

EFET

European Federation of Energy Traders

Amstelveenseweg 998 / 1081 JS Amsterdam
Tel: +31 20 5207970

E-mail: secretariat@efet.org

Webpage: www.efet.org

Credit Support Annex

Dated as of [•]

between

[•]

(“Party A”)

and

[•]

(“Party B”)

(each, a “Party” and collectively, the “Parties”)

to the

EFET Form

Master Netting Agreement

with an Effective Date of [•]

NOTICE & WAIVER: THIS ANNEX WAS PREPARED BY EFET EXERCISING ALL REASONABLE CARE. HOWEVER EFET, ITS RESPECTIVE MEMBERS, REPRESENTATIVES AND COUNSEL INVOLVED IN ITS PREPARATION AND APPROVAL SHALL NOT BE LIABLE OR OTHERWISE RESPONSIBLE FOR ITS USE OR FOR 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 ANNEX AND THE 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. USERS OF THIS ANNEX ARE URGED TO CONSULT THE PRACTICE NOTES AND RELEVANT LEGAL OPINIONS MADE AVAILABLE BY EFET AS WELL AS THEIR OWN RESPECTIVE COUNSEL.

§ 1

Definitions and Interpretation

- 1. Definitions:** Words and expressions used in this Credit Support Annex (the “**Annex**”) shall have the meanings set out in Appendix 1 (*Defined Terms*). In addition, words and expressions defined in the Master Netting Agreement referred to above (the “**MNA**”) (and not otherwise defined herein) shall have the same meanings when used herein.
- 2. Interpretation:** This Annex supplements, amends, forms part of and is subject to the MNA. The Parties agree to provide each other with Eligible Credit Support according to the following provisions. This Annex shall serve to collateralize outstanding obligations between the Parties from time to time pursuant to the MNA.

Headings and titles are for convenience only and do not affect the interpretation of this Annex. Unless otherwise described, references in this Annex to paragraphs are to paragraphs of this Annex. In the event of inconsistency between this Annex and provisions of the MNA, this Annex shall prevail. In the event of inconsistency between § 15 (*Specifications*) and the other provisions of this Annex, § 15 (*Specifications*) shall prevail. References to “transfer” in this Annex mean, in relation to Cash: payment, and in relation to other assets: delivery.

§ 2

Valuation Agent and Determination of Valuations

- 1. Valuation Agent:** The Valuation Agent shall be the agent designated as such in § 15.5. Should the Parties not have specified a Valuation Agent under § 15.5, the Party asserting a claim for transfer under § 3 (*Credit Support Obligations*) or § 4 (*Return of Eligible Credit Support*) shall be the Valuation Agent. Should: (a) a Close-Out Event have occurred; and/or (b) notice have been given of an event or circumstance which is not a Close-Out Event but which allows the Netted Agreements or a Netted Agreement (where the Parties have not elected §4.2 (*Global Nature of Close-Out*) of the MNA) to be Closed-Out, each event subsisting in respect of the Party that except for such event or events subsisting, would be the Valuation Agent designated in accordance with sentences one or two of this § 2.1, then the Party in relation to which the event described in (a) or (b) above does not subsist, for so long as the event described in (a) or (b) above subsists, shall assume the function of Valuation Agent.
- 2. Determination of Valuations:** The Valuation Agent (or the Party assuming the function of Valuation Agent in accordance with § 2.1) shall determine the Base Currency Equivalent at the Valuation Time in respect of each Valuation Day and inform the Parties no later than the Notification Time on the Valuation Day of the following:
 - (a) the amount of any Exposure;
 - (b) the Value of any Eligible Credit Support held under this Annex;
 - (c) the amount of any Credit Support Amount; and
 - (d) the amount, if any, which may be transferred pursuant to § 3 (*Credit Support Obligations*) or § 4 (*Return of Eligible Credit Support*).

§ 3

Credit Support Obligations

- 1. Credit Support Obligations:** Upon demand by a Party (the “**Transferee**”) on or promptly following a Valuation Day, the other Party (the “**Transferor**”) shall transfer to the Transferee Eligible Credit Support in an amount equal to the amount by which the Credit Support Amount of the Transferee exceeds the Eligible Credit Support held by the Transferee at the Valuation Time (the “**Delivery Amount**”). Eligible Credit Support demanded but not received by a Party prior to a Valuation Time shall be deemed to be held by it, provided that the transfer of such Eligible

Credit Support is due on or after such Valuation Time. The amounts to be transferred in accordance with this § 3.1 shall be rounded as specified in § 15.12.

2. **Delivery of Eligible Credit Support:** Subject to § 8 (*Dispute Resolution*), should a Transferor receive a request for Eligible Credit Support in accordance with § 3.1, then the Transferor shall transfer to the Transferee the requested Eligible Credit Support not later than close of business on the Local Business Day following such request by either:
 - (a) transferring Cash to the account of the Transferee specified in § 14 (*Bank Accounts*); or
 - (b) providing a Letter of Credit.

3. **Suspension of Delivery of Eligible Credit Support Relating to Termination of Less Than All Netted Agreements:** In the event that any Netted Agreement is terminated in accordance with its own terms (where the Parties have disapplied § 4.2 (*Global Nature of Close-Out*) of the MNA) at a time when all Netted Agreements are not also being Closed-Out pursuant to operation of the MNA or otherwise, if, as a consequence of such termination, the Party which is the non-defaulting Party under the terms of the terminated Netted Agreement(s) is required to transfer Eligible Credit Support pursuant to this Annex, then such transfer obligation shall be suspended until such time as the non-defaulting Party has been paid the sums payable (if any) as a consequence of the termination of the Netted Agreement(s). In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the Party which is the non-defaulting Party under the terminated Netted Agreement(s) is entitled to receive Eligible Credit Support pursuant to this Annex, then the non-defaulting Party may set-off the amount of such Eligible Credit Support to be delivered to it against sums payable (if any) by it as a consequence of the termination of the relevant Netted Agreement(s).

§ 4

Return of Eligible Credit Support

1. **Excess Credit Support:** Upon demand by the Transferor on or promptly following a Valuation Day, the Transferee shall transfer to the Transferor Eligible Credit Support in an amount equal to the amount by which the Eligible Credit Support held by the Transferee exceeds the Credit Support Amount of the Transferee at the Valuation Time (the “**Return Amount**”). The amounts to be transferred in accordance with this § 4.1 shall be rounded as specified in § 15.12.

2. **Return of Eligible Credit Support:** Subject to § 8 (*Dispute Resolution*), should a Transferee receive a request pursuant to § 4.1 (*Excess Credit Support*), then the Transferee shall transfer to the Transferor the requested Return Amount not later than close of business on the Local Business Day following such request by either:
 - (a) transferring Cash to the account of the Transferor specified in § 14 (*Bank Accounts*); or
 - (b) where the Eligible Credit Support is a Letter of Credit, and as preferred by the Transferor, waiving its rights, in part or in whole, under, or agreeing to the amendment or revocation of the Letter of Credit and, where relevant, its return. The Transferee may waive its rights conditional upon the transfer of other Eligible Credit Support such that its Value, when added to the Value of the remaining Eligible Credit Support held by the Transferee, equals the Credit Support Amount of the Transferee.

3. **Suspension of Return of Eligible Credit Support Relating to Termination of Less Than All Netted Agreements:** In the event that any Netted Agreement is terminated in accordance with its own terms (where the Parties have disapplied § 4.2 (*Global Nature of Close-Out*) of the MNA) but all Netted Agreements are not also being Closed-Out pursuant to operation of the MNA or otherwise, if, as a consequence of such termination, the Party which is the non-defaulting Party under the terms of the terminated Netted Agreement(s) is required to return Eligible Credit Support pursuant to this Annex, then such return obligation shall be suspended until such time as the non-defaulting Party has been paid the sums payable (if any) as a consequence of the

termination of the Netted Agreement(s). In addition, if as a consequence of the termination upon grounds as described in the preceding sentence, the Party which is the non-defaulting Party under the terms of the Netted Agreement(s) is entitled to a return of Eligible Credit Support pursuant to this Annex, then the non-defaulting Party may set-off the amount of such Eligible Credit Support to be returned to it against sums payable (if any) by it as a consequence of the termination of the Netted Agreement(s).

§ 5

Minimum Transfer, Threshold and Independent Amounts

1. **Minimum Transfer Amount:** In the event that a Minimum Transfer Amount has been agreed for a Party in § 15.1, that Party shall be obliged to transfer the Delivery Amount or the Return Amount pursuant to § 3 (*Credit Support Obligations*) or § 4 (*Return of Eligible Credit Support*), as the case may be, only if the Value of such Delivery Amount or Return Amount to be transferred, as the case may be, is at least equal to such Minimum Transfer Amount.
2. **Threshold Amounts:** In the event that a Threshold Amount has been agreed for a Party in § 15.2, that Party shall be obliged to transfer the Delivery Amount or the Return Amount pursuant to § 3 (*Credit Support Obligations*) or § 4 (*Return of Eligible Credit Support*), as the case may be, only if the Exposure of the other Party minus any Independent Amount of such Party, in addition to the first Party's Independent Amount if any, is at least equal to the Threshold Amount.
3. **Independent Amounts:** In the event that an Independent Amount has been agreed for a Party in § 15.9, such amount shall be added to the Exposure of the other Party when determining the Credit Support Amount of such other Party, and shall be deducted from its own Exposure when determining its own Credit Support Amount.

§ 6

Exchange of Eligible Credit Support

Exchange of Eligible Credit Support: Subject to the approval of the Transferee (not unreasonably to be withheld), the Transferor may replace, in whole or in part, any Eligible Credit Support provided under this Annex by Eligible Credit Support of the same or higher Value. The Transferee shall have no obligation to transfer the Eligible Credit Support which it holds until it has received the replacement Eligible Credit Support.

§ 7

Transfer of Title, Representation and No Security Interest

1. **Transfer of Title:** Each Party agrees that all right, title and interest in and to any Eligible Credit Support or Interest Amount which it transfers to the other Party under the terms of this Annex will vest in the Transferee free and clear of any liens, claims, charges or encumbrances or any other interest of the Transferor or of any third person.
2. **Representation:** Each Party represents to the other Party (which representation is deemed to be repeated on each day on which it transfers Eligible Credit Support or an Interest Amount) that it is the sole owner of or otherwise has the right to transfer all such Eligible Credit Support or Interest Amount to the other Party under this Annex, free and clear of any security interest, lien, encumbrance or other restriction.
3. **No Security Interest:** Nothing in this Annex is intended to create or does create in favour of either Party any mortgage, charge, lien, pledge, encumbrance or other security interest in any cash or other property transferred by one Party to the other Party under this Annex.

§ 8

Dispute Resolution

- 1. Objections:** Should a Party object to the Valuation Agent's (or in accordance with § 2.1 the Party acting as Valuation Agent's) calculation of Eligible Credit Support to be transferred or the Value of any Eligible Credit Support, then such Party shall notify the other Party and the Valuation Agent (if not the other Party), setting out the reasons for the objection, before the close of business on the earlier to occur of: the Local Business Day following the day on which the relevant demand for Eligible Credit Support is received, and the Local Business Day on which transfer of Eligible Credit Support is due pursuant to this Annex, as relevant.
- 2. Undisputed Amounts:** Where a Party disputes the Valuation Agent's (or in accordance with §2.1 the Party acting as Valuation Agent's) calculation of Eligible Credit Support to be transferred, the Party obliged to transfer such Eligible Credit Support, shall transfer the undisputed amount of such Eligible Credit Support, if any, to the other Party no later than the time such transfer is due pursuant to, as applicable, § 3 (*Credit Support Obligations*) or §4 (*Return of Eligible Credit Support*) of this Annex.
- 3. Resolution:** The Parties shall consult each other in an attempt to resolve disputes. If the Parties fail to resolve a dispute by the Resolution Time, then the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) shall recalculate the Eligible Credit Support to be transferred and/or the Value of Eligible Credit Support as of the Recalculation Day by seeking quotations from three leading traders in each of the relevant commodity markets which it may choose according to its reasonably exercised discretion, and by taking the arithmetic average of those obtained. Where three quotations are not available for a Relevant Transaction, each Party shall obtain one quotation and the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) will take the arithmetic average of those obtained. Where neither the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) nor the Parties are able to obtain the requisite quotations for a Relevant Transaction, the Valuation Agent's (or in accordance with § 2.1 the Party acting as Valuation Agent's) original calculations shall be used for such Relevant Transaction. Following a recalculation pursuant to this § 8.3, the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) will notify each Party (or the other Party if relevant), as soon as possible but in any event not later than the Notification Time on the Local Business Day following the Resolution Time, of the results of the recalculation and the means of arriving at those results. The appropriate Party will, upon demand following such notice, make the appropriate transfer.
- 4. No Close-Out Event:** The failure by a Party to transfer any amount which is the subject of a dispute to which this § 8 (*Dispute Resolution*) applies will not constitute a Close-Out Event for as long as the procedures set out in this § 8 (*Dispute Resolution*) are being carried out. For the avoidance of doubt, upon completion of those procedures, any failure by a Party to make a required transfer on the relevant due date shall be a Close-Out Event for the purposes of the MNA and this Annex.

§ 9

Interest income on Cash

Interest Income on Cash: The Transferee shall pay interest on Cash at the Reference Interest Rate set out in § 15.8. Interest Amounts shall be paid on the first Local Business Day of each month for Eligible Credit Support held and received during the preceding month to the account of the Transferor specified in § 14 (*Bank Accounts*). For the avoidance of doubt, interest on Cash shall only accrue up to, but not including, any Early Termination Date set forth in the Termination Notice issued by the Terminating Party pursuant to § 4.1 (*Termination and Close-Out of the Netted Agreements*) of the MNA (or, in the event of Automatic Termination of the Netted Agreements, up to, but not including, the date of such Automatic Termination) .

§ 10
Close-Out Events

Close-Out Event: In addition to any further relevant elections made in the MNA, upon this Annex being entered into, the following events shall also be Close-Out Events in respect of any Letter of Credit, other Credit Support Document and in respect of any entity issuing either:

- (A) any event described in § 3.1(A)(III) (*Credit Support Defaults*) of the MNA;
- (B) any event described in § 3.1(C)(I)(b) or (c) of the MNA; or
- (C) any event described in any of the following sub-elections under § 3.1(C)(VI) (*Failures to Provide Performance Assurance*) of the MNA:

§ 3.1(C)(VI)(a)(i) (*Credit Rating*) and § 3.1(C)(VI)(a)(ii) (*Credit Rating of Credit Support Provider that is a Bank*), and, unless a different rating has been specified in the terms of the MNA, the minimum acceptable rating for any Credit Support Provider shall be A- from Standard & Poor's Rating Group and A3 by Moody's Investors Services, Inc.;

§ 3.1(C)(VI)(a)(v) (*Expiry of Credit Support Document*), and, unless a specific time has been specified in the terms of the MNA, thirty (30) calendar days shall apply; and

§ 3.1(C)(VI)(a)(vi) (*Failure of Credit Support*).

§ 11
Credit Support / Performance Assurance

Notwithstanding election to the contrary or no election in the MNA, upon this Annex being entered into the terms of § 9 (*Credit Support / Performance Assurance*) of the MNA shall be made operative and shall apply to the MNA.

§ 12
Termination of the Netted Agreements

Termination of the MNA: Upon the Early Termination Date, the Valuation Agent (or the Party acting as Valuation Agent in accordance with § 2.1) shall determine the Base Currency Equivalent of all Eligible Credit Support provided under this Annex at the exchange rate and for value on the date as set out in § 7.2 (*Conversion of Settlement Amounts Into the Base Currency*) of the MNA, ("**Determination Date**"), provided, however, that any Eligible Credit Support in the form of a Letter of Credit as of the Determination Date shall not be considered by the Valuation Agent in making such determination. Notwithstanding the preceding sentence, to the extent that the Transferee draws under any such Letter of Credit, the obligations of the Transferor shall be discharged in an amount equal to such drawings. Such amount determined by the Valuation Agent will be deemed to be an amount payable (but not yet paid) by the Transferee to the Transferor on the Determination Date and shall be included in the Final Net Settlement Amount to be determined pursuant to § 8 (*Netting-Off of Settlement Amounts; Accrual of Interest*) of the MNA. At the same time, all claims of the Parties for the transfer of Eligible Credit Support pursuant to § 3 (*Credit Support Obligations*) or § 4 (*Return of Eligible Credit Support*) shall expire.

§ 13
Expenses

Each Party shall pay its own costs and expenses in connection with performing its obligations under this Annex, and neither Party shall be liable for any such costs and expenses incurred by the other Party.

§ 14
Bank Accounts

Transfers of Cash pursuant to § 3 (*Credit Support Obligations*) and § 4 (*Return of Eligible Credit Support*) as well as payments of Interest Amounts shall be made to the following accounts:

Party A:

Bank: []
Account number: []
Sort Code: []

Party B:

Bank: []
Account number: []
Sort Code: []

§ 15
Specifications

1. **Minimum Transfer Amount** means with respect to Party A: [•], and

Minimum Transfer Amount means with respect to Party B: [•],

provided, however, that (a) if a Close-Out Event has occurred with respect to a Party, the Minimum Transfer Amount for that Party shall be automatically reduced to zero, or (b) where the Credit Support Amount with respect to both Parties on a Valuation Day is zero and there are no outstanding Transactions, the Minimum Transfer Amount with respect to both Parties on such day shall be zero.

2. **Threshold Amount** means with respect to Party A: [•]; and

Threshold Amount means with respect to Party B: [•],

but, in the event that a Close-Out Event has occurred with respect to a Party then the Threshold Amount for that Party shall be automatically (re)set to zero.

3. **Valuation Time:** means the close of business on the Local Business Day immediately preceding the Valuation Day or date of calculation, as applicable, provided that the calculations of Value and Exposure will, as far as practicable, be made as of approximately the same time on the same date.

4. **Valuation Day:** [•]

5. **Valuation Agent:** [•]
6. **Notification Time:** [•]
7. **Resolution Time:** [•]
8. **Reference Interest Rate** means [•]
9. **Independent Amount** means with respect to Party A: [•]
Independent Amount means with respect to Party B: [•]
10. **Eligible Currency:** means [•]
11. **Eligible Credit Support:** means [•]
12. **Rounding:** The Delivery Amount and the Return Amount will be rounded up to the nearest integral multiple of [•] and down to the nearest integral multiple of [•] respectively.
13. **Base Currency:** Unless otherwise specified herein means the currency selected as such in Section 8.3(C) of Part I of the Election Sheet to the MNA.
14. **Additional provisions:** [•]

EFET

European Federation of Energy Traders

APPENDIX 1 to the Annex

Defined Terms

Terms used in this Annex shall have the following meanings:

“**Base Currency Equivalent**” means, in respect of any amount denominated in the Base Currency, such Base Currency amount, and, in respect of any amount denominated in an Eligible Currency, the amount of Base Currency required to purchase such amount of Eligible Currency at the spot exchange rate determined by the Valuation Agent for value on the day that the relevant determination is being made.

“**Cash**” means an amount of money in the Base Currency or any Eligible Currency.

“**Credit Support Amount**” means in relation to a Party (“**Party X**”) on a Valuation Day, the aggregate of Party X’s Exposure plus any Independent Amount applicable to the other Party (“**Party Y**”), minus any Independent Amount posted as Cash applicable to Party X and any Threshold Amount applicable to Party Y. Calculations which result in a negative number shall be deemed to be zero.

