

# EFET

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### Master Netting Agreement

dated as of \_\_\_\_\_ (its “Effective Date”)

between

[ ]

having its registered office at [ ]

(“Party A”)

and

[ ]

having its registered office at [ ]

(“Party B”)

**NOTICE & WAIVER: THIS MASTER NETTING AGREEMENT WAS PREPARED BY EFET AND ITS MEMBERS EXERCISING ALL REASONABLE CARE. HOWEVER EFET AND ITS MEMBER COMPANIES, REPRESENTATIVES AND 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 PARTICULAR CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS MASTER NETTING AGREEMENT TO ENSURE ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER’S LEGAL INTERESTS.**

# EFET

## Master Netting Agreement

**WHEREAS,** *this Agreement (the “Master Netting Agreement”) provides the means by which the Parties may, as they so elect, agree upon and implement certain mechanisms and procedures for the early termination and liquidation, close-out netting, payment netting and/or set-off of certain designated contracts, agreements, transactions, trades and related underlying obligations between them;*

**WHEREAS,** *the Parties have entered into and anticipate continuing to enter into contracts and individual trades and transactions thereunder involving purchases, sales, exchanges, hedges, options and similar undertakings the scope of which is further defined herein to which they wish the terms of this Master Netting Agreement to apply, and the terms of which they, as and where specified herein, wish the terms of this Master Netting Agreement to, as applicable, amend, revise, replace and/or restate; and*

**WHEREAS,** *the contractual mechanisms, rights and procedures provided for in this Master Netting Agreement are intended to assist the Parties in managing and mitigating the credit and counterparty performance related risks inherent to the types of transactions and business consolidated under this Master Netting Agreement;*

**NOW, THEREFORE,** *in consideration of the covenants and obligations herein contained and undertaken, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:*

### § 1

#### **Definitions and Interpretation**

1. **Definitions.** Terms used in this Master Netting Agreement shall have the meanings either set out in its Annex 1 (*Defined Terms*) or included in context within the body of this Master Netting Agreement.
2. **Other Definitional Provisions.** The term “**Party**” means a party to this Master Netting Agreement and a reference herein to either “**Party**” includes a reference to its successors and permitted assigns.

### § 2

#### **Scope of Early Termination and Close-Out Netting Rights**

1. **Designation of Agreements Which May Be Terminated, Closed-Out and Netted.** The scope of Close-Out netting rights available under this Master Netting Agreement is determined by a designation in the Election Sheet of agreements falling within its scope (each such agreement so designated being a “**Netted Agreement**” and all of them collectively being the “**Netted Agreements**”). Netted Agreements, and all transactions under the terms of those Netted Agreements entered into both before and after the date of this Master Netting Agreement, shall be governed by, and are hereby made subject to, consolidated under, and,

where applicable, amended, modified and/or supplemented by, the terms of this Master Netting Agreement.

2. **Exclusion of Agreements and Transactions from This Master Netting Agreement.** Any agreement or transaction between the Parties which might fall within the definition of a Netted Agreement, but which the Parties wish to exclude from the scope of this Master Netting Agreement and its Close-Out process, may be so excluded by listing such agreement or transaction in the Election Sheet as an Excluded Agreement.
3. **Single Agreement.** This Master Netting Agreement, all Netted Agreements, and all transactions relating or appended to, issued or entered pursuant to, or provided under or in accordance with, the terms of such Netted Agreements and/or this Master Netting Agreement, shall together constitute a single, integrated and inseparable agreement between the Parties. The Parties acknowledge that all such Netted Agreements, their underlying transactions and related documentation entered into after the date of this Master Netting Agreement are entered into upon reliance of this fact and that they would not otherwise enter into those Netted Agreements and/or transactions.

### § 3

#### Close-Out Events

1. **Definition of “Close-Out Event.”** The Parties shall specify in the Election Sheet the definition(s) of Close-Out Event which they desire to apply to this Master Netting Agreement, and, if applicable, to the Netted Agreements. Possible definitions which may be selected for this purpose include, without limitation, the Master Netting Agreement Default Events set forth below in § 3.1(A) (*Master Netting Agreement Default Events*) and either: (i) the Netted Agreement Default Events set forth below in § 3.1(B) (*Netted Agreement Default Events*) or (ii) the Harmonised Default Events set forth below in § 3.1(C) (*Harmonised Default Events*), each if and as further revised, amended, restated, modified or supplemented by the Parties in the Election Sheet:
  - (A) **Master Netting Agreement Default Events.** “Close-Out Event” shall mean any of the following Master Netting Agreement Default Events specified by the Parties as applicable in the Election Sheet:
    - (I) **Master Netting Agreement Misrepresentations.** A representation or warranty made or repeated by a Party under § 12.1 (*Representations and Warranties*) of this Master Netting Agreement proves to have been incorrect or misleading in any material respect when made or repeated; or
    - (II) **Master Netting Agreement Covenant Violations.** A Party is in violation of a covenant made under this Master Netting Agreement.
    - (III) **Credit Support Defaults.** The failure of a Party or its Credit Support Provider, when required (after giving effect to any applicable notice or grace period thereunder), to make a payment, to deliver or return any Eligible Credit Support, or to perform any other material obligation (other than when such obligation is released or excused pursuant to provisions of the applicable agreement) under any Credit Support Document to this Master Netting Agreement.
  - (B) **Netted Agreement Default Events.** “Close-Out Event” shall mean any event in relation to a Party, which is not an Excluded Default Event, on the basis of which the other Party has the contractual right to Close-Out all the transactions under a

Netted Agreement and shall include events on the basis of which a Party would have the contractual right to Close-Out a Netted Agreement or which would cause automatically the Close-Out of a Netted Agreement even if there are no transactions outstanding under that Netted Agreement at the relevant time.

(C) **Harmonised Default Events.** Notwithstanding anything to the contrary contained in any Netted Agreement, “**Close-Out Event**” shall mean any of the following events designated as effective by the Parties in their Election Sheet, and, depending upon whether the Parties have elected to disapply § 4.2 (*Global Nature of Close-Out*), such designation shall either: (i) if § 4.2 (*Global Nature of Close-Out*) has not been disapplied, delete from such Netted Agreement(s), replace and restate; or, (ii) in the event § 4.2 (*Global Nature of Close-Out*) has been disapplied, amend by adding such designated event(s) to, all of the definitions of events contained in each Netted Agreement, which, in relation to one Party give the other Party the contractual right to Close-Out all the transactions under such Netted Agreement, and if applicable, the Netted Agreement itself (and further, if such Netted Agreement is itself only a single transaction, that Netted Agreement itself):

(I) **Non-Performance.** The failure of a Party or its Credit Support Provider, when required, to make a payment, to deliver any Credit Support or to perform any other material obligation (other than when such obligation is released or excused pursuant to provisions of the applicable agreement, including, without limitation, those covering “Force Majeure” as defined in the applicable agreement):

- (a) under the Netted Agreement; provided, that in the case of a failure to pay, such failure is not cured within two (2) Business Days of a written demand, or, in the case of any other failure of performance (not covered by sub-paragraphs (b) or (c) below, or by § 3.1(C)(IV) (*Prolonged or Repeated Failure to Deliver or Accept*)), such failure is not cured within ten (10) Business Days of a written demand;
- (b) under any Credit Support Document (after giving effect to any applicable notice or grace period thereunder); or
- (c) in accordance with provisions of the applicable Netted Agreement regarding the provision of, as applicable, Credit Support, Performance Assurance or other financial security or collateral, however described.

(II) **Cross Default and Acceleration.**

- (a) any default, event of default or other similar condition or event (however described) in respect of a Party, such Party’s Credit Support Provider (if such Party has a Credit Support Provider) or such Party’s Controlling Party (if such Party does not have a Credit Support Provider but has a Controlling Party) under one or more agreements or instruments relating to Specified Indebtedness of any of them (individually or collectively) in an aggregate amount of not less than the Cross Default Threshold Amount (as specified for that Party in the Election Sheet) which has resulted in such Specified Indebtedness becoming, or becoming capable at such time of being declared, due and payable; or
- (b) the default of a Party or its Credit Support Provider or Controlling Party (individually or collectively) to make one or more payments on the due

date thereof in an aggregate amount of not less than the Cross Default Threshold Amount (as specified for that Party in the Election sheet) under one or more agreements or instruments relating to Specified Indebtedness (after giving effect to any applicable notice requirement or grace period).

- (III) **Winding-up/Insolvency/Attachment.** A Party or its Credit Support Provider:
- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (b) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (c) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (d) institutes or has instituted against it a proceeding seeking a judgement of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation and, if specified in the Election Sheet, is not withdrawn, dismissed, discharged, stayed or restrained within such period as specified in the Election Sheet;
  - (e) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
  - (f) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all its assets;
  - (g) has a secured party take possession of all or substantially all its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all its assets;
  - (h) causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in §§ 3.1(C)(III)(a) to 3.1(C)(III)(g) (inclusive); or
  - (i) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts referred to in this § 3.1(C)(III).
- (IV) **Prolonged or Repeated Failure to Deliver or Accept.** The failure of a Party to comply with its obligation to make or accept deliveries as required under a Netted Agreement transaction, (other than when such obligation is released pursuant to an event defined in the Netted Agreement as “Force Majeure”) for more than seven consecutive days or for more than seven (7) days in aggregate within a period of sixty (60) days.
- (V) **Misrepresentations and Warranty Defaults.** A representation or warranty when made or repeated or deemed to have been made or repeated by a Party to a Netted Agreement or by its Credit Support Provider in a Credit Support

Document proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated.

(VI) **Failures to Provide Performance Assurance.** The failure of a Party to, as applicable, provide or increase in amount, within three (3) Business Days of its receipt of a written demand therefore from the other Party (the "**Requesting Party**") such Requesting Party believing in good faith that a Material Adverse Change has occurred and is continuing in respect of the other Party: (a) a Letter of Credit; (b) cash; or (c) other security (including a bank or parent guarantee), in a form, amount and from an Entity which is, and continues thereafter to remain, reasonably acceptable to the Requesting Party (each a "**Performance Assurance**"). For the avoidance of doubt, in the event that an Entity providing Performance Assurance on behalf of a Party does not thereafter continue to be reasonably acceptable to the Requesting Party, the Requesting Party shall have the right to require the other Party to provide to it additional, alternative and/or replacement Performance Assurance.

