**AGREEMENT**

**FOR A TRANSFER OF EMISSION ALLOWANCES TO SECURE LIABILITIES**

**(“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, NIP 5252441634, represented by:

…………………………………………….

…………………………………………….

thereinafter referred to as “IRGiT”

and

............................. with its registered office in ............................., entered in the Register of Commercial Undertakings of the National Court Register under file no. KRS ............................., whose registration files are kept by the .................. Court ............................., with the share capital of ............................. (paid up in full), taxpayer identification no. NIP ............................., statistical no. REGON ............................., represented by:

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

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

hereinafter referred to as the “Company”

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

Whereas:

1. On ......................., the Company entered into a surety agreement with IRGiT (hereinafter: “Surety Agreement”) for the liabilities of ........................... with its registered office in ........................... (hereinafter: “Clearing House Member”);
2. The Company holds EUA emission allowances registered in the Union Registry (hereinafter: “EUA Emission Allowances” and “Union Registry”, respectively), which, in accordance with the Parties’ intention, shall be transferred to secure the Company’s liabilities;
3. The rules for determining the value of the EUA Emission Allowances securing the liabilities under the Surety Agreement are laid down in the Detailed Clearing and Settlement Rules within the meaning of the Regulations of the Exchange Clearing House (Commodity Market) (hereinafter: “ECH Regulations”);

Now therefore the Parties resolve as follows:

1. The Company declares that it will deposit to IRGiT’s account in the Union Registry, no. EU-100-5027385-0-74 (hereinafter: “**Account**”), EUA Emission Allowances up to the total amount of ........................ (........................) tons to secure its liabilities. The number of the deposited EUA Emission Allowances shall be determined and transferred to IRGiT in the form of Representations by the Company (hereinafter: “**Representation**”), containing information about increasing or decreasing the volume of EUA Emission Allowances deposited in the Account by the Company, sent electronically via the Clearing House Member, in the form of a scan to the following e-mail address: dzr@irgit.pl. If the volume of the deposited allowances is left unchanged, no Representation shall be required.
2. The form of Representation on increasing the volume of deposited EUA Emission Allowances is provided in Appendix 1 to the Agreement, and the form of Representation on decreasing the volume of deposited EUA Emission Allowances is provided in Appendix 2.
3. In order to increase the volume of EUA Emission Allowances in the Account, the Company shall submit a pertinent Representation and, no later than on the next business day following the date indicated in the Representation, shall transfer the specified volume of EUA Emission Allowances to the Account.
4. In order to decreases the volume of EUA Emission Allowances in the Account, IRGiT shall define in the Union Registry a transfer of the volume of EUA Emission Allowances specified in the Representation to the account indicated by the Company. Two business days before the date of defining the transfer in the Union Registry, as specified in the Representation, the EUA Emission Allowances covered by such Representation shall not be taken into account when determining the level of coverage of the collateral margins by the Clearing House Member. IRGiT may refuse to transfer a specific volume of EUA Emission Allowances if the collateral margins required on the date of definition of the transfer in the Union Registry are not covered by the Clearing House Member.
5. Receipt of a Representation confirming the transfer of EUA Emission Allowances shall be deemed effective after it has been sent in the form of a scan by e-mail to the following e-mail address: dzr@irgit.pl.
6. The EUA Emission Allowances deposited in accordance with the terms set forth in sec. 1–5 above (hereinafter: “Collateral”) shall form the basis for determining, in accordance with the terms set forth in the Surety Agreement, the level of non-cash collateral contributed to the non-cash collateral register kept by IRGiT.
7. The Company hereby represents that the Collateral is its sole property, that it is not encumbered with any third party rights, that its disposal by the Company under the Agreement is not subject to any statutory or contractual restrictions and that the Company has obtained the required corporate consents to effect the transfer of title to secure its liabilities.
8. In order to secure the performance of the obligations specified in the Surety Agreement, the Company hereby transfers the Collateral to IRGiT and authorizes IRGiT to sell the Collateral in accordance with the terms set forth in § 3, subject to the condition that if:
9. the Company’s obligations under the Surety Agreement expire, or
10. the Clearing House Member makes a cash payment or submits any non-cash collateral accepted by IRGiT in an amount corresponding to the required value of the collateral margin and transaction margin (within the meaning of the ECH Regulations), or
11. the Clearing House Member’s liabilities (within the meaning of the Surety Agreement) expire in respect of the transactions executed at the Company’s request and in respect of the settlements carried out by IRGiT for such transactions, which is confirmed in writing by IRGiT, and the Clearing House Member ceases to execute and clear transactions at the Company’s request;

Having received a written request from the Company accepted by the Clearing House Member, IRGiT shall perform all activities necessary to transfer the Collateral to the Company’s account in the Union Registry. The Collateral shall be transferred within three days of delivery of the complete request to IRGiT.