“**Delivery Amount**” has the meaning set out in § 3.1.

“**Eligible Credit Support**” has the meaning set out in § 15.11.

“**Eligible Currency**” has the meaning set out in § 15.10.

“**Exposure**” means in relation to a Party on a Valuation Day, the amount, if any, determined in a commercially reasonable manner by the Valuation Agent to be due and payable to such Party if all Netted Agreements were being terminated as of the Valuation Time, on the basis that (i) that Party is not the Defaulting Party and (ii) the Final Net Settlement Amount shall be calculated in the Base Currency. For the avoidance of doubt, such amount shall include sums due and payable, and the value of commodity delivered, but for which payment has not been received. Calculations which result in a negative number shall be deemed to be zero.

“**Independent Amount**” has the meaning set out in § 15.9.

“**Interest Amount**” means with respect to an Interest Period, the aggregate sum of the Base Currency Equivalents of the amounts of interest determined for each relevant currency and calculated for each day in that Interest Period on the amount of the Eligible Credit Support comprised of Cash and held by the Transferee, determined by the Valuation Agent for each such day as follows:

- (a) the amount of cash denominated in the relevant currency on that day; multiplied by
- (b) the Reference Interest Rate in effect on that day; divided by
- (c) 360 (or in the case of GBP, 365).

“**Interest Period**” means the period from (and including) the last Local Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Local Business Day on which Eligible Credit Support in the form of Cash was transferred to or received by the

Transferee) to (but excluding) the Local Business Day on which the current Interest Amount is transferred.

“Letter of Credit” means a standby letter of credit, bank guarantee or similar document in a format acceptable to the Transferee denominated in the Base Currency or an Eligible Currency issued irrevocably by a leading commercial bank with a credit rating of at least A- from Standard & Poor’s Rating Group or A3 by Moody’s Investors Services, Inc. which obliges the bank to pay the amount guaranteed therein upon first demand of the Transferee.

“Local Business Day” means in relation to a transfer of cash or other property under this Annex a day upon which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in the place where the relevant account is located and if different in the principal financial centre, if any, of the currency of such payment.

“Minimum Transfer Amount” is the amount designated as such in § 15.1.

“Notification Time” means the time designated as such in § 15.6.

“Recalculation Day” means the Valuation Day that gives rise to the dispute under § 8 (*Dispute Resolution*), provided, however, that if a subsequent Valuation Day occurs under § 3 (*Credit Support Obligations*) prior to the resolution of the dispute, then the “Recalculation Day” shall mean the most recent Valuation Day under that § 3 (*Credit Support Obligations*).

“Reference Interest Rate” has the meaning set out in § 15.8.

“Relevant Transaction” means a Netted Agreement or an Additional Netted Agreement (as the case may be).

“Resolution Time” has the meaning set out in § 15.7.

“Return Amount” has the meaning set out in § 4.1.

“Threshold Amount” has the meaning set out in § 15.2.

“Transferee” has the meaning set out in § 3 (*Credit Support Obligations*).

“Transferor” has the meaning set out in § 3 (*Credit Support Obligations*).

“Valuation Agent” means the agent designated as such in § 15.5 or otherwise provided for in § 2 (*Valuation Agent and Determination of Valuations*).

“Valuation Day” means any Local Business Day designated as such in § 15.4.

“Valuation Time” means the time designated as such in § 15.3.

“Value” means, for any Valuation Day or other day for which Value is calculated pursuant to this Annex, and subject to § 8 (*Dispute Resolution*) in the case of the dispute, with respect to:

- (a) Eligible Credit Support that is Cash, the Base Currency Equivalent of such amount; and
- (b) Eligible Credit Support that is a Letter of Credit, the Base Currency Equivalent of the face value of such Letter of Credit, less any drawn portion.

Executed by the duly authorised representative(s) of each Party

Party A:

By:
(Authorised Signatory)

Name:

Title:

Date:

Party B:

By:
(Authorised Signatory)

Name:

Title:

Date: