**EFET**

**European Federation of Energy Traders**

Amstelveenseweg 998 / 1081 JS Amsterdam

Webpage: www.efet.org

**WAIVER: THE FOLLOWING EMIR RISK MITIGATION TECHNIQUES AGREEMENT WAS PREPARED BY EFET’S MEMBERS EXERCISING ALL REASONABLE CARE, HOWEVER, EFET, THE EFET MEMBERS, 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 FROM ITS USE IN ANY INDIVIDUAL CASE AND IN WHATEVER JURISDICTION. IT IS THEREFORE THE RESPONSIBILITY OF EACH PARTY WISHING TO USE THIS AGREEMENT TO ENSURE THAT ITS TERMS AND CONDITIONS ARE LEGALLY BINDING, VALID AND ENFORCEABLE AND BEST SERVE TO PROTECT THE USER’S LEGAL INTEREST. EFET IS PROVIDING THIS AGREEMENT AT THE REQUEST OF ITS MEMBERS AS A MEANS OF FACILITATING BILATERAL AGREEMENT BETWEEN PARTIES TO ADDRESS CERTAIN OBLIGATIONS UNDER EMIR. ANY PARTIES CONTEMPLATING USING THIS AGREEMENT ARE URGED TO CONSULT THEIR OWN COUNSEL.**

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**EMIR Risk Mitigation Techniques Agreement**

**Supplementary Agreement for the Implementation of Obligations
in respect of Regulation EU 648/2012 (EMIR)**

Between

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“**Party A**“)

and

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

having its registered office at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“**Party B**“)

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

entered into on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “**Effective Date**”)

# **Arbitration.** If Option B is specified in Part II of this Agreement, any disputes which arise in connection with this Agreement shall be referred for resolution to the German Institute of Arbitration (DIS) and decided according to its rules ousting the jurisdiction of the ordinary courts. The number of arbitrators shall be three (3). The arbitration shall be conducted in the language specified in Part II of this Agreement.

 **PROVISION APPLYING IRRESPECTIVE OF OPTION A OR OPTION B**

# **Covered Agreements.** Notwithstanding §12.1 (***Governing Law***), amendments contained in this Agreement to any Covered Agreement shall be governed by and construed in accordance with the law specified to govern that Covered Agreement and otherwise in accordance with the applicable choice of law doctrine.

**§13**

**Miscellaneous**

# **Partial Validity.** Should any provisions of this Agreement be or become wholly or partially invalid or unenforceable, this shall not affect the validity of the remaining provisions. The invalid or unenforceable provision shall be replaced by an appropriate provision, which, to the greatest extent legally possible, comes closest to the economic and legal intention of the Parties with respect to any affected transaction(s) that was applicable immediately prior to such change.

# **Amendments.** Any amendments or additions to this Agreement shall be made only in writing signed by both Parties.

# **Counterparts.** This Agreement may be executed and delivered in counterparts (including by facsimile transmission), each of which will be deemed an original.

# **Third Party Rights.** The Parties do not intend that any person that is not a Party to this Agreement shall have any rights under or be able to enforce this Agreement and the Parties exclude to the extent permitted under applicable law any such third party rights that may otherwise be implied.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Name of Party]** **[Name of Party]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Name of Signatory/ies]** **[Name of Signatory/ies]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Title of Signatory/ies]** **[Title of Signatory/ies]**

**EFET**

**European Federation of Energy Traders**

**Election Sheet**

**to the**

**Agreement**

**PART II.**

**SECTION A: CUSTOMIZATION OF PROVISIONS IN PART I OF THIS AGREEMENT**

**§1
Subject of Agreement**

**§ 1.2 Amendments to Covered Agreements:**

 [ ] §4 (***Portfolio Reconciliation***), §5 (***Dispute Identification and Resolution Procedure***) and §8 (***Confidentiality Waiver***) of this Agreement shall not apply where the Parties have entered into an Alternative Documentary Solution.

 [ ] §4 (***Portfolio Reconciliation***), §5 (***Dispute Identification and Resolution Procedure***) and §8 (***Confidentiality Waiver***) of this Agreement shall apply where the Parties have entered into an Alternative Documentary Solution.

**§3
Election of Counterparty Status; Status Change**

**§ 3.1 Election of Counterparty Status:**

[ ] The Parties make no designation of their respective counterparty status.

