

## **EFETnet® Accession Agreement**

EFETnet B.V., 34197646, registered office at Keizersgracht 62-64, 1015 CS Amsterdam, The Netherlands, represented by its managing director Hugh Brunswick

– EFETnet –

– Licensed User –

Each of the above hereinafter referred to as a “party” and, collectively, the “parties”.

### **WHEREAS:**

- (A) EFETnet is a company that was founded by the European Federation of Energy Traders, a group of more than 70 energy trading companies, for the purpose of facilitating the energy trading process between and among its members and with other organisations active in the energy trading business, compliant with the EFET Standards as published on [www.efet.org](http://www.efet.org), from time to time.
- (B) The EFETnet Software is a software application for electronic process automation and communication in the energy trading industry and as defined in ‘EFETnet Software’, Schedule 6 to the General Terms and Conditions (GTC). The EFETnet Software was originally sublicensed by EFETnet to the Licensed User, pursuant to the GTC, and installed locally as a "peer-to-peer" service. This "peer-to-peer" service was then gradually superseded by EFETnet Central Matching Service, as defined in paragraph 2 of Schedule 8 to the GTC, to deliver an electronic platform for the exchange of electronic documents relating to transactions entered into by Licensed Users compliant with the relevant EFET Standards. The Central Matching Service hosts and runs the EFETnet Software, and from time to time at the discretion of EFETnet other EFET Box+ Modules, as a service ("SaaS"). EFETnet has published the GTC, as amended by Schedule 8 with respect to the Central Matching Service, on [www.efetnet.org](http://www.efetnet.org).
- (C) EFETnet has invested in the development of the Central Matching Service by a third party supplier, Ponton GmbH (Ponton), and continues to invest in the provision of maintenance and other ancillary services by Ponton or by other software and service suppliers that may be selected at EFETnet’s sole discretion from time to time.
- (D) EFETnet owns the exclusive rights for the Central Matching Service and a license for the Ponton X Suite.
- (E) Licensed User wishes to sublicense and use the Central Matching Service offered by EFETnet as SaaS for electronic process automation and communication in energy trading and EFETnet wishes to deliver and sublicense to Licensed User the Central Matching Service subject to the terms set out in this Agreement and Schedule 8 the GTC. In addition, Licensed User wishes to sublicense and use the Ponton X Suite and EFETnet wishes to make available and sublicense to Licensed User the Ponton X Suite subject to the terms set out in this Agreement and the GTC.
- (F) The electronic process automation and communication shall take place between Licensed User and other Licensed Users of the Central Matching Service or third parties using software compatible with the Central Matching Service on the basis of terms agreed between them, including, for purpose of the CMS eCM Module only, by Licensed User reliance on the deemed acceptance process set out in section 7 of the Central Matching Service eCM Appendix.

- (G) By purchasing a sublicense of the Central Matching Service and the Ponton X Suite (including the provision of certain maintenance services relating thereto) Licensed User shall be given the opportunity to participate in the newly developed electronic process automation and communication software in consideration for payment of the stipulated fees.

**IT IS AGREED AS FOLLOWS:**

**1. FULL AND ENTIRE AGREEMENT**

The full and entire agreement between the parties consists of:

- I. this **Accession Agreement** including all **applicable Schedules as published on [www.efetnet.org](http://www.efetnet.org)** relevant to either/both the EFETnet Software and/or the Central Matching Service and
- II. General Terms and Conditions (GTC) as published on [www.efetnet.org](http://www.efetnet.org).

**2. LICENSE**

2.1 EFETnet shall make the EFETnet Software available to the Licensed User and herewith grants to Licensed User a non-perpetual, non-exclusive, non-transferable sublicense to use the EFETnet Software for the term of this Agreement.

2.2 The sublicense shall be restricted to the use of the EFETnet Software for exchanging energy trade data compliant to the EFET Standards for process automation and communication and/or any other data as specifically permitted by EFETnet and stated as such on [www.efetnet.org](http://www.efetnet.org) with other licensed users of the EFETnet Software and for use:

- (a) at the following Licensed User Site(s) of Licensed User:

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- (b) In the Licensed User Role of:

Either Trader /Reporting Unit ("Trader Role")

and opts-in for  External Agent Role (only if Reporting Unit)

or Broker/Exchange/Organised Market Place (OMP)/Reporting Company ("Broker Role")

and opts-in for  External Agent Role (only if Reporting Company)

and/or  Clearing Registration Agent (CRA)

- (c) for the automation of the following EFET Standard selected processes:
  - and/or  Central Matching Service Electronic Confirmation Matching Service Module (CMS eCM)
  - and/or  Central Matching Service Hybrid Fax Confirmation Matching Service Module (CMS Hybrid fCM)
  - and/or  Central Matching Service Electronic eXchange Related Processes Module (CMS eXRP)
  - and/or  Central Matching Service Electronic Regulatory Reporting Module (CMS eRR) and, if opted-in for the External Agent functionality, adheres to the terms set out in Annex to the eRR-REMIT Service Sub Appendix.
  - and/or  Central Matching Service Electronic Confirmation Matching lite Service Module (CMS eCM lite)
  - and/or  Central Matching Service Electronic Trade Monitoring Module (CMS eTM)
  - and/or  \_\_\_\_\_ (Future Module)

2.3 Only Licensed User, its employees and the following affiliated companies and their employees are entitled to use the EFETnet Software

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

2.4 EFETnet shall, through its suppliers, provide the Maintenance Services to Licensed User and the affiliated companies for the EFETnet Software during the term of this Agreement.

**3. FEES**

3.1 Pursuant to Schedule 8 and associated Central Matching Service Module Append(ices) Licensed User shall pay to EFETnet the Monthly Fees calculated using the fees specified in the prevailing Schedule 1 (Fee Schedule) available on [www.efetnet.org](http://www.efetnet.org), for the relevant Licensed User Role and selected processes under the Agreement. The payment is due fourteen (14) days after the date of the monthly invoice to be issued by EFETnet.

Should the money not have arrived by the due date, EFETnet is entitled to send out reminders providing for late payment charges. Late payment charges shall be EUR 100 for the first reminder and EUR 500 for the second reminder. The first reminder shall be sent any time after expiry of the due date. The second reminder shall be sent out at the earliest four weeks after the date where payment was due.

- 3.2 All invoiced fees are excluding VAT and other taxes (if any), which will be added if and insofar as the law requires.
- 3.3 All payments (all contractual fees including the Monthly Fees as provided in the Fee Schedule for the relevant Licensed User Role and selected Central Matching Service Modules as set out in Schedule 8 and associated Central Matching Service Module Append(ices)) due under this Agreement shall be transferred without deduction to the following bank account of EFETnet:

Account Number: 40 42 06 220  
 Bank Details: ABN/AMRO Bank, Amstelveen  
 Swift Code: ABNANL 2A  
 IBAN: NL18ABNA0404206220

3.4 NOT USED

3.5 NOT USED

- 3.6 Licensed User shall notify to EFETnet prior to paying the invoiced Fees that an invoice is in dispute due to the malfunction of the EFETnet Software, improper provision of the maintenance service or any other delayed or improper provision of services by any supplier to EFETnet. Notwithstanding such right to objection, Licensed User shall pay the disputed fees to EFETnet. EFETnet will ensure that the disputed fees are not released to any supplier to EFETnet without prior written notice by Licensed User to EFETnet. EFETnet is entitled to provide the name of the Licensed User jointly with the reasoning for the withholding of the payment to any supplier to EFETnet.

- 3.7 For each process selected in Clause 2.2 (c) the Licensed User shall pay the fees according to the Fee Schedule or the applicable Central Matching Service Module Appendix.

- 3.8 All fees will be automatically adjusted by the percentage of the increase/decrease of the official consumer price index (Verbraucherpreisindex) as published by the German Federal Office of Statistics (Statistisches Bundesamt) applicable for the year before such adjustment takes place. (Example: *The indexed increase for consumer prices in Germany the year 2007 is 2 percentage points. The fees from 1 January 2009 onwards are increased by 2%*).

#### 4. NOTICES AND DELIVERY ADDRESS

- 4.1 Unless otherwise notified by the relevant party in writing, all notices between the parties will be sent to the addresses set forth in the header of this Agreement.

- 4.2 If and insofar telefax copies or e-mails are permitted by this Agreement, the following numbers / e-mail addresses shall be used for contractual communications:

EFETnet telefax no.: 0031 - 20 - 520 75 10

EFETnet e-mail: [management@efetnet.org](mailto:management@efetnet.org) with copy to [h.brunswick@efetnet.org](mailto:h.brunswick@efetnet.org)

Licensed User telefax no. \_\_\_\_\_

Licensed User e-mail: \_\_\_\_\_

EFETnet Service Team e-mail: [support@efetnet.org](mailto:support@efetnet.org)

- 4.3 The EFETnet® Software will be delivered by sending an e-mail with a customised hyperlink to Licensed User. For this purpose, Licensed User must provide an e-mail address, of which the second level domain name is legally owned by Licensed User (e.g. name@companyname.com).

Delivery E-mail Address (if different from Licensed User e-mail address):

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Details of the delivery process are provided in the EFETnet® General Terms and Conditions as published on [www.efetnet.org](http://www.efetnet.org).

## **5. TERM AND TERMINATION**

- 5.1 This Agreement has an Initial Term, and thereafter, is subject to automatic renewal as set out in Clause 5.3.
- 5.2 Either party is entitled to terminate this Agreement at the end of the Initial Term by giving at least three months' prior written notice to the expiry of the Initial Term or any time thereafter.
- 5.3 If neither party terminates in accordance with Clause 5.2, this Agreement shall automatically renew for an indefinite term, during which either party shall be entitled to terminate this Agreement with three months' prior written notice.
- 5.4 This Agreement terminates automatically at the date EFETnet (i) loses its right to license the EFETnet Software or (ii) if the Maintenance and Support Services Agreement between EFETnet and its service supplier is terminated or (iii) if insolvency proceedings are commenced over the assets of EFETnet or the Licensed User.

## **6. TERMINATION FOR GOOD CAUSE**

- 6.1 Either party's right to terminate this Agreement for good cause ("*wichtiger Grund*") in the event of a material breach shall remain unaffected.
- 6.2 In particular, EFETnet shall be entitled to terminate this Agreement with immediate effect for good cause if:
- (a) Licensed User has not paid the Initial Fee as set out in Fee Schedule 1 (Schedule 1) or in the applicable Central Matching Service Module Appendix within two weeks of the receipt of a written notice from EFETnet specifying that it is in default of its payment obligations;
  - (b) Licensed User has not paid two Monthly Fees (or portions of Monthly Fees or any other fees amounting in aggregate to two Monthly Fees or for two months usage calculated on the basis of the fees as set out in the applicable Central Matching Service Module Appendix); or
  - (c) Licensed User violates any sublicense restrictions and does not cure such violation within one week of the receipt of a written warning from EFETnet specifying the violation.

- 6.3 In particular, Licensed User shall be entitled to terminate this Agreement with immediate effect for good cause if, despite two written warnings, EFETnet is in default with its obligations under Clauses 5 and 8.6 of General Terms and Conditions.
- 6.4 As stated in 5.4 either party shall be entitled to terminate this Agreement with immediate effect for good cause if insolvency proceedings are issued by the Court against the other party (*Eröffnungsbeschluss*) or such proceedings are rejected due to the lack of assets (*Ablehnung mangels Masse*) or such party files itself a petition for insolvency (*eigener Insolvenzantrag*), respectively the equivalent actions occur under Dutch insolvency law.
- 6.5 Termination in accordance with this Clause 6 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party and all provisions which are to survive this Agreement or impliedly do so shall remain in force and effect.

## 7. INCLUSION OF GENERAL TERMS AND CONDITIONS

- 7.1 All further terms of the agreement between the parties are set out in the EFETnet® General Terms and Conditions (GTC) as published on [www.efetnet.org](http://www.efetnet.org) which forms an integral part of this Accession Agreement. In case of any potential contradiction with the GTC, this Accession Agreement shall prevail over the GTC.
- 7.2 Should Licensed User have any general terms and conditions of business, these shall not apply. This Accession Agreement (including EFETnet® General Terms and Conditions as published) contains the entire agreement between the parties relating to the sublicensing of the EFETnet Software and the provision of Maintenance Services.
- 7.3 EFETnet reserves the right to change the EFETnet® General Terms and Conditions as published on [www.efetnet.org](http://www.efetnet.org) from time to time. EFETnet will notify Licensed User prior to implementing such changes and request Licensed User's consent thereto (the **Change Notice**).
- 7.4 The consent shall be deemed to be given if Licensed User does not object to the new General Terms and Conditions within two weeks after having received the Change Notice. Upon Licensed User's expressed or deemed consent the new EFETnet® General Terms and Conditions as published on [www.efetnet.org](http://www.efetnet.org) shall become effective with immediate effect.
- 7.5 If Licensed User unreasonably objects to the Change Notice, EFETnet shall be entitled to terminate this Agreement at any time with two months' written notice from date of receipt of such objection, provided however, that during such notice period the parties shall attempt to negotiate in good faith an amicable solution.

**8. GENERAL**

- 8.1 In the event that any provision of this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable or should such provision be impracticable for any reason, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement. In such a case, this Agreement shall be construed in a legally permissible way which reasonably effectuates the economic purposes and the interests of the parties.
- 8.2 This Agreement shall be governed and construed in all respects by the laws of the Federal Republic of Germany, without regard to conflict of laws provisions and excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
- 8.3 The courts of Hamburg, Germany shall have exclusive jurisdiction on any dispute.

This Accession Agreement and the General Terms and Conditions are effective in the same way for all signatories of this Agreement.

Place

Date

Signature (s)

EFETnet

Name: (H. Brunswick)

Function: Managing Director

Licensed User

Name (s):

Function: