remuneration as Balance Responsible Party**).

2.7 Price for the Related Services

The price for the Related Services rendered by the Service Provider shall be calculated as provided in Annex 2 thereto.

2.8 [*if the sale of capacity guarantees option is included*] Capacity Guarantee Purchase Price

- (a) Payable amounts

The Capacity Guarantee purchase price payable by the Service Provider to the Producer for the Capacity Guarantee relating to the Wind Farm attributed to it shall be calculated as follows:

- (i) Initial Amount: Certified Volume x (Contract Price – Capacity Management Fee) for the respective Delivery Year.

- (ii) Final Amount: (Delivery Volume – Certified Volume) x Capacity Imbalance Price for the respective Delivery Year.

This amount indicates the difference between Certified Volume and Delivery Volume and the Final Amount reflects the corrected amount.

Where:

Capacity Imbalance Price means the penalty suffered by the Buyer based on the calculation computed by the Transmission System Operator and notified to the Buyer in accordance with the provisions of articles R.335-30 and R.335-31 of the French *Code de l'énergie*, respectively)

Capacity Management Fee amounts to xx € per Capacity Guarantee

Certified Volume (*niveau de capacité certifié*) means the number of all Capacity Guarantees allocated to the Wind Farm based on the normative approach as defined by the Capacity Mechanism Rules for the respective Delivery Year;

Contract Price means the Reference Price;

Delivery Volume (*niveau de capacité effectif*) means the number of Capacity Guarantees effectively issued by the Wind Farm based on the normative approach as defined by the Capacity Mechanism Rules for the respective Delivery Year;

Delivery Year (*année de livraison*) means the calendar year for which the relevant Capacity Guarantees are issued;

Reference Price (*prix de référence, PRef Capa*) means the reference price defined for the respective Delivery Year by the CRE pursuant to the provisions of article R.335-51 of the French *Code de l'énergie* and the relevant implementing order.

(b) Other payments

- (i) The Producer shall be liable for all costs and fees associated with the certification of the Wind Farm under the Capacity Certification Contract.
- (ii) The Service Provider (or the entity designated by it as Capacity Portfolio Manager) will support all fees and costs directly associated with the trading or the transfer of the Capacity Guarantees.
- (iii) Any variation of the Certified Volume of the Wind Farm shall lead to an adjustment of the Capacity Guarantee purchase price on a pro rata basis.]

2.9 [if the Wind Farm benefits from the Energy Premium Regime Financial consequences attached to reduction measures

(a) With respect to the Service Provider

- (i) Should the Service Provider fail to instruct in advance as per Clause 4.6 the Producer to stop producing power or erroneously instruct partial curtailment instead of the complete production interruption when the Day-Ahead Price is set to be negative for the duration during which it is set to be negative (a **Reduction Notification Failure**), the Service Provider shall compensate the Producer for the financial loss suffered by the Producer, corresponding to the negative prices paid by the Producer and the share of the negative price premium defined in article R.314-39 of the French *Code de l'Énergie* and in the applicable tariff order that the Producer suffers for the period to which the Reduction Notification Failure relates. For each hour of Reduction Notification Failure, the Service Provider shall pay the Producer an amount equal to : $(E) \times ((-D) + (F))$

where:

(E) corresponds to the power volume that has been produced by the Wind Farm during the delivery hour

(D) corresponds to the negative price of the corresponding delivery hour

(F) corresponds to the amount the Producer would have been entitled to claim against EDF under the Energy Premium Contract calculated pursuant to the provisions of articles R.314-34 and R.314-41 of the French *Code de l'énergie* in respect of the period to which the relevant Reduction Notification Failure relates,

- (ii) Should the Service Provider instruct the Producer to interrupt the production of the Wind Farm when the Day-Ahead Price is not negative (an **Inadequate Reduction Notification**), the Service Provider shall compensate the Producer for the foregone power production of the Wind Farm and pay an amount equal to : $(A) \times ((B) + (C))$

where:

(A) corresponds to the power volume that should have been produced by the Wind Farm during the period of the Wind Farm's power production interruption.

(B) corresponds to the purchase price the Buyer would have paid to the Producer for the period during which the Wind Farm's production should an Inadequate Reduction Notification had not been sent; and

(C) corresponds to the amount the Producer would have been entitled to claim against EDF under the Energy Premium Contract calculated pursuant to the provisions of articles R.314-34 and R.314-41 of the French *Code de l'énergie* in respect of the period to which the relevant Inadequate Reduction Notification relates, it being specified that for the purposes of such calculation the value of component (A) above shall be used as the value of the item referred to as "Ei" (as defined in article R.314-35 of the French *Code de l'énergie*).

- (iii) The compensation contemplated in paragraphs (i) to (ii) above shall be payable subject to the receipt by the Service Provider from the Producer of duly documented evidence of the amount the Producer would have been entitled to claim against EDF under the Energy Premium Contract.
- (iv) The Service Provider shall have no payment obligations towards the Producer in case both Parties fulfilled their obligations under Clause 4.6 and the Wind Farm fails to restart for any reason after the end of the Reduction Period.

(b) With respect to the Producer

Should the Producer:

- (i) fail for any reason to interrupt the production of the Wind Farm notwithstanding the Service Provider's instruction to this effect; or
- (ii) only lower the feed-in power of the Wind Farm without interrupting the production following the Service Provider's instructions under Clause 4.6,

the Producer shall compensate the Service Provider for the feed-in power volume which was injected into the Balancing Group by paying a fixed fee equal to EUR [●] /event [*Price to be commercially agreed upon between the Parties*].

(c) Computation of the loss of power production

- (i) For the purposes of this Clause 2.9, the value used for the calculation of the compensation shall be the average of the last measured 10 minute value before the interruption order and the first measured 10 minute value after return to normal

production following the interruption order end multiplied by the duration of the interruption order.

- (ii) In case the Wind Farm did not restart 10 minutes after the end of the interruption order, the loss of power production shall be calculated as the last measured 10 minute value before the interruption order, for the duration of the interruption order.
- (iii) In case the Wind Farm restarted only partially 10 minutes after the end of the interruption order, the loss of power production with respect to the part of the Wind Farm which did not restart shall be calculated as the last measured 10 minute value before the interruption order, for the duration of the interruption order. With respect to the part of the Wind Farm which restarted normally, the loss of power production shall be calculated as provided for in paragraph (i) above.]

3 Invoicing and payment¹

3.1 Invoicing by the Producer of the financial consequences of a failure to notify a negative Day-Ahead Prices period

The Service Provider shall provide the Producer before the tenth (10th) of each Month (M) with the billing elements for the preceding month (M-1) comprising the Power generated during every negative Day-Ahead Price hour for which the Service Provider did not request the Producer to stop or ramp down the Wind Farm's power production (the **Power Generated During Negative Day-Ahead Price Period**).

3.2 *[if the Wind Farm benefits from the Energy Premium Regime]* Invoicing by the Producer relating to the financial consequences attached to Power reduction measures and regularisation

- (a) The Producer shall issue an invoice or a credit note once a year upon receipt of the updated invoicing data referred to in paragraph VI (*Factures, avoir et modalités de paiement*) of the Energy Premium Contract and on the last day of February at the latest for the previous year under the conditions set out in paragraph (b) below.
- (b) The Producer shall issue either an invoice to reflect the compensation owed by the Service Provider to the Producer or a credit note to reflect a compensation owed by the Producer to the Service Provider in application of (a) above. Said invoice or credit note shall be issued on the basis of compensation data provided by the Service Provider no later than January 31st.

¹ To be amended, should the Parties elect self-invoicing

- (c) In case the sum of the credit notes and the invoices reveals an amount owed by the Producer to the Service Provider, the relevant amount owed by the Producer will be set-off against the Service Provider's payment obligations under the monthly invoice immediately following the issuance of the credit note, and conversely in case the sum of the credit notes and the invoices reveals an amount owed by the Service Provider to the Producer, the Service Provider shall pay said amount to the Producer within five (5) Business Days from the issue date of the relevant invoice.]

3.3 [if the sale of capacity guarantees option is included Invoicing by the Producer relating to the Capacity Guarantee

- (a) The Service Provider shall provide the Producer before the tenth (10th) of the month following the month of publication of the Reference Price by the CRE with the billing elements for the delivery year (AL-1) comprising:
- (i) the Certified Volume allocated to the Wind Farm in accordance with paragraph 8° of the annex of the *arrêté* dated 12 December 2016 *fixant les conditions du complément de rémunération de l'électricité produite par les installations de production d'électricité utilisant l'énergie mécanique du vent*; and
 - (ii) the Reference Price pursuant to the provisions of article R.335-51 of the French *Code de l'énergie* and the relevant implementing order.
- (b) Upon receipt of such billing elements, the Producer shall issue an annual invoice to the Service Provider for the purchase of the Capacity Guarantees relating to the delivery year (AL-1).
- (c) The Capacity Guarantees revenue invoiced shall be as provided in Clause 2.8.]

3.4 Invoicing by the Service Provider relating to other Related Services [if one or more Related Services other than the sale and purchase of Capacity Guarantees have been selected in Annex 2 thereto]

- (a) The Service Provider shall issue a monthly invoice with respect to the Related Services other than the sale and purchase of Capacity Guarantees selected in Annex 2 thereto.²
- (b) The revenue invoiced in consideration for the provision of the Related Services other than the sale and purchase of Capacity Guarantees shall be as provided in Clause 2.6.

² Fiscal rescript from French Ministry of Economic Affairs and Finance dated 21 December 2018 to be taken into account.

3.5 Transmission and payment of invoices

- (a) Invoices shall be payable within twenty (20) days from their date of receipt.
- (b) The Parties herewith consent to the issuance and transmission of all invoices exclusively in electronic format and all invoices under this Agreement shall be paid by way of intra-bank electronic wire transfers.

3.6 Late payment penalty

- (a) In case of late payment of all or part of any invoice, the defaulting Party shall be automatically liable to pay to the other Party a late payment penalty on all sums due (inclusive of VAT), without need of any formal notice, at the one-month interbank rate offered in the Euro Zone (EURIBOR 1 month) for the last Business Day of the month preceding the invoicing month (which will always be considered as at least equal to 0,00%) increased by two (2) percentage points. In any case, the applicable rate shall not be less than three (3) times the legal interest rate.
- (b) If the EURIBOR rate ceases to be available, provided that no substitution rate is published, the Parties shall agree upon another rate. In the event that the Parties do not reach an agreement within thirty (30) Business Days from the unavailability of such rate, the new rate to be used shall be determined by the President of the *Tribunal de Commerce* of Paris at the request of the first Party to act.

3.7 Disputes on invoices

- (a) In case of dispute on an invoice, the disputing Party shall (i) convey to the other Party before the due date a written note explaining its reasons for disputing such invoice and (ii) pay to the other Party the undisputed amount of such invoice within twenty (20) days from the date of receipt of such invoice.
- (b) In the event that the disputed amount is proving to be due by the disputing Party, the said Party shall pay to the other Party the amount of the disputed invoice increased by late payment penalty due since the date of payment as set out in Clause 3.5(a) until the effective payment date, in accordance with Clause 3.6.

4 Undertakings

4.1 General undertakings of the Producer

On the date hereof and throughout the duration of this Agreement, the Producer undertakes to:

- (a) comply with all applicable laws and regulations, with which the Producer is obliged to comply for the performance of its obligations under this Agreement;
- (b) be the legal operator of the Wind Farm;
- (c) operate the Wind Farm in accordance with all permits and authorizations necessary for the operation of the Wind Farm, and with prudent operation practices;
- (d) inform the Service Provider of any changes to the necessary permits and authorizations, in case they affect the amount of power injected into the grid, when it is injected, or the capacity of the Wind Farm with regard to the power capacity regime;
- (e) make all necessary arrangements for the purpose of being entitled to inject the electricity produced by the Wind Farm into the grid, including by complying with the requirements of the grid operator set out in the grid connection agreement, the CARD (or CART, as the case may be) and the operation agreement (*convention d'exploitation*);
- (f) prior to the Injection Period, enter into a joining agreement (*accord de rattachement*) with the Service Provider (or the entity designated as Balance Responsible Entity by the Service Provider) and ensure the attachment of the Wind Farm to the Balancing Group;
- (g) to the extent permitted by applicable law or regulation, refrain from joining any other balancing perimeter without the prior agreement of the Buyer;
- (h) [*if the sale of capacity guarantees option is included* if needed maintain an account on the Capacity Guarantee Registry and an operational email address which allows it to receive emails from the authorities]; and
- (i) warrant that the information relating to the Wind Farm set out in Schedule 1 is correct and true.

The representations of this Clause are deemed to be made by the Producer on each date on which a monthly invoice is issued throughout the Injection Period by reference to the facts and circumstances then existing.

