

## Agreement on Access to Auctions of Guarantees of Origin for Energy

### Article 1 Contracting Parties

**OTE, a.s.**

Registered office: Jihlavská 1558/21, Michle, 140 00 Prague 4, Czech Republic

Company ID: 26463318

VAT ID: CZ26463318

Registered in the Commercial Register maintained by the Municipal Court in Prague, Section B, File No. 7260

Represented by the members of the Board of Directors listed below

Banking details (bank name): Komerční banka, a.s.

Fees related to Guarantees of Origin of energy – Account No. (CZK): 115-9623060297/0100

Settlement account for Guarantees of Origin auctions – IBAN, Account No. (EUR):

CZ83 0100 0001 3138 4783 0257, 131-3847830257/0100

(hereinafter referred to as the “**Market Operator**” or “**OTE**”)

and

**NAME OF FOREIGN COMPANY [...]**

Registered office: [...]

Company ID: [...]

VAT ID: [...]

Registered in the Commercial Register maintained by the [...] Court in [...], Section [...], File No. [...]

Acting through its branch [NAME OF ORGANIZATIONAL UNIT]

Registered office: [...]

Branch Company ID: [...]

Branch VAT ID:

Registered in the Commercial Register maintained by the [...] Court in [...], Section [...], File No. [...]

Represented by the members of the Board of Directors listed below

Market participant registration code in CS OTE: [...]

Banking details (bank name): [...]

Settlement account for Guarantees of Origin auctions – IBAN, Account No.: [...] (hereinafter referred to as the “**Bank Account**”)

Account currency: [...]

(hereinafter referred to as the “**Auction Participant**”)

(The Market Operator and the Auction Participant each hereinafter individually referred to as a “**Contracting Party**” and jointly as the “**Contracting Parties**”)

have entered into, on the date, month and year stated below, this Agreement on Access to Auctions of Guarantees of Origin for Energy pursuant to Section 1746(2) of Act No. 89/2012 Coll., the Civil Code, as amended, in accordance with Act No. 458/2000 Coll., on Business Conditions and the Exercise of State Administration in the Energy Sectors and on Amendments to Certain Acts (the Energy Act), as amended,

and further based on Act No. 165/2012 Coll., on Supported Energy Sources and on Amendments to Certain Acts, as amended (hereinafter referred to as the “**Agreement**”):

## **Article 2**

### **Definition of Terms**

- 2.1 The following terms and abbreviations shall have, for the purposes of this Agreement and its annexes, the meanings assigned to them below:
- a) **Account Holder** - a natural or legal person for whom an account of Guarantees of Origin of Energy is maintained within the Registry of Guarantees of Origin (EZP);
  - b) **Act on Supported Energy Sources** – Act No. 165/2012 Coll., on Supported Energy Sources and on amendments to certain acts, as amended;
  - c) **Auction** – a process in which Guarantees of Origin of Energy are sold through an electronic system in the form of an auction. This system is administered in the Czech Republic by the Market Operator through the Registry of Guarantees of Origin (EZP);
  - d) **Authorised Person** – a person with access to the CS OTE who is authorised to communicate with the Market Operator to the extent specified in the Contractual Documentation. An Authorised Person may only be designated by a person authorised to act on behalf of the Auction Participant;
  - e) **Business Terms** – Business Terms of OTE, a.s., for the power sector and Business Terms of OTE, a.s., for the gas sector published on the [OTE website](#);
  - f) **Civil Code** – Act No. 89/2012 Coll., the Civil Code, as amended;
  - g) **Contractual Documentation** – a set of legal and technical documents which, together with the Agreement, govern the mutual rights and obligations of the Parties, namely: the Rules for the Use of Auctions of Guarantees of Origin of Energy, the Business Terms, and the EZP Documentation;
  - h) **CS OTE** - the central information system of the Market Operator;
  - i) **Decree on Guarantees of Origin of Energy** – Decree No. 328/2022 Coll., on Guarantees of Origin of Energy, as amended;
  - j) **Energy Act** – Act No. 458/2000 Coll., on the conditions for conducting business and on the exercise of state administration in the energy sectors and on amendments to certain acts (Energy Act), as amended;
  - k) **ERO** – the Energy Regulatory Office;
  - l) **ERO Price Decision** – a decision issued by the Energy Regulatory Office (ERO);
  - m) **EZP** – the Registry of Guarantees of Origin;
  - n) **EZP Documentation** – documentation governing the mutual rights and obligations of the Contracting Parties in connection with the access of the Auction Participant, as an Account Holder, to the Registry of Guarantees of Origin, and published on the OTE website;
  - o) **Guarantee of Origin of Energy** – an electronic document (certificate) the particulars of which are defined by legal regulations and in the EZP Documentation;
  - p) **Help Desk** – a workplace of the Market Operator established for the purpose of providing support to users of the CS OTE;
  - q) **OTE website** – the website available at [OTE website](#);
  - r) **Registry of Guarantees of Origin** – a part of the CS OTE used for the registration of Guarantees of Origin of Energy;
  - s) **Rules for the Use of Auctions of Guarantees of Origin of Energy** – a set of rules governing the conditions under which the Market Operator organises Auctions, including the conditions of participation in Auctions, published on [OTE website](#),

- t) **Tax code** – Act No. 280/2009 Coll., the Tax Code, as amended;
  - u) **Value Added Tax Act** – Act No. 235/2004 Coll., on Value Added Tax, as amended;
  - v) **Without undue delay** – no later than 3 Business Days from the occurrence of the relevant event.
- 2.2 Unless otherwise provided in the Agreement, the terms and abbreviations used herein shall be interpreted in accordance with the Civil Code, the Energy Act, the Act on Supported Energy Sources, and other applicable legal regulations.

### **Article 3**

#### **Scope of Agreement**

- 3.1 By signing this Agreement:
- a) The Market Operator undertakes to grant the Auction Participant access to the Auctions,
  - b) The Auction Participant undertakes to fulfil its obligations related to access to and participation in the Auctions and to pay the Market Operator the price in accordance with Article 4 of the Agreement.
- all under the terms and conditions set out in the Agreement and the Contractual Documentation.
- 3.2 The Rules for the Use of Auctions of Guarantees of Origin of Energy, which constitute Annex No. 1 to the Agreement, form an integral part of the Agreement. By signing the Agreement, the Auction Participant further acknowledges and agrees that, in addition to the Rules for the Use of Auctions of Guarantees of Origin of Energy, its rights and obligations under this Agreement shall also be governed by the other parts of the Contractual Documentation, which likewise constitute annexes to and integral parts of the Agreement. The current version of all parts of the Contractual Documentation is available in a manner allowing remote access on the OTE website.
- 3.3 The Market Operator shall be entitled to unilaterally amend all parts of the Contractual Documentation or to supplement them with new provisions. The wording of such amendments and supplements and/or the full wording of the Contractual Documentation as amended or newly issued shall be notified by the Market Operator to the Auction Participant by publication on the OTE website or by any other appropriate means, no later than on the effective date of such amendment. If an amendment to the Contractual Documentation results in a deterioration of the existing conditions for the Auction Participant, and the Auction Participant does not agree with the new wording of the Contractual Documentation, it shall be entitled to terminate the Agreement subject to a notice period of one (1) month, which shall commence on the first day of the calendar month immediately following the calendar month in which the written notice of termination was delivered to the other Contracting Party, unless the Contracting Parties agree on an earlier termination of the Agreement. The Auction Participant acknowledges that any amendments or updates to individual parts of the Contractual Documentation are carried out in accordance with the rules and procedures set out directly in such documents or in the agreements of which they form a part.

### **Article 4**

#### **Price**

- 4.1 The amount of the prices for the activities provided by the Market Operator under the Agreement (hereinafter referred to as the “**Price**”) may be determined by normative legal acts and/or individual legal acts of public authorities, for example, but not limited to, the relevant Price Decision of the Energy Regulatory Office (ERO).

- 4.2 If the amount of the Price is not determined by normative legal acts and/or individual legal acts of public authorities, the Market Operator shall be entitled to determine the amount of the Price in accordance with the procedure set out on the publicly accessible website of the Market Operator. The Market Operator shall inform the Auction Participant of any change in the amount of the Price pursuant to the preceding sentence by publishing such information on the Market Operator's website or by any other appropriate means, prior to the effective date of the new amount of the Price.
- 4.3 If the Auction Participant does not agree with the new amount of the Price, it shall be entitled to terminate the Agreement subject to a notice period of one (1) calendar month, which shall commence on the first day of the calendar month immediately following the calendar month in which the written notice of termination was delivered to the other Contracting Party, unless the Contracting Parties agree on an earlier termination of the Agreement.
- 4.4 The Prices shall be paid by the Auction Participant to the Market Operator in accordance with the procedure set out in the Rules for the Use of Auctions of Guarantees of Origin of Energy and in compliance with the Act on Supported Energy Sources, the Decree on Guarantees of Origin of Energy and the Price Decision of the Energy Regulatory Office (ERO).

## **Article 5**

### **Rights and Obligations of the Contracting Parties**

- 5.1 The rights and obligations of the Contracting Parties not governed by the Agreement or its annexes shall be governed by generally binding legal regulations, particularly the Civil Code, the Energy Act, the Act on Supported Energy Sources and the Decree on Guarantees of Origin of Energy.
- 5.2 The Market Operator shall
- a) enable the Auction Participant to access and participate in the Auctions organised in accordance with the Agreement, the Rules for the Use of Auctions of Guarantees of Origin of Energy and other parts of the Contractual Documentation
  - b) pay the Auction Participant the amounts determined based on the evaluation of the Auctions in cases where such obligation arises for the Market Operator under the Rules for the Use of Auctions of Guarantees of Origin of Energy, and
  - c) comply with the Agreement and the Contractual Documentation.
- 5.3 The Auction Participant shall
- a) have access to the Registry of Guarantees of Origin (EZP) established as an Account Holder,
  - b) comply, when accessing and participating in the Auctions, with the Agreement, the Rules for the Use of Auctions of Guarantees of Origin of Energy and other parts of the Contractual Documentation,
  - c) pay the Prices pursuant to Article 4 of the Agreement to the Market Operator within the time limits and in the manner specified in the Agreement and the Rules for the Use of Auctions of Guarantees of Origin of Energy, in cases where such obligation arises for the Auction Participant, and
  - d) protect all data, information, communications, documents, etc. obtained through access to the CS OTE, in accordance with Article 14 of the Agreement.
- 5.4 The Auction Participant undertakes to inform the Market Operator Without undue delay of all facts that may affect the performance of the Agreement, in particular:

- a) the commencement of insolvency proceedings concerning the bankruptcy or threatened bankruptcy of the Auction Participant and the method of its resolution,
- b) the adoption of a decision on the liquidation of the Auction Participant,
- c) the termination of the licence(s) of the Auction Participant issued by the Energy Regulatory Office, which entitles the Auction Participant to be an account holder in the Registry of Guarantees of Origin (EZP), and
- d) the fact that the Auction Participant is subject to any international sanctions but not limited to, international sanctions pursuant to:
  - I. Act No. 69/2006 Coll., on the Implementation of International Sanctions, as amended,
  - II. other generally binding legal regulations,
  - III. directly applicable legal acts of the European Union,
  - IV. international treaties, agreements, conventions or other bilateral or multilateral legal instruments binding on the Czech Republic,(hereinafter collectively referred to as “**International Sanctions**”).

#### **Article 6**

##### **Advance Payment**

- 6.1 The Auction Participant shall provide the Market Operator with a sufficient advance payment in accordance with the Rules for the Use of Auctions of Guarantees of Origin of Energy.
- 6.2 The method of determining the amount of the advance payment, the permitted forms of the advance payment and the conditions for its use are set out in the Rules for the Use of Auctions of Guarantees of Origin of Energy.

#### **Article 7**

##### **Terms of Payment and Billing**

- 7.1 The Auction Participant shall maintain a fully functional Bank Account in effect for the entire duration of the Agreement. The Bank Account may be changed based on a written notice signed by an authorised representative of the Auction Participant and delivered to the Market Operator.
- 7.2 The settlement of payments for Guarantees of Origin of Energy traded by the Auction Participant through an Auction shall be invoiced by issuing a tax invoice in accordance with the Agreement.
- 7.3 The Market Operator or the Auction Participant shall not be deemed to be in default with the payment of a tax invoice if the relevant amount is credited to the account of the other Contracting Party within the time limits in accordance with the Rules for the Use of Auctions of Guarantees of Origin of Energy.
- 7.4 If the Market Operator or the Auction Participant is unable to make a due payment on time or in the agreed amount, it shall notify the other Contracting Party of this fact Without undue delay. In such case, the right to default interest pursuant to Article 10 of the Agreement shall neither lapse nor be otherwise affected.
- 7.5 All payments between the Market Operator and the Auction Participant under the Agreement shall be made by bank transfer in accordance with the Rules for the Use of Auctions of Guarantees of

Origin of Energy.

- 7.6 In accordance with Section 630(1) of the Civil Code, the Contracting Parties have agreed that the limitation period for all claims of the Market Operator against the Auction Participant under the Agreement shall be four (4) years. The Auction Participant expressly agrees to the provision set out in the preceding sentence.

### **Article 8**

#### **Invoicing on behalf of the Auction Participant**

- 8.1 The Contracting Parties have agreed that the Market Operator shall issue tax invoices on behalf of the Auction Participant in connection with supplies made by the Auction Participant under the Agreement (hereinafter referred to as the “**Documents**”).
- 8.2 The subject matter of the Agreement does not include any other activities which may be directly or indirectly associated with the issuance of the Documents on behalf of the Auction Participant, such as, but not limited to, the obligation to file the relevant tax returns, to assess or pay the relevant tax, to keep records of the issued Documents or to retain and archive such Documents. For the avoidance of doubt, the Auction Participant shall be solely responsible for the fulfilment of the obligations referred to in the preceding sentence, as well as any other activities directly or indirectly related to the issuance of the Documents on behalf of the Auction Participant, unless expressly provided otherwise in the Agreement.
- 8.3 By signing the Agreement, the Auction Participant authorises the Market Operator to issue all Documents on behalf of the Auction Participant, and the Market Operator accepts such authorisation by signing the Agreement.
- 8.4 The Market Operator undertakes not to issue on behalf of the Auction Participant any Documents other than those specified in the Rules for the Use of Auctions of Guarantees of Origin of Energy.
- 8.5 The Market Operator shall not be entitled to authorise a third party to issue the Documents without the prior written consent of the Auction Participant.
- 8.6 By signing the Agreement, the Auction Participant undertakes to accept all Documents issued by the Market Operator on behalf of the Auction Participant, provided that such Documents comply with all requirements under the Agreement and with generally binding legal regulations, particularly the Value Added Tax Act.
- 8.7 In accordance with the Value Added Tax Act, the Market Operator agrees that the Documents issued on behalf of the Auction Participant may be issued in electronic form.
- 8.8 The Market Operator shall not bear any liability for:
- a) pecuniary damage, including loss of profit, and non-pecuniary damage arising as a result of incorrect and/or untrue and/or incomplete data stated in the Documents issued on behalf of the Auction Participant, where the Auction Participant has provided the Market Operator with incorrect and/or untrue and/or incomplete data or documents, or has failed to provide such data or documents duly and in a timely manner,
  - b) the proper and timely issuance of the Documents under the Agreement where the Auction Participant has failed to fulfil its obligations under this Article of the Agreement,
  - c) the assessment and payment of taxes by the Auction Participant or any other obligations incurred by the Auction Participant directly or indirectly in connection with the issuance of the Documents under the Agreement, including maintaining the relevant records of the

issued Documents or the retention and archiving of such Documents.

### **Article 9 Claims**

- 9.1 The procedures for submitting claims and their handling, including all binding time limits, are set out in the Rules for the Use of Auctions of Guarantees of Origin of Energy.

### **Article 10 Late Payment Interest**

- 10.1 For each day of delay in the fulfilment of a monetary obligation under the Agreement, the creditor shall be entitled to claim from the Contracting Party in default payment of default interest on the outstanding amount at the rate stipulated by generally binding legal regulations.
- 10.2 If either Contracting Party pays default interest on an outstanding amount that was invoiced without justification, such interest shall be refunded within ten (10) Business Days after this fact has been duly evidenced.

### **Article 11 Liability for Damage**

- 11.1 The conditions of liability of the Contracting Parties for damage caused arising from a breach of the Agreement, including its annexes, are governed by the Agreement and/or the Contractual Documentation, while compensation for damage shall be subject to the relevant provisions of the Contractual Documentation and the following agreements of the Contracting Parties. The Contracting Parties exclude any other regulation of their liability for damage caused arising from a breach of the Agreement, including its annexes, other than that set out in the Agreement, the Rules for the Use of Auctions of Guarantees of Origin of Energy or other parts of the Contractual Documentation.
- 11.2 The Contracting Parties shall be obliged, during the term of the Agreement, to prevent potential property damage and non-pecuniary damage, both individually and in cooperation with the other Contracting Party.
- 11.3 The Contracting Parties undertake to inform each other of all facts of which they are aware that could lead to damage or non-pecuniary damage and to endeavour to avert any impending damage or non-pecuniary damage.
- 11.4 The Auction Participant shall compensate for property damage and non-pecuniary damage and to reimburse lost profit incurred by the Market Operator arising from a breach of the Auction Participant's obligations. Damage shall also include fines imposed by public authorities as well as claims of third parties successfully asserted in connection with a breach of the Agreement by the Auction Participant. For the avoidance of doubt, the payment of contractual penalties shall not in any way affect the Market Operator's right to compensation for property damage and/or non-pecuniary damage, including lost profit.
- 11.5 The Market Operator shall be liable solely to the extent corresponding to the amount of actual damage caused to the Auction Participant intentionally or through gross negligence and shall compensate the Auction Participant for such damage. The Market Operator shall not be liable for loss of profit of the Auction Participant, for damage caused, even partially, by the fault of the Auction Participant, nor for recourse claims for reimbursement of contractual penalties and other sanctions, nor for indirect or consequential damage. The extent of the foreseeable aggregate

damage that may arise as a result of a breach of the Market Operator's obligations under the Agreement in connection with events occurring within a single calendar year, as well as the maximum amount of compensation that may be provided by the Market Operator to the Auction Participant for a period of one calendar year, shall be set out in the Rules for the Use of Auctions of Guarantees of Origin of Energy.

- 11.6 The liability of the Market Operator for damage caused as a result of a breach of obligations of the Market Operator other than those arising from the Agreement shall be governed by the Business Terms, whereby, in such cases, the overall and non-exceedable liability cap for breaches of the Market Operator's obligations set out in the Business Terms shall apply. For the avoidance of doubt, the Contracting Parties expressly agree that any compensation for damage provided by the Market Operator under the Agreement shall be included within the overall and non-exceedable liability cap for breaches of the Market Operator's obligations set out in the Business Terms.

## **Article 12 Dispute Resolution**

- 12.1 The Contracting Parties shall use their best reasonable efforts to ensure that any disputes arising out of the Agreement are settled amicably as a matter of priority.
- 12.2 If no amicable settlement of the dispute is reached, either Contracting Party may bring an action before the general court having local jurisdiction over the Market Operator. Such agreement on local jurisdiction constitutes an agreement of the Contracting Parties within the meaning of Section 89a of Act No. 99/1963 Coll., the Civil Procedure Code, as amended.
- 12.3 The Contracting Parties exclude any other dispute resolution arrangements than those set out in the Agreement or in other parts of the Contractual Documentation.

## **Article 13 Communication**

- 13.1 Authorised Persons already registered in the CS OTE shall remain valid for the purposes of the Agreement without the need for their registration. In the event of registration or change of an Authorised Person, the procedure set out in the Contractual Documentation shall apply.
- 13.2 Unless the Contractual Documentation provides otherwise, changes in contractual matters, including, but not limited to, changes to registered data concerning the Auction Participant and its representatives and changes to the Bank Account pursuant to Section 7.1 of the Agreement, shall be effected by submitting documents evidencing the requested change in written form, which shall mean a registered letter, a message delivered via a data box, or personal delivery. The date of delivery in such case shall mean the date of delivery of the relevant documents (i) by registered mail, (ii) to the Data box, or (iii) the date of personal delivery and acceptance by the Market Operator.
- 13.3 In other operational matters, communication may be transmitted electronically (e-mail). E-mails sent by the Auction Participant must be sent to the address **zaruka@ote-cr.cz**, or this address must be included in the copy of the e-mail. The date of delivery in the case of e-mail shall mean the date of receipt of the e-mail.

## **Article 14**

## Confidentiality

- 14.1 The Contracting Parties mutually undertake that all information, data, communications, documents, etc., in whatever form and regardless of whether they are marked as confidential and irrespective of their financial or any other value, contained in the Agreement or otherwise made available or disclosed to them in connection with the Agreement, including information provided in person, remotely or during telephone conversations (hereinafter referred to as the “**Confidential Information**”), shall be treated as confidential and shall therefore be kept confidential. The Contracting Parties undertake not to use such Confidential Information for purposes other than the performance of the Agreement, to protect it against disclosure and publication, and not to disclose it to third parties without the prior written consent of the authorised Contracting Party until such time as the information becomes publicly available without a breach of the Agreement by the receiving Contracting Party. The Contracting Parties shall not disclose Confidential Information to any persons other than their professional advisers and employees designated to perform activities under the Agreement, unless otherwise provided in the Agreement. The Contracting Parties shall reasonably limit the number of employees having access to Confidential Information and shall adopt effective measures to prevent the leakage of Confidential Information.
- 14.2 The obligation under Section 14.1 of this Article shall not apply to information that is publicly available or where disclosure is required by a court, a public prosecutor’s office or a competent public or administrative authority pursuant to law.
- 14.3 If a Contracting Party breaches its obligation under Section 14.1 of this Article, it shall pay the other Contracting Party a contractual penalty of CZK 200,000 (in words: two hundred thousand Czech crowns) for each such breach. The contractual penalty shall be payable based on an issued tax invoice within fifteen (15) calendar days from the assertion of the contractual penalty by the Contracting Party through a written demand for payment delivered to the Contracting Party that has breached its obligation under Section 14.1 of this Article.
- 14.4 The Auction Participant acknowledges that access to information arising from the Agreement (including Confidential Information) is also granted to the suppliers of the CS OTE, and that such suppliers also treat such information as confidential. The Market Operator shall be responsible for ensuring that the suppliers of the CS OTE comply with the confidentiality obligations under this Article of the Agreement.

## Article 15 Data Usage Principles

- 15.1 Unless otherwise stipulated by applicable laws or by the Contractual Documentation, the Market Operator shall be the sole owner of all data, indices, records, statistics, charts, reports, documents, other data and information generated or otherwise processed by the Market Operator and contained in the CS OTE, as well as in other systems and databases of the Market Operator, which are not submitted to the CS OTE by auction participants or other third parties (hereinafter referred to as the “**Data**”). This shall apply irrespective of the form in which such Data are displayed or stored, and the Market Operator shall hold all copyrights and other intellectual property rights to such Data.
- 15.2 The Auction Participant shall be entitled to use the Data subject to fulfilment of all the following conditions:
- a) the Auction Participant shall duly identify the author/source of the Data, i.e. the Market

- Operator, when using the Data or any information derived therefrom;
- b) the Auction Participant shall use the Data and any information derived therefrom in compliance with generally binding legal regulations, i.e. the legal order of the Czech Republic, applicable European Union law and the legal order of the country of establishment of the Auction Participant, if different from the country of establishment of the Market Operator; and
  - c) where the Data are used by the Auction Participant for commercial purposes, with the aim of generating profit or other pecuniary benefit for the Auction Participant or any other person, and/or if such Data are not protected under the Energy Act or the Act on Supported Energy Sources, the Market Operator shall be entitled, in justified cases, to amend the conditions governing the use of the Data. This provision shall be without prejudice to any mutual rights and obligations arising from previously concluded agreements or other legal acts between the Market Operator and other persons relating to the conditions of use of the Data.
- 15.3 The use of the Data shall not in any way affect the copyrights or other rights of the Market Operator to the Data, which shall continue to remain in the exclusive ownership of the Market Operator, unless otherwise provided by applicable laws, the Agreement and/or the Contractual Documentation.
- 15.4 The Auction Participant shall be entitled to use the Data only for the duration of the contractual relationship with the Market Operator under which the Auction Participant is bound by the Agreement and/or the Contractual Documentation. Notwithstanding the foregoing, the Auction Participant shall also be entitled to use the Data after termination of the contractual relationship with the Market Operator for the purposes of accounting, tax, regulatory or contractual settlement, provided that such Data relate to the period of the contractual relationship with the Market Operator. This entitlement shall continue for the period required by applicable laws.
- 15.5 Unless otherwise stipulated by the Agreement and/or the Contractual Documentation:
- a) any use of the Data shall be at the Auction Participant's own risk. Unless expressly stated otherwise, the Data are not intended to direct the Auction Participant towards any specific action or omission; and
  - b) the Market Operator shall not be liable, in connection with the use and handling of the Data by the Auction Participant, for any damage, non-material harm, loss, costs or expenses caused, inter alia, by missing, incomplete, inaccurate and/or incorrect Data.

## **Article 16**

### **Term of the Agreement**

- 16.1 The basic condition for the formation of the Agreement is the acceptance of its proposal by the other Contracting Party without any reservations, additions, deviations or limitations. If the Auction Participant does not deliver the signed draft of the Agreement to the Market Operator within 30 days from the date of its dispatch to the Auction Participant, the Market Operator shall not be obliged to conclude the Agreement in the originally proposed wording. A further condition for the formation of the Agreement is its execution in written form, whereby the signatures of the duly authorised representatives of the Contracting Parties must be affixed to the same document. The above conditions shall also apply to the conclusion of amendments to the Agreement. Another condition for the formation of the Agreement is that the Auction Participant must be the Account Holder in the Registry of Guarantees of Origin (EZP) in the CS OTE.

- 16.2 The Agreement is concluded for an indefinite period, but no longer than for the duration of holding an account in the Registry of Guarantees of Origin (EZP) in the CS OTE and become valid on the date of its signature by both Contracting Parties. The Agreement shall become effective on the date on which the legal regulation amending the Decree on Guarantees of Origin of Energy becomes effective and/or whose subject matter includes the legal regulation of Auctions and the related rights and obligations of the Contracting Parties beyond the scope of the regulation contained in the Act on Supported Energy Sources.
- 16.3 The Contracting Parties acknowledge that the Agreement is not subject to the obligation of publication in the Register of Contracts within the meaning of Act No. 340/2015 Coll., on Special Conditions for the Effectiveness of Certain Contracts, the Publication of such Contracts and on the Register of Contracts (the Act on the Register of Contracts), as amended.
- 16.4 The Market Operator shall be entitled to withdraw from the Agreement in the following cases:
- a) the Auction Participant's access to the Auctions has been restricted, prevented or withdrawn in accordance with the Rules for the Use of Auctions of Guarantees of Origin of Energy,
  - b) the Auction Participant breaches the Agreement and/or the Contractual Documentation and fails to remedy such breach within the period specified in the written notice of the Market Operator, which shall be at least five (5) Business Days from the date of delivery of such notice,
  - c) the Auction Participant is in default with the payment of any monetary obligation towards the Market Operator and fails to remedy such default within the period specified in the written notice of the Market Operator, which shall be at least five (5) Business Days from the date of delivery of such notice,
  - d) the Auction Participant loses any authorisation to use the Guarantees of Origin Registry under the Act on Supported Energy Sources,
  - e) the Market Operator loses any authorisation to provide services under the Agreement,
  - f) the Auction Participant becomes subject to International Sanctions,
  - g) the Auction Participant causes damage to the Market Operator intentionally or through gross negligence,
  - h) the Auction Participant breaches its obligations regarding the protection of Confidential Information under the Agreement,
  - i) the Auction Participant breaches its obligations regarding the processing of personal data in accordance with the Agreement, and
  - j) for reasons specified in the Rules for the Use of Auctions of Guarantees of Origin of Energy and other parts of the Contractual Documentation.
- 16.5 Either Contracting Party shall be entitled to withdraw from the Agreement in the event of:
- a) a final decision establishing the insolvency of the other Contracting Party,
  - b) a decision on the liquidation of the other Contracting Party.
- 16.6 Either Contracting Party shall be entitled to terminate the Agreement in writing without stating any reason. The notice period shall be one (1) month and shall commence on the first day of the calendar month immediately following the calendar month in which the written notice of termination is delivered to the other Contracting Party.
- 16.7 Withdrawal from or termination of the Agreement must be made in writing.

- 16.8 The effects of withdrawal from the Agreement shall take effect on the date of delivery of the written notice of withdrawal to the other Contracting Party (ex nunc).
- 16.9 In the absence of evidence to the contrary regarding the delivery of a notice of withdrawal or termination sent via a postal service provider, such notice shall be deemed to have been delivered on the third (3<sup>rd</sup>) Business Day after dispatch; if sent to an address in another state, it shall be deemed delivered on the fifteenth (15<sup>th</sup>) calendar day after dispatch.
- 16.10 The Agreement may also be terminated by mutual agreement of both Contracting Parties. Such agreement must be in writing.
- 16.11 The termination of the Agreement shall not affect any rights of either Contracting Party arising from a breach of the Agreement by the other Contracting Party prior to the termination of the Agreement, nor any rights and obligations of the Contracting Parties accrued during its term (e.g. the right to payment of contractual penalties, compensation for damage, default interest).
- 16.12 The conditions for the termination of the Agreement are set out in the Agreement and in the Rules for the Use of Auctions of Guarantees of Origin of Energy. The Contracting Parties exclude any other regulation of the conditions for termination of the Agreement than those set out in the Agreement, the Rules for the Use of Auctions of Guarantees of Origin of Energy or other parts of the Contractual Documentation.

