



OD-2050-Ed.1.0
IECEE PV Program

OPERATIONAL & RULING DOCUMENTS

PV Quality Mark and PV Quality Seal



Licensing Agreement

between

Electrosuisse

(Owner of the PV Quality Mark and PV Quality Seal)

and

Individual

IECEE PV Program Participants

OD-2050-Ed.1.0

2010-09-17

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IEC System for Conformity Testing and Certification of Electrotechnical Equipment and Components

Agreement

BETWEEN

“Electrosuisse”, an association established under the laws of Switzerland and having its registered office at Luppenstrasse 1, 8320 Fehraltorf (Switzerland),

represented by Dr Ueli Betschart

(hereinafter referred to as “Electrosuisse”)

AND

“.....<insert legal entity>”, a legal entity and IECEE National Certification Body – NCB established under the laws of<insert country of establishment> and having its principal place of business located at<insert address of establishment>,

represented by <insert full name of representative, if applicable>

(hereinafter referred to as “NCB”)

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1. PREAMBLE

WHEREAS throughout this Agreement the following Definitions shall be used:

- IECEE:** Worldwide System for Conformity Testing and Certification of Electrotechnical Equipment and Components (IECEE);
- NCB:** "IECEE Member NCB" as used in this Agreement shall mean an IECEE Member NCB accepted by the IECEE to operate the IECEE-PV Scheme;
- PV Program:** The IECEE Approval Program for Photovoltaics was established with the purpose to establish a visual identification, a Quality Mark, for PV components and a Quality Seal for PV systems to distinguish quality assessed PV products from PV products of unknown quality. The PV Quality Mark and PV Quality Seal is only awarded and authorized to be displayed on PV products which were able to obtain a product certification from a National Certification Body (NCB), i.e. a participant in the IECEE System for the Mutual Recognition of Conformity Assessment Certificates for Electrotechnical Equipment and Components (IECEE-PV);
- IECEE PV PROGRAM:** Procedure For Certification of Photovoltaic (PV) Products and The use of the IECEE PV QUALITY MARK and PV QUALITY SEAL;

WHEREAS Electrosuisse, on behalf of the IECEE, is the owner of the PV Quality Mark and PV Quality Seal (see illustration in Annex A hereto), which enjoy protection in Switzerland and other countries;

WHEREAS **NCB** desires to use itself, and to grant sub-licenses to manufacturers and/or distributors to use, the PV Quality Mark and PV Quality Seal in order to distinguish photovoltaic ("PV") systems and components according to the IECEE PV program procedures;

WHEREAS the IECEE-PV Program is governed by:

- IECEE 01: IEC System of Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) - Basic Rules,
- IECEE 02: Scheme of the IECEE for Mutual Recognition of Test Certificates for Electrotechnical Equipment and Components (CB Scheme) - Rules of Procedure, and
- IECEE 03: Rules of Procedure of the Scheme of the IECEE for Mutual Recognition of Conformity Assessment Certificates for Electrotechnical Equipment and Components (CB-FCS),
- and the relevant Operational Documents for the IECEE PV PROGRAM as described in OD-2051 hereto,

(hereinafter collectively referred to as the "Rules of the System");

WHEREAS Electrosuisse represents that it has made best efforts to have the PV Quality Mark and PV Quality Seal registered as trademarks in countries adhering to the Madrid system for the international registration of trademarks;

WHEREAS in carrying out their obligations under this Agreement the parties will act in accordance with good faith and fair dealing;



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THE PARTIES HAVE AGREED TO THE FOLLOWING:

2. RIGHT TO USE THE PV QUALITY MARK and PV QUALITY SEAL

Electrosuisse grants to NCB during the term of this Agreement a royalty-free, non exclusive trademark license right to use pursuant to the requirements of the IECEE “Rules of the System” the PV Quality Mark and PV Quality Seal as described in Annex A hereto in connection with the PV components and/or entire PV systems (hereinafter jointly or severally referred to as “Products”), in order to promote Products which fulfill the requirements for certification, and to sub-license such rights in order to produce, distribute, promote and sell Products certified by the NCB¹ in the countries for which Electrosuisse obtained valid trademark protection (see a non-binding list of countries in Annex B hereto).