(a) **Material Adverse Change:** A Material Adverse Change shall have occurred if any one or more of following events has occurred and is continuing in so far as such event is specified as applying to a Party in the Election Sheet:

(i) **Credit Rating:** If the Credit Rating of an Entity listed in (AA) to (CC) below, each such Entity being a "**Relevant Entity**" of such Party, is withdrawn or downgraded below the rating set out for such Party in the Election Sheet:

(AA) the other Party (unless all of that other Party's financial obligations under all Netted Agreements are fully guaranteed or assured under a Credit Support Document);

(BB) the other Party's Credit Support Provider (other than a bank);  
or

(CC) any Entity (a "**Controlling Party**") who is a party to a control and/or profit and loss transfer agreement (Berherrschungs-Gewinnabführungsvertrag) within the meaning of the German Stock Corporation Act (Aktiengesetz; AktG) (a "**Control and Profit Transfer Agreement**") with a Party and that Party is in relation to such Entity, its subsidiary over which such Entity has control;  
or

(ii) **Credit Rating of a Credit Support Provider That is a Bank:** If the Credit Rating of a bank serving as the other Party's Credit Support Provider is withdrawn or downgraded below the Credit Rating set out in the Election Sheet.

(iii) **Financial Covenants:** In so far as a Relevant Entity does not have a Credit Rating, if such Relevant Entity does not fulfil any of the following financial requirements as determined by reference to its most recent financial statement:

(AA) **EBIT to Interest:** The ratio of EBIT to the sum of all interest and any amounts in the nature of interest charged to

expense relating to financial indebtedness for borrowed money (which includes debts payable to Affiliates as well as debt instruments to financial institutions) for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet;

- (BB) **Funds from Operations:** The ratio of Funds from Operations to Total Debt for such Relevant Entity in any fiscal year is greater than the ratio specified in the Election Sheet; or
- (CC) **Total Debt to Total Capitalisation:** The ratio of Total Debt to Total Capitalisation for such Relevant Entity in any fiscal year is less than the ratio specified in the Election Sheet.
- (iv) **Decline in Tangible Net Worth:** If the Tangible Net Worth of a Relevant Entity falls below the amount specified in the Election Sheet.
- (v) **Expiry of Credit Support Document:** If any Credit Support Document expires or terminates with respect to any outstanding obligations of the other Party under a Netted Agreement or this Master Netting Agreement, or, if a Credit Support Document is due to expire or terminate within the period of time, if any, specified in the Election Sheet, or the failing or ceasing of such Credit Support Document to be in full force or effect for the purposes of a Netted Agreement or this Master Netting Agreement (in each case other than in accordance with its terms or the terms of, as applicable, this Master Netting Agreement and/or the relevant Netted Agreement) before the satisfaction of all outstanding obligations of such other Party under this Master Netting Agreement and all Netted Agreements to which such Credit Support Document relates, without the written consent of the Requesting Party.
- (vi) **Failure of Credit Support:** If any Credit Support Provider of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of, any Credit Support Document provided by it or otherwise fails to comply with or perform its obligations under or in respect of such Credit Support Document and such failure is continuing after any applicable grace or cure period.
- (vii) **Failure of Control and Profit Transfer Agreement:** If any Controlling Party of the other Party disaffirms, disclaims, revokes, repudiates or rejects in whole or in part, or challenges the validity of any Control and Profit Transfer Agreement entered into by it or otherwise fails to comply with or perform its obligations under such Control and Profit Transfer Agreement.
- (viii) **Impaired Ability to Perform:** If in the reasonable and good faith opinion of the Requesting Party, the ability of the Relevant Entity to perform its obligations under this Master Netting Agreement and any Netted Agreement, any Credit Support Document or any Control and Profit Transfer Agreement, as the case may be, is materially impaired.

- (ix) **Amalgamation/Merger:** If the other Party or its Credit Support Provider undergoes a change of control, consolidates or amalgamates with, or merges with or into, or transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, another Entity, or another Entity transfers all or substantially all its assets to, or reorganises, incorporates, reincorporates, or reconstitutes into or as, such other Party or its Credit Support Provider and:
    - (AA) the creditworthiness of such Party, its Credit Support Provider or the resulting, surviving, transferee or successor Entity is materially weaker than that of the other Party or such Credit Support Provider, as the case may be, immediately prior to such action;
    - (BB) the resulting, surviving, transferee or successor Entity fails to assume all the obligations of that other Party or such Credit Support Provider under this Master Netting Agreement and all Netted Agreements or any Credit Support Document to which it or its predecessor was a party either by operation of law or pursuant to an agreement reasonably satisfactory to the Requesting Party; or
    - (CC) the benefits of any Credit Support Document cease or fail to extend (without the consent of the Requesting Party) to the performance by such resulting, surviving, transferee or successor Entity of its obligations under this Master Netting Agreement and all Netted Agreements.
  - (VII) **Additional Harmonised Default Events.** Any additional events specified in the Election Sheet as Additional Harmonised Default Events.
2. **Excluded Default Events.** Notwithstanding anything to the contrary express or implied herein, any events designated by the Parties as Excluded Default Events in the Election Sheet shall not constitute Close-Out Events for purposes of this Master Netting Agreement.

#### § 4

#### The Right to Close-Out, Its Effect and Applicable Limitations

1. **Termination and Close-Out of the Netted Agreements.** If a Close-Out Event has occurred and is continuing in respect of a Party, then the other Party (the “**Terminating Party**”) shall be entitled to Close-Out all transactions under all of its Netted Agreements (provided, however, that absent an election to disapply § 4.2 (*Global Nature of Close-Out*), it may not Close-Out less than all transactions under all such Netted Agreements, and, if applicable, the Netted Agreements themselves (and if any such Netted Agreement is itself a single transaction, such Netted Agreement itself) by providing a Termination Notice under § 5.1 (*Termination Notice*); and provided further, that no Termination Notice shall be required for the Close-Out of any Netted Agreement and its underlying transactions which have been Closed-Out automatically by, as applicable, either the Netted Agreement’s own terms or the terms of this Master Netting Agreement set forth in § 6 (*Customization of Automatic Termination Rights*). A Close-Out Event will be deemed to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event cease to exist or the payment in full of any amount that has become due and

payable, as applicable, hereunder or under the terms of all relevant Netted Agreements, as the result of the occurrence of such Close-Out Event. Each Netted Agreement is hereby amended accordingly.

2. **Global Nature of Close-Out.** Unless the Parties have provided otherwise in their Election Sheet, the scope of the Close-Out process under this Master Netting Agreement shall be global in respect of all Netted Agreements. Absent such contrary election, a Party may not Close-Out under fewer than all of its Netted Agreements and any attempt to initiate Close-Out of any fewer than all of such Netted Agreements shall initiate Close-Out of the remainder pursuant to the procedure set forth in § 5.2 (*Effect of Attempting to Initiate Close-Out of Less Than All Netted Agreements*). For the avoidance of doubt, absent the elections to both disapply this § 4.2 and to specify in the Election Sheet what alternative, non-global termination parameters will apply, a Party, from the Effective Date of this Master Netting Agreement, shall have no further right to voluntarily initiate by the giving of notice the Close-Out of a Netted Agreement pursuant to its own terms, nor, absent the Close-Out of all Netted Agreements may any single Netted Agreement automatically Close-Out pursuant to any terms providing for the same contained within the terms of a Netted Agreement, and each Netted Agreement is hereby amended accordingly.
3. **Effect of Initiation of Close-Out.** With effect from the Early Termination Date all further payment and performance obligations in respect of all transactions under such Netted Agreements shall be released (and not merely suspended) and all remaining duties and obligations of the Parties under each such Netted Agreement to schedule deliveries and acceptances and to effect ordinary payments and settlements shall be replaced by the single, surviving obligation of one Party to pay the other a Settlement Amount in respect of each Closed-Out Agreement in accordance with its terms, as amended by the terms of § 7 (*Determination and Settlement of Settlement Amounts*) and § 8 (*Netting-off of Settlement Amounts; Accrual of Interest*); and, pursuant to the terms of this Master Netting Agreement, those Settlement Amount payment obligations in respect of each Closed-Out Agreement shall be further consolidated by netting them off into a resultant single Final Net Settlement Amount due from one Party to the other in accordance with the provisions of § 8 (*Netting-off of Settlement Amounts; Accrual of Interest*).

## § 5

### Voluntary Commencement of Close-Out

1. **Termination Notice.** Unless Close-Out has been initiated automatically in accordance with the procedures set forth below in § 6 (*Customization of Automatic Termination Rights*), the Terminating Party shall initiate Close-Out under all of the Netted Agreements by sending to the Defaulting Party a notice (the “**Termination Notice**”) which notice may be, but need not be, in the form provided in the attached Annex 2 (*Form of Termination Notice*), specifying the date on which all transactions under all Netted Agreements are Closed-Out (the “**Early Termination Date**”). The Termination Notice given must be given in conformance with the notification requirements of §12.6 (*Addresses for Communications Between Parties*) and shall be deemed to satisfy the notice requirements of each Netted Agreement. The Early Termination Date designated may be no earlier than the day the Termination Notice is deemed to be received under the terms of this Master Netting Agreement and shall be no later than the day falling twenty (20) days after such day.
2. **Effect of Attempting to Initiate Close-Out of Less Than All Netted Agreements.** Unless the Parties have elected to disapply § 4.2 (*Global Nature of Close-Out*), in the event that the Terminating Party attempts to exercise any right to Close-Out one or more (but not all) of the Netted Agreements, the exercise of such right shall be deemed to be effective provision of a

Termination Notice, thereby initiating Close-Out, effective on the designated Early Termination Date, of all the Netted Agreements.

3. **Amendment to Early Termination Provisions of All Netted Agreements.** The provisions of each Netted Agreement governing its Close-Out are hereby amended to conform to the terms of this § 5 (*Voluntary Commencement of Close-Out*).

## § 6

### Customization of Automatic Termination Rights

1. **Automatic Termination and Global Close-Out.** If the Parties have elected to apply § 3.1(B) (*Netted Agreement Default Events*) and have further not elected to disapply either § 4.2 (*Global Nature of Close-Out*) or this § 6.1, then upon the Automatic Termination of any Netted Agreement pursuant to its own terms, all other Netted Agreements shall automatically and immediately terminate as well, regardless of whether any or all such Netted Agreement(s) contain (an) Automatic Termination provision(s) of their own. And if applicable, the terms of each Netted Agreement are amended to so provide.
2. **Optional Uniform Election of Automatic Termination and Close-Out.** Notwithstanding any contrary election made in such Netted Agreement, if the Parties provide in the Election Sheet to make this § 6.2 operative, the terms of each Netted Agreement shall be amended to provide that, upon the occurrence of an Automatic Termination Close-Out Event designated in the Election Sheet as applying to a Party or, as applicable, its Credit Support Provider or Controlling Party, then all, but not fewer than all, Netted Agreements shall automatically Close-Out in accordance with their own terms, but with such Close-Out being effective as of the time of termination specified in the Election Sheet.
3. **Automatic Termination Mechanics.** Upon commencement of Close-Out pursuant to the terms of this § 6.1 (*Automatic Termination and Global Close-Out*) or § 6.2 (*Optional Uniform Election of Automatic Termination and Close-Out*), and effective as of the time specified for such termination in, as applicable, either the Election Sheet or the terms of the first Closed-Out Agreement to so Close-Out, Close-Out of the Netted Agreements shall be as provided in § 4.3 (*Effect of Initiation of Close-Out*); provided, however, that the Close-Out shall commence automatically and the Terminating Party need not send the Defaulting Party any Termination Notice in order to effectuate the commencement of such Close-Out.
4. **Automatic Early Termination and Adjustment for Bankruptcy.** If this § 6.4 is designated as operative by the Parties in their Election Sheet, in circumstances where Close-Out occurs automatically, the relevant Settlement Amount will be subject to such adjustments as are appropriate and permitted by law to reflect any payments or deliveries made by one Party to the other under the relevant Netted Agreement (and retained by such other Party) during the period from the date of Close-Out to the date of calculation of the relevant Settlement Amount.

## § 7

### Determination and Settlement of Settlement Amounts

1. **Determination of Settlement Amounts.** The Settlement Amount under each Closed-Out Agreement shall be determined in accordance with the terms of such Closed-Out Agreement.
2. **Conversion of Settlement Amounts Into the Base Currency.** When a Close-Out has been commenced and there is more than one Settlement Amount and one or more of those

Settlement Amounts is denominated in a currency other than the Base Currency (the “**Other Currency**”), the Terminating Party shall determine the amount in the Base Currency (the “**Base Currency Equivalent**”) that would result from the conversion of such Settlement Amount into the Base Currency at the spot exchange rate at which the Terminating Party can buy the Base Currency with the Other Currency, as determined in any commercially reasonable manner, for value on the relevant Final Settlement Date for the Settlement Amount. If all Settlement Amounts are denominated in a single currency other than the Base Currency, the Terminating Party may, notwithstanding a contrary designation of Base Currency in the Election Sheet, designate such other currency to be the Base Currency.

3. **Settlement of Settlement Amounts in Accordance with this Master Netting Agreement.** When Close-Out has been commenced, all Settlement Amounts of Closed-Out Agreements shall be determined at the times and in the manner set forth in this § 7 (*Determination and Settlement of Settlement Amounts*) and in § 8 (*Netting-off of Settlement Amounts; Accrual of Interest*), notwithstanding any provision to the contrary in any Closed-Out Agreement. The date specified for settlement of such Settlement Amounts in the terms of each respective Netted Agreement shall be the Early Termination Date and each Netted Agreement is hereby amended accordingly.

## § 8

### Netting-Off of Settlement Amounts; Accrual of Interest

1. **Netting-Off.** If, on the Early Termination Date both Parties owe one or more Settlement Amounts under two or more Closed-Out Agreements, such settlement amounts shall be aggregated and netted-off, and only the difference, if any, between the two offsetting aggregate amounts (a “**Final Net Settlement Amount**”) shall be owed on the Early Termination Date by the Party with the larger aggregate obligation.
2. **Discharge of Settlement Amount.** If a Settlement Amount has been netted off in whole or in part on the Early Termination Date, such Settlement Amount shall, to the extent of such netting-off, be deemed to have been discharged and no longer due under the relevant Closed-out Agreement.
3. **Final Net Settlement Amount.**
  - (A) **Final Net Settlement Amount for Closed-Out Agreements.** The Terminating Party shall determine the Final Net Settlement Amount due and provide to the Defaulting Party a statement showing the calculation of the Final Net Settlement Amount (which may be, at the option of the Terminating Party, provided at the same time and as part of the Termination Notice or by separate notice following the Early Termination Date).
  - (B) **Final Settlement Date.** The Final Net Settlement Amount shall be payable by the Party from whom such payment is due on or before the Business Day falling three (3) Business Days after the Business Day on which the statement is provided under §8.3(A) (*Final Net Settlement Amount for Closed-Out Agreements*) hereof (the “**Final Settlement Date**”).
  - (C) **Place of Payment and Base Currency.** Subject to the last sentence of § 7.2 (*Conversion of Settlement Amounts Into the Base Currency*), the Final Net Settlement Amount shall be paid in the Base Currency, and in conformance with the payment instructions specified in respect of the Party receiving the Final Net Settlement Amount, in the Election Sheet (or such alternative payment instructions as

are provided by the Terminating Party in the statement provided pursuant to § 8.3(A) (*Final Net Settlement Amount for Closed-Out Agreements*)), together with interest thereon, from (and including) the Final Settlement Date to (but excluding) the date such amount is paid, at the rate specified in § 8.4 (*Accrual of Interest on the Final Net Settlement Amount*). If the Party owing the Final Net Settlement Amount has more than one branch, there shall be no limitation as to the place of payment of the obligation, unless otherwise specified by the Parties hereto.

4. **Accrual of Interest on the Final Net Settlement Amount.** The Final Net Settlement Amount shall bear interest at the then prevailing Interest Rate specified by the Parties in the Election Sheet, from (and including) the Final Settlement Date to (but excluding) the date of actual payment.

## § 9

### Credit Support / Performance Assurance

1. **Benefit of Credit Support.** If this § 9.1 is specified in the Election Sheet as applying, and without limitation to § 8.1 (*Netting-Off*), if a Party to whom a Settlement Amount is payable under any Closed-Out Agreement has the benefit of Credit Support under any Closed-Out Agreement or this Master Netting Agreement, then such Party shall include the Settlement Amount within its process of netting-off pursuant to § 8.1 (*Netting-Off*) but shall only be entitled to apply such Credit Support against the Final Net Settlement Amount. For such purposes:

The definition of Settlement Amount in Annex 1, (*Defined Terms*) is restated as follows:

“**Settlement Amount**” means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon: (i) all transactions under such Closed-Out Agreement having been Closed-Out, (ii) the resulting obligations of the Parties having been determined, but (iii) notwithstanding the terms of the applicable Closed-Out Agreement, the Parties shall be treated as not being entitled to exercise any rights to Credit Support in determining the Settlement Amount under any Closed-Out Agreement.

2. **Fungible Use of Credit Support.** If this §9.2 (*Fungible Use of Credit Support*) has been applied by the Parties in the Election Sheet, Credit Support in the form of cash which is provided, held, requested and/or delivered by and between the Parties and, if applicable, their Credit Support Providers, in respect of amounts owed or exposures under any one or more Netted Agreement or this Master Netting Agreement, may be used and applied by the Terminating Party fungibly, as, where and when needed for purpose of calculation of a Settlement Amount as contemplated in §9.1 (*Benefit of Credit Support*) notwithstanding any contrary implication, statement or limitation contained in any related Credit Support Document or correspondence or communication between the Parties, their Credit Support Providers or otherwise.

## § 10

### Additional Optional Provisions Relating to Close-Out

1. **Designation of Additional Optional Provisions.** The following additional optional provisions set forth immediately hereinafter in §§ 10.1(A) and 10.1(B) shall not be a part of this Master Netting Agreement unless such provision(s) (is/are) expressly

incorporated by the Parties into the Master Netting Agreement by designation of such provision as operative in the Election Sheet, and, if and when so selected, shall be incorporated herein in the form(s), if and where applicable, in which the same have been further customized and amended by the Parties in the Election Sheet:

(A) **Set-Off of Final Net Settlement Amount.**

- (I) **Set-Off Rights.** Where under the terms of § 8.3(B) (*Final Settlement Date*) the Final Net Settlement Amount is payable to or by the Defaulting Party, the Terminating Party may, at its option and without prior notice to the Defaulting Party, set off the Final Net Settlement Amount or part thereof against any payment obligation of or to the Defaulting Party (whether or not matured, contingent or invoiced) under any other agreements, instruments or undertakings between the Parties. The right of set-off shall be without prejudice and in addition to any right of set-off, combination of accounts, lien, charge or other right to which any Party is at any time otherwise entitled (whether by operation of law, by contract or otherwise). If an amount is unascertained, the Terminating Party may reasonably estimate the amount to be set off.
- (II) **No Security Interest Created.** Nothing in this § 10.1(A) is intended to create or does create in favor of either Party a mortgage, charge, lien, pledge, encumbrance or other security interest.
- (III) **Base Currency Conversion.** Payment obligations of the Defaulting Party under any agreements, instruments or undertakings between the Parties that are denominated in a currency other than the Base Currency shall, in order to effect set-off in accordance with this § 10.1(A), be converted into a Base Currency Equivalent under the principles set out in § 7.2 (*Conversion of Settlement Amounts Into the Base Currency*).