4.2 General undertakings of the Service Provider

On the date hereof and throughout the duration of this Agreement, the Service Provider undertakes to:

- (a) have, maintain and comply with the requirements of all the planning, environmental, power and other authorisations, licences, consents, permits or approvals of a competent authority

necessary (from time to time) to allow that Party to lawfully undertake its obligations under this Agreement and in particular to have the energy produced by the Wind Farm integrated into its Balancing Perimeter ;

- (b) comply with all applicable laws, and not by its acts or omissions knowingly or recklessly cause the other Party to breach any applicable laws or this Agreement;
- (c) be registered as a Balance Responsible Entity in accordance with article L.321-15 of the French *Code de l'énergie*, and be free to act as the Balance Responsible Entity with respect to the Balancing Group;
- (d) be party to all necessary industry documents (i.e. licences, agreements, documents or codes) with which the Service Provider is obliged to comply under applicable laws or prudent operation practices, which are required for the performance of its obligations under this Agreement;
- (e) provide the Producer with all documents, data, certificates or other information relating to the subject matter of this Agreement as the Producer may reasonably request (including any of the same that the Producer may have been requested to provide to a competent authority), and shall provide any competent authority with all documents, data, certificates or other information relating to the subject matter of this Agreement which such competent authority may request from time to time;
- (f) have information or communication systems and data security measures in place in compliance with market standards.

4.3 Capacity Guarantees [if such Related Service has been selected in Annex 2 thereto]

- (a) Sale and Purchase of Capacity Guarantees
 - (i) If the Wind Farm's capacity (*capacité*) is not certified by the Transmission System Operator as of the date hereof, the Service Provider shall carry out all formalities for the certification request and the issuance of the Capacity Guarantees in the name of and on behalf of the Producer, it being specified that the Producer shall provide its full support and shall bear all costs associated thereto.
 - (ii) If the Producer did not request the Transmission System Operator to open an account in its name in the Capacity Guarantee Registry in accordance with the provisions of article R.335-35 of the French *Code de l'énergie* and if the Producer mandated the Service Provider to proceed, the Service Provider shall request the Transmission System Operator to open said account in the name of the Producer.

- (iii) The Producer undertakes to appoint the Service Provider (or the entity designated as such by the Service Provider) as Capacity Portfolio Manager.
- (iv) During the Injection Period, the Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) shall benefit from the sole and exclusive right to acquire all the Producer's Capacity Guarantees and consequently the Producer shall:
 - (A) sell to the Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider), and the Service Provider (or the entity designated by the Service Provider as Capacity Portfolio Manager) shall purchase from the Producer, all Capacity Guarantees credited to the Producer's account opened in the Capacity Guarantee Registry; and
 - (B) refrain from selling and transferring any Capacity Guarantees to any third party.

It being specified that the Capacity Guarantees sold by the Producer to the Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) shall be sold with full title guarantee, free from all charges, liens, other encumbrances and third-party claims.

- (v) Any transfer of a Capacity Guarantee shall be carried out by the issue of a joint request from the Producer and the Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) to the Transmission System Operator who shall in turn credit such Capacity Guarantee to the Service Provider's (or the entity designated as Capacity Portfolio Manager by the Service Provider's) account opened in the Capacity Guarantee Registry in accordance with the provisions of articles R.335-37 and R.335-36 of the French *Code de l'énergie*, respectively.
- (vi) The Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) shall bear all costs and shall perform all formalities required for, or in connection with, the transfer to its benefit of all Capacity Guarantee owned by the Producer (such as the provisions of information to the CRE relating to the transfer of any Capacity Guarantee in accordance with the provisions of article R.335-40 of the French *Code de l'énergie*), with the full support of the Producer in this respect (e.g. by granting a power of attorney (*mandat*) to the Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) for the purposes of issuing the joint request referred to in paragraph (v) above).

- (vii) The Service Provider (or the entity designated as Capacity Portfolio Manager by the Service Provider) shall be responsible for all arrangements and other actions required for marketing the Capacity Guarantees and shall market any Capacity Guarantee in its sole discretion.

- (b) Capacity portfolio management
 - (i) The Service Provider (or the entity designated as such by the Service Provider) shall act as Capacity Portfolio Manager (*responsable de périmètre de certification*) by entering into an agreement with the Transmission System Operator and shall be liable for the settlement of capacity imbalances (*responsable des écarts entre la capacité certifiée et la capacité effective*) of capacity operators in its portfolio pursuant to the provisions of article L.335-3 of the French *Code de l'énergie*.

 - (ii) Further to the issuance of any Capacity Guarantee credited to the Producer's account and provided that the same has been duly transferred to the Service Provider in accordance with the provisions of paragraph (a) above, the Parties shall enter into an agreement pursuant to which such Capacity Guarantee shall be allocated to the capacity portfolio managed by the Service Provider in accordance with the provisions of paragraph 9° of article R.335-1 of the French *Code de l'énergie*. Following the entry into force of the said agreement, the Service Provider shall, subject to the provisions of paragraph (iii) below, be liable for the settlement of capacity imbalances related to such Capacity Guarantees allocated to its portfolio.

 - (iii) If, at any time, any capacity imbalances attached to Capacity Guarantees acquired by the Service Provider under the Agreement result from a failure by the Producer to comply with any of its obligations under this Agreement or the capacity guarantee regime generally (e.g. availability below the Certified Volume), the Producer shall be liable in lieu of the Service Provider for any such capacity imbalances (based on the calculation computed by the Transmission System Operator and notified to the Service Provider in accordance with the provisions of articles R.335-30 and R.335-31 of the French *Code de l'énergie*, respectively) and shall compensate the latter upon request by paying (including by way of set-off) any penalty and associated costs relating thereto suffered by the Service Provider.

 - (iv) The Producer undertakes to inform the Service Provider without delay of any change in the availability of the Power volume of the Wind Farm requiring from the Service Provider an upwards or downwards rebalancing of the Certified Volume of the Wind Farm with respect to the capacity guarantee regime. The Service Provider

undertakes to make all necessary upwards or downwards rebalancing of the Wind Farm with respect to the capacity guarantee regime.

4.4 Planning of the Power generation

Without prejudice to paragraphs (a), (b) and (c), the Producer undertakes to keep the Service Provider regularly updated of any event which may have a significant and lasting impact on the production and capacity of the Wind Farm and to transfer to the Service Provider or to any entity appointed by it, including forecasting service providers, all information which it becomes aware of, either of its own doing or of that of third parties, including of the Distribution or Transport System Operator. The Producer may appoint a third entity which will be responsible for the provision of such information.

(a) Planned or foreseeable shutdowns

- (i) A planned or foreseeable shutdown shall mean a total or partial down time of the Wind Farm planned by the Producer for maintenance of resulting from an unavailability of the grid prior notified by the Distribution or Transport System Operator to the Producer in accordance with the CARD (or CART, as the case may be).
- (ii) In such case, the Producer shall, as soon as possible and [forty-eight (48)] hours before the commencement of such event at the latest, inform the Service Provider of any planned or foreseeable shutdowns of at least five (5) hours and affecting at least [three (3) MW] of the Wind Farm, by email or on the internet-based data portal provided by the Service Provider for this purpose or by any other means of communication agreed by the Parties from time to time. The said notification shall indicate the starting and ending time of such event.
- (iii) *[if the sale of capacity guarantees option is included]* The Producer shall ensure the availability of the Wind Farm and refrain from conducting maintenance works and from carrying out any change in the structure of the supply during any PP2 Peak Periods.]

(b) Unplanned or unforeseeable shutdowns

- (i) An unplanned or unforeseeable shutdown shall mean a total or partial down time of the Wind Farm of at least [five (5)] hours and which is not a planned or foreseeable shutdown as defined in paragraph (a) above. A shutdown is deemed to be partial when it exceeds [twenty-five (25)%] of the Wind Farm capacity or [three (3) MW], whichever is lower.

- (ii) In such case, the Producer shall, eight (8) hours after the commencement of such event at the latest, inform the Service Provider of any unplanned or unforeseeable shutdowns, by email or on the internet-based data portal provided by the Service Provider for this purpose or by any other means of communication agreed by the Parties from time to time. The said notification shall indicate the starting and foreseeable ending time of such event.

- (c) Failure to comply

After three failures by the Producer to timely comply with its information undertakings set out in this Clause 4.4, the Service Provider will send a warning to the Producer. The Producer may incur up to two additional failures without the Service Provider being entitled to claim any indemnity. As from the sixth and for each subsequent failure, the Producer shall be liable to pay, on a per failure basis, a non-lump-sum indemnity (*indemnité non-libératoire*) to the Service Provider of an amount of [●] euros (EUR [●]), with a [●] euros (EUR [●]) cap per year.

4.5 Remote Control of the Wind Farm by the Service Provider

- (a) An automated solution enabling a controlling party to operate remotely the Wind Farm in order to adjust the supply of power produced (a **Remote Control**) which is compatible with the Service Provider's system (the **Virtual Power Plant**) may be installed on the Wind Farm, if such option has been selected in Annex 2, paragraph 2 thereto.
- (b) If the Remote Control of the Wind Farm has been selected in Annex 2, paragraph 2 thereto:
 - (i) If the Wind Farm is equipped with an existing Remote Control system, the Parties shall cooperate to connect the Wind Farm to the Virtual Power Plant;
 - (ii) Should the connection of the Remote Control to the Virtual Power Plant require additional equipment, the Service Provider may require from the Producer the authorization to install such equipment at the [Service Provider/Producer]'s costs;
 - (iii) If the Wind Farm is not equipped with any Remote Control, the Producer shall grant to the Service Provider the authorization to install such Remote Control and to connect it to its Virtual Power Plant. The bearing of the costs for the installation of such Remote Control, which shall have title to such Remote Control and bear the associated costs (including maintenance) are as provided in Annex 2, paragraph 2 thereto.

4.6 Negative prices

- (a) Should the Day-Ahead Price be negative, the Service Provider shall request the Producer to stop the Wind Farm's power production for a specific period of time (the **Reduction Period**) by transmitting a notification under the conditions set out in paragraph (b) below, and the Producer shall comply with any such instructions.
- (b) The ramp-down instructions referred to hereinabove shall be sent (i) in the event of a Remote Control connected to the Virtual Power Plant, through the Remote Control directly by the Service Provider, and (ii) otherwise, by email with return receipt by 3pm the Business Day immediately preceding the date on which the ramp-down instructions shall apply.
- (c) If the Wind Farm is not equipped with a Remote Control and not connected to the Service Provider's Virtual Power Plant [*if such option has not been selected in Annex 2 thereto*]:
- (i) In case the Producer receives instructions to ramp down the production of the Wind Farm in accordance with paragraph (b) above, the Producer shall at 6pm at the latest the day before confirm it has received the instruction email referred to in paragraph (b) above and that it will reduce the feed-in power accordingly. In case the Producer has not confirmed promptly and in any case no later than [●] hours after the Producer received the ramp-down instruction email, the Service Provider shall instruct the Producer by any means available or, as the case may be, the O&M Service Provider by phone.
- (ii) The Producer or, as the case may be, the O&M Service Provider shall always be reachable (24/7).
- (iii) Should the Producer:
- (A) fail for any reason to interrupt the production of the Wind Farm notwithstanding the Service Provider's instruction to this effect; or
- (B) only lower the feed-in power of the Wind Farm without interrupting the production following the Service Provider's instructions under paragraph (a) above,
- the Producer shall compensate the Service Provider for the feed-in power volume which was injected into the Balancing Group by paying a fixed fee equal to EUR [●] /MWh [*Price to be commercially agreed upon between the Parties*].
- (iv) In the event the Service Provider sends a reduction instruction in accordance with the provisions of paragraph (a) above and the Transmission System Operator carries

out, in order to maintain supply-demand balance pursuant to the provisions of article L.321-10 of the French *Code de l'énergie*, a feed-in management measure for a period overlapping with a Reduction Period (an **Overlapping Reduction Period**), the Wind Farm's power production shall be adjusted during such Overlapping Reduction Period to comply with the lowest reduction value applicable to the Wind Farm that was provided to the Producer.

- (d) If the Wind Farm is equipped with a Remote Control and connected to the Service Provider's Virtual Power Plant [*if such Related Service has been selected in Annex 2 thereto*], the Producer shall not be responsible for any financial consequences of a possible injection by the Wind Farm in case of negative Day-Ahead Prices pursuant to this Clause 4.6.

4.7 Metering data

- (a) The Producer shall ensure that the Power delivered to the Buyer at the Delivery Point is measured by a meter (*dispositif de comptage*) complying with applicable laws and regulations, and more specifically with the grid connection agreement, the CARD and the operation agreement (*convention d'exploiter*).
- (b) The Producer shall make available to the Service Provider all such metering data.
- (c) The Producer shall ensure that its delivery of the Power at the Delivery Point is metered and documented in accordance with the relevant procedures of the Distribution System Operator.
- (d) The metering shall be made by the Distribution System Operator [or Transmission System Operator – to be specified] of that meter (*dispositif de comptage*) pursuant to the provisions of article L.322-8 of the French *Code de l'énergie* and the data disclosure and processing shall be made in accordance with the provisions of articles L.341-4 and R.341-4 et seq. of the French *Code de l'énergie*. In accordance with the provisions of article R.111-27 of the French *Code de l'énergie*, the Producer hereby agrees to provide the Service Provider with, or that the Distribution System Operator remits directly to the Service Provider, all metering data (*données de comptage*) related to the Wind Farm's Power measured by the Distribution System Operator upon receipt, and shall take all necessary actions for that purpose.
- (e) If a faulty or temporally delayed or other non-fault-free performance of the meter or metering service by the Distribution System Operator of that metering point is detected, the Producer upon discovery of such malfunctioning of the meter shall request the Distribution System Operator to remedy such failure without delay and the Producer may bring before the dispute resolution committee (*Comité de règlement des différends et des sanctions*) of the CRE a claim in that respect in accordance with the provisions of articles L.134-19 et seq of the French *Code de l'énergie*. Should the Balancing Responsible Entity of the Balancing Group

have access to proper metering data for the relevant metering point, the Parties may request the latter to provide the Transmission System Operator with such metering data in accordance with the provisions of article C.18 of the Balance Responsible Entity Regulations.

- (f) The Producer shall communicate to the Service Provider without delay any faults in or damage to the metering equipment of which it becomes aware.

4.8 REMIT reporting requirements

The Service Provider and the Producer are subject to EU Regulation on Power Markets Integrity and Transparency 1227/2011 (REMIT) which requires them both to report the transactions under the Agreement.

The Producer will register the Wind Farm with the CRE via the "Centralised European Registry for Power Market Participants" (CEREMP). Prior to the Agreement entering into effect, the Producer shall provide the Service Provider with documentation proving that the Wind Farm is properly registered. Furthermore, the Producer shall be obliged to keep its registration up to date via CEREMP and to inform the Service Provider without delay in the case of any changes.

- (a) Undertakings applicable if REMIT reporting services have been selected in Annex 2 thereto:
 - (i) The Producer authorizes the Service Provider, and the Producer accordingly agrees, to report the transactions under the Agreement on behalf of both Parties in accordance with the requirements under REMIT.
 - (ii) The Service Provider will carry out the REMIT reporting requirements for the Producer. Should the costs of the REMIT reporting increase for the Service Provider, the Service Provider reserves the right to request from the Producer a fee for assuming the REMIT reporting requirements. In such case, the Producer shall have the right to revoke the authorization to report the transaction data and to fulfil the REMIT reporting requirements itself or appoint a third party to do so.
 - (iii) If further data is required from the Producer to fulfil the reporting requirements, the Service Provider shall request such data from the Producer. The Producer shall then be responsible for the accuracy, completeness and timely submission of such data. The Producer shall neither be obliged to review the completeness and accuracy of the data nor shall the Service Provider be liable for any erroneous transaction data report as a consequence of erroneous or incomplete data or data provided in an untimely fashion by the Producer.

- (iv) Either Party shall have the right to terminate the execution of the REMIT reporting as agreed in this Clause by giving a 3-month prior notice to the other Party. Following such termination, each Party shall be obliged to comply itself with the REMIT reporting obligations.
 - (v) The Producer may request once every calendar year (the first one and the last ones pro-rata) appropriate documentation evidencing what the Service Provider reported on behalf of the Producer, in which case the Service Provider shall provide the Producer with such evidence free of charge.
- (b) Undertakings applicable if REMIT reporting services have not been selected in Annex 2 thereto:

Each Party shall be obliged to comply itself with the REMIT reporting obligations.

4.9 Additional measuring equipment

- (a) In order to improve forecasting of the power volume produced by the Wind Farm, the Service Provider shall have the right to install at its own costs required equipment in the facilities of the Wind Farm. The Service Provider shall secure the prior approval of the Producer in order to proceed with the installation of said equipment. Such approval shall not to be delayed, refused or withheld save on material grounds. Material grounds would be considered to exist in circumstances where the contemplated equipment would cause any current or future jeopardy to the surrounding equipment of the Wind Farm, to the operation of the Wind Farm or to the Wind Farm itself. In case such equipment is installed with the prior consent of the Producer, the Producer shall be the owner of such equipment and shall take care of the maintenance of such equipment, at its own cost³.
- (b) The Producer may appoint a third party with the performance of the installation and the operation and maintenance of any such equipment. Any operation, maintenance and any dismantling costs of such equipment shall be borne by the Producer. The Producer shall use its best efforts to assist with the installation, operation and maintenance of such equipment.
- (c) If the Producer has installed equipment that measures the power fed into the grid by the Wind Farm, the Producer shall provide such measuring data to the Service Provider. The Producer undertakes to provide to the Service Provider the relevant Supervisory Control and Acquisition Data (SCADA Data) in the format of a Comma Separated Variable (CSV) file, or such other format as the Parties may agree (such agreement not to be unreasonably withheld

³ This is the option recommended but Parties may otherwise agree.

or delayed). The SCADA Data shall be provided via a secure connection to a FTP site as notified by the Service Provider. The Service Provider undertakes to provide the Producer with the IP address of the FTP site and login details accordingly⁴.

- (d) The Service Provider undertakes to use the SCADA Data for the sole purpose of forecasting the power volume produced by the Wind Farm and shall refrain from selling or sharing the SCADA Data with any third party without the prior consent of the Producer.

4.10 Direct agreement

The Service Provider and the Producer acknowledge that the Lenders may require entering into a direct agreement pursuant to which the parties will agree, *inter alia*, the terms of their mutual cooperation in case of failure by the Producer to comply with its obligations under this Agreement. Accordingly, the Service Provider and the Producer undertake to negotiate in good faith with the Lenders for the purpose of entering into such direct agreement.

5 Representations and warranties

Each Party represents and warrants to the other Party that, as at the Effective date:

- (a) it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
- (b) it has the power (i) to execute this Agreement and any other documentation relating to this Agreement to which it is a party, (ii) to deliver this Agreement and any other documentation relating to this Agreement that it is required by this Agreement to deliver, and (iii) to perform its obligations under this Agreement and has taken all necessary action to authorise that execution, delivery and performance;
- (c) the execution, delivery and performance referred to in paragraph (b) above do not violate or conflict with any Applicable laws, any provision of its constitutional documents, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
- (d) its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar laws affecting creditors' rights generally;

⁴ Standardization of the data format is recommended in order to facilitate transfers of the Agreement and changes of Parties

- (e) no litigation, arbitration or administrative suit or proceeding before any court, tribunal, governmental body, agency, official or arbitrator is pending or, so far as it is aware, threatened against it or any of its Affiliates which would, if adversely determined, result in a material adverse change in such Party's financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement;
- (f) it is not relying upon any representations of the other Party other than those expressly set out in this Agreement;
- (g) it has negotiated, entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise);
- (h) it has entered into this Agreement with a full understanding of the material terms and risks of this Agreement and it is capable of assuming those risks; and
- (i) the other Party is not acting as a fiduciary or an advisor for it, nor has the other Party given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement.

6 Taxes

All sums referred to in this Agreement are stated exclusive of VAT, which shall be added if appropriate at the rate prevailing at the time of issuance of the related invoices. An amount equal to the VAT payable on any sum due to a Party shall not require to be paid to such Party before that Party provides the paying Party with an appropriate VAT invoice in relation to that amount. Where, in accordance with applicable laws⁵, any supplies under this Agreement may be zero-rated and/or subject to a reverse charge (as referred to in Council Directive 2006/112/EC), the following shall apply:

- (a) each Party hereby undertakes to do all such proper acts, deeds and things as are necessary to ensure that such supply is zero-rated or subject to the reverse charge in accordance with such applicable laws (which may include providing all such proper, true and accurate documentation or assistance as may reasonably be required by the relevant tax authority);
- (b) in the event that either Party fails to comply with paragraph (a) above, that Party shall indemnify the other Party in respect of any and all VAT, penalties and interest incurred by such other Party as a result of the first Party's failure; and

⁵ Fiscal rescript from French Ministry of Economic Affairs and Finance dated 21 December 2018 to be taken into account.

- (c) in the absence of the Service Provider providing any documentation as referred to in paragraph (a) above, the Producer reserves the right to charge local VAT.

7 Remediation of defaults

- 7.1 In case any Party fails to meet any of its obligations under this Agreement, the other Party shall have the right, without prejudice to any rights under this Agreement or damages it may claim, to send a default notice by registered letter with acknowledgment of receipt to the defaulting Party, and shall send a copy of any such notice to the Buyer.
- 7.2 The Buyer shall use its best efforts to have the default remedied by the defaulting Party. If the default is not remedied within a reasonable period of time, the Buyer will be entitled to draw all the appropriate consequences from this (which may include the change of Balancing Entity Perimeter or termination of the CPPA).

8 Termination of the Agreement

8.1 Events of Termination

This Agreement may be terminated in the following circumstances:

- (a) Termination in case of change of Balancing Entity Perimeter at the Buyer's request

In case the Buyer notifies the Producer and the Service Provider of its decision to switch to another Balancing Entity Perimeter, the Producer shall have the right to terminate this Agreement by sending a notice by registered letter with acknowledgment of receipt to the Service Provider.

- (b) Termination in case of termination of the CPPA

In case the CPPA is terminated, for whatever reason, the Producer shall have the right to terminate this Agreement by sending a notice by registered letter with acknowledgment of receipt to the Service Provider.

- (c) Termination in case the Injection Period Commencement Date does not occur by the Long-Stop Date

This Agreement may be terminated in case the Injection Period Commencement Date does not occur by the Long-Stop Date as set out in Clause 2.4.

8.2 Consequences of Termination

- (a) The Parties agree that this Agreement may only be terminated pursuant to the provisions of Clause 8.1 and that the termination ground shall be specified.
- (b) The defaulting Party shall have no right to claim compensation for any consequences resulting from such termination.
- (c) Any termination of this Agreement pursuant to the provisions of Clause 8.1 shall be possible at the earliest on the Next Possible Technical Settlement Date, in accordance with the provisions of Clause 9 of this Agreement.
- (d) It is expressly agreed between the Parties that the consequences of an early termination of this Agreement at the request of the Buyer will not be borne by the Producer.

9 Cooperation when switching between different balancing groups

9.1 The Parties hereby agree to collaborate when switching between different balancing groups.

9.2 Removal from Balancing Group:

- (a) The Wind Farm shall be removed from the Balancing Group at the end of the Injection Period if such Injection Period is not extended, upon suspension of the Injection Period, or, as the case may be, upon termination of this Agreement.
- (b) In such event, the Service Provider shall enable a change of the Wind Farm as from the Next Possible Technical Settlement Date to a balancing group to be designated by the Producer, provided that the Producer has entered into a joining agreement with such balancing group and provided the required notifications to the Transmission System Operator at the latest on the date which allows, according to market rules, the Next Possible Technical Settlement Date to occur. If the Producer does not specify a balancing group for such a change or fails to do so in due time, the Service Provider shall de-register the Wind Farm from the Balancing Group.

10 Indemnification

- 10.1 In the event that a Party fails to comply with any of its obligations under this Agreement, the defaulting Party shall indemnify and hold harmless the other Party for its demonstrable and direct damages within the limit of EUR [2,000/MW].
- 10.2 The said indemnification cap shall not apply in the event of gross or intentional breach of the defaulting Party.

11 Force Majeure

- 11.1 Subject to clause 11.2, any event or circumstances that are at once unforeseeable, insurmountable and external to the Party which invokes them (the **Affected Party**), and that make it impossible for the Affected Party to perform all or part of any of its obligations under this Agreement under the conditions laid down when entering into this Agreement shall constitute a force majeure event (a **Force Majeure Event**).
- 11.2 The following events shall not be deemed to be Force Majeure Events: communication or computer systems failure of any or part of the Service Provider's information or communication systems which make the Service Provider unable to perform all or part of any of its obligations under this Agreement for any length of time, failure by the Service Provider to implement suitable data security measures, unauthorised third party access to any or part of the Service Provider's information or communication systems.
- 11.3 No events or circumstances shall be considered to constitute a Force Majeure Event unless the following procedure is duly respected:
- (a) The Affected Party shall give notice to the other Party (the **Non-Affected Party**) of the (i) event or circumstances constituting such Force Majeure Event, (ii) the probable impact on the performance of such Party's obligations hereunder, and (iii) the degree and expected duration of its inability to perform its obligations under this Agreement.
 - (b) Such notice shall be given as soon as reasonably practicable after the Affected Party becomes aware, or should have become aware, of the relevant event or circumstance constituting a Force Majeure Event.
- 11.4 The Affected Party shall commit to undertake all commercially reasonable efforts to minimise and overcome the effects of the Force Majeure Event (which includes, in the event of an event or circumstance affecting the operation of the Delivery Point, undertaking all commercially reasonable efforts to ensure that the System Operator minimises and overcomes the effects of the Force Majeure Event); as long as the Force Majeure Event persists, it must keep the Non-Affected Party informed, in good faith and to the extent reasonably necessary, of the current status and the degree and anticipated duration of the hindrance from performance.
- 11.5 To the extent the Producer is released from its supply duty based on any Force Majeure Event, the Service Provider shall also be free of its corresponding off-taking and payment under this Agreement. To the extent the Service Provider is released from its off-taking and payment obligation under the Agreement based on any Force Majeure Event, the Producer shall also be free of its supply and payment obligations under this Agreement.

- 11.6 In the event that the Force Majeure Event persists for more than fifteen (15) days from the date of its notification, the Parties shall meet to determine the necessary adjustments to be made to their respective obligations under this Agreement.

12 Change in Law

- 12.1 The Parties expressly exclude the application of article 1195 of the French *Code civil*.

- 12.2 For the purpose of this Clause 12:

Change in Law shall mean the approval of, entry into force of, amendment to, modification of or suppression of any Law.

Law shall mean all measure, decision, decree, ordinance, law, regulation, directive with a general or limited scope, issued by a competent legislative, administrative or judicial authority having an impact on the purchase and sale of Power and Related Services.

- 12.3 Without prejudice to the terms of Clause 10.1, any unforeseeable Change in Law; which occurs after this Agreement is entered into, beyond the Parties' control, and which causes or is likely to cause a substantial change to the balance of the Parties' rights and obligations under this Agreement as at the date this Agreement is entered into (the **Original Balance**) shall give either Party the right to request a renegotiation of the Agreement, in order to restore the Original Balance between their respective rights and obligations.

- 12.4 Without prejudice to Clause 12.6, any Change in Law for which this Clause 12 can be invoked does not exempt any Party of its obligations under this Agreement.

- 12.5 If no agreement can be reached within a period of three (3) months as of the date on which one of the Parties requested a renegotiation, the matter shall be referred to the senior management of the Service Provider and the Producer in writing. The senior management of both Parties will endeavour to reach a common decision within fourteen (14) Business Days from such referral.

- 12.6 If no common decision can be found by the senior management of both Parties within such term, and provided that the Party claiming application of this Clause 12 has demonstrated the abovementioned substantial change to the Original Balance of the rights and obligations under this Agreement, this Agreement can be terminated by either Party as from the Next Possible Technical Settlement Date.

13 Confidentiality

- 13.1 The Parties shall treat confidential the existence and content of this Agreement, all the data supplied under this Agreement and all information of which they become aware in connection with this Agreement (the **Confidential Information**).
- 13.2 This shall not apply to information which:
- (a) was legally in the possession of a Party as of the date hereof; or
 - (b) legally comes into the possession of a Party after the date hereof; or
 - (c) was developed independently at a later point in time by the recipient of the information; or
 - (d) is in the public domain as at the date hereof or thereafter comes into the public domain by means other than breach of this Agreement; or
 - (e) is communicated to the recipient by a third party without any duty of confidentiality; or
 - (f) have been released in writing for disclosure by the disclosing party; or
 - (g) is disclosed pursuant to applicable law or court order or regulatory directive; or
 - (h) is to be disclosed by the Service Provider to ACER and the CRE in accordance with Clauses 4.7(e) and 4.8 in order to fulfil the REMIT reporting requirements concerning Registered Reporting Mechanisms (RRM) or, more generally, to any regulatory body to which disclosure is required by law; or
 - (i) is disclosed by the Service Provider (or the entity designated as Balance Responsible Entity by the Service Provider) acting as Balance Responsible Entity to the System Operators in order to support system stability; or
 - (j) will be made accessible to Affiliates of either Party which have a need to access the confidential information, provided that such Affiliates are aware of the confidentiality nature of the information or are made aware thereof and accept to comply with confidentiality obligations substantially similar to those provided under this Clause ; or
 - (k) is made available to those employees of the Lenders or external advisors of a Party who need to access the confidential information and are legally bound by confidentiality duties.
- 13.3 [If the Producer's REMIT reporting obligations are delegated to a third party, the confidentiality obligation shall apply to such third party and the Producer shall remain liable towards the Service Provider.]

- 13.4 The duties provided in Clauses 13.1 to 13.3 shall continue to apply for three (3) calendar years after the term of this Agreement as provided for in Clause 2.5.
- 13.5 Upon termination of this Agreement, the Parties shall return or destroy all Confidential Information and destroy or permanently erase (to the extent technically practicable) all copies of Confidential Information made and use reasonable endeavours to ensure that anyone to whom any Confidential Information has been supplied destroys or permanently erases (to the extent technically practicable) such Confidential Information and any copies made by them. This duty applies save to the extent that the Parties or the recipients of any Confidential Information are required to retain any such Confidential Information by any applicable law, rule or regulation or by any competent judicial, governmental, supervisory or regulatory body.

14 Notices

- 14.1 Any communication to be made under or in connection with the Agreement shall be made in English [or in French] and in writing and, unless otherwise provided, may be made by electronic mail, fax or letter, it being specified that any notice relating to the termination of this Agreement shall be made by registered letter with acknowledgment of receipt (*lettre recommandée avec demande d'avis d'accusé réception*).
- 14.2 The e-mail address, address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with the Agreement are those identified hereinafter or any substitute e-mail address, address or fax number or department or officer as the Party may notify to the other by not less than five (5) Business Days' notice.

In case of the Service Provider:

Address: [●]

Tel: [●]

Fax : [●]

Email : [●]

To the attention of: [●]

In case of the Producer:

Address: [●]

Tel: [●]

Fax : [●]

Email : [●]

To the attention of: [●]

15 Governing law - Jurisdiction

15.1 Governing law

This agreement shall be construed in accordance with and governed by the laws of France.

15.2 Jurisdiction

- (a) The Parties shall endeavour to resolve amicably all disputes relating to the formation, interpretation, performance or termination of this Agreement.
- (b) In the event that the Parties do not reach an agreement within thirty (30) Business Days from the notification of such dispute to the other Party, such dispute shall be submitted to the exclusive jurisdiction of the Tribunal de Commerce of Paris at the request of the first Party to act.
- (c) The occurrence of a dispute shall be without prejudice to the enforceability of every provision of this Agreement.

16 Miscellaneous

16.1 Continuing obligations

- (a) The Parties agree that in case of termination of this Agreement, for any reason whatsoever, this Clause 16 and Clauses 13 and 15 will survive and continue to have effect after the termination of this Agreement.
- (b) The Parties further agree that Clauses 3 and 6 shall survive until the date on which all amounts payable by any of the Parties under or in connection with this Agreement have been paid in full and all commitments have been cancelled or otherwise cease to be available [for the avoidance of doubt, it is specified that if the purchase and sale of Capacity Guarantee service has been selected in Annex 2 thereto, such provisions shall survive and remain binding on each Party for a period of four (4) calendar years following the Delivery Year of the last Capacity Guarantee sold to the Service Provider under this Agreement].

16.2 Partial invalidity

If, at any time, any provision of this Agreement or any part thereof is or becomes invalid, illegal or unenforceable in any respect under any applicable law of any jurisdiction:

- (a) neither the validity, legality and enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired thereby; and
- (b) the Parties shall promptly negotiate in good faith new provisions to remedy the invalidity, illegality or unenforceability of such provision under the law of the relevant jurisdiction and to restore this Agreement as soon as possible to its original intent and effect.

16.3 Entire agreement

This Agreement constitutes the entire agreement between the Parties in relation to the matters to which it relates and supersedes any previous agreement, whether express or implied, regarding the same. No modification, amendment, supplement or waiver to this Agreement will be effective unless consented to in writing by each of the Parties.

16.4 Remedies and waivers

No failure to exercise, nor any delay in exercising, on the part of any Party, any right or remedy under the Agreement shall operate as a waiver of any such right or remedy or constitute an election to affirm the Agreement. No election to affirm the Agreement on the part of any Party shall be effective unless it is in writing. No single or partial exercise of any right or remedy shall prevent any further or other exercise or the exercise of any other right or remedy. The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by law.

Annex 1

Wind Farm and Delivery Point identification

The Producer supplies Power to the Service Provider produced by the following generation Wind Farm:

The Wind Farm

[*Wind Farm name*]:

- Owner/Operator: [●]
- Delivery Point: [●]
- Metering Point: [●]
- Account No. at grid operator: [●]
- Customer No. at grid operator: [●]
- Balancing Group: [●]
- Grid Operator: [●]
- Maximum Capacity: [●] MW
- Technical Minimum Production Level: [●] MW

Wind Farm's code	Max. Capacity (MW)	Commissioning Date	Serial Number	Manufacturer / Type	Geographic Location	Postal Code and City
[●]	[●]	[●]	[●]	[●]	[●]	[●]

Annex 2

Election Sheet

This Annex 2 forms an integral part of the Agreement. Notwithstanding the foregoing, in the event of any discrepancy or conflict between this Annex 2 and any other part of the Agreement, this Annex 2 shall prevail.

1. Related Services

The Related Services shall be as follows:

- (a) REMIT reporting

The Service Provider shall [*please tick the appropriate box*]:

- provide the REMIT reporting services described in Clause 4.8(a) of the Agreement, therefore Clause 4.8(a) of the Agreement shall apply and Clause 4.8(b) of the Agreement shall not apply, and an annual fixed fee of EUR [●] shall be paid to the Service Provider in consideration for such service [*To be commercially agreed upon between the Parties*]; or
- not provide the REMIT reporting services described in Clause 4.8(a) of the Agreement, therefore Clause 4.8(a) of the Agreement shall not apply and Clause 4.8(b) of the Agreement shall apply.

- (b) Forecasting of the Power on a continuous basis

The Service Provider shall provide forecasting services to the Producer, as follows:

[*Conditions and price to be commercially agreed upon between the Parties*]

[*Additional Related Services may be listed and described here*]

2. Remote Control

The Wind Farm shall [*please tick the appropriate box*]:

- be operated under Remote Control by the Service Provider, therefore Clauses 4.5(b) and 4.6(d) of the Agreement shall apply and Clause 4.6(c) of the Agreement shall not apply; or
- not be operated under Remote Control by the Service Provider, therefore Clauses 4.5(b) and 4.6(d) of the Agreement shall not apply and Clause 4.6(c) of the Agreement shall apply.

3. Identification of the Capacity Portfolio Manager

Under the Agreement, the Capacity Portfolio Manager shall be:

- the Service Provider; or
- the following entity designated as such by the Service Provider, which shall act under the entire responsibility of the Service Provider: [*CAPACITY PORTFOLIO MANAGER*], a [*type of company*], incorporated under the laws of [*jurisdiction of incorporation*], with a share capital of [●], whose registered office is [*address*], [*postal code*] [*city*], [*country*], registered at the [*competent trade or company registry*] under number [●]. It is hereby specified that the Service Provider is responsible for all the services undertaken by such entity under this Agreement. Therefore, all acts, defaults and neglects of such entity, its agents or employees, which have an impact directly or indirectly on the performance of this Agreement, will be treated as if they were acts, defaults or neglects of the Service Provider for the execution of this Agreement.

Annex 3

Injection Period Commencement Date Notice

[PRODUCER]

[address]

[SERVICE PROVIDER]

[address]

[date]

Dear Sirs,

We refer to the agreement for the sale and provision of certain Services (the **Agreement**) entered into between us on [●], under the terms of which you have agreed to provide Services, subject to the fulfilment of the condition precedent listed in Clause 2.2(a)(i) of the Agreement.

All terms defined in the Agreement shall bear the same meaning herein.

The Injection Period Commencement Date of the Agreement shall be 1 [●].

Yours faithfully,

[PRODUCER]

By: [●]

Signature Page

Made in [●], in two (3) originals.

SIGNED by [NAME])

For and on behalf of [SERVICE PROVIDER])

)

.....
[Signature/Title]

SIGNED by [NAME])

For and on behalf of [PRODUCER])

)

.....
[Signature/Title]

SIGNED by [NAME])

For and on behalf of [BUYER])

)

.....
[Signature/Title]