### **Article 17**

#### **Place of Performance for VAT Purposes**

##### **I.**

#### **Declarations of the Auction Participant**

- 17.1 The Auction Participant hereby declares that the organisational unit (branch) specified in Article 1 of this Agreement does not constitute a fixed establishment within the meaning of the Value Added Tax Act, as amended. The Auction Participant further declares that it does not have any other presence in the territory of the Czech Republic that could be considered a fixed establishment, and that none of the supplies provided by the Market Operator are intended for such organisational unit or any other presence of the Auction Participant in the Czech Republic.
- 17.2 The Auction Participant undertakes to inform the Market Operator within 3 Business Days if there is a change in the nature of activities of the organisational unit (branch) that results in the creation of a fixed establishment, and also if any other fixed establishment or VAT registration arises for the Auction Participant in the territory of the Czech Republic. Information on such circumstances must be provided to the Market Operator in writing Without undue delay, but no later than 10 days from the date on which the fixed establishment of the Auction Participant arose in the Czech Republic.
- 17.3 The Auction Participant undertakes that if its organisational unit (branch) or other presence in the Czech Republic is assessed by the tax authorities as a fixed establishment for VAT purposes, as a result of which the Market Operator is assessed additional tax and/or penalties or related charges by the tax authority within the meaning of the relevant legal regulations, in particular fines, penalties, tax increases or default interest due to incorrect application of VAT, the Auction Participant shall fully reimburse the Market Operator for such additionally assessed or imposed payments and reasonable costs incurred by the Market Operator in connection with the proceedings for such additional assessment or imposition, with the exception of procedural costs imposed on the Market Operator by the tax authority as a result of inactivity or failure of the Market Operator to fulfil its legal obligations under Section 107(6) of the Tax Code.

- 17.4 The Auction Participant shall make such payment on the basis of a written request of the Market Operator and upon submission of documents evidencing the additional assessment of tax and the imposition of related penalties and charges by the tax authority upon the Market Operator, as well as documents evidencing that the additionally assessed tax and related penalties and charges have been paid by the Market Operator to the tax authority. The payment shall be made by the Auction Participant Without undue delay, but no later than one week from the delivery of the request and the documents referred to in the preceding sentence to the Auction Participant, irrespective of whether the decision imposing or assessing such payment has become final and enforceable. Penalties or related charges imposed by the tax authority due to delay in payment of tax shall be reimbursed by the Auction Participant to the Market Operator up to the maximum amount corresponding to such penalties and charges attributable to the delay in payment of the tax until the expiry of the substitute due date of the additionally assessed tax pursuant to Section 143 et seq. of the Tax Code.
- 17.5 The obligation of the Auction Participant to make payment under paragraph 17.4 of this Article shall not be conditional upon whether the Market Operator has exercised any legal remedies against the decision by which such payment was additionally assessed or imposed. However, if such decision is cancelled or mitigated and the additionally assessed or imposed payment is fully or partially refunded to or set off against another tax liability of the Market Operator, for which the Auction Participant is not obliged to provide reimbursement under paragraph 17.4 of this Article, the Market Operator shall reimburse the Auction Participant the corresponding amount after deduction of reasonable costs incurred in exercising such legal remedies leading to the cancellation or mitigation of the decision.

## II.

### Declarations of the Market Operator

- 17.6 In connection with any decision of the tax authority concerning an additional assessment of tax due to incorrect application of value added tax as referred to above, the Market Operator undertakes to discuss with the Auction Participant the potential use of statutory remedies against such decision of the tax authority, including any related evidence, in order to ensure that such statutory remedies may, where appropriate, be exercised by the Market Operator within the statutory time limits.
- 17.7 The Market Operator further undertakes that, in the event that it does not make use of the statutory remedies, or where the decision on the additional assessment of tax due to incorrect application of value added tax is not annulled or mitigated on the basis of such statutory remedies, it shall make corrections to the tax invoices in accordance with the Value Added Tax Act in relation to the supplies provided by the Market Operator to the Auction Participant under this Agreement, in respect of which the tax authority has additionally assessed tax due to incorrect application of value added tax.
- 17.8 In the event that the organisational unit (branch) or other presence of the Auction Participant in the Czech Republic is assessed by the tax authorities as a fixed establishment for VAT purposes, as a result of which the Auction Participant is additionally assessed VAT in respect of supplies made by the Auction Participant to the Market Operator under this Agreement, the Market Operator undertakes to reimburse the Auction Participant such additionally assessed tax on the basis of corrected tax invoices issued by the Auction Participant in accordance with the Value Added Tax Act and delivered to the Market Operator together with documents evidencing the additional assessment of tax by the tax authority.