(B) **Suspension.**

- (I) **Rights to Suspend.** If: (i) a Party has a right to Close-Out or (ii) an event (a "**Potential Close-Out Event**") occurs that with the passage of time or the giving of notice would give a Party a right to Close-Out, then that Party (the "**Suspending Party**") shall, for so long as the Potential Close-Out Event continues or it has a right to Close-Out, be entitled to cease further delivery, acceptance, nomination and notification under each Netted Agreement (and upon the Suspending Party so ceasing, each Party shall be released (and not merely suspended) from the underlying delivery, acceptance, notification and nomination obligations) under all (but not some) Netted Agreements, provided (subject to sub-paragraph (II) below) that the Suspending Party gives X hours written notice to the other Party of the exercise by it of its rights pursuant to this provision and the Suspending Party does not subsequently seek to deliver, accept, nominate or notify in relation to any obligations arising under such Netted Agreements without first giving at least Y hours written notice to the other Party of its intention to re-commence delivery, acceptance, nomination or notification. For the purposes of this paragraph (I), X and Y shall have the meanings given to them in the Election Sheet.

- (II) **Right to Withhold Payments.** If a Party has a right to Close-Out, or if a Potential Close-Out Event has occurred, then the Suspending Party shall, for so long as the Potential Close-Out Event continues or it has a right to Close-Out, have the right, without providing notice to the other Party, to withhold payments owed by it to the other Party under all (but not some) Netted Agreements, and, if applicable, under § 11 (*Payment Netting*).
- (III) **Obligations of Other Party.** Where the Suspending Party exercises its rights under sub-paragraph (I) above, the other Party shall notify, nominate or renominate volumes and quantities to any system operator to reflect the cessation referred to in sub-paragraph (I).
- (IV) **No Impact on Right to Close-Out.** The exercise by the Suspending Party of its rights under this § 10.1(B) shall not prevent it from subsequently exercising its Close-Out rights under this Master Netting Agreement, and are without prejudice to the Suspending Party's existing rights under any Netted Agreement.
- (V) **Indemnification Obligation.** If a Suspending Party purports to exercise its rights under sub-paragraph (I) and/or (II) above in circumstances where neither a Close-Out Event nor a Potential Close-Out Event has in fact occurred in respect of the other Party, then the Suspending Party shall indemnify and hold harmless the other Party against any liabilities, imbalance charges or other costs reasonably incurred by the other Party in respect of any transactions under a Netted Agreement as a result of the Suspending Party's purported exercise of its rights under sub-paragraph (I) and/or (II) above.
- (VI) **Amendment to Netted Agreement Terms.** Each Netted Agreement shall be amended in order to render its terms consistent with the terms of this §10.1(B).

## § 11

### Payment Netting

1. **Payment Netting Election.** If this § 11.1 is made operative by the Parties in the Election Sheet, financial settlement and payment obligations (hereinafter "**Payment Obligations**") assumed in respect of transactions under, and imposed and governed by, a Concerned Agreement, notwithstanding any contrary provisions or terms contained therein, shall be paid and settled in accordance with the terms of this § 11, and the relevant payment and financial settlement terms and provisions of each such Concerned Agreement are hereby amended accordingly. The scope of this § 11 is limited to payments owed between the Parties under Concerned Agreements in the ordinary course of their trading activities and absent any Close-Out of such Concerned Agreements, which Payment Obligations, unless otherwise agreed by the Parties in respect of §11.3 (*Harmonised Due Date*), fall due on the same date (each, a "**Due Date**") and also in the same currency. Accordingly, nothing in this § 11 shall amend, override, restate or otherwise alter any of the provisions of this Master Netting Agreement concerning Close-Out and the accrual and obligation to make, or the mechanics provided herein for the payment of, a Final Net Settlement Amount.
2. **Designation of Concerned Agreements.** The Parties shall specify in the Election Sheet as "**Concerned Agreements**" those agreements and transactions between them across which

they wish to provide for and implement hereunder a system of offsetting netted settlement payments in lieu of the agreement-specific terms of payment provided for therein.

3. **Harmonised Due Date.** If the Parties have elected to make this §11.3 operative, they agree that all obligations imposed under the Concerned Agreements to effect regularly scheduled Payments Obligations on the dates such Payment Obligations become due and payable pursuant to the original terms of each Concerned Agreement shall be amended to provide that such Payment Obligations become due and payable by the tenth (10<sup>th</sup>) Business Day of the calendar month following, as applicable, the delivery, acceptance and scheduling, or similar performance of service, under a transaction, for the previous month (the “**Harmonised Due Date**”), provided that the Party who, if applicable, is the buyer (or Party otherwise obligated to make a payment) under such transaction has received in accordance with the terms of the Concerned Agreement governing such transaction an invoice pursuant to § 11.4 (*Invoice*) below not later than, and in each case including:
  - (A) the fifth (5<sup>th</sup>) Business Day preceding and excluding the Harmonised Due Date for transactions governed by the Concerned Agreements specified in the Election Sheet as applying to this § 11.3(A), and
  - (B) the fourth (4<sup>th</sup>) Business Day preceding and excluding the Harmonised Due Date for transactions governed by the Concerned Agreements specified in the Election Sheet as applying to this § 11.3(B).

Payment Obligations deriving from transactions 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 remain due and payable in accordance with the original billing and payment terms of the Concerned Agreement (unamended by this § 11) under which they were transacted.

4. **Invoice.** Each Party who is a seller (or otherwise entitled to receive a payment) in a transaction under a Concerned Agreement shall transmit to the other Party in the course of the calendar month following, as applicable, delivery, acceptance and scheduling, or similar performance of service for the previous calendar month, an invoice setting forth the total quantities, as applicable, sold or with respect to which settlement was otherwise required under the terms of each transaction and/or the Concerned Agreement in the previous calendar month. In connection with such invoice the Party shall state all amounts then owed between the Parties pursuant to the transactions and Concerned Agreements including, without limitation, all amounts owed for the purchase and sale, fees, charges, reimbursements, damages, interest, and other payments, settlements or credits, VAT and other taxes due and owed then between the Parties, and the Net Payment Amount due pursuant to § 11.5 (*Payment Netting*).
5. **Payment Netting.** If on, as applicable, a Due Date or Harmonised Due Date, there are any amounts due under one or more transactions under one or more Concerned Agreements, 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 (the “**Net Payment Amount**”).
6. **Payment.** On, as applicable, a Due Date or 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 and such purposes in the Election Sheet.

7. **Default Interest.** Late payments shall accrue interest from, and including, as applicable, the Due Date or Harmonised Due Date, to, but excluding, the date of payment at the Default Interest Rate as specified in the Election Sheet.
8. **Payment Default.** The failure to pay a Net Payment Amount shall be deemed to be a failure to pay an amount owed under each transaction or, as the case may be, owed under a Concerned Agreement and, unless otherwise agreed in this Master Netting Agreement, the Party the Net Payment Amount is owed to shall have all the rights and remedies which apply to the failure to pay according to the terms of such transactions or the Concerned Agreements. Each Concerned Agreement is hereby amended accordingly.
9. **Disputed Amounts.** If a Party, in good faith, disputes the accuracy of any invoice, it shall on or before, as applicable, the Due Date or Harmonised Due Date, provide a written explanation for the basis for the dispute and shall pay:
  - (A) if this § 11.9 (A) is specified in the Election Sheet as applying, subject to manifest error, the full Net Payment Amount invoiced not later than, as applicable, the Due Date or 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 the Election Sheet from, and including, the date such amount was paid, to the other Party, but excluding, the date returned or credited; or
  - (B) if this § 11.9 (B) is specified in the Election Sheet as applying, the undisputed amount invoiced no later than, as applicable, the Due Date or 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 from, and including, the date such amount was due, to the other Party, but excluding the date paid or credited.

## § 12

### Miscellaneous and Optional Provisions

1. **Representations and Warranties.** Each Party represents and warrants to the other, which representations and warranties are deemed repeated each time the Parties enter into any transaction under a Netted Agreement and into any Netted Agreement, that: (a) it is duly authorized to execute and deliver this Master Netting Agreement and to perform its obligations hereunder and has taken all necessary actions to authorize such execution, delivery and performance, (b) the person signing this Master Netting Agreement on its behalf is duly authorized to do so on its behalf, and (c) this Master Netting Agreement constitutes a legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, insolvency, conservatorship, receivership, moratorium or other similar laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law). Each Party represents and warrants to the other that it has not transferred (whether by security or otherwise) assigned, purported to assign or otherwise dispose or disposed of, any of its rights to any amounts that may be owed to it under any Netted Agreement. Each Party further represents and warrants

to the other any such additional representations and warranties, if any, as are specified in the Election Sheet.

2. **Governing Law.** This Master Netting Agreement, and any dispute arising out of, relating to or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the substantive laws of the country and legal system specified for such purposes in the Election Sheet. The rights of the Parties under this Master Netting Agreement shall be in addition to, and not in limitation or exclusion of, any other rights which they may have (whether by agreement, operation of law or otherwise).
3. **Appointment of Process Agent.** Each Party irrevocably appoints the Process Agent (if any) specified for it in the Election Sheet to receive, for it and on its behalf, service of process in any suit, action or proceedings relating to this Master Netting Agreement. If for any reason any Party's Process Agent is unable to act as such, such Party will promptly notify the other Party and within thirty (30) days appoint a substitute process agent acceptable to the other Party. The Parties irrevocably consent to service of process given in the manner provided for in this Master Netting Agreement.
4. **Selection of Arbitration and/or Jurisdiction.**
  - (A) **Jurisdiction.** If this § 12.4 (A) is specified in the Election Sheet as applying, each Party consents to the exclusive jurisdiction of the courts of the country whose law is selected to govern this Master Netting Agreement for purposes of the resolution of any dispute arising under or in connection with this Master Netting Agreement.
  - (B) **London Court Arbitration.** If this § 12.4 (B) is specified in the Election Sheet as applying, any disputes which arise in connection with this Master Netting 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 respect of § 12.4(C), 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.
  - (C) **DIS Arbitration.** If this § 12.4 (C) is specified in the Election Sheet as applying, any disputes which arise in connection with this Master Netting 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 provided otherwise in the Election Sheet. The place of arbitration shall be Frankfurt, Germany where all hearings and meetings shall be held, unless the Parties agree otherwise.
5. **Limitations on Assignment and Transfer:** Unless provided otherwise in the Election Sheet, neither this Master Netting Agreement nor any Netted Agreement nor any interest in or under this Master Netting Agreement or any Netted Agreement may be transferred (whether by way

of security or otherwise) or assigned by either Party without the prior written consent of the other Party, except that a Terminating Party may make a transfer or assignment of all or any part of its interest in any Final Net Settlement Amount payable to it under § 8.3(B) (***Final Settlement Date***) hereof (and any of the interest thereon payable to it under § 8.4(C) (***Accrual of Interest on the Final Net Settlement Amount***) hereof). Unless provided otherwise by amendment of these terms, any purported transfer or assignment that is not in compliance with this § 12.5 shall be void. The terms of this § 12.5 shall prevail over any inconsistent provisions contained in the Netted Agreements or Credit Support Documents.

(A) If the Parties have agreed in respect of either or both of them to apply this § 12.5(A), and notwithstanding anything to the contrary express or implied by the preceding paragraph of § 12.5, a Party may make such a transfer or assignment of this Master Netting Agreement and all of its Netted Agreements (but no fewer than all of such Netted Agreements) to an Affiliate; provided that such Affiliate is of an equivalent or greater creditworthiness than the assigning and transferring Party and is duly incorporated or organized in the same jurisdiction as the assigning and transferring Party. Such assignment and transfer shall only become effective upon notice of such transfer and assignment being received by the other Party and provided that any Credit Support Document issued or agreed on behalf of the assigning and transferring Party has first been reissued or amended to support the obligations of the Affiliate for the benefit of the other Party.

6. **Addresses for Communications Between Parties.** All notices sent by one Party to the other shall be in writing and shall be delivered by letter (overnight mail or courier, postage prepaid) or facsimile to the address provided for such Party in the Election Sheet. Each Party may change its notice information by two Business Days written notice to the other. Written notices shall be deemed received and effective:

(A) if delivered by hand, on the day delivered if delivered before 17.00 hours (recipient's time) on a Business Day or otherwise on the first Business Day after the date of delivery;

(B) if sent by first class post, on the second (2<sup>nd</sup>) Business Day after the date of posting, or if sent from one country to another, on the fifth (5<sup>th</sup>) Business Day after the day of posting; or

(C) if sent by facsimile transmission and a valid transmission report confirming good receipt is generated, on the day of transmission if transmitted before 17.00 hours (recipient's time) on a Business Day or otherwise at 09.00 hours (recipient's time) on the first Business Day after transmission.

7. **Rights of Third Parties.** The Parties do not intend that any third party shall have any rights under or be able to enforce the Master Netting Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that might otherwise be implied.

8. **No Waiver.** A failure or delay in exercising any right, power or privilege in respect of this Master Netting Agreement will not be presumed to operate as a waiver, and a single or partial exercise of any right, power or privilege will not be presumed to preclude any subsequent or further exercise, of that right, power or privilege or the exercise of any other right, power or privilege.

9. **Partial Invalidity.** If, at any time, any provision of this Master Netting Agreement, a Netted Agreement or any transaction thereunder is or becomes illegal, invalid or

unenforceable, in any respect, under the law of any relevant jurisdiction, neither the legality, validity nor enforceability of the remaining provisions of this Master Netting Agreement, any Netted Agreement or transaction thereunder, shall be in any way affected or impaired thereby. The Parties undertake to replace any illegal, invalid or unenforceable provision with a legal, valid and enforceable provision that comes as close as possible to the invalid provision as regards its economic intent.

10. **Counterparts.** This Master Netting Agreement (and each amendment, modification and waiver in respect of it) may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

**[BALANCE OF PAGE INTENTIONALLY LEFT BLANK]**

**Executed by the duly authorized representative of each Party and effective as of its designated Effective Date.**

**[Name of Party A]**

By: .....

Name:  
Title:

**[Name of Party B]**

By: .....

Name:  
Title:

# EFET

## European Federation of Energy Traders

### ELECTION SHEET to the Master Netting Agreement

This Election Sheet amends, restates, supplements, revises and forms a part of the Master Netting Agreement with an Effective Date of [ ] (the “**Master Netting Agreement**”) between [ ] (“**Party A**”) and [ ] (“**Party B**”).

### PART I: CUSTOMIZATION OF PROVISIONS

#### § 2

#### Scope of Early Termination and Close-Out Netting Rights

#### § 2.1 Designation of Agreements Which May Be Terminated, Closed-Out and Netted:

**The following shall be “Netted Agreements”:**

[ ] <b>EFET Power</b>	Any European Federation of Energy Traders form General Agreement Concerning the Delivery and Acceptance of Electricity (“ <b>EFET Power</b> ”) in effect between the Parties, including, without limitation, that certain EFET Power agreement with an Effective Date of [_____], including all amendments thereto
[ ] <b>EFET Gas</b>	Any European Federation of Energy Traders form General Agreement Concerning the Delivery and Acceptance of Natural Gas (“ <b>EFET Gas</b> ”) in effect between the Parties, including, without limitation, that certain EFET Gas agreement with an Effective Date of [_____], including all amendments thereto
[ ] <b>GTMA</b>	Any Electricity Forward Agreement Association form Grid Trade Master Agreement (“ <b>GTMA</b> ”) in effect between the Parties, including, without limitation, that certain GTMA dated [_____], including all amendments thereto
[ ] <b>ISDA</b>	Any International Swaps and Derivatives Association, Inc. form Master Agreement (Multicurrency - Cross-Border) (“ <b>ISDA</b> ”) in effect between the Parties, including, without limitation, that certain ISDA dated [_____], including all amendments thereto
[ ] <b>ZBT 2004</b>	Any agreement in effect between the Parties based upon the 2004 release of the Zeebrugge Hub Natural Gas Trading Terms and Conditions, including, without limitation, that certain ZBT ‘04 dated [_____], including all amendments thereto

<input type="checkbox"/>	<b>ETMA</b>	Any International Emissions Trading Association form Emissions Trading Master Agreement for the EU Scheme <sup>®</sup> (“ <b>ETMA</b> ”) in effect between the Parties including, without limitation, that certain ETMA dated [_____], including all amendments thereto
<input type="checkbox"/>	<b>IETMA</b>	Any International Emissions Trading Association form International Emissions Trading Master Agreement <sup>®</sup> (“ <b>IETMA</b> ”) in effect between the Parties including, without limitation, that certain IETMA dated [_____], including all amendments thereto
<input type="checkbox"/>	<b>NBP '97 Master Agreement</b>	Any master agreement in effect between the Parties incorporating the Short Term Flat NBP Trading Terms and Conditions 1997 including, without limitation, that certain NBP '97 Agreement dated [_____], including all amendments thereto
<input type="checkbox"/>	<b>FEMA</b>	Any Nordic Association of Energy Traders form Financial Energy Master Agreement (“ <b>FEMA</b> ”) in effect between the Parties including, without limitation, that certain FEMA dated [_____], including all amendments thereto
<input type="checkbox"/>	<b>German Master Agreement / Deutscher Rahmenvertrag</b>	Any Master Agreement for Financial Derivates Transactions (incl. any Addenda) (" <i>Rahmenvertrag für Finanztermingeschäfte</i> " inkl. " <i>Anhänge</i> ") in effect between the Parties, including, without limitation, that <i>Deutscher Rahmenvertrag</i> dated as of [_____], including all amendments thereto
<input type="checkbox"/>	<b>Other Master Trading Agreements</b>	Any master agreement between the Parties covering securities contracts, spot or forward, physically or cash settling commodity contracts or currency contracts, repurchase agreements, swap agreements and any other physical or cash settling transaction whether currently in existence or arising hereafter.
<input type="checkbox"/>	<b>Long Form Confirmation Agreements</b>	All agreements or transactions between the Parties similar to the transactions covered by the Netted Agreements designated above that are documented under a confirmation or similar document which incorporates by reference all or some of the terms of one of the Netted Agreements designated above.
<input type="checkbox"/>	<b>Other</b>	[Specify]:

**Additional Netted Agreements.** The Parties wish to further expand the applicable definition of Netted Agreement beyond those master trading and netting agreements, if any, specified immediately above, in the manner and as further provided, and subject to any further limitations on such definition imposed, in the attached *Additional Netted Agreement Rider to the Master Netting Agreement's Election Sheet*, appended hereto as **Part III** of this Election Sheet and, if the preceding box is checked, such Additional Netted Agreement Rider to the Master Netting Agreement's Election Sheet is thereby made a part of, and incorporated in, the Master Netting Agreement.

**§ 2.2 Exclusion of Agreements and Transactions from this Master Netting Agreement:**

The “**Excluded Agreements**” between the Parties are:


**§ 3**

**Close-Out Events**

**§ 3.1 Definition of “Close-Out Event”:** The following shall be Close-Out Events:

- § 3.1(A) the following designated **Master Netting Agreement Default Events**, if any, shall be Close-Out Events:
  - § 3.1(A)(I) **Master Netting Agreement Misrepresentations**
  - § 3.1(A)(II) **Master Netting Agreement Covenant Violations**
  - § 3.1(A)(III) **Credit Support Defaults**
  - Other Master Netting Agreement Default Events** [ SPECIFY ]

**AND EITHER:**

- § 3.1(B) the **Netted Agreement Default Events** shall be Close-Out Events;

**OR**

- § 3.1(C) The following designated **Harmonised Default Events** shall apply and shall be Close-Out Events:
  - § 3.1(C)(I) **Non-Performance**
  - § 3.1(C)(II) **Cross Default and Acceleration**  
and the **Cross Default Threshold Amount(s)** applicable shall be:
    - For **Party A:** \_\_\_\_\_ and/or
    - For **Party B:** \_\_\_\_\_
  - § 3.1(C)(III) **Winding-up/Insolvency/Attachment;**  
and the applicable time period for purposes of subparagraph (iv) shall be:  
\_\_\_\_\_
  - § 3.1(C)(IV) **Prolonged or Repeated Failure to Deliver or Accept**
  - § 3.1(C)(V) **Misrepresentations and Warranty Defaults**
  - § 3.1(C)(VI) **Failures to Provide Performance Assurance**, and, for purposes of § 3.1(C)(VI)(a) **Material Adverse Change:**

the following categories of Material Adverse Change shall apply to **Party A**:

- §3.1(C)(VI)(a)(i) (**Credit Rating**), and the minimum rating shall be: \_\_\_\_\_;
- §3.1(C)(VI)(a)(ii) (**Credit Rating of Credit Support Provider that is a Bank**);
- §3.1(C)(VI)(a)(iii) (**Financial Covenants**), and the EBIT to Interest ratio shall be: \_\_\_\_\_, the Funds From Operations to Total Debt ratio shall be: \_\_\_\_\_, and the Total Debt to Total Capitalisation ratio shall be: \_\_\_\_\_;
- §3.1(C)(VI)(a)(iv) (**Decline in Tangible Net Worth**), and the relevant figure is: \_\_\_\_\_;
- §3.1(C)(VI)(a)(v) (**Expiry of Credit Support Document**), and
  - the relevant time period shall be \_\_\_\_\_, or
  - no time period shall apply;
- §3.1(C)(VI)(a)(vi) (**Failure of Credit Support**);
- §3.1(C)(VI)(a)(vii) (**Failure of Control and Profit Transfer Agreement**);
- §3.1(C)(VI)(a)(viii) (**Impaired Ability to Perform**); and
- §3.1(C)(VI)(a)(ix) (**Amalgamation/Merger**)

the following categories of Material Adverse Change shall apply to **Party B**:

- §3.1(C)(VI)(a)(i) (**Credit Rating**), and the minimum rating shall be: \_\_\_\_\_;
- §3.1(C)(VI)(a)(ii) (**Credit Rating of Credit Support Provider that is a Bank**);
- §3.1(C)(VI)(a)(iii) (**Financial Covenants**), and the EBIT to Interest ratio shall be: \_\_\_\_\_, the Funds From Operations to Total Debt ratio shall be: \_\_\_\_\_, and the Total Debt to Total Capitalisation ratio shall be: \_\_\_\_\_;
- §3.1(C)(VI)(a)(iv) (**Decline in Tangible Net Worth**), and the relevant figure is: \_\_\_\_\_;
- §3.1(C)(VI)(a)(v) (**Expiry of Credit Support Document**), and
  - the relevant time period shall be \_\_\_\_\_, or
  - no time period shall apply;
- §3.1(C)(VI)(a)(vi) (**Failure of Credit Support**);
- §3.1(C)(VI)(a)(vii) (**Failure of Control and Profit Transfer Agreement**);
- §3.1(C)(VI)(a)(viii) (**Impaired Ability to Perform**); and
- §3.1(C)(VI)(a)(ix) (**Amalgamation/Merger**)

- § 3.1(C)(VII)** The following **Additional Harmonised Default Events**:  
[\_\_\_Specify\_\_\_]

### § 3.2 Excluded Default Events:

- Notwithstanding the above election(s), the following Excluded Default Events shall not be Close-Out Events:

- [ ] any event on the basis of which a Party has the contractual right to Close-Out all of the transactions, or all of the affected transactions, under a Netted Agreement due to: (i) the imposition or incurrence of tax liabilities or the obligation to gross-up payments on account of tax, or (ii) a change in law that makes performance under or in respect of that Netted Agreement illegal;
- [ ] any event which is defined as “Force Majeure” under any Netted Agreement;
- [ ] any failure to nominate, schedule, deliver, notify or accept under a Netted Agreement;
- [ ] The following **Additional Excluded Default Events**: [Specify]

#### § 4

#### The Right to Close-Out and Applicable Limitations

##### § 4.2 Global Nature of Close-Out.

- [ ] **Reservation of Right to Terminate Less Than All Netted Agreements (Non-Global Close-Out):** § 4.2 (*Global Nature of Close-Out*) shall not apply and instead the Parties reserve, in addition to the right to Close-Out all Netted Agreements pursuant to the terms of the Master Netting Agreement, the rights specified below:

- [ ] **Voluntary Termination of Individual Netted Agreements based upon Their Own Close-Out Terms.** The right to instead Close-Out only some, but not all, Netted Agreements pursuant to their own terms, leaving the balance of remaining unterminated Netted Agreements subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently Closed-Out.

*and/or:*

- [ ] **Automatic Termination of Individual Netted Agreements based upon Their Own Close-Out Terms.** The right, after entry into this Master Netting Agreement, for Netted Agreements to automatically self-terminate in accordance with the terms of their own Automatic Termination provisions, leaving the balance of remaining unterminated Netted Agreements containing no such automatic termination provisions subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently terminated.

*and/or:*

- [ ] **Voluntary Termination of Individual Netted Agreements based upon the Close-Out Terms of the MNA.** The right to instead terminate one or more, but not necessarily all, Netted Agreements pursuant to the terms of, and due to the occurrence of a Close-Out Event specified in, this Master Netting Agreement, leaving the balance of remaining unterminated Netted Agreements subject to the terms of this Master Netting Agreement until such time, if any, as they are subsequently Closed-Out, and each Netting Agreement is hereby amended accordingly.

In each of the above three cases, if a Close-Out Event has occurred, and unless and until such time as a Party issues a Termination Notice in accordance with § 5.1 (*Termination Notice*) hereof, (or, if applicable, Close-Out of a Netted Agreement occurs automatically) each Party

shall retain its rights and obligations under each Netted Agreement without regard to anything to the contrary set forth herein. Where a Party elects to exercise its Close-Out rights under a Netted Agreement (or, if applicable, such Netted Agreement Closes-Out automatically by its own terms), rather than in accordance with its Close-Out rights under this Master Netting Agreement, it will be required to satisfy the applicable notification requirements under the relevant Netted Agreement.

§ 6

**Customization of Automatic Termination Rights**

**§ 6.1. Automatic Termination and Global Close-Out.**

§ 6.1 shall not apply.

**§ 6.2. Optional Uniform Election of Automatic Termination and Close-Out.**

§ 6.2 shall apply to **Party A**,

with the **Effective Time of Automatic Termination** being: \_\_\_\_\_

and the Close-Out Events constituting **Automatic Termination Close-Out Events** for Party A being:

All designated Close-Out Events

If the Parties have made operative the harmonised Close-Out Event definition in § 3.1(C) (***Harmonised Default Events***), then only those Close-Out Events designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***),

less, if any, the following sub-definitions contained within § 3.1(C) (***Harmonised Default Events***): \_\_\_\_\_

If the Parties have made operative the underlying Netted Agreement definition of Close-Out Event specified in § 3.1(B) (***Netted Agreement Default Events***), then only those Close-Out Events defined within the Netted Agreements analogous to those designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***)

Any event defined in a Netted Agreement which upon its occurrence will cause that Netted Agreement to automatically self-terminate by operation of an Automatic Termination provision contained therein.

OTHER [**Specify**]

§ 6.2 shall apply to **Party B**

with the **Effective Time of Automatic Termination** being: \_\_\_\_\_

and the Close-Out Events constituting **Automatic Termination Close-Out Events** for Party B being:

All designated Close-Out Events

If the Parties have made operative the harmonised Close-Out Event definition in § 3.1(C) (***Harmonised Default Events***), then only those Close-Out Events designated in § 3.1(C)(III) (***Winding-up/Insolvency/Attachment***),

less the following sub-definitions contained within § 3.1(C) (***Harmonised Default Events***): \_\_\_\_\_

If the Parties have made operative the underlying Netted Agreement definition of Close-Out Event specified in § 3.1(B) (***Netted Agreement Default Events***), then only those Close-Out Events defined within the Netted

Agreements analogous to those designated in § 3.1(C)(III) (*Winding-up/Insolvency/Attachment*)

Any event defined in a Netted Agreement which upon its occurrence will cause that Netted Agreement to automatically self-terminate by operation of an Automatic Termination provision contained therein.

OTHER [Specify]

**§ 6.4 Automatic Early Termination and Adjustment for Bankruptcy**

§ 6.4 shall be operative

**§ 8**

**Set-off of Settlement Amounts; Accrual of Interest**

**§ 8.3 Final Net Settlement Amount**

**§ 8.3(C) Place of Payment and Base Currency:**

**Base Currency:** The Base Currency is:

Sterling; or

Euro; or

Other, [Specify]

**Payment Instructions:**

Payments due under this Master Netting Agreement in the Base Currency shall be made to the following accounts:

Name of Bank and Office, Account Number and Reference for Party A:

[Specify]

Name of Bank and Office, Account Number and Reference for Party B:

[Specify]

**§ 8.4 Accrual of Interest on the Final Net Settlement Amount.**

**§ 8.4** The “**Interest Rate**” shall be: \_\_\_\_\_

**§ 9**

**Credit Support / Performance Assurance**

**§ 9.1 Benefit of Credit Support**

Shall apply

**§ 9.2 Fungible Use of Credit Support**

Shall apply

**§ 10**

**Additional Optional Provisions Relating to Close-Out**

**§ 10.1 Designation of Additional Optional Provisions:** The following additional optional provisions are hereby made operative, amended and revised if and as hereinafter provided, and incorporated into the Master Netting Agreement:

§ 10.1(A) **Set-Off of Final Net Settlement Amount** shall apply

§ 10.1(B) **Suspension** shall apply;

and, for purposes of § 10.1(B): X shall be  hours, and  
Y shall be  hours.

**§ 11**

**Payment Netting**

**§ 11.1 Optional Payment Netting Rights Election.**

**Payment Netting** shall apply between the Parties as specified below

**§ 11.2 Designation of Concerned Agreements.**

The **Concerned Agreements** to which Payment Netting shall apply are:

[Specify];

**OR**

**The Netted Agreements;**

*provided, however,* that the following Netted Agreements shall NOT be Concerned Agreements: [SPECIFY];

**AND/OR**

*provided, however,* that the following additional agreements, contracts and/or transactions (which are not Netted Agreements) SHALL BE Concerned Agreements: [SPECIFY]

**§ 11.3 Harmonised Due Date.**

§ 11.3 (**Harmonised Due Date**) shall be operative, and

The Concerned Agreements governed by § 11.3(A) are: [SPECIFY]; and/or

The Concerned Agreements governed by § 11.3(B) are: [SPECIFY]

**§ 11.6 Payment.** If different from those bank accounts specified for each Party in respect of §8.3(C) (*Place of Payment and Base Currency*), the Bank Account(s) to be used for purposes of § 11 (*Payment Netting*) are:

For Party A: [insert bank account details]

For Party A: [insert bank account details]

**§ 11.7 Default Interest Rate.** The “**Default Interest Rate**” shall be:

the Interest Rate plus three percent (3 %) per annum, or

**Other** [SPECIFY].

**§ 11.9 Disputed Amounts.**

§ 11.9 (A) shall apply.

§ 11.9 (B) shall apply.

§ 12

**Additional Miscellaneous and Optional Provisions**

**§ 12.1 Representations and Warranties.**

The Parties agree the following additional representations and warranties are added to, and made in accordance with, those set forth in § 12.1 (***Representations and Warranties***):

1.	
2.	
3.	
4.	

**§ 12.2 Governing Law.** The governing law for this Master Netting Agreement shall be the law of:

- England & Wales
- Germany
- Other [*Specify*]

**§ 12.3 Appointment of Process Agent.**

- Party A appoints as its Process Agent: \_\_\_\_\_
- Party B appoints as its Process Agent: \_\_\_\_\_

**§ 12.4 Selection of Arbitration and/or Jurisdiction.**

- § 12.4(A) **Jurisdiction** shall apply
- § 12.4(B) **London Court Arbitration** shall apply
- § 12.4(C) **DIS Arbitration** shall apply
- Another form of dispute resolution and/or submission to the jurisdiction of another court shall apply: [SPECIFY]

**§ 12.5 Limitations on Assignment and Transfer.**

- The provision set forth in § 12.5(A) of the Master Netting Agreement shall be operative and apply in respect of:
  - Party A
  - Party B

**§ 12.6 Addresses for Communications Between Parties.** For the purposes of § 12.6 of this Master Netting Agreement:

Address for notices or communications to Party A:  
 Address:  
 Attention:  
 Facsimile No:  
 Telephone No:

Address for notices or communications to Party B:

Address:

Attention:

Facsimile No:

Telephone No:

## **PART II: ADDITIONAL TERMS**

The following additional terms and conditions shall apply to the Master Netting Agreement

**PART III: ADDITIONAL NETTED AGREEMENT RIDER**

to the

**Master Netting Agreement’s Election Sheet**

**Additional Netted Agreements & Treatment of Related Defaults**

**§ 1 Designation of Additional Netted Agreements & Transactions:** In addition to the master trading agreements identified as Netted Agreements in the Election Sheet in respect of § 2.1 (*Designation of Agreements Which May Be Terminated, Closed-Out and Netted*) of the Master Netting Agreement, the following, as applicable, transactions, agreements and contracts as specifically elected below in § 1.1 (*Specific “Additional Netted Agreements & Transactions*) and/or § 1.2 (*Definition by Categories of Additional Netted Agreements*), shall also be deemed to be Netted Agreements under this Master Netting Agreement;

**provided, however,** that unless expressly provided to the contrary in this Rider, any defined events included in the terms of such Additional Netted Agreements which by virtue of being defined as Netted Agreements would otherwise become Close-Out Events under the terms of this Master Netting Agreement, shall not be Close-Out Events and their occurrence shall not (absent such event also being a Close-Out Event as defined in respect of one or more Netted Agreements incorporated by reference in Part I of this Election Sheet) give rise to the right to initiate, or, if applicable, cause the automatic Close-Out of, this Master Netting Agreement or any other Netted Agreement.

**§1.1 Specific “Additional Netted Agreements & Transactions” are:**


**AND/OR:**

**§1.2 Definition by Categories of Additional Netted Agreements:** “**Additional Netted Agreement**” also means any contract (whether oral or in writing) entered into by the Parties, other than: (i) those agreements identified as Netted Agreements in the Election Sheet in respect of § 2.1 (*Designation of Agreements Which May Be Terminated, Closed-Out and Netted*) of the Master Netting Agreement, and (ii) Excluded Agreements (or any transaction which is part of or subject to either of (i) or (ii)), and which:

- is described in its terms as being an Additional Netted Agreement for the purposes of this Master Netting Agreement;
- incorporates the Short Term Flat NBP Trading Terms and Conditions 1997, but is not subject to a NBP Master Agreement;
- incorporates the Beach 2000 standard terms and conditions;

- incorporates the Zeebrugge Hub Natural Gas Trading Terms and Conditions, releases 1999 or 2001;
- incorporates the terms and conditions of any release of Global Coal's Standard Coal Trading Agreement (SCoTA);
- is for the spot or forward physical sale, purchase and/or exchange of Commodities (including any option in respect of the physical delivery of any Commodity);
- is a cash or financially settled forward or swap (including any cap, collar, or floor) or other derivative relating to any or all Commodities, or with respect to the price or value of any or all Commodities, or any combination of the foregoing;
- is a rate swap transaction, basis swap, forward rate transaction, equity index swap, equity index option, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross currency rate swap transaction, currency option or any other similar transaction (including any option with respect to any of these transactions);
- other: [Specify].

For purposes of this Additional Netted Agreement Rider, "**Commodities**" means:

- electricity, crude oil, refined oil products, chemical products, natural gas, liquefied natural gas, natural gas liquids, coal, bio-fuels;
- agricultural and other soft commodity products, metals, pulp and paper;
- rights in and to transportation capacity, transmission capacity, capacity in electricity wires, gas or other petrochemical pipelines, and storage facilities;
- rights to, and capacity in shipping, freight and similar carriers,
- greenhouse gasses, carbon, NO<sub>x</sub>, SO<sub>2</sub>, ROCs, particulates and other measurable emissions allowances and credits;
- tradable renewable energy credits, certificates of origin, green certificates and LECS;
- weather products, including without limitation, rainfall, temperature and similar measurable climatic elements;
- other: [Specify];

and "**Commodity**" means and may refer to any one of them.

**§ 2 Additional Netted Agreement Settlement Amounts.** Rather than the definition of Settlement Amount set forth in Annex 1 to the Master Netting Agreement, "**Settlement Amount**" in respect of Additional Netted Agreements shall have the following meaning:

- Not applicable; or
- The net amount which would be due and payable by one Party to the other Party pursuant to applicable law as a result of a breach by the Defaulting Party of its obligations under such Additional Netted Agreement; or

[Specify]

**§ 3 Additional Netted Agreements and Payment Netting.**

Additional Netted Agreements shall be treated as Concerned Agreements for purposes of inclusion in payment netting pursuant to the terms of § 11 (*Payment Netting*)

**§ 4 Supplemental Liquidation Mechanics.**

Not applicable; or

The following shall be used to calculate the Settlement Amount of any Additional Netted Agreement the terms of which do not contain their own provisions for liquidating and valuing such transaction(s) upon Early Termination:

**Calculation of Settlement Amount.** The Settlement Amount for any terminated Additional Netted Agreement shall be the Gains less the Aggregate of the Losses and the Costs which the Terminating Party incurs as the result of the Close-Out of the Additional Netted Agreement and/or all transactions under such Additional Netted Agreement, as well as any other amounts payable between the Parties under or in connection with the Additional Netted Agreement. For the purposes of this provision:

- (a) **“Costs”** means brokerage fees, commissions and other third party costs and expenses reasonably incurred by the Terminating Party either in terminating any arrangement pursuant to which it has hedged its obligation or entering into new arrangements which replace the Closed-Out Additional Netted Agreement and all reasonable legal fees, costs and expenses incurred by the Terminating Party in connection with its Close-Out of the Additional Netted Agreement.
- (b) **“Gains”** means an amount equal to the present value of the economic benefit to the Terminating Party, if any (exclusive of Costs), resulting from the Close-Out of the Additional Netted Agreement, determined in a commercially reasonable manner; and
- (c) **“Losses”**: means an amount equal to the present value of the economic loss to the Terminating Party, if any (exclusive of Costs), resulting from the Close-Out of the Additional Netted Agreement, determined in a commercially reasonable manner.

In calculating the Settlement Amount of a Closed-Out Additional Netted Agreement, the Terminating Party may, but is not obliged, to calculate its Gains or Losses as at the Early Termination Date, at its discretion, without entering into any replacement transaction for the terminated Additional Netted Agreement.

# EFET

## European Federation of Energy Traders

### ANNEX 1 To The Master Netting Agreement

#### Defined Terms

Terms used in the Master Netting Agreement shall have the following meanings:

**“Additional Netted Agreement”** shall have the meaning, if any, given to it in the Additional Netted Agreement Rider found at Part III of the Election Sheet.

**“Affiliate”** means with respect to a Party, any Entity Controlled, directly or indirectly, by that Party, any Entity that Controls, directly or indirectly, that Party or any Entity directly or indirectly under common Control with a Party.

**“Automatic Termination”** means the process of self-termination of a contract described further in §6 (*Customization of Automatic Termination Rights*).

**“Automatic Termination Close-Out Event”** has the meaning, if any, given to it in respect of a Party in § 6.2 of the Election Sheet.

**“Base Currency”** means the currency specified as such in § 8.3(C) of the Election Sheet.

**“Base Currency Equivalent”** has the meaning given to it in § 7.2 (*Conversion of Settlement Amounts Into the Base Currency*).

**“Business Day”** means a day (other than a Saturday or a Sunday) on which commercial banks are open for general business at the places where each Party has its registered office; provided, that for purposes of the use of such term in §11 (*Payment Netting*) Business Day shall mean any day on which commercial banks effect deliveries of both Euro and Sterling, excluding all Saturdays and Sundays and those days defined as “Non-Business Days” in the “Payment Netting Standard European Settlement Calendar” as published on the EFET website.

**“Close-Out”** means, when used as a verb, to accelerate, terminate, liquidate or cancel (including by way of Automatic Termination) the transactions under a Netted Agreement, and, if applicable, also the Netted Agreement itself (and if such Netted Agreement constitutes only a single transaction, the termination of such transaction and the Netted Agreement itself) and further to net off and aggregate the values of all such transactions into a single net sum in accordance with the terms of such Netted Agreement, as, if applicable, amended and/or supplemented and revised by this Master Netting Agreement; and, as applicable, if not required at an earlier stage of the process, following the completion of the Close-Out process, the termination of any remaining unterminated Netted Agreement itself; when used as a noun, **“Close-Out”** means the act of Closing-Out and **“Closed-Out”** shall be construed accordingly.

**“Close-Out Event”** shall have the meaning(s) set forth in § 3.1 (*Definition of “Close-Out Event”*) unless another meaning has been selected by the Parties in § 3.1 of their Election Sheet.

**“Closed-Out Agreement”** means a Netted Agreement under which all transactions which legally may be Closed-Out have been Closed-Out.

“**Concerned Agreements**” has the meaning given to it in § 11.2 (*Designation of Concerned Agreements*) and shall consist of those agreements identified as such in § 11.2 of the Election Sheet.

“**Control**” means ownership of more than 50% of the voting power of an Entity and “**Controlled**” or “**Controlling**” shall be construed accordingly.

“**Control and Profit Transfer Agreement**” has the meaning specified in §3.1(C)(VI)(a)(i)(CC).

“**Controlling Party**” means any Entity that has entered into a Control and Profit Transfer Agreement in respect of or in favour of a Party.

“**Credit Rating**” means in respect of an Entity any of the following:

- (i) the long-term unsecured, unsubordinated (unsupported by third party credit enhancement) public debt rating;
- (ii) the debt issuer's credit rating; or
- (iii) the corporate credit rating given to that entity, in each of cases (i) to (iii) by Standard & Poor's Rating Group (a division of McGraw-Hill Inc.) or Moody's Investor Services Inc.;

“**Credit Support**” means any security, whether in the form of cash; parent company, Affiliate or bank guarantees or letters of credit, surety agreements, Control and Profit Transfer Agreements and all other instruments of a similar nature or purpose provided or agreed to be provided on behalf of a Party and in effect or required to be maintained in respect of any Netted Agreement, any transaction under a Netted Agreement or this Master Netting Agreement.

“**Credit Support Document**” means any agreement pursuant to which Credit Support or Performance Assurance is provided for purposes of this Master Netting Agreement or any Netted Agreement including, without limitation, any credit support annex or supplemental or amending agreement to this Master Netting Agreement or any Netted Agreement, as well as any Control and Profit Transfer Agreement.

“**Credit Support Provider**” means any provider of a Credit Support Document, including, without limitation, any Controlling Party or any provider of Performance Assurance.

“**Cross Default Threshold Amount**” has the meaning, if any, given to it in respect of a Party in the Election Sheet.

“**Default Interest Rate**” has the meaning given to it in respect of § 11.7 of the Election Sheet.

“**Defaulting Party**” means the Party that is not the Terminating Party.

“**Due Date**” has the meaning given to it in § 11.1 (*Payment Netting Election*).

“**Early Termination Date**” has the meaning given to it in § 5.1 (*Termination Notice*); and in the case of an Automatic Termination shall be the date on which the Closed-Out Agreements are deemed to have self terminated.

“**EBIT**” means earnings before interest and taxes which shall be in respect of the relevant fiscal year, the net revenue of the Relevant Entity before deducting corporate taxes (or any other tax on income or gains in the relevant jurisdiction of the Relevant Entity) plus the sum of all interest and any amounts in the nature of interest charged to expense relating to financial indebtedness for borrowed money (which amounts include debts payable to Affiliates as well as debt instruments to financial institutions) of the Relevant Entity.

“**Effective Date**” has the meaning given to it in the preamble to the Master Netting Agreement and means the date on which this Master Netting Agreement comes into force.

“**Election Sheet**” means the Election Sheet to the Master Netting Agreement.

“**Eligible Credit Support**” shall have the meaning or meanings assigned to such term in any credit support annex supplementing this Master Netting Agreement.

“**Entity**” means an individual, government or state division thereof, government or state agency, corporation, partnership or such other entity as the context may require.

“**Excluded Agreement**” has the meaning, if any, given to it in § 2.2 of the Election Sheet in respect of § 2.2 (*Exclusion of Agreements and Transactions from This Master Netting Agreement*) of the Master Netting Agreement.

“**Excluded Default Event**” has the meaning, if any, given to it in § 3.2 of the Election Sheet in respect of § 3.2 (*Excluded Default Events*) of the Master Netting Agreement.

“**Final Net Settlement Amount**” has the meaning given to it in § 8.1 (*Netting-Off*).

“**Final Settlement Date**” has the meaning given to it in § 8.3(B) (*Final Settlement Date*).

“**Funds from Operations**” means the amount of cash generated or employed by the Relevant Entity in its operating activities.

“**Harmonised Default Events**” means those events specified by the Parties as applicable in § 3.1 of the Election Sheet with respect to § 3.1(C) (*Harmonised Default Events*).

“**Harmonised Due Date**” has the meaning given to it in § 11.3 (*Harmonised Due Date*).

“**Interest Rate,**” has the meaning given to it in respect of § 8.4 of the Election Sheet

“**Letter of Credit**” means an irrevocable standby letter of credit payable on demand in a form and substance satisfactory to the Requesting Party and issued by a financial institution whose Credit Rating is at least the rating specified in respect of the Party in the Election Sheet as provided in §3.1(C)(VI)(a)(ii) (*Credit Rating of a Credit Support Provider that is a Bank*);

“**Master Netting Agreement**” means this Agreement and its Election Sheet and Annexes, together with any Credit Support Document(s).

“**Master Netting Agreement Default Events**” means those events specified by the Parties as applicable in § 3.1 of the Election Sheet with respect of § 3.1(A) (*Master Netting Agreement Default Events*).

“**Material Adverse Change**” has the meaning specified in § 3.1(C)(VI)(a) (*Material Adverse Change*);

“**Netted Agreements**” mean the agreements (each as from time to time amended or supplemented) between the Parties hereto designated as Netted Agreements in § 2.1 of the Election Sheet in respect of § 2.1 (*Designation of Agreements Which May Be Terminated, Closed-Out and Netted*) of the Master Netting Agreement including, if applicable, and further subject to applicable limitations imposed on such definition in relevant provisions of Part III of the Election Sheet, any Additional Netted Agreements (each, individually, a “**Netted Agreement**”).

“**Netted Agreement Default Events**” has the meaning given to it in § 3.1(B) (*Netted Agreement Default Events*).

“**Party**” has the meaning given to it in § 1.2 (*Other Definitional Provisions*) (collectively, “**Parties**”).

“**Payment Obligations**” has the meaning given to it in § 11.3 (*Harmonised Due Date*)

“**Performance Assurance**” has the meaning given to it in § 3.1(C)(VI) (*Failures to Provide Performance Assurance*); and, when and where applicable, may also reference similar forms of collateral provided to remedy a Material Adverse Change in the condition of a Party in accordance with the terms of any Netted Agreement.

“**Potential Close-Out Event**” has the meaning given to it in § 10.1(B)(1) (*Rights to Suspend*).

“**Process Agent**” means that agent, if any, as specified by the Parties in § 12.3 of the Election Sheet with respect of § 12.3 (*Appointment of Process Agent*).

**“Requesting Party”** has the meaning given to it in § 3.1 (*Failures to Provide Performance Assurance*).

**“Relevant Entity”** has the meaning given to it in § 3.1(c)(VI).

**“Settlement Amount”** means, in respect of any Closed-Out Agreement, the net amount which is due and payable by one Party to the other upon: (i) all transactions under such Closed-Out Agreement having been Closed-Out, (ii) the resulting obligations of the Parties having been determined, and (iii) in accordance with the applicable Closed-out Agreement, those obligations having been set off, and/or having been otherwise reduced, by the exercise of rights to apply any Credit Support delivered under or held in connection with such Closed-Out Agreement and/or this Master Netting Agreement.

**“Specified Indebtedness”** means any financial indebtedness (whether present or future, contingent or otherwise, as principal or surety or otherwise) for borrowed money (which includes all debts payable to Affiliates as well as debt instruments to financial institutions).

**“Suspending Party”** has the meaning given to it in § 10.1(B)(I) (*Rights to Suspend*).

**“Tangible Net Worth”** means the sum of all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity and any accumulated retained earnings less any accumulated retained losses and intangible assets including, but not limited to, goodwill.

**“Terminating Party”** has the meaning, as applicable, given to it in § 4.1 (*Termination and Close-Out of the Netted Agreements*).

**“Termination Notice”** has the meaning given to it in § 5.1 (*Termination Notice*).

**“Total Capitalisation”** means in respect of the relevant period the sum of Total Debt and all paid up shareholder cash contributions to the share capital account or any other capital account of the Relevant Entity ascribed for such purposes of the Relevant Entity;

**“Total Debt”** means in respect of the relevant period the sum of financial indebtedness for borrowed money (which includes debts payable to affiliated companies as well as debt instruments to financial institutions) of the Relevant Entity;

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ANNEX 2  
to the  
Master Netting Agreement  
Form of Termination Notice

[ON TERMINATING PARTY LETTERHEAD]

[Defaulting Party's  
Name and Address Details  
As Specified for it in  
§ 12.6 of the Election Sheet]

[DATE]

Dear \_\_\_\_\_:

**RE: TERMINATION NOTICE -- Notice of Termination of Master Netting Agreement between \_\_\_\_\_ and \_\_\_\_\_ dated \_\_\_/\_\_\_/\_\_\_\_\_ (the "MNA").**

You are hereby notified pursuant to the terms of the MNA that due to your having experienced a Close-Out Event, we are exercising our rights, effective \_\_\_/\_\_\_/\_\_\_\_\_ (the "**Early Termination Date**"), to terminate and Close-Out all Netted Agreements under the MNA in accordance with its terms, and those, as applicable, of each underlying Netted Agreement.

This letter shall serve as our Termination Notice, in fulfillment of the requirements of § 5 (Voluntary Commencement of Close-Out) of the MNA.

Capitalized terms used in this letter have the meanings given to them in the MNA.

[additional information relevant to mechanics and deadlines applicable to cessation of nominations, etc.]

Regards,

[Terminating Party]

[Signature]