3. REGISTRATION, RENEWAL AND MAINTENANCE OF THE TRADEMARKS

- 3.1. Electrosuisse is the sole owner of the PV Quality Mark and PV Quality Seal trademarks. It represents that it makes best efforts to maintain the PV Quality Mark and PV Quality Seal registered in countries adhering to the Madrid system for the international registration of trademarks. NCB will provide reasonable assistance to Electrosuisse in good faith to the renewal, maintenance and registration of the PV Quality Mark and PV Quality Seal in the NCB’s country if so requested by Electrosuisse.
- 3.2. In those countries where the PV Quality Mark and PV Quality Seal are not registered, Electrosuisse at its own free discretion may apply for such registration, or may by its prior written approval permit the NCB or any other third party to register the PV Quality Mark and PV Quality Seal in the name of Electrosuisse, but on behalf of IECEE, in that country. Unless the parties explicitly agree otherwise, any expense regarding efforts and cost will be borne by NCB. Upon any such successful additional registration, the list of countries in Annex B will be deemed complemented accordingly.
- 3.3. While this Agreement remains valid, Electrosuisse shall inform the IECEE Secretariat for communication to all PV Program participants through the latter immediately upon receipt or notification of any challenges, infringements, potential infringements or other reasonably discernable threats against its applications and registrations. Electrosuisse shall have total and complete discretion and control of the prosecution or not of all actions to prevent any other party from using the PV Quality Mark and PV Quality Seal in association with the production, promotion, sale or distribution of any infringing products. Such actions shall be actively and diligently pursued consistent with the interest of NCB hereunder and will not be settled or compromised without the approval of NCB. NCB is obliged to support Electrosuisse in prosecuting the action, the expenses of such prosecution being the sole responsibility of Electrosuisse. Electrosuisse shall have the sole right to determine whether or not any action shall be taken on account of any such infringements or limitations. Any recovery shall belong solely to Electrosuisse.
- 3.4. If Electrosuisse elects not to pursue any such infringer, then NCB may do so at its sole cost and expense upon the prior written approval of Electrosuisse, which approval shall not be unreasonably withheld. Any recovery shall then equitably be splitted between Electrosuisse and NCB. Should NCB undertake to pursue any infringer under this

¹ The NCB has only the right to grant a license to manufacturers/distributors with regard to Products certified by *THE* NCB in question, i.e. the NCB is prohibited from granting a sub-license in order to mark products which are (i) not certified (which is obvious); and/or (ii) certified by a different NCB.



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provision, it shall keep Electrosuisse duly informed of all developments related to any such claims or suit and shall not resolve such by settlement without the prior written consent of Electrosuisse, which consent shall not be unreasonably withheld, and Electrosuisse shall provide reasonable support to this avail at full cost.

- 3.5. NCB undertakes not to file or cause to be filed anywhere any trademark application for the PV Quality Mark and PV Quality Seal. It undertakes not to file or use, directly or indirectly, any trademark, trade name, application etc. anywhere confusingly similar to the PV Quality Mark and PV Quality Seal.
- 3.6. Should it appear necessary to modify the present Agreement, e.g. to accommodate changes in legal requirements and/or national conditions, both parties shall consult with each other to address the issues expediently.

4. RESPONSIBILITY

Electrosuisse shall be liable for any breach of its obligations under this Agreement in cases of gross negligence and willful acts. Any other liability of Electrosuisse is hereby explicitly waived to the extent permitted by mandatory provisions of law. NCB in particular agrees that its use and/or sub-licensing of the PV Quality Mark and PV Quality Seal shall in no case imply any legal responsibility on the part of Electrosuisse and/or no obligation to hold harmless for damages incumbent on NCB or on the manufacturer or distributor of Products. NCB shall defend and indemnify Electrosuisse from and against any damages, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising for Electrosuisse out of the use of PV Quality Mark and PV Quality Seal pursuant to this Agreement and of the use and/or distribution of Products by NCB or its sub-licensees.

5. TERM OF THE AGREEMENT

- 5.1. This Agreement enters into force when both parties have validly signed. It is automatically terminated after the expiry of a period of 3 years after entering into force, unless the parties mutually agree in writing about a renewal, by default for a period of another 3 years.
- 5.2. Each party may terminate this Agreement with immediate effect, by notice given in writing by means of communication ensuring evidence and date of receipt (e.g. registered mail with return receipt, special courier), in case of a substantial breach by the other party of the obligations arising out of the contract, or in case of exceptional circumstances justifying the earlier termination.
- 5.3. Any failure by a party to carry out all or part of its obligations under the Agreement resulting in such detriment to the other party as to substantially deprive such other party of what it is entitled to expect under the Agreement, shall be considered a substantial breach for the purpose of article 5.2, above. Circumstances in which it would be unreasonable to require the terminating party to continue to be bound by this Agreement, shall be considered as exceptional circumstances for the purpose of article 5.2 above.
- 5.4. The parties hereby agree that the following shall be inter alia considered as a substantial breach or an exceptional circumstance for the purpose of Article 5.2:
 - (a) Certification of non-conform products by NCB or production, sale or distribution by its sub-licensees of non-conforming Products marked with the PV Quality Mark or PV Quality Seal after their non-conformity has been discovered;



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- (b) Use by NCB of Electrosuisse's trademarks in breach of this Agreement;
- (c) A delay exceeding 60 days in any payments under any title to be made by NCB;
- (d) Filing of identical or similar trademarks as PV Quality Mark and PV Quality Seal by NCB without proper authorization by Electrosuisse or oppositions or any other challenge by NCB against Electrosuisse's trademarks;
- (e) NCB ceases to be accepted by the IECEE to operate in the IECEE PV Program;
- (f) bankruptcy, moratorium, receivership, liquidation or any kind of arrangement between debtor and creditors, of the other party;

5.5. Upon the termination or expiration of this Agreement, all rights herein granted to NCB shall revert to Electrosuisse. Except for the case of earlier termination by Electrosuisse according to Article 5.2 above, NCB or its sub-licensees will however be entitled to sell after termination or expiration of this Agreement, for a period of three months, the Products already manufactured or in the process of being manufactured at that date, provided that all other obligations of NCB and/or its sub-licensees are complied with. The amount of these Products shall be indicated by NCB in writing at the moment of Agreement termination.

6. RECORD RETENTION

The NCB shall retain all documentation, for at least the time period specified in the Operational Document in OD-2051, related to the authorizations it has granted to its customers for the use of the PV Quality Mark and PV Quality Seal, and shall make such documentation available to Electrosuisse on first demand.

7. ADVERTISING AND PROMOTION

Neither party may refer to or use the other's name in advertising, promotions or otherwise orally or in written materials without prior written consent.

8. NON-ASSIGNABILITY

NCB may not assign, subcontract or transfer, in whole or in part, any of its rights, obligations or interests other than those granted under this Agreement without the express written consent of Electrosuisse.

9. ARBITRATION

Any dispute whatsoever arising from this agreement and/or breach of any of the obligations imposed hereby shall be referred to binding arbitration. A single independent arbitrator shall be appointed with the mutual agreement of the parties. In the event that the parties cannot agree on the appointment of a single arbitrator within sixty (60) days, each shall for their part appoint one arbitrator. The two appointed arbitrators shall then between them appoint a third and independent arbitrator whose role it shall be to chair the arbitration proceedings. The arbitration proceedings shall take place in Geneva, Switzerland and shall be in accordance with the WIPO (World Intellectual Property Organization, Geneva) Expedited Arbitration Rules. The language to be used in the arbitral proceeding shall be English. The dispute controversy or claim shall be exclusively



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decided in accordance with the material laws of Switzerland. This provision shall not preclude any party from seeking injunctive relief.

10. FINAL PROVISIONS

10.1. This Agreement comprises the entire and only agreement between the parties with respect to the subject matter and may not be varied or amended except in writing on a subsequent date and executed by the authorized representatives of both parties. It supersedes all previous understandings, whether oral or in writing, between the parties on the same subject.

10.2. The English text of this Agreement is the only to be considered as original.

10.3. Any amendment to this Agreement and all notices or other communications given pursuant to this Agreement shall be in writing in English, shall be effective upon receipt, and shall be delivered by certified or registered airmail with postage prepaid, by facsimile or cable communications, or by hand. Such communications shall be deemed given and received upon dispatch or hand delivery, if sent by telex, cable or personal delivery, or within five (5) days of mailing, if sent by certified or registered air mail, and shall be addressed as follows:

If to Electrosuisse:

Electrosuisse
Mr. Fritz Beglinger
Luppenstrasse 1, CH-8320 Fehraltorf, Switzerland
Telephone: +41 44 956 11 11 Facsimile: +41 44 956 11 22

If to NCB:

[address]
Telephone..... Facsimile:

or to such other address the party concerned may thereafter give
to the other party in writing.

10.4. Annexes A and B to this Agreement form an integral part of it, whereas the parties agree that the list contained in Annex B is not-binding, may not be relied upon and may be subject to changes at any time.



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IN WITNESS WHEREOF

the parties executed this agreement in two copies, each party declares having received one copy.

Signed for and behalf of

NCB

Electrosuisse
Luppenstrasse 1
CH-8320 FEHRALTORF
SWITZERLAND

Date: _____

Date: _____

Signed: _____

Signed: _____

By:

By: Dr. Ueli Betschart

Title:

Title: Director

Signed: _____

Signed: _____

By:

By: Fritz Beglinger

Title:

Title: Manager Business Unit
Industry and Commerce

ANNEX A

PV Quality Mark and PV Quality Seal



**PV Quality Mark for
PV Components**



**PV Quality Seal
for PV Systems**



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ANNEX B

Non-binding list of countries with valid trademark protection

Albania	Namibia
Algeria	Netherlands
Antigua and Barbuda	Norway
Armenia	Oman
Australia	Poland
Austria	Portugal
Azerbaijan	Republic of Korea
Bahrain	Republic of Moldova
Belarus	Romania
Belgium	Russian Federation
Bhutan	San Marino
Bosnia and Herzegovina	Sao Tome and Principe
Botswana	Serbia ¹³
Bulgaria	Sierra Leone
China	Singapore
Croatia	Slovakia
Cuba	Slovenia
Cyprus	Spain
Czech Republic	Sudan
Democratic People's Republic of Korea	Swaziland
Denmark	Sweden
Egypt	Switzerland
Estonia	Syrian Arab Republic
European Union	Tajikistan
Finland	The former Yugoslav Republic of Macedonia
France	Turkey
Georgia	Turkmenistan
Germany	Ukraine
Ghana	United Kingdom
Greece	United States of America
Hungary	Uzbekistan
Iceland	Viet Nam
Iran (Islamic Republic of)	Zambia
Ireland	
Italy	
Japan	
Kazakhstan	
Kenya	
Kyrgyzstan	
Latvia	
Lesotho	
Liberia	
Liechtenstein	
Lithuania	
Luxembourg	
Madagascar	
Monaco	
Mongolia	
Montenegro	
Morocco	
Mozambique	
	Total: (84)