

Master Agreement on Participation in a Proficiency Testing Programme

between

MEASNET, a partnership organized under the laws of Spain and registered in the National Register of Associations: Group 1 /Section 1 / national number 597932, with its registered offices in UPM - Campus de Montegancedo EDIFICIO "CIDA", 28223 Pozuelo de Alarcón, Madrid, Spain

- hereinafter referred to as "**Measnet**" -

and

registered in the Commercial Register of its registered offices in _____, a company organized under the laws of _____ and _____ under docket-no. _____, with _____,

- hereinafter referred to as "**Participant**" –

RECITALS:

Measnet is an international organization of wind energy institutes cooperating in a wind energy measuring network. The goal of Measnet is to improve and ensure the quality of measurements relating to wind energy technology in order to allow mutual recognition and interchangeability of results and to achieve uniform interpretation of standards and recommendations.

In this course Measnet organizes Proficiency Testing Programmes (round robin or interlaboratory tests) for its members. However, in order to improve the quality of such Proficiency Testing Programmes Measnet also offer non-members, at its sole discretion and on a case-by case basis, to participate in certain Proficiency Testing Programmes.

This Agreement provides for the terms and conditions of such a participation a Proficiency Testing Programme. It is intended to apply as a framework agreement to all Proficiency Testing Programmes in which the Participant takes part during its term.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties have agreed as follows:

1. **Definitions**

"Confidential Information" herein shall mean all technical and economical Information concerning the PT disclosed by one Party ("**disclosing Party**") to the other Party ("**Recipient**") or in any other way obtained by a Party in connection with PT, whether disclosed or obtained in writing or orally or in electronic form or in any other way, regardless of whether or not marked as "confidential" or "secret", including any and all copies or electronic or other records or reproductions made thereof, including, without limitation, trade or business secrets of a Party, know-how related to wind energy measurements, wind energy converters or process-, production- or application know-how in connection with equipment related to wind energy generation, product properties, market data or analyses data, test-results, test processes, technical specifications, prices, cost and the existence of this Agreement and its contents and the identity of the Laboratories participating in a PT.

Evaluator herein shall mean: Person or entity in charge of the evaluation of a PT, belonging to or contracted by Measnet and independent from all Laboratories.

Laboratories herein shall mean: Each of the companies or entities participating in a PT.

PT herein shall mean: Any proficiency test consisting in the comparison of the results of independent

evaluation of the same items or data sets by different Laboratories.

PT Results Report herein shall mean: The final written report provided by Measnet in English language with a summary of the results of a PT.

Samples herein shall mean: Items or data sets that are sent to all Laboratories for evaluation under this Agreement.

Services herein shall mean: The Services provided by Measnet as defined in section 3.1 in the course of a PT.

Test Results herein shall mean: The result of the evaluation of the Samples made by each Laboratory participant a PT.

Time Schedule herein shall mean: The time schedule for a PT provided by the Evaluator

2. **Scope of the Agreement**

Measnet will organize and manage PTs and the Participant will participate in PTs, as agreed case by case, subject to the terms and conditions of this Agreement, and the Participant acknowledges that PTs will only be carried out subject to the terms and conditions of this Agreement.

3. **Services of Measnet**

3.1. In the course of a PT Measnet will provide the following services to the Laboratories:

- Access to the website Reserved Area, through the assigned quality consult ID and personal password.
- Guideline on how to perform the PT and evaluation report(s) corresponding to the chosen PT.
- Samples
- PT Results Report, which may be used by Participant at its sole discretion.

3.2. The Evaluator will be appointed by Measnet, at its sole discretion.

3.3. The identity of the Participant will not be disclosed in the presentation of the PT results. PT results submitted by the Participant and the other participants in a PT to Measnet will be identified in the corresponding reports by a numerical code assigned to the individual Laboratories.

4. **Samples**

4.1. In case PTs are carried out on physical Samples, these Samples will be sent by the Evaluator by courier to the Participant laboratory for testing. Once the testing is completed, the Samples shall be returned by the Participant to the Evaluator.

4.2. Transportation cost for Samples shall be borne by the Participant. Quotations for transportation cost may be provided by Measnet case by case upon request of the Participant. Customs duties and levies are not included and are to borne by the Participant.

4.3. Samples to be delivered by Measnet to the Participant for being used during the PT will remain the sole property of Measnet. Such Samples shall not be forwarded by the Participant to any third party and shall be used by the Participant only for the purposes of this Agreement.

- 4.4. The Participant shall return the Samples to Measnet in a good condition and without damage, except normal wear and tear, and within a period of time as defined in [Measnet's Web Page](#). Upon request of the Participant, Measnet may arrange for property insurance cover on behalf of the Participant and at Participant's cost and expense.

5. Time Schedule and PT Measurement by Participant

- 5.1. Once the PT Laboratories are confirmed by Measnet, the Evaluator will provide a Time Schedule for the PT to all Laboratories, including the Participant. The Time Schedule is binding for the Participant.
- 5.2. Measnet will communicate any change in the Time Schedule to the Laboratories within ten working days after the registration dates expires. Measnet cannot warrant compliance of the Evaluator or the Laboratories with the Time Schedule and Measnet shall not be liable for any delay or non-compliance with the Time Schedule.
- 5.3. The Participant shall carry out the PT in its laboratory in accordance with the standards of Best Available Technology (BAT), the guidelines and instructions provided by Measnet and the Evaluator and the Time Schedule.

6. Property of Source Data and PT Results

- 6.1. All source data forwarded or disclosed to the Participant as well as the intermediate intercomparison results remain the sole property of Measnet and shall only be used by the Participant for the purposes of this Agreement.
- 6.2. The PT Results Report provided by Measnet is the property of the Participant.

7. Use of Measnet name, Logo and Trade Marks

- 7.1. It is understood and agreed that the Participant is not accredited by Measnet and participation in a PT will not result in, or be deemed as, accreditation of the Participant by Measnet. The Participant shall refrain from any public statement suggesting or implying in any way whatsoever that he performs measurements approved by Measnet.
- 7.2. It is understood and agreed that no right, license or privilege expressed or implied, is granted to the Participant regarding the name and logo of Measnet and any trade marks, registered designs or utility models owned or controlled by Measnet, and Participant shall not make any use of the logo or stamp of Measnet and any trade marks, registered designs or utility models owned or controlled by Measnet in connection with the PT.

8. Service Fee and Terms of Payment

- 8.1. The fee for the Services for every individual PT is about 2,000,- EUR net plus statutory VAT,.
- 8.2. Terms of Payment: 30 days after date of invoice net without deduction.
- 8.3. The Participant may offset payment, also if complaints or counter claims are raised, only if the counter claims are legally established or undisputed or accepted by Measnet.

9. Warranty and Liability

- 9.1. Measnet warrants that the Services shall be performed in accordance with the standards of practice customary in the profession for services of a similar nature.
- 9.2. If Measnet is notified by the Participant in writing that the Services provided by Measnet materially fail to conform to the warranty set forth in section 9.1 within ten (10) days after discovery of any such deficiency, and not later than twelve (12) months after the performance of the Services, Measnet shall, at its sole discretion, re-perform those services which fail to so conform provided this is technically and economically feasible or refund the fees paid for the deficient services in proportion which the value of the services free of any deficiency would, at the time when the Agreement was entered into, have had to the actual value.
- 9.3. The warranty set forth here above is exclusive and given by Measnet, and accepted by the Participant, in lieu of any and all other warranties of merchantability and fitness for a particular purpose, whether known to Measnet or not, and all other warranties including, without limitation, accuracy and correctness and absence of deficiencies of the measurements carried out by the Laboratories and the PT Test Results or compliance with the Time Schedule, are hereby expressly disclaimed by Measnet and waived by the Participant.
- 9.4. Measnet and its directors, officers, members, subcontractors and representatives disclaim and shall not be liable for any incidental, indirect or consequential loss, damage, cost or expense whatsoever, whether claimed in contract, equity, tort or otherwise, including without limitation loss of profit, loss of production, loss of contract, lost return on investment, increased cost of operation or loss of use or value of any facilities, unless caused intentionally. Liability for any loss, cost, damage, or expense arising from any claim asserted against Participant by a third party is subject to the limitations of liability mentioned here above.

10. Confidentiality

- 10.1. The Recipient undertakes to use Confidential Information only for the purposes of this Agreement and to keep strictly confidential any and all Confidential Information received from the disclosing Party in connection with this Agreement and not to disclose it to any third Party, not to directly or indirectly commercially exploit the Confidential Information or parts thereof and not to directly or indirectly use the Confidential Information for obtaining industrial property rights.
- 10.2. Each Party further agrees to make Confidential Information available only to those of its employees who need to have access to it for the purpose of this Agreement, to limit the disclosure to the extent required for the purpose of this Agreement, to inform such employees about the existence of this Agreement and its confidentiality obligations and to commit such employees to the same extent of confidentiality as provided for herein and, as far as legally permissible, also for the time after their employment. Upon request of the disclosing Party, the Recipient shall provide a list of such employees who have had access to the Confidential Information or parts thereof.
- 10.3. The Recipient shall protect the Confidential Information disclosed by the disclosing Party with at least the same degree of care it employs to protect its own confidential Information but shall, in no event, employ less than reasonable degree of care. The recipient agrees to promptly notify the disclosing Party of any misuse or misappropriation of the Confidential Information.

11. **Exceptions to Confidentiality**

- 11.1. The confidentiality obligations as mentioned in Section 10 here above shall not apply to such Confidential Information or to any part thereof, for which the Recipient provides evidence that
- a) it was known to the recipient prior to its receipt from a third party other than the disclosing Party, or
 - b) it was in the public domain or generally available to the public prior to its receipt, or
 - c) it became known to the public or generally available to the public subsequent to its receipt without the Recipient being responsible therefore, or
 - d) it was received by the Recipient at any time without any commitment of confidentiality from a third party having a bona fide right to disclose the same to the Recipient, or
 - e) is legally required to be disclosed, in which case such disclosure shall be made, if at all, in accordance with section 11.2 below.
- 11.2. If a Party is required by law to disclose Confidential Information or if disclosure thereof is required by a Party in connection with the assertion of any Claim or defence in any judicial or administrative proceedings involving such Party, such Party may make disclosure thereof provided that the Party making the disclosure thereof shall immediately notify the other Party of the requirement and the terms thereof prior to such disclosure and shall use its best efforts to obtain proprietary or confidential treatment of such Confidential Information by the third party to whom the Confidential Information is being disclosed, and shall, to the extent such remedies are available, seek protective orders limiting the dissemination and use of the Confidential Information.

12. **Right of Ownership in Confidential Information**

- 12.1. The Recipient agrees that Confidential Information disclosed to it will remain the property of the disclosing Party, and that the Confidential Information or drawings or other written or printed data included therein shall not be copied or reproduced, mechanically, electronically or otherwise, without the prior written consent of the disclosing Party, except for such copies the Recipient requires for internal circulation for the purposes of this Agreement.
- 12.2. It is understood and agreed that no right, license, privilege or immunity, expressed or implied, is granted under any patent / patent application or proprietary rights owned or controlled by either Party.

13. **Return of Confidential Information**

Upon request of the disclosing Party, at its sole discretion, and in any case at expiry of this Agreement, the recipient shall within 30 (thirty) days return to the disclosing Party all Confidential Information received by the Recipient in written or electronic form or recorded in any other way (including copies, electronic records and transcripts thereof) and any samples or devices, finally delete all electronic records containing Confidential Information from its systems, destroy or finally delete all analyses` and adaptations in written or electronic form, and, upon request of the disclosing Party, confirm the complete return, destruction or deletion in writing.

14. **Effective Date and Termination**

- 14.1. This Agreement shall come into force on _____ and shall be valid for an indefinite period of time. It may be terminated by either Party by giving one month prior written notice. It is understood and agreed that Services not having been completed prior to expiry of this Agreement will be subject to the terms and conditions of this Agreement also after expiry of this Agreement.
- 14.2. This Agreement may be terminated by Measnet with immediate effect by giving written notice if (i) the number of Laboratories prepared to participate in the PT does not reach the minimum number of 4 Laboratories or (ii) the number of Laboratories during the PT for any reason whatsoever drops below the minimum of 4 Laboratories or (iii) the PT cannot be continued for technical reasons or reasons attributable to the Evaluator or Laboratories or the Participant, without the Participant being entitled to any compensation. In such a case the Service Fee will be refunded in proportion to the value of the Services not already having been rendered by Measnet, except in case the termination is due to reasons attributable, in whole or in part, to the Participant or in case of Force Majeure.

15. **Notices**

All written communication between the Parties shall be made in English language, and all notices to be given herein shall be effective upon receipt and shall be in writing in English language and delivered to the Parties by registered mail or reputed courier service or telefax to the addresses given in the Registration Form for the PT.

16. **Force Majeure**

- 16.1. If either of the parties be prevented from performing its obligations under this Agreement due to Force Majeure, such as acts of God, war, riot, insurrection, fire, flood, typhoon, earthquake, strike or any other labour dispute, transport delays or major machinery break-down, as well as other cases which are beyond reasonable control of either party (hereinafter referred to as "**Force Majeure**"), regardless of whether occurring to the party or its subsuppliers, the performance of those obligation shall be extended by a period for which the effect of such cases has continued.
- 16.2. The prevented party shall notify the other party in writing without undue delay of the occurrence of Force Majeure. Under such circumstances, both parties are still under the obligation to use best efforts to take all necessary measures to execute this Agreement.
- 16.3. The prevented party shall inform the other party without undue delay in writing of the termination or elimination of the case of Force Majeure.
- 16.4. If the effect of Force Majeure continues for more than six months, either parties shall be entitled to terminate this Agreement by giving written notice.

17. **Governing Law and Place of Jurisdiction**

- 17.1. This Agreement shall be governed by and construed in accordance with Spanish Law.
- 17.2. Place of jurisdiction shall be Madrid, Spain.

18. **Miscellaneous**

- 18.1. In case any provision of this Agreement should be held, in whole or in part, invalid or unenforceable, the validity of the remaining provisions shall not be affected thereby. The parties will replace the invalid or unenforceable provision by a valid provision which will pursue most closely the economic intent of the replaced provision.
- 18.2. No part of this Agreement shall be assigned or transferred by any Party without the prior written consent of the other Party, which may be withheld at its sole discretion.
- 18.3. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assignees.
- 18.4. This Agreement constitutes the entire agreement between the Parties regarding the subject matter of this Agreement, and supersedes all prior written or oral agreements, commitments, and understandings between the Parties.
- 18.5. No amendment, waiver or consent relating to this Contract shall be effective unless it is in writing and signed by the Parties, including a waiver of this provision.

Executed on this _____ day of _____, _____

MEASNET

Name:
Title:

Name:
Title: