

EFET

European Federation of Energy Traders

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WAIVER: THE FOLLOWING CROSS PRODUCT PAYMENT NETTING AGREEMENT WAS PREPARED BY EFET EXERCISING ITS BEST DUE DILIGENCE: HOWEVER, EFET, THE EFET MEMBERS, REPRESENTATIVES AND EFET COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE AND ANY DAMAGES OR LOSSES RESULTING OUT OF ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS GENERAL AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER'S LEGAL INTEREST.

Cross Product Payment Netting Agreement

Between

...

having its registered office at

...

(Party A)

and

...

having its registered office at

...

(Party B)

(referred to jointly as the „Parties“ and individually as a „Party“)

entered into on (the „Effective Date“)

(referred to as “this Agreement”)

WHEREAS,

- The Parties have entered into the master agreements and sets of terms and conditions as specified in the Principal Agreement Annex attached to this Agreement (each such master agreement or set of standard terms and conditions being referred to as a "Principal Agreement" or collectively the "Principal Agreements");
- The Parties regularly enter into transactions for the purchase, sale, delivery and acceptance of certain tangible and intangible commodities which are governed by the terms of the Principal Agreements (each such transaction being an "Individual Contract");
- The Individual Contracts contain - amongst others - (i) provisions related to the obligation to effect payments of the Netting Currency as defined in the Principal Agreement Annex for the various deliveries of commodities received under an Individual Contract ("Payment Obligations") and (ii) deviating provisions related to the dates by which such payments become due and payable between the Parties ("Due Dates");
- In order to reduce operational efforts and mitigate credit risks, the Parties therefore wish to harmonise the provisions of the Principal Agreements related to Payment Obligations and Due Dates in order to net amounts due and payable between the Parties under Individual Contracts.

NOW, THEREFORE, the Parties agree as follows:

§ 1

Invoicing, Harmonised Due Date and Payment Netting

1. **Harmonised Due Date:** The Parties agree that all Payment Obligations shall become due and payable by the 10th Business Day of the calendar month following the delivery of the commodity for the previous month under an Individual Contract, provided that the Party who is the buyer of the commodity under such Individual Contract has received in accordance with the terms of the Principal Agreement governing such Individual Contract an invoice pursuant to §1.2 (Invoice) below (the "Harmonised Due Date") not later than, and in each case including,
 - (a) the 5th (fifth) Business Day preceding and excluding the Harmonised Due Date for Individual Contracts governed by the Principal Agreements as specified in § 4.8 (a), and
 - (b) the 4th (fourth) Business Day preceding and excluding the Harmonised Due Date for Individual Contracts governed by the Principal Agreements as specified in § 4.8 (b).

Payment Obligations deriving from Individual Contracts for which an invoice has not been received within the time periods stipulated under (a) and (b) above shall not become due and payable on the Harmonised Due Date but shall instead become due and payable according to the terms of the Principal Agreement under which they were entered into.

2. **Invoice:** Each Party who is a seller of a commodity in an Individual Contract shall transmit to the other Party in the course of the calendar month following delivery of such commodity under such Individual Contract for the previous month an invoice setting forth the total quantities of each commodity that were sold by it under each Individual Contract in the previous calendar month. In connection with such invoice the Party shall state all amounts then owed between the Parties pursuant to the Individual Contracts including, without limitation, all amounts owed for the purchase and sale of such commodities, fees, charges, reimbursements, damages, interest, and other payments or credits owed then between the Parties, and the Net Payment Amount pursuant to § 1.3 (Payment Netting).
3. **Payment Netting:** If on a Harmonised Due Date there are any amounts due under one or more Individual Contracts, which would otherwise be payable by each Party to the other, then such amounts will be aggregated and the Parties shall discharge their respective Payment Obligations through netting, in which case the Party, if any, owing the greater aggregate amount shall pay the other Party the difference between the aggregate amounts owed ("Net Payment Amount").
4. **Payment:** On the Harmonised Due Date, the Party owing the Net Payment Amount shall pay by wire transfer in freely available funds to the other Party's bank account as specified for such Party in § 4.3.
5. **Default Interest:** Late payments shall accrue interest from, and including, the Harmonised Due Date to, but excluding, the date of payment at the Default Interest Rate as specified in § 4.4.
6. **Payment Default:** The failure to pay the Net Payment Amount shall be deemed to be a failure to pay an amount owed under each Individual Contract or, as the case may be, owed under a Principal Agreement and, unless otherwise agreed in this Agreement, the Party the Net Settlement Amount is owed to shall have all the rights and remedies which apply to the failure to pay according to the terms of such Individual Contracts or the Principal Agreements. Each Principal Agreement is hereby amended accordingly.

7. **Disputed Amounts:** If a Party, in good faith, disputes the accuracy of any invoice, it shall on or before the Harmonised Due Date provide a written explanation for the basis for the dispute and shall pay:
- (a) if this § 1.7 (a) is specified in § 4.5 as applying, subject to manifest error, the full Net Payment Amount invoiced not later than the Harmonised Due Date. If any amount paid under dispute is finally determined to have not been due, such overpayment shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate as specified in § 4.6 from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or
 - (b) if this § 1.7 (b) is specified in § 4.5 as applying, the undisputed amount invoiced no later than the Harmonised Due Date. If any amount withheld under dispute is finally determined to have been due, such withheld amount shall, at the election of the owed Party, be credited or returned to it within ten (10) days of such determination, along with interest accrued at the Interest Rate as specified in § 4.6 from, and including, the date such amount was due, to the other Party, but excluding the date paid or credited.

§ 2

Inconsistencies

In the event of any inconsistencies between the provisions of § 1 of this Agreement and the provisions of one or more of the Individual Contracts, the provisions of § 1 of this Agreement shall prevail and the terms of such Individual Contract shall be amended accordingly.

§ 3

Governing Law and Arbitration

1. **Governing Law:** This Agreement shall be construed and governed by the substantive law of the Jurisdiction specified in § 4.7.
2. **Arbitration:**
 - (a) if this § 3.2 (a) is specified in § 4.1 as applying, any disputes which arise in connection with this Agreement shall be referred for resolution to the German Institution of Arbitration (DIS) and decided according to its rules, ousting the jurisdiction on the ordinary courts. The numbers of arbitrators shall be three. The arbitration shall be conducted in the English language unless otherwise specified in § 4.1. The place of arbitration shall be Frankfurt, Germany where all hearings and meetings shall be held, unless the Parties agree otherwise; or
 - (b) if this § 3.2 (b) is specified in § 4.1 as applying, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, or validity, shall be referred to and finally resolved by arbitration under the Rules of the London Court of International Arbitration, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three, each Party having the right to nominate one arbitrator. The place of arbitration shall be London, England where all hearings and meetings shall be held, unless the Parties agree otherwise. Unless otherwise specified in § 4.1, the language to be used in the arbitral proceedings shall be English and the Parties hereby expressly waive any right of appeal to any court having jurisdiction on any question of fact or law. It is agreed that the arbitrators shall have no authority to award exemplary or punitive damage of any type under any circumstances whether or not such damage may be available under the relevant applicable law, the parties hereby waiving their right, if any, to recover such damages.

§ 4

Specifications and Definitions

1. Arbitration: For the purpose of this Agreement

§ 3.2 (a) shall apply.

The language specified for the purpose of § 3.2 (a) shall be: **[check box and insert language, if deviation from standard choice of § 3.2 (a) ("English") is wanted]**

§ 3.2 (b) shall apply.

The language specified for the purpose of § 3.2 (b) shall be: **[check box and insert language, if deviation from standard choice of § 3.2 (b) ("English") is wanted]**

2. Business Day: For the purpose of this Agreement, Business Day means any day on which commercial banks effect deliveries of both Euro and Sterling, except all Saturdays and Sundays and those days defined as "Non-Business Days" as published in the "Payment Netting Standard European Settlement Calendar" on EFET website.

3. Bank Accounts: Payments pursuant § 1.4 (Payment) shall be effected to the following bank accounts:

Bank Account of Party A: [insert bank account details]

Bank Account of Party B: [insert bank account details]

4. Default Interest Rate: For the purpose of this Agreement, the Default Interest Rate shall be the Interest Rate plus three percent (3 %) per annum.

5. Disputed Amounts: For the purpose of this Agreement

§ 1.7 (a) shall apply.

§ 1.7 (b) shall apply.

6. Interest Rate: For the purpose of this Agreement, the Interest Rate shall be the one month EURIBOR interest rate for 11.00 a.m.

7. Jurisdiction: For the Purpose of § 3.1 the applicable Jurisdiction shall be:

[insert name of jurisdiction whose substantive law shall govern this Agreement]

8. Principal Agreements:

(a) For the purpose of § 1.1 (a) Principal Agreement shall be:

[insert the Principal Agreement where NO quantity allocation is necessary in order to determine the amount to be invoiced]

(b) For the purpose of § 1.1 (b) Principal Agreement shall be:

[insert the Principal Agreement where quantity allocation is necessary in order to determine the amount to be invoiced]

9. Miscellaneous:

[Insert changes, if any, to the standard wording of the Cross Product Payment Netting Agreement, or, otherwise, delete § 4.9 as appropriate.]

Executed by the duly authorised representative of each Party effective as of the Effective Date.

[Place of signature], [Date]

[Place of signature], [Date]

[Name of Party A]

[Name of Party B]

[Name and Title]

[Name and Title]

Principal Agreement Annex

to the Cross Product Payment Netting Agreement

between [Name of Party A] and [Name of Party B]

with an Effective Date: [Insert Effective Date]
(referred to as this Agreement)

I. Principal Agreement in accordance with the terms of this Agreement shall be:

1. <input type="checkbox"/>	European Federation of Energy Traders General Agreement concerning Delivery and Acceptance of Electricity with an Effective Date of [] (the “ EFET Power Agreement ”)
2. <input type="checkbox"/>	European Federation of Energy Traders General Agreement concerning Delivery and Acceptance of Natural Gas with an Effective Date of [] (the “ EFET Gas Agreement ”)
3. <input type="checkbox"/>	Electricity Forward Agreement Association Grid Trade Master Agreement dated as of [] (the “ GTMA ”)
4. <input type="checkbox"/>	Zeebrugge Hub Natural Gas Trading Terms and Conditions 2004 (“ ZBT Terms ”)
5. <input type="checkbox"/>	The Short Term Flat NBP Trading Terms and Conditions 1997 dated as of [] or any Master agreements agreed between the Parties incorporating those terms (“ NBP Master ”)
6. <input type="checkbox"/>	[amend as appropriate]

[Check boxes as appropriate; however only agreements deriving payment obligations of the same currency (the “**Netting Currency**”) may be elected for the purpose of this Agreement.]

II. Netting Currency: For the purpose of this Agreement, the Netting Currency shall be:

[insert the currency applicable to Payment Obligations under the applicable Principal Agreements; **however only Principal Agreements deriving payment obligations of the same currency may be applicable for the purpose of this Agreement.**]

[Place of signature], [Date]

[Place of signature], [Date]

[Name of Party A]

[Name of Party B]

[Name and Title]

[Name and Title]