[ ] The Parties elect to make the designations of their respective counterparty status set out below:

 **Party A** designates that as of the Effective Date and each time it enters into an EMIR Relevant Transaction, which designation shall be deemed to be repeated on every day on which an EMIR Relevant Transaction is outstanding, it is:

 [ ] a financial counterparty pursuant to Article 2(8) of EMIR;

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a financial counterparty

 pursuant to Article 2(8) of EMIR if it were established in the European Union;

 [ ] a non-financial counterparty pursuant to Article 2(9) of EMIR and which exceeds any of the relevant clearing thresholds (as determined in Article 11 of the RTS);

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a non-financial counterparty pursuant to Article 2(9) of EMIR if it were established in the European Union and which exceeds any of the relevant clearing thresholds (as determined in Article 11 of the RTS);

 [ ] a non-financial counterparty pursuant to Article 2(9) of EMIR and which does not exceed any of the relevant clearing thresholds (as determined in Article 11 of the RTS); or

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a non-financial counterparty pursuant to Article 2(9) of EMIR if it were established in the European Union and which does not exceed any of the relevant clearing thresholds (as determined in Article 11 of the RTS).

 **Party B** designates that as of the Effective Date and each time it enters into an EMIR Relevant Transaction, which designation shall be deemed to be repeated on every day on which an EMIR Relevant Transaction is outstanding it is:

 [ ] a financial counterparty pursuant to Article 2(8) of EMIR;

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a financial counterparty pursuant to Article 2(8) of EMIR if it were established in the European Union;

 [ ] a non-financial counterparty pursuant to Article 2(9) of EMIR and which exceeds any of the relevant clearing thresholds (as determined in Article 11 of the RTS);

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a non-financial counterparty pursuant to Article 2(9) of EMIR if it were established in the European Union and which exceeds any of the relevant clearing thresholds (as determined in Article 11 of the RTS);

 [ ] a non-financial counterparty pursuant to Article 2(9) of EMIR and which does not exceed any of the relevant clearing thresholds (as determined in Article 11 of the RTS); or

 [ ] an entity established outside the European Union that to the best of its knowledge and belief, having given due and proper consideration to its status, would be a non-financial counterparty pursuant to Article 2(9) of EMIR if it were established in the European Union and which does not exceed any of the relevant clearing thresholds (as determined in Article 11 of the RTS).

**§4
Portfolio Reconciliation**

**§ 4.1 Portfolio Reconciliation:** Portfolio Data Sending Entity:

 [ ] Party A

 [ ] Party B

 [ ] Both Parties

 Portfolio Data Receiving Entity:

 [ ] Party A

 [ ] Party B

 [ ] Neither Party

**§ 4.6 Agents and Third Party Service Providers**

 [ ] **Party A** appoints its Affiliate\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to act as its agent for the purpose of performing [all of its][the following] obligations under §4 (***Portfolio Reconciliation***): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 [ ] **Party B** appoints its Affiliate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ to act as its agent for the purpose of performing [all of its][the following] obligations under §4 (***Portfolio Reconciliation***): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**§7
Timely Confirmation**

**§ 7.1 Timely Confirmation:** [ ] §7 shall apply
 [ ] §7 shall not apply

**§11
Form of Notifications**

**11.1 Form of Notifications:**

 **Party A:** Address for notices:

 Address:
 Attention:
 Fax:
 Phone:
 Email:

 Copy to:
 Address:
 Attention:
 Fax:

 Email:

 [ ] Notices may be given by email to Party A

 [ ] Notices may not be given by email to Party A

 **Party B:** Address for notices:

 Address:
 Attention:
 Fax:
 Phone:
 Email:

 Copy to:
 Address:
 Attention:
 Fax:
 Email:

 [ ] Notices may be given by email to Party B

 [ ] Notices may not be given by email to Party B

**§12
Governing Law and Dispute Resolution**

 **§12.1 Governing Law and Dispute Resolution:**

 [ ] Option A shall apply; or

 [ ] Option B shall apply and the language of the arbitration shall be:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_; or

 [ ] Neither Option A nor Option B shall apply and, subject to §12.3 (***Covered Agreements***), the following provisions shall apply in respect of governing law and dispute resolution:

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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**ANNEX 1**

**Defined Terms**

**Business Day Locations: Party A Business Day Location:**

 The Party A Business Day Location is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

 **Party B Business Day Location:**

 The Party B Business Day Location is \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**SECTION B: ADDITIONAL PROVISIONS TO THE AGREEMENT**

IN WITNESS WHEREOF the parties have executed this Agreement on the respective dates specified below with effect from the Effective Date.

 “**Party A**” ”**Party B**”

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Name of Party]** **[Name of Party]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Name of Signatory/ies]** **[Name of Signatory/ies]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Title of Signatory/ies]** **[Title of Signatory/ies]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**[Date of Signing]** **[Date of Signing]**