1. In the event that the Company, in accordance with the Surety Agreement, is required towards IRGiT to satisfy any claims that have not been satisfied by it, IRGiT as the entity managing the clearing guarantee system on the terms laid down in the ECH Regulations shall satisfy such claims from the Collateral in accordance with the principles provided for in this paragraph.
2. IRGiT may, in the event specified in sec. 1, sell the Collateral and satisfy the claims referred to in sec. 1 from the obtainable purchase price at which IRGiT, acting in a commercially reasonable manner, is able to sell the Collateral. IRGiT shall promptly return to the Company any surplus of funds remaining after such sale.
3. The amount obtained from the sale of the Collateral shall be credited by IRGiT towards the Company’s liabilities arising from the Surety Agreement, taking into account in the first place any costs incurred by it related to the enforcement of such receivables. If the price obtained from the sale of the Collateral does not fully cover the Company’s liabilities, IRGiT shall have the right to pursue them until the Company’s liabilities have been fully covered.
4. In the situation described in this paragraph, IRGiT, before performing the actions described in sec. 2, shall inform the Company of its intention to sell the Collateral, at the same time calling on the Company to remedy the breaches referred to in sec. 1 within 1 (one) business day from the date of receipt of such notification. If the Company remedies such breaches within the time limit specified above, IRGiT shall abandon its intention to sell the Collateral. The Parties shall deem effective any notification sent to the following e-mail addresses: ................, with the reservation that on the date of sending the message to the indicated e-mail addresses IRGiT sends the original of the notification to the Company via registered mail.
5. For the avoidance of doubt, the Parties hereby confirm that IRGiT is entitled to dispose of the Collateral only to the extent specified in this Agreement.

Any documented costs related to the transfer of the EUA Emission Allowances to secure the Company’s liabilities and to satisfy IRGiT’s receivables shall be incurred by the Company, provided that they do not exceed the standards and business practice adopted in such relationships.

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 3 to the Agreement.
5. This Agreement is executed for an indefinite term with effect from ..........
6. Each Party may terminate this Agreement with a 1-month notice effective as of the end of the calendar month.
7. Any amendments to this Agreement shall be null and void unless made in writing, 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.
8. The applicable provisions of the Civil Code shall apply to any matters not governed by this Agreement.
9. Any disputes arising from this Agreement shall be submitted by the Parties for resolution to the court of arbitration at the Polish Power Exchange in Warsaw.
10. This Agreement has been executed in two identical counterparts – one for each of the Parties.

 **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **IRGiT Company**

Appendix 1

Form of Representation on increasing the volume of EUA Emission Allowances deposited in the Account by a Company

.............., ........................ (place and date)

**REPRESENTATION**

**to the Agreement for a transfer of emission allowances to secure liabilities entered into on ................... by and between Izba Rozliczeniowa Giełd Towarowych S.A. (IRGiT) and .................... (“Company”) (hereinafter: “Agreement”)**

We hereby represent that the Company, on ........................, will submit to the Union Registry an instruction to transfer ............................ EUA Emission Allowances from the Company’s account in the Union Registry, no. ................................., to IRGiT’s account in the Union Registry, no. EU-100-5027385-0-74, intended to cover its liabilities specified in the Agreement.

Following the execution of the transfer, the total number of EUA Emission Allowances deposited by the Company in accordance with the Agreement in IRGiT’s account will be .....................

For the Company:

**…………………………………………..**

**date and signature**

Appendix 2

Form of Representation on decreasing the volume of EUA Emission Allowances deposited in the Account by a Company

.............., ........................ (place and date)

**REPRESENTATION**

**to the Agreement for a transfer of emission allowances to secure liabilities entered into on ................... by and between Izba Rozliczeniowa Giełd Towarowych S.A. (IRGiT) and .................... (“Company”) (hereinafter: “Agreement”)**

We hereby represent that the Company requests a decrease in the volume of EUA Emission Allowances deposited in IRGiT’s account in the Union Registry.

Please define a transfer of .......................... EUA Emission Allowances to be executed on ...................... to the Company’s Account in the Union Registry, no. ..................................

Following the execution of the transfer, the total number of EUA Emission Allowances deposited in accordance with the Agreement in IRGiT’s account will be .....................

For the Company:

**…………………………………………..**

**date and signature**

Appendix 3

**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.