



Version 4.0, 1st December

2016 EFETnet®

GENERAL TERMS AND CONDITIONS

(referred to as “these Terms” or “GTCs”)

WHEREAS:

EFETnet B.V., company register number 34197646, with registered office at Keizersgracht 62-64, 1015 CS Amsterdam (hereafter referred to as “EFETnet®”) is a company, founded by the European Federation of Energy Traders (EFET), for the purpose of facilitating the energy trading processes between and among its members and with other organisations active in the energy trading business.

EFETnet® has invested in the development of the EFETnet® Software by a software developer (Ponton), and continues to invest in new products and services as a cost-sharing vehicle to the benefit of the industry.

Ponton has exclusively licensed the EFETnet® Software to EFETnet acting as a software distributor and service provider.

“Licensed User” is the sublicensee of the EFETnet® Software agreeing to the following General Terms and Conditions by signing the downloadable Accession Agreement as available under www.EFETnet.org.

These Terms set out the general framework for licensing and providing maintenance services. Any schedules referred to by these Terms are available on www.EFETnet.org

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

The following General Terms and Conditions shall apply in addition to the Accession Agreement as specified therein. Further applicable for EFETnet services are the following Schedules as follows:

Schedule 1 (Fee Schedule), Schedule 2 (Maintenance Services), Schedule 4 (Testing Requirements), Schedule 5 (System Requirements) and Schedule 6 (EFETnet® Software)..

Accession Agreement and Schedules are downloadable from www.efetnet.org

1. DESCRIPTION OF THE EFETNET® SOFTWARE

1.1 The EFETnet® Software which currently provides for matching processes for confirmations and positions between trading counterparties and brokers is as described in Schedule 6 (EFETnet Software) as published on www.efetnet.org.

1.2 The EFETnet® Software currently provides for matching processes for confirmations and positions between OTC trading counterparties.

1.3 EFETnet® may introduce new services or service features from time to time. Any new service, and/or service feature is open for subscription for EFETnet® Licensed Users and condition to the Schedule 1 (Fee Schedule) as published on www.EFETnet.org.

2. SOFTWARE DELIVERY

2.1 EFETnet® shall procure that Ponton delivers the EFETnet® Software including documentation to Licensed User after EFETnet® has notified Ponton of the conclusion of the Accession Agreement by way of a License Notice. The Software delivery will be made to the Delivery E-mail Address specified by Licensed User. The e-mail will contain a URL which enables the Licensed User to download the EFETnet® Software (Hotlink).

2.2 It will only be possible to download the EFETnet® Software via the Hotlink for 30 minutes after dispatch of the email by Ponton. If the download fails or the Hotlink becomes inactive, Licensed User shall request a new Hotlink via EFETnet® from Ponton. The URL is considered confidential information pursuant to Clause 11 of these Terms and may not be made available to any third party. The means of obtaining the EFETnet® Software may be reasonably amended upon EFETnet®'s prior notice to Licensed User.

3. FURTHER RESTRICTIONS OF SUBLICENSE

3.1 The EFETnet® Software is further detailed in Schedule 6 (EFETnet® Software). Licensed User may only use EFETnet® Software components in conjunction with each other and strictly limited to the purposes set out here. Licensed User must not unbundle or use the EFETnet® Software for any purposes other than those set out here. Licensed User must not sell, rent, transfer or otherwise dispose of the license.

3.2 EFETnet®, or Ponton, on EFETnet's behalf, shall be entitled to monitor compliance with the sublicense restrictions.

3.3 Upon termination, the license shall automatically end and Licensed User shall immediately delete all copies of the EFETnet® Software from Licensed User's systems.

4. INTELLECTUAL PROPERTY INDEMNITY

4.1 EFETnet® warrants to Licensed User based upon the agreements which EFETnet® concluded with Ponton that the use and operation of the EFETnet® Software, new Software Functionalities other than Updates and Upgrades, Software Updates, Software Upgrades, EFETnet® documentation under these Terms shall not infringe any proprietary or intellectual property rights of any third party. Furthermore, to EFETnet®'s best knowledge, no third party has any other rights in the EFETnet® Software or Software Updates, new Software Functionalities, Software Upgrades or other EFETnet® documentation, which would limit the permitted usage of the EFETnet® Software in any way.

4.2 In the event of an intellectual property rights infringement, whether actual or alleged, suffered by Licensed User in connection with the Licensed User's use or possession of the EFETnet® Software, Software Updates, Software Upgrades, documentation or any other EFETnet® materials supplied to the Licensed User during the term, Licensed User shall promptly notify EFETnet® and Ponton thereof in writing, or by telefax. Upon receipt of such notice, EFETnet® shall without undue delay exercise its rights against Ponton in order to indemnify and keep indemnified Licensed User against all losses, claims, damages and expenses (including reasonable legal fees) in relation to any intellectual property rights infringement. Licensed User shall give EFETnet® and Ponton all reasonable assistance in all negotiations and proceedings necessary to remedy any suspected intellectual property rights infringement.

4.3 In the event of conflicting instructions from different Licensed Users, or the same Licensed User, EFETnet® may refer the issue to the EFETnet® Steering Group. The EFETnet® Steering Group advises the EFETnet Managing Director on how to deal with the issue. Reference is made to the procedure provided in Clause 9.4 of these Terms which shall apply to instances captured in Clause 4.2.

5. SERVICES

EFETnet® shall procure that the maintenance and support services will be rendered directly by Ponton to Licensed User as detailed in Schedule 2 (Maintenance Services) as published on www.EFETnet.org.

6. LICENSED USER'S OBLIGATIONS

6.1 Licensed User acknowledges that Licensed User's full co-operation is required to enable EFETnet® and/or Ponton to deliver the EFETnet® Software and provide the Maintenance Services. Licensed User shall provide EFETnet® and/or Ponton with co-operation and assistance in accordance with Clause 6.2 below.

6.2 Licensed User's obligation to co-operate and assist includes, but is not limited to:

(a) Licensed User shall qualify at least two appropriate employees with regard to the installation, set-up, operation and functioning of the EFETnet® Software and provide EFETnet and Ponton with their names and contact details ("Licensed User Contacts"). The Licensed User Contacts shall be responsible for supporting Ponton in the provision of the Maintenance Services. In the event

Maintenance Services are requested during the operational hours of the EFETnet® Software, the Licensed User shall ensure that Ponton is able to contact at least one (1) of the Licensed User Contacts and that such Licensed User Contacts shall have the necessary access to the EFETnet® Software and its system environment to enable Ponton to fulfil EFETnet®'s maintenance obligations under this Agreement.

(b) The Licensed User Contacts shall be responsible for providing Ponton with the necessary information relating to, but not limited to the EFETnet® Software installation, configuration, environment, error conditions and system logs of such Licensed User to the extent requested by Ponton in order to fulfil its obligations under this Agreement.

(c) Licensed User shall ensure that the Schedule 5 (System Requirements) are met by the Licensed User's electronic data processing system. Schedule 5 (System Requirements) may be modified by EFETnet® from time to time, upon prior written notification to Licensed User. EFETnet® shall provide Licensed User with reasonable notice, as defined in Clause 7.3 of the Accession Agreement, in the event that the Schedule 5 (System Requirements) need to be amended, reconfigured or otherwise modified in order to allow error-free set-up, installation or operation of the EFETnet® Software. The Licensed User undertakes to make such amendment, reconfiguration or modification on advice of EFETnet .

(d) Licensed Users shall not unreasonably deny EFETnet's and/or Ponton's access to Licensed User's premises and to Licensed User's system if EFETnet and/or Ponton requests such access in order to analyse and solve a problem relating to the EFETnet® Software. Access to Licensed User Sites requires full compliance with the Licensed User's own internal security policies and procedures whilst at that Licensed User's premises.

(e) If Ponton and/or EFETnet® notifies Licensed User of a defect in the EFETnet® Software which may lead to operational errors, Licensed User shall use best efforts to discontinue the use of the EFETnet® Software as soon as practicable and until EFETnet and/or Ponton has remedied that defect.

(f) Licensed User shall install and maintain internet connections of sufficient bandwidth for the download/installation, activation, operation and maintenance of the EFETnet® Software for the full license period.

(g) All actions and support which may be reasonably requested to accomplish the commercial purpose of these General Terms and Conditions and the Accession Agreement.

7. REPRESENTATION AND WARRANTIES

7.1 The parties warrant that they have the full right and power to enter into the Accession Agreement and to perform all their obligations under these Terms.

7.2 Except as expressly stated here or in the Accession Agreement, or these Terms, all other warranties whether implied by law or otherwise are hereby expressly excluded to the extent permitted by law.

8. LIABILITY FOR DEFECTS

8.1 Any and all defects in the EFETnet® Software shall be reported by Licensed User to the Helpdesk and dealt with in accordance with paragraph 2 of Schedule 2 (Maintenance Services).

8.2 Any failure of EFETnet and/or Ponton to provide the Maintenance Services, or any other services contemplated by these Terms shall be addressed in the manner described in Clauses 8.3 to 8.6 below.

8.3 Licensed User shall notify Ponton in writing with a copy to EFETnet® (Remedy Notice) if a defect in the EFETnet® Software cannot be remedied by applying the Maintenance Submission Process three (3) consecutive times. For the avoidance of doubt, all Maintenance Submission Processes may be carried out on the same day. The Remedy Notice shall specify the defect in the EFETnet® Software and provide a reasonable period of time for Ponton (which shall be no less than ten (10) Business Days) to provide a remedy, or in the event the defect disables the EFETnet® Software unusable for electronic data matching, the time period shall not be less than five (5) Business Days (in either case the parties shall not have to go through the Maintenance Submission Process again).

8.4 In the event that any response by Ponton fails to provide a remedy within the period of time set out in the relevant Remedy Notice pursuant to Clause 8.3 above:

(a) such time period shall re-run once more for the relevant number of Business Days set out in the Remedy Notice (Remedy Re-run); and

(b) the Monthly Fees shall be reduced by five (5) per cent of the total monthly amount of such fee per Business Day during the Remedy Re-run detailed above which Ponton fails to remedy the defect.

8.5 If Licensed User is in breach of its obligations pursuant to Clause 6.2(a) to 6.2(h), the response time periods detailed here shall pause for the period of time from the due date of such obligation until the obligation is fulfilled.

8.6 Notwithstanding Clause 8.4, if Ponton fails to remedy the defect within the Remedy Re-run, EFETnet® shall exercise its rights against Ponton under the agreements entered into with the same and pursuant to the German Civil Code ("BGB") to obtain from Ponton appropriate remedies for any defect suffered by EFETnet and/or the Licensed User from Ponton.

8.7 In the event of conflicting instructions from different Licensed Users, or the same Licensed User, EFETnet® may refer the issue to the EFETnet® Steering Group. The Steering Group shall advise

EFETnet on how to proceed with the issue. Reference is made to the procedure provided for in Clause 9.4 of these Terms.

8.8 Should Licensed User decide, after EFETnet® or Ponton issued a notice regarding warning of potential software defects, to continue using the EFETnet® Software after such warning Licensed User acknowledges that it is acting on its own risk.

9. HANDLING OF CLAIMS

9.1 Licensed User shall notify any claim under Clauses 4, 8 or any other claims caused by Ponton (in particular liability claims for poor service quality and for damages caused in connection with delivering the EFETnet® Software or providing the Maintenance Services -“Ponton Claims”) to EFETnet® to the following e-mail-address: H.Brunswick@EFETnet.org with copy to management@EFETnet.org

9.2 EFETnet® shall use commercially reasonable efforts to manage, handle and settle the Ponton Claims in a timely manner.

9.3 Upon Licensed User's request, EFETnet® shall assign and transfer its rights against Ponton concerning the Ponton Claims to Licensed User (or, if other Licensed Users are affected as well, either (i) the relevant proportion of the total claims associated with that Licensed User, or (ii) the full rights to the group of affected Licensed Users). If more than one of the Licensed Users is concerned, EFETnet® shall become authorised to exercise the rights of all affected Licensed Users in the name and on behalf of these Licensed Users.

9.4 EFETnet® may request that advice of the EFETnet® Steering Group must be obtained prior to EFETnet®'s decision. The EFETnet® Steering Group has an advisory role in relation to EFETnet®. Any advice provided by the EFETnet® Steering Group shall not be binding upon the management of EFETnet®. The EFETnet® Steering Group consists of the Licensed User representatives making resolutions with the majority of the Steering Groups' votes. The EFETnet® Steering Group is entitled to set up its own rules of procedure which should provide for an uneven number of members. EFETnet® shall invite EFETnet® Steering Group members to meet and shall chair all meetings of the EFETnet® Steering Group.

10. LIMITATION OF LIABILITY

10.1 EFETnet® is acting as promoter, software distributor and service provider of the EFETnet® Software in its own name and on its own account. EFETnet®'s liability is dependent on what can be recovered from Ponton.

(a) for claims notified by Licensed User to EFETnet® in relation to all Licensed Users to the amount EFETnet® can recover from Ponton as ultimate supplier of the EFETnet® Software and the Maintenance Services; and

(b) for negligently failing to meet its obligations on behalf of Licensed Users pursuant to these Terms (including but not limited to those obligations described in Clauses 4.2, 8.6 and 9) to an amount of EUR 500,000.00 (EURO five hundred thousand) for all damages occurred to all Licensed Users in aggregate within a twelve month period.

10.2 For the purpose of calculating compensation in relation to Clause 10.1 Licensed User in the Licensed User Role of 'Broker' shall receive a weighting of one tenth (1/10) of a Licensed User in the Licensed User Role of 'Trader'.

10.3 EFETnet® shall obtain and maintain appropriate insurance cover for its liability in the amount stated in Clause 10.1(b) and shall review the appropriate insurance cover regularly.

10.4 The liability caps and the insurance cover as provided in Clause 10 lit. a) and b) shall apply to all affected Licensed Users in aggregate.

10.5 EFETnet®'s liability shall be unlimited in the event of

(a) intent; or

(b) grossly negligent actions/omissions of its representatives and/or executive employees; or

(c) injuries affecting the life, body or health of any person.

10.6 In the event of a breach of essential contractual obligations hereunder, EFETnet®'s liability for any grossly negligent actions of any employees or any other individual or entity acting on behalf of EFETnet® shall be limited to typical and appropriately predictable damages.

10.7 EFETnet®'s liability according to the German Product Liability Code shall remain unlimited.

10.8 The Licensed User will run the testing procedure set out in Schedule 4 (Testing Requirements) for the EFETnet® Software jointly with Ponton before starting the productive use of the EFETnet® Software. The testing procedure shall be applicable to the current most recent software standard as published on www.EFETnet.org. Limitations of the scope of liability of EFETnet in case of non-compliance of a Licensed User with such testing requirements are also provided for by Schedule 4 (Testing Requirements).

11. CONFIDENTIALITY

11.1 The parties acknowledge that they will receive confidential information regarding their respective businesses and third parties (Confidential Information) as a result of signing the Accession Agreement. Accordingly, the parties shall during the life of the agreement, these Terms and two years thereafter (i) hold confidential and cause their employees, officers, directors, auditors, consultants, agents and representatives to hold in confidence all Confidential Information; and (ii) not use or permit their employees, officers, directors, agents or representatives to use the Confidential Information other than in connection with their respective obligations under and for the purposes of this Agreement. Licensed User shall in particular be entitled to communicate with

Ponton with regard to any and all information necessary to deliver software, remedy defects or provide services and with other EFETnet® Licensed Users.

11.2 The confidentiality provisions shall not apply to Confidential Information which (i) the parties already lawfully possessed; (ii) was obtained from a third party who, to the party's knowledge, is not prohibited from transmitting the information by a contractual obligation; (iii) the parties are or become obliged to disclose on basis of any legal provision, court decision or comparable statutory instrument; or (iv) which is or become generally available to the public other than as a result to a wrongful disclosure by one of the parties.

11.3 The parties will, upon request of either party or termination/expiry of the EFETnet® Software License, return all Confidential Information and destroy any copies, whether made electronically or otherwise, of Confidential Information that have previously been made available to them. This shall not apply to any copy of Confidential Information where (i) either party is obliged to retain such copies either by applicable law, court decision or any other comparable statutory instrument, or (ii) such copies are electronically made in the course of automatic archiving or backup procedures.

11.4 In the event of disclosure of Confidential Information to a third party in default of this Clause 11, the defaulting party shall use all reasonable endeavours to assist the other party in recovering and preventing such third party from using, disseminating, selling or otherwise disposing of such.

12. GENERAL PROVISIONS

12.1 Unless provided otherwise in these Terms all notices or communications between the parties or to EFETnet and/or Ponton, which are to be given under these Terms, or under the Accession Agreement, must be in writing and in the English language but can be transmitted by e-mail or telefax except for termination notices, which must be in writing and delivered by registered mail. Licensed User consents to EFETnet® providing Ponton with the required relevant information.

12.2 Notices delivered by hand shall be deemed served at the time of delivery. Notices sent by post by a party registered in one European country to a party registered in another European country shall be deemed given on the fifth calendar day following the date such notice was posted. Notices sent by facsimile transmission shall be deemed given at the time of its actual receipt.

12.3 Any failure by either party to enforce any right or any waiver of any breach of or failure to comply with these Terms and/or the Accession Agreement by the other party shall not be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other breach of, or failure to comply with, any other provision of these Terms and/or the Accession Agreement.

12.4 Any amendment to, these Terms the Accession Agreement and/or the Licensed User Agreement shall not be binding on the parties unless set out in writing. Clause 7.3 to 7.5 of the Accession Agreement shall apply and supersedes this requirement.

12.5 No Licensed User may sub-contract or assign any of its respective contractual obligations, except for EFETnet®'s entitlement to use Ponton to deliver software and provide services as stipulated herein.

12.6 In the event that any provision of these Terms shall, for any reason, be held to be invalid, illegal or unenforceable or should such provision be impracticable for any reason, such as invalidity, illegality or unenforceability it shall not affect any other contractual provision. In such a case, these Terms and the Accession Agreement shall be construed in a legally permissible way which reasonably effectuates the economic purposes and the interests of the parties.

12.7 These Terms and the Accession Agreement shall be governed and construed in all respects by the laws of the Federal Republic of Germany, without regard to conflict of laws provisions and excluding the UN Convention on Contracts for the International Sale of Goods (CISG). The courts of Hamburg, Germany shall have exclusive jurisdiction.

13. DEFINITIONS

The following definitions and conditions shall apply for these General Terms and Conditions and/or the Accession Agreement by:

"Affiliated Companies" means those affiliate companies of Licensed User in the sense of section 15 of the German Stock Corporation Act ("AktG") identified in Clause 2.3

"Business Day" means Monday to Friday (inclusive) except those below: New Year's Day, Good Friday, Easter Monday, Labour Day (1.05), Ascension Day, Whit Monday, Reunification Day (3.10), Christmas Day (25.12) and Boxing Day (26. 12).

"Change Notice" means the notice specified in Clause 7.3 of the Accession Agreement

"Confidential Information" means the information defined in Clause 11.1.

"Delivery E-Mail Address" means the e-mail address specified in Clause 4.3 of the Accession Agreement.

"eCM Module" Electronic Confirmation Matching (eCM) Module, being a software module implementing the EFET eCM Standard as defined in Schedule 6 (EFETnet Software);

"eCM Module User" means a Licensed User who has chosen to sublicense and use the ECM Module in conjunction with the EFET Box+ Common Services;

"EFET Box+" shall have the meaning ascribed to it in Schedule 6 (EFETnet Software)

"EFET Box+ Common Services" shall have the meaning as defined in Schedule 6 (EFETnet Software)

"EFET Box+ Modules" shall have the meaning as defined in Schedule 6 (EFETnet Software)

"EFETnet Software Environment" shall have the meaning as defined in Schedule 6 (EFETnet Software)

"EFET Standard" shall have the meaning of all current standards for electronic confirmation matching (including broker confirmations and emissions) and for electronic position matching, issued by EFET as the standard setting body and as published on www.efet.org. For the avoidance of doubt, the EFET Standards shall also cover future processes relating to, for example, bills/invoices, scheduling, and

clearing registration as may then be issued by EFET as the standard setting body and as then published on www.efet.org in the future.

“EFETnet® Steering Group” means an advisory group initially comprising of 4 Licensed Users which collectively determine organisational and strategic level decisions on matters including (but not limited to) project timing, project finances, project organisation and which adopts decisions in the context of maintenance services and the handling of claims by Licensed Users. The Steering Group shall advise the EFETnet Managing Director on any issues upon his request.

“EFETnet® Software” means the software, which will allow the sending of messages compliant with the EFET Standard, as further described in Schedule 6.

“EFETnet® Software Update” means modifications to the EFETnet® Software relating to the removal of defects and/or minor improvements.

“EFETnet® Software Upgrade” means expansions of functionality of the EFETnet® Software as well as implementations of further processes and/or Future Module(s), or new versions of the EFET Standard(s) as detailed in Schedule 2 (Maintenance Services).

“ePM Module” Electronic Position Matching (ePM) Module, being a software module implementing the EFET ePM Standard and as defined in Schedule 6 (EFETnet Software)

“ePM Module User” means a Licensed User who has chosen to sublicense and use the EPM Module, in conjunction with the EFET Box+ Common Services.

“Future Module(s)”, being one, or more software module(s) that will implement future EFET Standard(s), fees to be set out in Schedule 1 (Fee Schedule).

“Future Module User” means a Licensed User who has chosen to sublicense and use one or more Future Modules, in conjunction with the EFET Box+ Common Services.

“Helpdesk” means the helpdesk facility provided by Ponton as specified in Schedule 2 (Maintenance Services) as published on www.EFETnet.org.

“Hotlink” means the hyperlink specified in Clause 2.1.

“Initial Fee” means the sum of any one-time fees to be paid by Licensed User according to Clause 3.3 of the Accession Agreement in conjunction with Schedule 1 (Fee Schedule) as published on www.EFETnet.org

“Initial Term” means a period until 31st August 2016.

“License Notice” means a written confirmation by EFETnet® that Licensed User has concluded the Accession Agreement and is entitled to receive the Hotlink and use the EFETnet® Software.

“Licensed User Contacts” means the persons listed in Clause 4.2 of the Accession Agreement and in Clause 6.1 of these Terms.

“Licensed User Role” as provided in Clause 10.2 of these Terms and in Clause 2.2 of the Accession Agreement means the role played by the Licensed User as defined in the EFET Standard, within the Schedule 1 (Fee Schedule) different schema's will apply to different Licensed user Roles. Specifically Schedule 1 (Fee Schedule) shall apply to Licensed Users in the Licensed User Role of 'Trader' and Schedule 1 (Fee Schedule) shall apply to Licensed Users in the Licensed User Role of 'Broker'

“Licensed Users” means those parties having concluded a Accession Agreement and have accepted the General Terms and Conditions as published on www.EFETnet.org

“Licensed User Site” means each production environment of a Licensed User, regardless of the number of test and/or development environments and regardless of the location of staff using the production environment.

“Maintenance Services” means the services specified in Schedule 2 (“Maintenance Services”).

“Maintenance Submission Process” means the process detailed in Schedule 2 (“Maintenance Services”).

“Monthly Fee” means the monthly fee to be paid by Licensed User according to prevailing Schedule 1 (“Fee Schedule”) published on www.EFETnet.org and the current number of Licensed Users who have signed the Accession Agreement and are using the EFETnet® Software in live productive use.

“Ponton” means Ponton Consulting GmbH, Dorotheenstraße 60, D-22301 Hamburg, Germany.

“Ponton Claims” means the claims described in Clause 9.1.

“Ponton X/D” shall have the meaning defined in Schedule 6 (EFETnet Software).

“Ponton X/E” shall have the meaning defined in Schedule 6 (EFETnet Software).

“Ponton X/P” shall have the meaning defined in Schedule 6 (EFETnet Software).

“Ponton X Suite” shall have the meaning defined in Schedule 6 (EFETnet Software).

“Remedy Notice” means the notice to be provided pursuant to Clause 8.3.

“Remedy Re-run” means the procedure defined in Clause 8.4.

“System Requirements” means those minimum Licensed User system requirements necessary to ensure adequate installation and running of the EFETnet® Software as further detailed in Schedule 5 (System Requirements). EFETnet® may from time to time change the System Requirements to keep pace with technical changes and newer versions of components of the EFETnet® Software Environment at Licensed User(s).