**Surety Agreement (“Agreement”)**

entered into in Warsaw on ...................................... by and between:

Izba Rozliczeniowa Giełd Towarowych S.A. with its registered office in Warsaw at ul. Książęca 4, entered in the Register of Commercial Undertakings kept by the District Court for the Capital City of Warsaw, 12th Commercial Division of the National Court Register, under file number 0000321809, with the share capital of PLN 44,805,000.00 (forty-four million eight hundred five thousand Polish zloty and 00/100), paid up in full, taxpayer identification no. NIP 5252441634, statistical no. 141660448, represented by:

…………………………………………….

…………………………………………….

hereinafter referred to as “IRGiT” or the “Clearing House”

and

............................... with its registered office in ..............................., entered in the register of commercial undertakings kept by ............................... under file number ..............................., with the share capital of ..............................., taxpayer identification no. NIP ..............................., statistical no. REGON..............................., represented by:

……………………………………………………………………………………………………………

……………………………………………………………………………………………………………

hereinafter referred to as the “Guarantor”

and

............................... with its registered office in ..............................., entered in the register of commercial undertakings kept by ............................... under file number ..............................., with the share capital of ..............................., taxpayer identification no. NIP ..............................., statistical no. REGON..............................., represented by:

……………………………………………………………………………………………………………

……………………………………………………………………………………………………………

hereinafter referred to as the “Brokerage House”

IRGiT, the Guarantor and the Brokerage House shall hereinafter be jointly referred to as the Parties, and each separately as a Party.

Whereas:

(i) IRGiT runs an exchange clearing house (“Clearing House”), of which the Brokerage House is a member;

(ii) The Guarantor is a client of the Brokerage House;

(iii) The Brokerage House acts at the request of the Guarantor and executes on its behalf transactions on the markets operated by Towarowa Giełda Energii S.A. (Polish Power Exchange), which are then cleared by IRGiT;

(iv) In accordance with the Regulations of the Exchange Clearing House (Commodity Market) (“ECH Regulations”), Clearing House members, including the Brokerage House, are required to establish collateral for the transactions they execute and to participate in the clearing guarantee system (“System”);

(v) The System consists of:

(a) transaction margins,

(b) collateral margins,

(c) guarantee funds,

(d) margin monitoring system;

(vi) The IRGiT Management Board accepts the collateral contained in this Agreement as security provided by the Brokerage House in non-cash form for the collateral margins listed in (b) on the terms specified in the Detailed Clearing and Settlement Rules within the meaning of the ECH Regulations (“Detailed Clearing and Settlement Rules”);

(vii) The Guarantor is familiar with and accepts the terms and conditions of membership in the Clearing House operated by IRGiT, in particular the content of the ECH Regulations;

(viii) The correct performance by the Brokerage House of its obligations arising from the transactions executed at the Guarantor’s request, in connection with the Brokerage House’s membership in the Clearing House, is contingent on the proper performance by the Guarantor of the obligations arising from the Agreement for the provision of brokerage services by the Brokerage House (“Brokerage Agreement”);

The Parties have resolved as follows:

unless defined otherwise in the Agreement, all capitalized terms have the meanings ascribed to them in the ECH Regulations.

**§ 1**

The subject matter of this Agreement is an unconditional and irrevocable surety by the Guarantor for all liabilities incurred by the Brokerage House in connection with IRGiT’s clearing of transactions executed by the Brokerage House at the Guarantor’s request or as a result thereof.

**§2**

1. The Guarantor hereby provides an unconditional and irrevocable surety for the Brokerage House’s liabilities referred to in § 1 of this Agreement up to the amount of PLN .................... (..................... Polish zloty).
2. The surety is granted until .............................
3. Whenever the scope of the Brokerage House’s liabilities referred to in § 1 changes, the surety shall automatically cover such changed scope of the Brokerage House’s liabilities, although it shall not affect the maximum total amount of the surety specified in sec. 1. The Guarantor hereby releases IRGiT of the obligation to notify the Guarantor in writing of a change in the scope the Brokerage House’s liabilities.
4. The Guarantor hereby represents that:
5. the execution and performance of this Agreement shall not result in a breach of its corporate documents, internal regulations or any provision of Polish law;
6. it has obtained all authorizations required for the proper execution or performance of this Agreement as well as for the validity and effectiveness hereof;
7. its financial standing enables it to fully comply with the provisions of this Agreement.

**§3**

1. The Guarantor hereby represents that it shall satisfy all IRGiT’s claims arising from the Brokerage House’s failure to satisfy the liabilities referred to in § 1, including, without limitation, a situation in which the Brokerage House notifies IRGiT about its inability to make a repayment for reasons attributable to the Guarantor, in particular in the event of its failure to satisfy its liabilities under the Brokerage Agreement. The notification referred to in the preceding sentence shall be sent by e-mail to the following address: dzr@irgit.pl with an indication of the amount of the liability referred to in § 1. The Parties agree that for the purposes of this Agreement, the notification referred to in the first sentence shall be deemed effective and made in documentary form.
2. In the situation referred to in sec. 1, the Guarantor undertakes to make the performance towards IRGiT at the first request, within 1 business day from the date of receipt of the notification referred to in sec. 3, by paying the amount specified by IRGiT, constituting the Brokerage House’s liability referred to in § 1, to the account indicated in such notification. The date of receipt of the notification referred to in the preceding sentence shall be construed as the date of delivery in a manner enabling the Guarantor to read its content. If the notification is sent by e-mail, it shall be construed as the date of sending such message in accordance with sec. 3. The payment date shall be the date on which the bank account indicated by IRGiT is credited in full with the amount indicated in the notification referred to in sec. 3 below.
3. Promptly following the occurrence of the circumstances specified in sec. 1, IRGiT shall notify the Guarantor of the amount of the liability referred to in § 1 and the payment due date by e-mail to the following address: ............. and ............. or in writing to the address of its registered office indicated in the Agreement. The Parties agree that for the purposes of this Agreement, the notification referred to in the first sentence shall be deemed effective.
4. In order to secure the Guarantor’s liabilities, the Guarantor shall provide IRGiT with bank guarantees:
5. the total value of which, together with the amount of collateral in cash form or in any non-cash form acceptable by IRGiT, shall constitute the total value of the collateral provided for the clearing of transactions executed by the Brokerage House at the request of the Guarantor or as a result thereof, to be determined in accordance with the provisions of the Detailed Clearing and Settlement Rules and the ECH Regulations, and
6. fulfilling the requirements specified for non-cash collateral in the Detailed Clearing and Settlement Rules.
7. If the Guarantor fails to satisfy, within the time limit specified in the notification referred to in sec. 3, the receivables in the full amount indicated in such notification, IRGiT shall be entitled to enforce the security resulting from the bank guarantee referred to in sec. 4 without the need for the submission of a prior notification of such intention to the Guarantor.
8. The Guarantor shall provide the Brokerage House with a copy of the bank guarantees referred to in sec. 4.

**§4**

1. The Guarantor hereby represents that, except as otherwise provided in the Agreement, all notifications sent in connection with the Agreement must be sent to the address indicated at the beginning of the Agreement.
2. A change of address by a Party shall not constitute an amendment to the Agreement. In the event of the change referred to in the previous sentence, the Party making such change shall promptly notify the other Party thereof, no later than within 2 days of such change. If the notification is not made by the date specified in the previous sentence, any communication delivered to the previous address shall be deemed effectively delivered.

**§ 5**

1. In connection with the execution and performance of the Agreement, each Party provides the other Party with personal data of persons authorized to represent it as well as personal data of persons indicated for business contacts.
2. The Parties hereby represent that they comply with the applicable personal data protection regulations, in particular the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (“GDPR”), the provisions Personal Data Protection Act of 10 May 2018 and all implementing regulations issued on their basis that are applicable to personal data processing, and shall take the necessary technical and organizational actions to protect such data.
3. Each Party shall be the controller of the personal data provided to it, as referred to in sec. 1, and shall process such data for the purposes arising from the legitimate interests of the data controller and to fulfill the legal obligations imposed on the controller.
4. Each Party undertakes to fulfill its information obligation in the above scope in accordance with the applicable regulations. IRGiT’s information clause constitutes Appendix 1 to the Agreement.

**§ 6**

1. This Agreement shall enter into force on .................
2. Any matters not regulated in this Agreement shall be governed by the provisions of the Civil Code, in particular by the provisions of Articles 876–878.
3. Any amendments to this Agreement shall be made in writing in the form of an annex, except for amendments to the contact persons or e-mail addresses, which shall only require a declaration by the Party concerned, signed by its authorized persons in accordance with the rules of representation.
4. Any disputes arising between the Parties from the relationship covered by this Agreement shall be submitted by the Parties for resolution to the court of arbitration at the Polish Power Exchange in Warsaw.
5. This Agreement has been executed in three identical counterparts – one for each of the Parties.

**……………….. …………………… ……………………….**

 **IRGiT Guarantor Brokerage House**

Appendix 1

**Information clause on the processing of personal data by Izba Rozliczeniowa Giełd Towarowych S.A. in connection with the requirements of Articles 13 and 14 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), hereinafter referred to as the “GDPR”.**

The controller of the data the subjects of which are persons authorized to represent the entity and of the data the subjects of which are persons designated for business contacts is Izba Rozliczeniowa Giełd Towarowych S.A. (IRGiT), ul. Książęca 4, 00-498 Warsaw, tel. +48 22 341 99 01, irgit@irgit.pl.

The controller has appointed a Data Protection Officer who may be contacted by e-mail at iod@irgit.pl.

The scope of personal data processed by IRGiT includes the first and last name, business e-mail address, business telephone number and name of the position held and, for persons authorized to represent the entity, their first and last name, position and data contained in the current excerpt from the relevant register or data contained in the power of attorney.

The personal data of individuals authorized to represent the entity and the data of persons designated for business contacts will be processed by IRGiT in compliance with Article 6(1)(f) GDPR, i.e. on the basis of a legitimate interest pursued by the controller, namely verification of the correct representation of the entity in connection with a submitted declaration of intent, conduct of communication related to the execution or performance of agreements, maintenance and development business relationships, establishment, investigation of or defense against any claims.

The recipients of such data may be the processors of personal data on behalf of IRGiT in connection with services provided to IRGiT, in particular consulting, auditing, financial and accounting or IT services.

Personal data will be processed during the term of the agreement between IRGiT and the counterparty, following which such data will be stored for the time necessary to make pertinent clearings and establish, investigate or defend against any claims.

Each person has the right to request access to their personal data, rectify or delete such data, restrict their processing or have them transferred.

Each person has the right to file an objection against the processing of their personal data to the extent to which the basis for the processing of their personal data is the legitimate interest of the Controller.

Each person has the right to file a complaint against the processing of their data with the President of the Personal Data Protection Authority.

The provision of the data the subjects of which are persons authorized to represent the entity and of the data the subjects of which are persons designated for business contacts is a condition for the execution of the agreement.