## **Article 18**

### **Final Provision**

- 18.1 This Agreement and all legal relationships of the Parties established thereby, related thereto, or arising therefrom shall be governed by the laws of the Czech Republic, particularly the Civil Code, the Energy Act, the Act on Supported Energy Sources, and the Decree on Guarantees of Origin of Energy. The governing language shall be the Czech language.
- 18.2 Upon termination of the Agreement, all rights and obligations of the Parties arising therefrom shall cease to exist, except for those rights and obligations which by their nature or by virtue of the Agreement are intended to survive.
- 18.3 The provisions on the protection of Confidential Information, the processing of personal data, the settlement of mutual receivables and liabilities, compensation for damage, contractual penalties and dispute resolution shall remain in effect even after termination of the Agreement.
- 18.4 This Agreement may be amended or supplemented only in writing, by legal acts of the Parties explicitly designated as amendments to this Agreement and executed by the authorised representatives of the Parties on the same document; amendments in any other form are excluded. The foregoing shall not apply to Annexes Nos. 1, 2 and 3 to the Agreement, which the Market Operator is entitled to amend or supplement unilaterally in accordance with the procedure specified in the respective annexes pursuant to Article 3(3.3) of the Agreement. If the Auction Participant does not deliver a signed proposal for an amendment to the Market Operator within 30 days from the date of its dispatch to the Auction Participant, the Market Operator shall not be obliged to conclude the amendment in the originally proposed wording.
- 18.5 Rights and obligations not expressly regulated in the body of the Agreement shall be governed by the Rules for the Use of Auctions of Guarantees of Origin of Energy forming Annex No. 1 to the Agreement, the Business Terms forming Annex No. 2 to the Agreement, and the EBP Documentation forming Annex No. 3 to the Agreement. Annexes Nos. 1, 2 and 3 are available in electronic form on the OTE website. By executing the Agreement, the Auction Participant confirms that it has received the Rules for the Use of Auctions of Guarantees of Origin of Energy, the Business Terms and the EBP Documentation sufficiently in advance prior to signing the Agreement, has become fully acquainted with their content and all provisions thereof, agrees with their wording, undertakes to comply with them and to ensure compliance by persons authorised or otherwise empowered by it or by its contractual partners. In the event of any inconsistent or conflicting provision between the Agreement and the Contractual Documentation, the provisions of the Agreement shall prevail.
- 18.6 The Parties fully accept that the following annexes form an integral part of the Agreement:
- a) Annex No. 1 – Rules for the Use of Auctions of Guarantees of Origin of Energy,
  - b) Annex No. 2 – Business Terms,
  - c) Annex No. 3 – EBP Documentation.
- 18.7 Should any provision of the Agreement be superseded by new legislation, the Parties undertake to replace the affected provision with a new provision reflecting such legislation or to agree on a provision that most closely corresponds to the purpose originally pursued by the Parties when concluding the Agreement. The remaining provisions of the Agreement shall remain unaffected.
- 18.8 The Parties do not intend that any rights or obligations beyond those expressly stipulated in the Agreement be implied from past or future practices established between the Parties or from customary practices generally observed or observed in the sector relating to the subject matter of

the Agreement, unless expressly agreed otherwise herein. The Parties further confirm that they are not aware of any established trade practices or customs between them.

- 18.9 If any provision of the Agreement becomes invalid, ineffective or unenforceable, this shall not affect the validity, effectiveness or enforceability of the remaining provisions of the Agreement, unless it follows from the Agreement that such provision cannot be separated from the remainder of the Agreement or its annexes. Where such provision is severable, the Parties undertake, Without undue delay, to replace it with a new provision having the same or similar purpose.
- 18.10 If either Party does not at any time or repeatedly require performance under the Agreement, this shall in no way affect its right to enforce such performance. Any failure to exercise, or delay in exercising, any right, power or remedy under the Agreement by either Party shall not be construed as a waiver thereof. Any waiver of a breach of any provision of the Agreement shall not be deemed a waiver of any subsequent breach of that provision or of any breach of any other provision of the Agreement. The conduct described in this provision shall likewise not constitute a usage or trade practice.
- 18.11 The Parties expressly exclude the application of the following provisions of the Civil Code to this Agreement: Sections 557, 1726 second sentence, 1757(2), 1764 to 1766, 1793 to 1795, 1796, 1799 and 1800, 2004 and 2005(1), and 2050. Unless otherwise agreed herein, any response by either Party to an offer of the other Party containing an addition, reservation, limitation, modification or deviation shall not constitute acceptance of the offer within the meaning of Section 1740(3) of the Civil Code, even if it does not materially alter the terms of the offer or the Agreement.
- 18.12 The Parties undertake to process personal data in compliance with Act No. 110/2019 Coll., on the Processing of Personal Data, as amended, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 (the “**GDPR**”), and the relevant implementing regulations. The Market Operator processes personal data provided by the Auction Participant or its subcontractors on the basis of applicable legislation for the purpose of fulfilling rights and obligations arising from or related to the Agreement and for the purpose of performing its statutory duties pursuant to Act No. 458/2000 Coll. (Energy Act), Act No. 165/2012 Coll. (Act on Supported Energy Sources), and related applicable legislation. The Party transferring personal data within the meaning of Article 4(1) GDPR (the “**Personal Data**”) shall ensure fulfilment of all conditions necessary for such transfer in relation to data subjects, including informing the data subjects that their Personal Data have been transferred to the receiving Party for the purpose of performance of the Agreement. Where the receiving Party is the Market Operator, the Auction Participant shall also inform data subjects of the terms of personal data processing published on the OTE website available at [Personal Data Processing — English](#).
- 18.13 This Agreement is executed in two counterparts, each Party receiving one copy.
- 18.14 The Parties declare that they have familiarised themselves with the content of the Agreement, fully understand it, and are not aware of any obstacles, claims of third parties or other legal defects that would prevent its execution or render it invalid. In witness whereof, the duly authorised representatives of the Parties have affixed their signatures hereto.

For OTE, a.s.:

For [...]:

In Prague, on [...]

In [...], on [...]

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